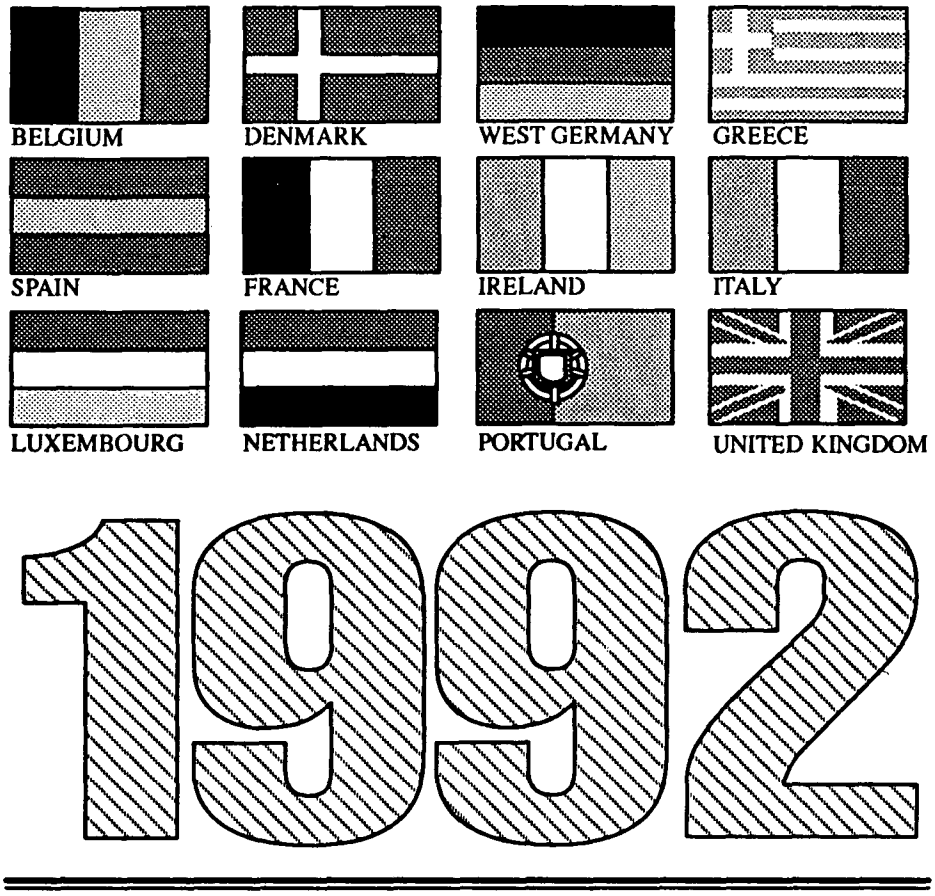

THE EFFECTS OF GREATER ECONOMIC INTEGRATION WITHIN THE EUROPEAN COMMUNITY ON THE UNITED STATES:

THIRD FOLLOWUP REPORT

Investigation No. 332–267

USITC Publication 2368

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UNITED STATES INTERNATIONAL TRADE COMMISSION

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THE EFFECTS OF GREATER ECONOMIC INTEGRATION WITHIN THE EUROPEAN COMMUNITY ON THE UNITED STATES THIRD FOLLOWUP REPORT

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PREFACE

On October 13, 1988, the United States International Trade Commission (Commission) received a joint request from the House Committee on Ways and Means and the Senate Committee on Finance (presented as app. 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 and a comprehensive analysis of its potential economic consequences for the United States. The committees requested that the Commission provide a report by July 15, 1989, with followup reports as necessary. 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 and second followup reports were issued in March 1990 and September 1990, respectively.

In their letter of request, the committees stated that the form and content of the policies, laws, and directives that remove economic barriers and restrictions and harmonize practices among the EC member states may have a significant impact on U.S. business activities within Europe overall and in particular sectors, and further, the process of creating a single market may also affect progress and results in the ongoing Uruguay Round of GATT multilateral trade negotiations. 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." The initial report contained background, introductory, definitional, and descriptive material related to the EC 1992 program. It also discussed the institutional framework and procedures for the implementation of the EC 1992 program. The bulk of the initial report, however, consisted of (1) the discussion and analysis of changes expected from the implementation of those directives issued prior to January 1, 1989, grouped into key categories, and (2) information and analysis of the EC 1992 program and its relation and impact on the GATT, the Uruguay Round, and other EC member-state obligations and commitments to which the United States is a party. Subsequent followup reports have essentially followed the format of the initial report, with summaries of each of the initial report's chapters and discussions of developments during the 6-month period following each previous report, as appropriate. This third followup report continues to follow this format and basically covers developments since July 1, 1990.

Copies of the notice of the third 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* (55 F.R. 42911) on October 24, 1990, 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 Communities (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, signed in 1965, effectively completed the formation of the EC.

Although the EC, as a customs union, has had no internal customs duties since July 1, 1968, and has had common external duties, internal as well as external trade has encountered numerous nontariff obstacles. Some of these barriers predate the formation of the EC, and others have arisen as EC countries attempted, from time to time, to insulate particular industries or products after internal duties were eliminated. These measures and the costs associated with them took on an added prominence with the elimination of internal tariffs and increase in intra-EC trade. They contributed to a general "Eurosclerosis" that also affected the competitiveness of EC nations in the world market.

A recognition of these costs and the desire to complete the internal market were at least partially responsible for the White Paper 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. Dismantlement of these barriers was to be accomplished through the issuance of approximately 280 directives.

The initial USITC report, issued in July 1989, was divided into three sections. The first section addressed (1) the genesis of and prospects for the 1992 program, (2) the institutional framework and procedures for implementation of the 1992 program, (3) the descriptive and definitional aspects of the 1992 program, and (4) U.S. trade with the EC. The second section analyzed the changes expected from the implementation of each of the 261 measures issued or proposed prior to January 1, 1989, grouped into key categories. The third section contained information on and analysis of the implications of the 1992 program for GATT, the Uruguay Round, and other EC member-state obligations and commitments under bilateral or multilateral agreements and codes to which the United States is a party.

Subsequent followup reports, issued in March 1990 and September 1990, followed the same format as that of the initial report. A summary of each of the previous reports' chapters was followed by a discussion of new developments in that chapter's area of concern, primarily for the 6 months prior to that report. 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. The second followup report also contained chapters on research and development and three industry sectors—automobiles, chemicals and pharmaceuticals, and telecommunications.

This third followup report follows the established format and covers basically the period since July 1, 1990. The report includes most of the chapters covered in previous reports. Also included is a discussion of the effects of the EC 92 program on the U.S. value-added telecommunication and information services industry. A list of EC 92 initiatives addressed in this investigation is presented as appendix C, and an index of industry/commodity analyses contained in chapters 4 through 12 is presented as appendix D.

The highlights of the third followup report are summarized below, by report section.

Introduction and Background

Introduction to the Europe 1992 Program

- *Under the Italian Council presidency in the last half of 1990, the EC continued to pass the legislation that forms the 1992 integration program.*

At the beginning of 1991, Luxembourg succeeded to the presidency and to the task of overseeing two intergovernmental conferences, one on economic and monetary union and the

other on political union, convened to recommend major modifications to the EC's organic treaties.

- *The focus of the EC is turning from the passage of directives in Brussels to the implementation of those directives in the member states. The EC Commission is stepping up its efforts to monitor and encourage implementation.*
- *Denmark and the United Kingdom are in the lead in efficiency of implementation.*

Germany is also efficient, but reunification may delay future action. Spain and Portugal have had difficulties but are catching up. The status and pace of implementation in Italy and Greece remain problematic, although Italy's new La Pergola law system, which provides for cooperation between Government ministries and Parliament, appears to be improving Italy's record.

- *As evidenced by the status of the Toy Safety Directive, implementation of technical standardization directives is lagging, particularly in the establishment and mutual recognition of certification bodies. The European Economic Interest Grouping regulation is generally well implemented, but demand for the creation of groupings is low because of their uncertain tax status. Although the implementation deadline for the Second Banking Directive has not yet passed, the implementation process is already well advanced in several member states.*
- *The EC 92 process is encouraging wider European integration.*

In June 1990, the EC and European Free Trade Association (EFTA) nations began formal negotiations to establish a European Economic Area (EEA) that would enable the free movement of goods, persons, services, and capital among the 19 EC and EFTA countries. Negotiators hope to have an agreement creating the EEA completed in time to allow the EEA to come into force concurrently with the EC's single-market initiative. Several EFTA countries are closer to considering application for EC membership, while some central and Eastern European countries are seeking EFTA membership as a stepping stone to full EC membership.

France, West Germany, Belgium, the Netherlands, Luxembourg, and Italy got a headstart on the EC 92 process by signing the Schengen Agreement in June 1990, eliminating border controls on movements of people, goods, and services.

- *German unification, as well as the political and economic reforms in central and Eastern Europe, has implications for the Community's external relations.*

The EC obtained temporary derogations from GATT to allow former East Germany to maintain trade agreements with its Council for Mutual Economic Assistance (CMEA) trading partners. German unification also required the EC to modify its external trade agreements under the Lome Convention and the GSP system. The EC completed its first-generation bilateral trade and economic cooperation agreements with the European CMEA countries in 1990 and began negotiations on second-generation accords. These new agreements will provide benefits almost equal to those enjoyed by Community members through preferential trade arrangements and could eventually lead to the establishment of free trade areas with the EC.

Review of Customs Union Theory and Research on the 1992 Program

- *The EC 1992 program will expand trade within the EC. However, customs union theory alone cannot predict whether trade with nonmember countries will increase or decrease.*

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. The internal trade liberalization, however, will also 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. Producers in nonmember countries will benefit if the EC 1992 program boosts growth in the EC.

- *Recent outside economic research on the EC 1992 program examines the impact on the U.S. financial, automobile, and telecommunications sectors.*

Recent research on the EC 1992 program contends that in the banking and securities sector, the market-integration program will prompt significant legislative and regulatory changes in the United States as the EC liberalizes its financial sector. In the automobile sector, it is argued that U.S. firms operating in the EC are well positioned because they already have a pan-European orientation. Moreover, it is asserted that the United States could gain significantly, as exports from the United States are likely to expand. In the telecommunications sector, the EC 1992 program could significantly open telecommunications services to competition in the long run.

- *In a comprehensive study, the staff of the EC Commission asserts that the EC could benefit significantly by moving beyond the EC 1992 initiative to a complete economic and monetary union (EMU).*

This research contends that an EMU will amplify the economic benefits that result from the EC 1992 program. In fact, the EC Commission argues that only a single currency would allow the full potential benefits of a single market to be achieved. They point out that the three main objectives of an EMU are efficiency, stability, and equity. They contend that the addition of a single currency to a single market will enhance the resource allocation function of prices at the EC level as well as provide more price stability. Finally, they believe that the relative advantage from an EMU will not systematically favor one region over another.

U.S. Trade and Investment in the EC

- *The European Community constituted one of the largest trading partners of the United States during 1986-90.*

The EC consistently accounted for between 18 and 24 percent of total U.S. imports during that period and between 23 and 24 percent of total U.S. exports. The U.S. trade balance with the EC rose from a deficit of $25 billion in 1986 to a positive $3 billion in 1990. U.S. exports to the EC rose from $83 billion in 1989 to $92 billion in 1990, whereas U.S. imports from the EC rose from $84 billion to $88 billion in the same period.

- *The United States is the EC's largest trading partner.*

The EC member states imported about 891 billion dollars' worth of goods in 1989, about 7.8 percent of which was supplied by the United States. EC exports were at a level of $780 billion in 1989, with about 7.7 percent going to the United States.

- *Two new trade organizations were established in August 1990 to promote investment in the EC.*

As of August 1990, a number of major U.S. and EC multinational firms formed the European Community Chamber of Commerce in the United States, with offices located in Washington, DC, and Brussels, Belgium. Also formed was the European-American Chamber of Commerce, as a consolidation of 11 bilateral EC Chambers of Commerce.

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

Standards, Testing, and Certification

- *Standards harmonization is a key component of the 1992 program.*

Of the 279 initiatives originally programmed in the 1985 White Paper, more than half—a total of 175—are standards related. The number of products affected is potentially enormous.

- *The EC Commission's Green Paper on standards, released on October 8, 1990, triggered renewed U.S. charges that standards setting in Europe is not fully open to U.S. firms.*

The paper appeared to reflect some backtracking by the EC on its commitment to use international standards, to implicitly discourage the inclusion of non-European experts in standards-drafting work, and to suggest that Eastern European suppliers be given privileged access to information relative to their counterparts in the rest of the world. In addition, the Commission signaled its intent to use standards as a means to promote the sale of EC-made goods in markets such as Latin America, Southeast Asia, and elsewhere.

- *Developments on the testing and certification front did little to allay U.S. fears about the potential for delays and discrimination in product approval.*

U.S. producers expressed concern that unless current EC thinking is turned around, U.S. suppliers could have limited options for proving conformity to EC requirements and could be forced to work through EC-based labs to secure them. Particular concern was expressed about quality assurance. Despite these concerns, U.S. business appears hopeful that it will ultimately benefit from the EC's move to a single set of regulations and conformity-assessment procedures.

Generally speaking, the question does not seem to be whether U.S. firms will gain from the harmonization of EC requirements, but rather, how much and when. Delays in adopting the needed standards and uncertainties about product approval are one reason for the "wait and see" attitude still evident among U.S. businesses who otherwise support the EC standards effort.

- *Highlights of industry developments include an effective ban on EC imports of U.S. pork and meat products, passage of far-reaching nutritional labeling requirements, initial steps towards creation of a European Medicines Agency, and a variety of measures related to emissions requirements for automobiles.*

Several agriculture-related directives posed the prospect of disrupting current trade flows, and changes favored by U.S. industry were made in directives relating to machinery, medical devices, and telecommunications terminal equipment.

Financial Sector

- *The 1992 program for financial services has raised interest and concern in the United States.*

Liberalized and open financial and capital markets in the EC should create business opportunities for U.S. financial-services firms. EC capital markets and financial firms are likely to become relatively more competitive and efficient, thereby benefiting EC consumers and prompting a reevaluation of the global competitiveness of the U.S. financial sector.

- *In December 1990, EC member states convened the Intergovernmental Conference (IGC) on Economic and Monetary Union, which may lead to significant economic and monetary policy changes in the Community.*

Building on the framework set out in the Delors Report of April 1989, the IGC will seek substantial amendments to the Treaty of Rome in order to establish a framework for the development of EC institutions and EC decisionmaking on economic questions. This framework is expected to lead, over time, to the creation of a European central bank (the so-called EuroFed) and a single currency.

- *Market access by third-country financial firms will be subject to the Community's reciprocity policy, which is based on "national treatment and effective market access."*

The EC could seek to negotiate with the United States in order to obtain "comparable competitive opportunities," which could be defined by the EC to include the right of an EC banking, securities, or insurance firm to sell a wide range of financial services throughout the United States on the basis of a single authorization.

- *The goal of the 1992 program in public procurement is to remove longstanding barriers at the member-state level by establishing rules to encourage more open public procurements, transparency, and nondiscrimination in all phases of public purchasing.*

- *The "excluded sectors" directive was adopted in September 1990 and will govern procurement of works and supplies by certain entities in the water, transport, energy, and telecommunications sectors when it becomes effective on January 1, 1993.*

The most important development in public procurement was the adoption of the Excluded Sectors Directive by the EC Ministers on September 17, 1990. To become effective on January 1, 1993, the directive imposes certain procedural, recordkeeping, and reporting requirements on specified "public" entities intended to introduce competition into the award of works contracts valued, net of VAT, over ECU 5 million; supplies contracts awarded by telecom entities valued over ECU 600,000; and supplies contracts awarded by other covered entities valued over ECU 400,000. Consistent with prior drafts, the directive permits exclusion of contract proposals that are not at least 50 percent of EC origin and, in the event there are equivalent tenders, the directive requires that preference be given to the tenders of EC origin. Tenders are to be considered equivalent if the price difference does not exceed 3 percent.

- *The "remedies" directive applicable to procurement in the excluded sectors was not adopted in 1990 as had been expected.*

In July 1990, the EC Commission submitted a proposal for a remedies directive to coordinate application of Community rules on the procurement procedures of entities operating in the excluded sectors. As proposed, the directive imposes on member states the duty to implement effective review procedures concerning the decisions of contracting entities in the excluded sectors, including procedures for suspending the award or implementation of contracts, setting aside unlawful decisions by the contracting entities, and awarding damages to persons harmed by infringement. The proposed remedies directive also contains provisions for direct EC Commission intervention in a particular contract award, and provisions under which contracting entities must have their practices and procedures reviewed for conformity to national and Community law and attested by an independent person with certain specified legal qualifications. Resistance from the United Kingdom and others, especially to the proposed system for independent auditing of private sector companies operating in the excluded sectors, prevented adoption of a remedies directive in 1990.

- *The EC advanced its program for the integration of the internal energy market by moving forward proposals for easing transmission of natural gas through the major systems and use of natural gas by power stations.*

In October 1990, the EC Commission published amendments to the Proposal for a Council Directive on the Transit of Natural Gas Through the Major Systems. The amendments primarily emphasize in the recitals the underlying policies reflected in the proposed directive: environmental protection, minimization of risk, and security of supply. In a related development, in August the EC Commission proposed a Council directive to remove the restriction against the use of natural gas in power stations. Parliament's opinion on the proposal was held up by the Socialist Group, which called for a debate on the issue of deleterious effects on the environment of methane emissions from pipelines. If Parliament approves the Energy Council's report, the EC Council is expected to adopt the directive without further debate.

- *The EC also reached a common position and adopted a proposal for regulating the transmission of electricity through and across member states.*

On July 13, 1990, the EC Commission announced its position on transmission of electricity on grids. On October 10, Parliament approved a common position emphasizing maintenance of environmental and consumer protections as the market opens up. On October 29, 1990, the EC Energy Council approved a directive allowing transit of electricity through and across member states, to be transposed by July 1, 1991. The directive is intended to provide for the use of national high-tension grids to transport electricity from one EC country to another at a reasonable price and at no inconvenience to the network operator.

Customs Controls

- *The EC is attempting to complete the task of eliminating internal customs formalities by replacing them with controls at the external boundaries of the Community. It is also working to achieve freedom of movement and employment for persons residing in the EC.*

The resulting reduced costs and delays are likely to benefit both EC and foreign firms. The EC Commission's goal is that all regulation of external trade will eventually occur at the member states' borders with other countries and at other points of initial entry into the EC. Important efforts were also made toward free movement of persons, mutual recognition of professional and vocational qualifications, and expansion of the authority of EC institutions to ensure that places of work in the EC will be safe and healthy. All of these initiatives were favorably received by interested parties outside the EC, although concerns were raised on other aspects of EC customs administration and trade policy.

- *Several customs control measures were adopted in recent months, making headway toward free movement of goods and people, and the growing membership in the Schengen Agreement is expanding the area within the EC where most controls have already been eliminated.*

New legislation concerning Community transit, release of goods for free circulation, customs warehouses, free zones, and German unification was approved since the second followup report in this study. In addition, proposed measures on weapons control and trade statistics, as well as the draft Common Customs Code, are still undergoing review and amendment. These directives, along with those already discussed in earlier reports in this study, would eliminate most border formalities by 1993 and would simplify and standardize those that must continue. With the addition of Italy, the Schengen Agreement now provides essentially barrier-free movement of goods among the six original parties to the EEC Treaty. Concerns remain as to German unification, tax collection, and security issues. Assuming these concerns are resolved, the goal of free movement of goods should largely be implemented, with benefits to enterprises inside and outside the EC.

- *Free movement of people remains an unattained objective of the EEC Treaty, although programs to expand educational and cooperative opportunities within the EC are receiving considerable attention and funding.*

With increasing immigration and German reunification, problems continue to arise in the effort to assure mutual recognition and eventual harmonization of professional and vocational qualifications in the member states. In addition, variations in social benefits programs present difficult issues as more member-state nationals live and work in EC countries other than their own. Thus, people are not completely free to move to or perform services in other member states. Training and technical programs, many of which involve business-university cooperation and may include Eastern European nationals, are being renewed, refunded, and enlarged with a view toward attaining maximum opportunities and competitiveness for EC workers. All these measures are intended to benefit EC nationals, not those of third countries.

Transport

- *The two major objectives of EC initiatives pertaining to the 1992 program concerning transportation are creating a unified transport market among the EC member states and decreasing economic regulation of transport services.*

Actions that the EC had previously taken to implement the former 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 latter objective, the EC had previously restricted the scope of capacity-sharing arrangements governing passenger air transportation and had increased the maximum number of authorizations each member state could grant to its trucking companies for Community transport.

- *The EC Council issued two final regulations during the summer of 1990 implementing the "second liberalization package" for air passenger services.*

The regulations liberalize the conditions under which new carriers can enter the market, existing carriers can increase capacity, and all carriers can introduce lower fares.

- *The EC also issued a number of initiatives addressing structural problems in air transport that could inhibit the type of expanded competition contemplated under the second liberalization program for air passenger services.*

In this regard, the EC Commission proposed issuance of a regulation establishing a system for allocating takeoff and landing slots at EC airports for flights between member states. Additionally, the EC Commission promulgated final regulations governing anticompetitive practices. The regulations would control the carriers' ability to enter into agreements concerning scheduling of international air services between EC airports. The regulations would also govern carriers' ability to consult on passenger tariffs and cargo rates pertaining to such services and to enter into undertakings pertaining to the purchase, development, or operation of certain computer reservation systems.

- *The current directives pertaining to economic deregulation in the air-transport sector do not address third-country issues.*

A U.S. airline official stated that he did not perceive the regulations implementing the second liberalization package for air-transport services to have any direct effect on U.S. concerns. A senior official at the U.S. Department of Transportation, however, gave a speech criticizing certain aspects of the second liberalization package as "overly regulatory" and expressed concern that the EC Commission is being too restrictive in regulating the rights of non-EC carriers to carry traffic between EC member states.

- *In December 1990, the EC Council increased the number of authorizations available for Community trucking companies in 1991 and 1992.*

The objective of the increase is to make the number of authorizations available greatly exceed demand by the end of 1992, thereby facilitating the abolition of the quota system scheduled for 1993.

Competition Policy and Company Law

- *Entry into force of the regulation on the control of concentrations and the increased action on the Takeover Directive reveal increasing interest on the part of the EC Commission in reshaping European businesses.*

- *The EC Commission has been notified of over 15 proposed mergers, of which it has decided to open proceedings as to only one. EC and U.S. merger officials are meeting in an effort to work out an EC-U.S. antitrust agreement.*

- *The Thirteenth Company Law Directive has been amended to change the scope of the directive, make more objective the test as to when an offer must be made for the remaining shares, to provide general principles governing the supervision of takeovers, to further restrict defensive actions by the offeree board to frustrate a takeover, and to increase the information that must be included in the offer document.*

- *The European Company Statute has received significant modifications by the Parliament which, inter alia, appear to increase the importance of the site of the registered office, strengthen the employee participation provisions, and further delineate the responsibilities of the management and supervisory boards.*

The Parliament has deleted the tax provisions that would have granted European Companies special tax treatment as an incentive to form a European Company.

Taxation

- *EC tax initiatives related to the 1992 program have focused on three areas: (1) harmonization of indirect taxes (value-added taxes (VAT) and excise taxes), (2) action on three long-outstanding proposed directives regarding intracompany transfers, and (3) possible tax evasion resulting from the liberalization of capital movements.*

The focus of EC tax harmonization efforts has been on indirect taxes, because these taxes are applied at member-state borders. Tax harmonization has been one of the most difficult issues facing the EC 1992 effort because changes in rates and coverage can have significant revenue, political, and social implications for individual member states.

- *The EC 1992 program calls for the approximation of indirect taxes (value-added (VAT) and excise taxes) and for the elimination of double taxation of transnational companies.*

The principal goal in approximating the VAT and excise tax rates of different countries is to narrow differences in rates so that such differences do not result in economic distortions when frontier controls are abolished after 1992, and with respect to companies to enable firms to operate on an EC level on much the same basis that firms can operate within a member state. Rates and practices often differ significantly among member states. Progress on tax matters has been slow and difficult because changes can have significant revenue, political, and social ramifications.

- *During the latter half of 1990, agreement was reached at the Council level on an interim regime for collection of VAT and a definitive regime for collection of excise taxes.*

A compromise was reached, subject to a Belgian reservation, to liberalize travelers' allowances (restrictions on the amounts and quantities of goods that travelers can enter duty free), effective June 30, 1991. Also, the EC Commission proposed two new company tax directives related to foreign losses and withholding taxes on interest and royalty payments.

Residual Quantitative Restrictions

- *The EC Commission intends to eliminate existing (residual) national quantitative restrictions (QRs) by the end of 1992, but no decision has been reached on how to address national QRs in sectors other than automobiles.*

The EC Commission has not indicated how it intends to address national QRs in sensitive sectors other than automobiles. In the automobile sector, a 5-year phaseout of quotas on Japanese auto imports has been proposed. A final agreement has not been reached among EC countries on the length of the transitional period, the import ceiling for Japanese autos, and whether local-content requirements would be included in any restrictions.

If Japanese producers continue to shift more production facilities to the EC and to increase their sales, U.S.-owned automakers may face challenges to their market position in the EC market. 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.

Intellectual Property

- *The issue of intellectual property rights in the EC is an important one for the United States.*

Many U.S. products sold in the EC are or can be protected by some intellectual property right. Such rights are especially important for firms selling high-technology products such as biotechnology and computer software, because of the considerable investment often required to develop such products (e.g., biotechnology), the ease in copying such products (e.g., computer software), or both.

- *The proposed computer software directive has been amended by the EC Commission, and the EC Council has arrived at a common position with respect to it.*

The amended proposed directive would ensure protection for computer programs if they are original, would provide for limited reverse engineering to achieve interoperability of programs, and would conform the term of protection to the Berne Convention standard.

- *The EC Commission has proposed a regulation for a Community plant variety protection right.*

The proposed regulation would establish a Community Plant Variety Protection Office and establish a comprehensive and exclusive regime for the protection of rights to plant varieties in the EC.

- *The EC Commission has proposed a directive for copyright protection for audiovisual rental and lending rights.*

The proposed directive would allow rightholders to authorize or prohibit rental or lending of originals and reproduction of protected works on video cassettes, audio cassettes, and compact disks.

Implications of EC Market Integration For GATT, The Uruguay Round, and Other International Commitments

EC Integration, the GATT, and the Uruguay Round

- *The United States and other countries are concerned that the EC 1992 program might result in increased protectionism or discrimination against their exports.*

Specific concerns include reciprocity, transparency, transitional measures on autos and textiles, and standards and certification issues. Also, the EC trading partners are apprehensive over limits on national treatment, requirements for third countries to continue trading in the EC, local-content rules, and quantitative restrictions.

- *With the suspension of formal discussions in the Uruguay Round of multilateral negotiations, it is premature to assess potential changes in EC laws that may result, but parallels between some policy positions at the EC level and at the GATT can be identified.*

Some subject areas covered by both internal market measures and GATT discussions demonstrate similar policy views; in others, definite differences may be seen. However, with the continuing disagreement as to agricultural reform precluding the completion of negotiations in areas where no written texts have been finalized, further progress in the Uruguay Round is uncertain. Draft agreements already provided to the participating governments may not be implemented, and U.S. legal authority to consider them under the so-called "fast-track procedure" is scheduled to expire. As a result, possible effects on U.S. business interests cannot be predicted with any accuracy.

EC Integration and Other EC Commitments

- *The EC Transport Minister reiterated that the EC has started a process aimed at gradually replacing member-state bilateral treaties regarding air transport with third-country bilaterals.*

Currently, there are in force between EC member states and third countries a large number of bilateral air-services agreements that regulate air services and, among other things, allocate rights of cabotage and landing rights. The EC Commission has reiterated its intention to take over from the member states responsibility for negotiating future international air-traffic agreements but has not indicated that existing agreements will be affected.

- *Since the second followup report was published, there have been few new developments relating to the possible conflict between the reciprocity provision of the EC's Second Banking Directive and the OECD's Capital Movements Code.*

The reciprocity provision of the EC's Second Banking Directive raised the possibility of a conflict between that directive and provisions of the OECD Capital Movements Code designed to dismantle barriers to capital movements among its contracting parties. In order to address this possible conflict, the OECD continues to consider the possibility of amending the codes to reconcile the two measures, but it has taken no action to date.

Other Policies and Special Topics

The Social Dimension

- *The social dimension is intended to protect employees as the European Community moves towards a single market. It serves an important function of seeking some degree of harmonization among the diverse labor standards and social protections of the various member states.*

- *In the latter half of 1990, the EC Council adopted two new directives covering worker safety and health. The EC Commission has also proposed additional directives addressing worker safety and health.*

The Council has adopted a new directive addressing worker exposure to biological agents and one addressing the exposure of temporary or subcontract employees to radiation. The Council has also agreed to an amended directive governing worker exposure to asbestos. The EC Commission has proposed directives addressing protection of pregnant workers, safety and health protection for workers at temporary or mobile worksites, and medical assistance for employees on seagoing vessels.

- *In the area of worker information, participation, and consultation, the EC Commission has proposed a directive calling for the establishment of companywide European Works Councils, which would consist of employee representatives who would meet with company management to discuss pending company decisions pertinent to the employees' interests.*

The directive reportedly formalizes procedures already in place in some EC companies. The U.S. industry groups that have been following this area are still studying the proposal to ascertain whether it has any extraterritorial effects. They are also working with EC industry organizations to examine the implications for all firms operating in the EC. Preliminarily, some U.S. industry representatives have expressed concern about the protection of confidential business information under the directive.

Research and Development

- *EC-sponsored collaborative R&D programs carried out under the Framework programs were designed to encourage cooperation between corporations, universities, and private and public research institutes.*

The EC has stated that "every natural or legal person under public or private law who is a resident or established in the an EC member state" is eligible to participate in an EC Framework program, which provides an avenue for participation by U.S. and other foreign enterprises. The only other official requirement for participation is that the potential collaborator have at least one other partner from another EC member state.

- *U.S. multinational firms expressed a general belief that U.S. participation in Europe's consortium program would be improved if they could have a greater role in the administration of programs.*

A greater role would include serving on work groups and panels of experts formed by the EC Commission with industry representation to define the substance of the programs.

Rules of Origin and Local-Content Requirements

- *No changes in EC country-of-origin rules or content standards have been evident in recent months, and concerns that such measures are being used to achieve trade policy goals remain.*

The EC applies a "last substantial transformation" rule to determine the origin of goods not wholly the product of one country, but with many supplementary criteria and exceptions. Particular attention continues to be focused on antidumping and anticircumvention measures, whereby the EC takes into account the country being targeted, production and supply relationships between targeted firms and third countries, the level of EC content incorporated in the subject goods, and EC trade and production policy objectives. Although a draft Uruguay Round agreement on these rules could still be adopted, no changes in existing EC standards have been presented.

The Value-Added Telecommunication and Information Services Industry in the United States

- *The European Community has developed the foundation for a harmonized telecommunication services market.*

The principal thrust of the EC's program regarding telecommunication services is embodied in the ONP Directive, which provides a framework for the development of harmonized technical interfaces and regulations. The development of follow-on directives will allow telecommunication service operators to provide services throughout the Community once they are legally established in any member state.

- *Harmonization will be accompanied by liberalization of the Community's telecommunication services market.*

The Liberalization Directive imposes an obligation on member states to limit the public network operator's monopoly to voice and telex services. Private operators will essentially be able to provide other services in competition with the public network beginning January 1, 1993, with certain exceptions regarding data transmission services.

- *U.S. telecommunication and information service providers are likely beneficiaries of the harmonization and liberalization of the European Community's telecommunication services market.*

Many U.S. telecommunication and information services firms have facilities and business partners in the European Community. Moreover, it is commonly perceived that U.S. firms such as IBM, AT&T, and the regional Bell holding companies have competitive advantages in a broad range of telecommunication and information services. Depending on the individual member states' implementation of newly developed regulations, these U.S. firms could begin to derive significant revenue from their European business.

PART I
INTRODUCTION AND BACKGROUND

CHAPTER 1
INTRODUCTION TO THE EUROPE 1992 PROGRAM

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CHAPTER 1
INTRODUCTION TO THE EUROPE 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 and Outlook for EC 1992

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. The actions called for in the Treaty of Rome as originally adopted were largely implemented by the mid-1960s. Over the next 20 years, Community membership doubled but few additional internal barriers were eliminated. Stagnating growth, high unemployment, and increased import competition raised domestic pressures for protectionist measures and reduced the momentum towards 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 cooperation among themselves.

In June 1985, the EC Commission issued a White Paper 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. EC leaders recognize that not all sensitive issues are likely to be resolved by 1992 and that a barrier-free Europe, therefore, is unlikely to be fully realized by that date. Certain measures—such as those in the area of tax harmonization—have prompted strong member-state resistance.

Progress on the EC single-market program and the development of EC relations with third countries have become inextricably linked. The rapid changes in Eastern 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. Some non-EC European nations are seeking membership in the Community in order to take full advantage of the benefits of the internal market. On June 20, 1990, the six European Free Trade Association (EFTA) nations, concerned that their special relationship with the EC is being challenged, launched formal negotiations with the EC to create a European Economic Space (EES) and realize the free movement of goods, services, people, and capital between the two blocs. Although the EC Commission argues that the external effects of integration will be positive, some third countries—including the United States—are concerned that increased competition among the 12 member states could induce certain sectors of EC industry to seek protection against imports, thus forming a "Fortress Europe."

Under the Irish presidency of the EC Council of Ministers during the first half of 1990, the EC continued to pass the legislation needed to effectuate the 1992 integration program. As set out in the White Paper, 279 internal market measures were to form the integration program. The EC Commission had transmitted to the EC Council proposals covering all of those measures, as well as supplementary proposals, as of July 18, 1990. As of that date, the EC Council had formally adopted 164 of the measures. The EC Council issued 20 internal market measures during the 6 months of the Irish presidency and has estimated that two-thirds of the 1992 measures had been passed. Within the EC Council, the presidency changed hands according to treaty provisions, with Italy succeeding Ireland to the chair for the second half of 1990, effective July 1, 1990.

The EC institutions moved toward a possible major restructuring within the framework of the planned political union of the EC. At their summit in Dublin on June 25-26, 1990, the EC heads of state and government confirmed that intergovernmental conferences on political and monetary union would begin on December 14, 1990, in Rome. New EC institutions moved toward establishment: a European Environmental Agency, a European Medicines Agency, and a European Organization for Standards and Testing (EOTC). After long debate, the question of where to fix the seat of the European Parliament remained unresolved, with France and Belgium pressing respectively for Strasbourg and Brussels.

Implementation

As the EC Commission, Parliament, and Council completed more and more of their work on single-market measures, the issue of implementation of those measures by EC member states assumed greater and greater importance. Some internal market measures are recommendations and decisions, which take effect immediately upon their issuance in all member states, but the vast majority of measures are directives, which take effect only upon their transposition into member-state law. As of July 13, 1990, only 19 of the 108 single-market directives that were required to be already transposed into national law had been fully transposed by all member states.

The EC Commission is the agency responsible under the Treaty of Rome for ensuring that directives are implemented by the EC member states. The EC Commission has told member states that they have not

adequately met their implementation obligation and has stepped up its efforts to monitor implementation and to enforce each member state's obligation to implement. Although enforcement is often effected by suit against a member state in the European Court of Justice, that recourse is problematic in that member states cannot be forced to obey judgments of the Court. Consequently, in addition to bringing Court actions, the EC Commission seeks to persuade member states to comply with their implementation obligation through political means, such as contacts between the European Parliament and national legislatures.

The status and pace of implementation varies widely from member state to member state. Member states such as the United Kingdom, Denmark, and Germany generally implement rapidly, whereas Italy, Spain, Portugal, and Greece have encountered significant obstacles to full implementation. Spain and Portugal have obtained derogations that permit delay in implementation, with some deadlines pushed back as far as 1997.

Developments Since the Second Followup Report

Introduction

Under the Italian presidency of the EC Council of Ministers[1] during the second half of 1990, the EC continued to pass the legislation needed to effectuate the 1992 integration program. As set out in the White Paper and its updates, 282 internal-market measures form the integration program. The EC Commission had transmitted to the EC Council proposals covering all of those measures[2] as of July 18, 1990.[3] As of March 14, 1991, the EC Council had formally adopted 186 of the measures.[4]

Within the EC Council, the presidency changed hands according to treaty provisions, with Luxembourg succeeding Italy to the chair for the first half of 1991, effective as of January 1, 1991. Luxembourg plans to give priority to completing the 1992 program and the two Intergovernmental Conferences (IGCs) begun in December and to increasing the social dimension of integration.[5] The Netherlands will assume the presidency in July of 1991.

The two IGCs were convened on December 15, 1990. One will work toward economic and monetary union (EMU) and the other will plan for a political union that would involve common foreign and security policy.

After some debate, the EC Commission recommended that the Treaty of Paris, which created the European Coal and Steel Community (ECSC), be permitted to run until its expiration in 2002. EC Commissioner Sir Leon Brittan, who deals with competition policy, had proposed abolishing the treaty immediately because it is allegedly no longer useful for the coal and steel sectors to receive special treatment. The EC Commission wants to review the provisions of the treaty in 2002, allow some to lapse, and merge others into the Treaty of Rome. At that point, the ECSC would merge completely into the European Economic Community (EEC).[6]

Debate continued on the seat of various EC institutions. Although the European central bank, commonly referred to as EuroFed, had its draft constitution approved on December 2, 1990, the EuroFed's location is still undecided, with Frankfurt, Luxembourg, and Amsterdam being the leading contenders.[7] Also still unresolved is whether the European Parliament should meet in Strasbourg or Brussels.

On November 27, 1990, the European Organization for Testing and Certification (EOTC) held its first meeting. Formed in April of 1990, with its headquarters in Brussels, the EOTC is intended to be "the technical support for the single market."[8] The EOTC will oversee product testing and certification in the EC and the European Free Trade Association (EFTA) and is composed of about 45 national technical experts and representatives from industry, labor, consumer groups, the EC, and EFTA, as well as a small staff.[9]

East and West Germany were reunited on October 3, 1990.[10] Although EC law went into effect on that day in the five Länder, or regions, of the former East Germany, the EC passed interim measures to ease the entry of the new territories into the EC's legal regime by slowing the imposition of legal requirements. Particular areas affected by such measures were tariffs, agriculture, the environment, and structural policy.[11]

The remainder of chapter 1 is devoted to two issues of importance to EC integration. First, the vast

[1] Italy has been criticized by some for its performance in the presidency. Critics cite disorganization, excessive numbers of meetings, inadequate preparation, and overfull agendas. *The Economist*, Oct. 20, 1990, p. 66.

[2] EC Commission, *Fifth 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 (90) 90, Mar. 28, 1990, p. 6.

[3] Ibid.; EC Commission data base Info 92, July 25, 1990.

[4] EC Commission data base Info 92, Mar. 18, 1991. The Council had, as of March 14, 1991, also partially adopted five measures and reached common positions on four more. Ibid.

[5] Reuters News Service, Nov. 7, 1990. With only a small staff of full-time diplomats in its foreign ministry and its Brussels mission, Luxembourg may find it difficult to fulfill the obligations of the presidency. Ibid. and industry sources.

[6] Reuters News Service, Nov. 19, 1990; *Financial Times*, Aug. 31, 1990, p. 1; *European Report*, No. 1628 (Nov. 10, 1990), Institutions and Policy Coordination, p. 5.

[7] Reuters News Service, Dec. 2 and 3, 1990.

[8] EOTC Director Henrique Machado Jorge, Nov. 23, 1990, Reuters News Service.

[9] Reuters, Nov. 23, 1990; see *Council Resolution on Global Approach to Testing and Certification, Official Journal of the European Communities (OJ)* No. C 10 (Jan. 16, 1990). See also pt. 2 of this and previous reports for further information on standards, testing, and certification.

[10] Einigungsvertrag (treaty of reunification); *Doing Business in Europe* (Commerce Clearing House), Oct. 10, 1990, p. 2.

[11] See, for example, *EC Council Regulation (EEC) No. 2684/90 of 17 Sept. 1990, OJ* No. L 263 (Sept. 26, 1990) p. 1; Reuters News Service, Jan. 2, 1991.

majority of integration measures being issued by the EC are directives that member states must implement by transposing them into national law. The issue of implementation is therefore increasing in prominence. Second, the question of how the EC conducts its external relations has assumed great importance in view of the significant changes occurring in the world.

Implementation

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 and greater importance. Some internal-market measures are recommendations and decisions, which take effect immediately upon their issuance in all member states, but the vast majority of measures are directives, which take effect only when they are carried over, or "transposed," into member-state law.

The implementation process can be complicated. 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.[12] 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.[13] 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 sometimes find them inadequate as implementation measures.[14]

Once the basic law or decree is issued, it must often be supplemented by administrative regulations that aid in enforcing the law.[15] 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. Application must be uniform across the EC.[16]

Failure at any point in that chain of implementation to carry out the letter and spirit of the EC's directives can render the 1992 program meaningless. 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.

However, many large companies reportedly have a policy of anticipating directives and attempting to comply with them even before they are issued. To this end, many maintain offices in Brussels to gather information so that management can make decisions as early as possible. Such companies prefer to cooperate with and anticipate EC measures rather than fight them, although the French tobacco companies are known for their combativeness in this regard. There is usually plenty of time to study a directive and to anticipate its effect: 1 year to draft the directive if it is not controversial, then 1 year to issue it, then up to 2 years for implementation.

The Status of Implementation

As of January 10, 1991, only 24 of the 120 single-market directives for which the implementation deadline has passed had been fully transposed by all member states.[17] The EC Commission estimates that the member states will be called upon to transpose in full or in part 33 additional measures in 1991, 22 in 1992, and 7 in 1993.[18] The EC considers the pace of implementation "disappointing," and expects that member states will accelerate their implementation efforts.[19] The European Parliament warns 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."[20]

Progress is not uniform in all areas. Environmental protection is an area in which member states have been very slow in implementation, particularly with regard to directives on drinking water, beaches, and wild birds. Problems in this area stem in part from the fact that some member states are farther along in environmental protection than others. A failure of implementation in the environmental field tends to be noticed because of complaints filed by the environmentalist "Green" movement.[21]

Implementation can be less of a problem in some areas, such as financial services, than in other areas, because some directives have direct application even if a member state has failed to transpose them into national law. A company is legally correct if it complies with the directive, and it can complain to the EC Commission if a nonimplementing member state

[12] Official of the EC Commission, Directorate General (DG) XV, interview by USITC staff, Brussels, Jan. 21, 1991.

[13] 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).

[14] Official of the EC Commission, DG XV, interview by USITC staff, Brussels, Jan. 21, 1991.

[15] This aspect is similar to U.S. practice in that many statutes in the U.S. Code are supplemented or interpreted by regulations issued by administrative agencies and published in the *Federal Register* and the *Code of Federal Regulations*.

[16] Official of the EC Commission, DG III, interview by USITC staff, Brussels, Jan. 22, 1991.

[17] EC Commission, COMSTAT5 III A 2, Jan. 10, 1991.

[18] EC Commission, *Implementation of the Legal Acts Required to Build the Single Market*, Communication From the Commission to the Council and the European Parliament, COM (90) 473, Oct. 5, 1990, pp. 2 and 3, footnote 3.

[19] Ibid. See also EC Commission, *Programme of the Commission for 1991*.

[20] 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.

[21] Official of the U.S. Mission to the EC, interview by USITC staff, Jan. 30, 1991. See also USITC, *Effects of EC Integration* , USITC publication 2318, September 1990, p. 4-35.

discriminates against it. According to an industry source, this situation can be a problem for small and medium-size companies who are not familiar with EC law or who find it difficult to obtain the text of legislation and to complain to the EC Commission. Member states can be unaware of EC developments as well, and failure to implement has on more than one occasion been found out when a company opened a Brussels office, became familiar with EC law, and then confronted its own national authorities with that law only to have those authorities plead ignorance. In other cases, as often with Belgium, member states reportedly try to defend against accusations of poor implementation by saying that they are working on implementation measures.

On October 5, 1990, the EC Commission issued a communication to the Council and Parliament on the status of implementation of 1992 directives.[22] The communication noted that more than two thirds of the White Paper measures have been adopted and asserted that the integration program is clearly irreversible. The EC Commission further noted that since 1989, member states have become more aware of their obligations with regard to the transposition of EC directives and have sped up their implementation. The rate of transposition had risen from 31 percent in September 1989 to more than 60 percent in October 1990. The communication praised Italy for its "La Pergola" law, which seeks to streamline transposition procedures,[23] and Portugal for notable progress, especially in the field of plant and animal health regulation.

As in previous reports, the EC Commission blamed "the administrative organization of the Member States" for failure to implement and noted that implementation problems continue to be concentrated among a few member states. The EC Commission did not ascribe to them "any lack of will." This conclusion was based on an analysis of the member states' voting record in Council, which showed no relation between the position taken and delays in transposition.[24] The report noted that extensive delays are not inevitable, citing the Capital Movements Directive 88/361/EEC, which was implemented even before its entry into force. According to the EC Commission, that case proved that the implementation of even sensitive directives such as those on capital movements faces no obstacles "when governments have the will to attain the objectives they have set themselves."[25]

The EC Commission reported that 80 percent of plant and animal health border rules have been implemented, with Italy and Greece being the laggards. As to the removal of technical barriers, the record is more uneven. Directives covering pharmaceutical products have had the most success, achieving a 97-percent implementation rate. Implementation of measures dealing with motor vehicles, tractors, chemical products, and new technologies is proceeding at a rate acceptable to the EC Commission. However, the implementation rate for the technical barrier area as a whole is only about 65 percent. The worst problems are in the agri-foodstuff[26] and consumer protection sectors, with Italy, Portugal, Greece, and Belgium exhibiting the worst record. As discussed more fully below, directives issued under the "new approach" toward technical harmonization, according to the EC Commission, are not being satisfactorily implemented. In contrast, old approach directives are being implemented properly.[27]

In the area of public procurement, the EC Commission focused in its report on two directives it considers important: the measure relating to public supply contracts and the directive on public works contracts. According to the EC Commission, the member states have not recognized the importance of these directives in their transposition efforts. Although the supplies measure has been implemented in all member states except Italy and the Netherlands, the works directive still awaits transposition in the United Kingdom, Italy, Luxembourg, and the Netherlands. Spain and Portugal have obtained "derogations," that is, postponements, until March 1, 1992. In urging faster implementation of these directives, the EC Commission stressed the importance of balanced implementation to insure that government agencies and firms comply with procurement rules.[28]

Also problematic, in the EC Commission's view, is the status of three insurance measures. Member states have transposed less than 20 percent of the directives on legal protection, credit, and nonlife insurance. The rest of the financial services directives are faring better, with a 70-percent transposition rate for measures dealing with securities transactions, considering that some member states have obtained derogations. The liberalization of capital movements is being implemented in all member states except Spain, Greece, Ireland, and Portugal, which have derogations until 1993.

The EC Commission puts the transposition rate at 65 percent for the four directives that deal with the movement of self-employed workers. The directive concerning the specific training in general medical practice is applicable in all member states except Italy. In the transportation sector, the few measures requiring implementation have reportedly not been properly dealt with by the member states.

According to the Director General of the EC Council Secretariat, member states have adequately implemented fiscal, customs, and veterinary measures.

[22] EC Commission communication, COM (90) 473, Oct. 5, 1990.

[23] Act No. 86 of Mar. 9, 1989, *Official Gazette* of Mar. 10, 1989. That law was analyzed in 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, March 1990, pp. 1-20 to 1-24.

[24] EC Commission communication COM (90) 473, Oct. 5, 1990.

[25] Ibid., p. 5.

[26] The level of transposition is estimated at 50 percent and is not expected to improve in the near future. 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. 17.

[27] EC Commission communication COM (90) 473, Oct. 5, 1990, p. 4. See also discussion on p. 1-18.

[28] Ibid., p. 5.

The Director General stated that the member states are significantly behind schedule with respect to technical standards, insurance, and public procurement.[29]

The EC Commission continues to bring before the European Court of Justice cases in which member states have failed to comply with their obligation under the Treaty of Rome to implement directives. In this regard, the EC Commission was able to report significant improvement. The number of cases awaiting decision has dropped from 44 in 1989 to 36 in 1990.[30]

There is some disagreement among the sources as to whether such factors as war and economic downturn will slow implementation of the 1992 program. One view, expressed by several governments, states that although prosperity has aided the progress of the White Paper program, recession will not harm it. The main obstacles to implementation are seen as administrative disorganization, bureaucratic inertia, and inattention.[31] Others, mainly in industry, opine that, just as the 1974 oil crisis killed the precursor to EMU, recession and war may well hurt 1992. The tension between EC member states with relatively low unemployment and countries with high unemployment, one industry source opined, may lead to fears of a flood of economic migrants. Another obstacle to full implementation is uneven respect for law. According to the industry source, the French and the Italians are seen as accustomed to bypassing even their own laws. The British are viewed as trying to adapt EC law to their own ends. The Germans are seen to follow the law absolutely.

EC Measures to Improve Implementation

The first few years of the 1992 program saw an emphasis in the EC on rapid Council adoption of White Paper measures. In 1989, the EC's focus turned toward implementation, as evidenced by the first major EC Council debate on the subject. At that time, only two White Paper directives had been fully implemented by all member states.[32] The EC Commission, the institution charged with monitoring implementation, has announced plans to strengthen its procedures for insuring compliance by member states with their obligation to implement.

Infringement Proceedings

Traditionally, the EC Commission had relied principally on one response to noncompliance with that obligation, that is, invoking article 169 of the Treaty of Rome to pursue infringement proceedings before the European Court of Justice. The EC Commission determined to streamline those proceedings, in particular by initiating proceedings as soon as the deadline for implementation expires, and by having requests for proceedings reviewed only by the relevant EC Commissioner rather than by all 17 Commissioners as in the past.[33]

The usefulness of article 169 is limited because the Court of Justice has no power to enforce a judgment against a member state. On more than one occasion, the Court has ordered a member state to transpose a directive, then has had to issue a second judgment ordering the state to obey the first judgment. This suggests that suing a member state under article 169 is a useless endeavor. However, once a member state has been found in violation of treaty rules, the other member states bring political pressure to bear to encourage obedience to the treaty and in general the noncomplying state eventually implements the directive.[34]

Heightening Public Awareness

Because it lacked formal enforcement power, the EC Commission decided that its traditional recourse to infringement proceedings was inadequate. The institution now seeks to use political pressure to insure effective implementation. This pressure is exerted by bringing the status of implementation to the attention of the other EC institutions and the public. When the EC Council is given the statistics on member-state noncompliance, the member-state ministers who form the Council react to their own nation's failures by putting pressure on their administrations. Since the EC Commission changed its approach, the average rate of implementation has increased from 31 percent in September 1989 to 70 percent in September 1990. The figure has now dropped to 65 percent, but mainly because so many new measures were passed by the Council at the end of 1990.[35]

The EC Commission now disseminates information on implementation in several ways. It publishes extensive status reports, gives advance notice of implementation deadlines by publishing a list of the

[29] *European Report*, No. 1626 (Nov. 11, 1990), Internal Market, p. 7.

[30] EC Commission communication COM (90) 473, Oct. 5, 1990, p. 6.

[31] Official of the EC Commission, DG III, interview by USITC staff, Brussels, Jan. 22, 1991; Officials of the Bundesverband der Deutschen Industrie (BDI, Federation of German industry), interview by USITC staff, Cologne, Jan. 24, 1991; Official of the Department of Trade and Industry (DTI), interview by USITC staff, London, Jan. 29, 1991.

[32] Official of the EC Commission, DG III, interview by USITC stafff, Brussels, Jan. 22, 1991.

[33] The infringement process is lengthy. Once the implementation deadline of a directive is passed, the EC Commission takes 2 to 3 months to issue a warning letter, then 6 months or more to issue a reasoned opinion. The Court sees the case at least 2 years after the deadline, and its opinion comes at least a year after that. The Court of Justice has not yet decided a case concerning member-state failure to implement any White Paper directive. Official of the EC Commission, DG XV, interview by USITC staff, Brussels, Jan. 21, 1991.

[34] Thus, although the Court of Justice has several times had to issue a second judgment to a member state in a single case, instances of a third judgment have been very rare. Sir Gordon Slynn, Judge, European Court of Justice, address to ABA-EC conference, "1992 in Europe," June 8, 1990.

[35] Official of the EC Commission, DG III, interview by USITC staff, Brussels, Jan. 22, 1991.

measures going into force in the next 6 to 12 months, and has developed an exchange program for member-state government officials. It is also compiling a list of citizen grievances and maintaining a public computer data base, Info 92. This public effort contrasts with legal infringement proceedings, which are case-by-case affairs that have failed to alert governments and the public to the importance of implementation.[36]

The exchange program for member-state government officials will give priority to officials involved in key 1992 areas such as certification, public procurement, recognition of diplomas, and pharmaceutical products. Also to be set up are networks for information exchange on such topics as police matters, animal health controls, and tax collection.[37]

Most violations are found because of complaints from individuals and companies.[38] As part of its monitoring effort, the EC Commission is compiling a "grievance notebook" based on complaints from citizens facing red tape that obstructs the free movement of persons within the EC. The EC Commission warned that slow progress by member states in removing border controls could damage the 1992 program in the eyes of EC citizens.[39]

The database Info 92, which began working on January 1, 1990, lists the national laws that transpose EC directives by title, number, and date of publication, although it does not contain the actual text of the laws. The database is the product of regular monitoring, which updates it every 2 weeks. Info 92 is not a legal document but is maintained for informational purposes. It provides a yardstick by which to gauge the progress of the White Paper.[40] Although the EC Commission has in its possession the texts, variously in English and French, of all notified implementation measures, it lacks the resources to make them available to the public. All that can be done is to provide references to the texts in Info 92, which is already expensive to maintain. The EC Commission could expand this service but refrains from doing so in part because of its self-limiting impulse, which is based on subsidiarity.[41]

[36] Ibid.

[37] Ibid.

[38] Official of the EC Commission, DG XV, interview by USITC staff, Brussels, Jan. 21, 1991.

[39] Reuters, Nov. 22, 1990; *International Herald Tribune*, Nov. 24-25, 1990, p. 2. Examples of difficulties included the case of a Belgian resident who had to send her husband's coffin to a French consulate to be sealed before it could be buried in his French hometown. Other cases involved confrontations between a Dutch citizen and Greek customs officers, a Belgian citizen and Dutch officials, and a Danish citizen and Italian officials. Ibid.

[40] Official of the EC Commission, DG III, interview by USITC staff, Brussels, Jan. 22, 1991.

[41] Under that doctrine, the EC Commission acts only when necessary, leaving as much sovereignty as possible to the member states. Official of the EC Commission, DG III, interview by USITC staff, Brussels, Jan. 22, 1991.

The EC Commission's older database, Celex, section 7, contains a full listing of the official notifications to the EC Commission from member states of implementation measures. Info 92 reportedly is not as official, precise, or clear in that its information on implementation does not always come from official sources but can be derived from newspaper articles and other such sources. Only measures notified to the EC Commission by member states are official implementation measures. This is not to say that a listing in Celex indicates that a measure legally conforms to the directive it implements, just that the measure has been officially notified.[42] The EC Commission tries to verify that measures do conform, but it is difficult to declare that a measure fully conforms. Some say that the EC Commission can only determine that it has found no violations of EC law. Only the Court of Justice could declare conformity, and in practice even it merely determines that no violation has occurred.[43]

The European Parliament has criticized the EC Commission for its slow reporting. In its resolution on the annual EC Commission report on the application of EC law, Parliament noted that the report on 1988 was not issued until the end of 1989 and called for future reports to appear by the end of the March following the year to which the reports relate.[44] The European Parliament is concerned about the poor state of implementation. That body has undertaken to discuss the application of EC law with national parliaments.[45] On April 18, 1990, the American Chamber of Commerce in Belgium sent a letter to EC Commissioner Bangemann expressing support for the EC Commission's efforts to improve implementation and urging that information systems on the subject, such as the database Info 92, be improved with such elements as daily updates and data on why certain implementation measures may be blocked at the national level.

Procedural Changes

The EC Commission also seeks to improve the transparency of implementation procedures in several ways. When a member state notifies the EC that it has implemented a directive, it must now also provide a detailed table showing when and how each provision of EC law is transposed into national law.[46] Moreover, each new EC directive will now contain standard wording that requires member states to explicitly refer in the published version of their implementing

[42] Official of the EC Commission, DG XV, interview by USITC staff, Brussels, Jan. 21, 1991.

[43] Ibid.

[44] 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. 230.

[45] European Parliament, *Resolution, OJ* No. C 231 (Sept. 17, 1990), p. 232.

[46] Martin Donnelly, Advisor to EC Commissioner Brittan, address to ABA-EC conference, "1992 in Europe," June 7, 1990.

legislation to the directive the legislation is implementing.[47] A member-state citizen aggrieved by particular legislation will know whether an appeal to the EC Commission is appropriate.[48]

Codification of EC law will also, in the EC Commission's view, enhance transparency. In this context, codification essentially involves combining related legal measures into one, thus simplifying EC law and facilitating understanding and therefore proper application of the law.[49] Codification is a complex process that is proceeding slowly, but it has already been accomplished in the areas of value added tax, cosmetics, and the labeling of foodstuffs and is ongoing as to public procurement and tractors.[50]

Another target of the EC Commission is lack of coordination within member-state governments. In many cases, the national representative who negotiates the terms of a directive in Brussels is not the same person responsible for implementing the directive at home. The EC Commission is concerned that the two officials often fail to coordinate between themselves, thereby causing confusion and delay in the implementation process. The EC Commission praised French Prime Minister Rocard for his 1990 circular to French Government agencies instructing them to begin implementation procedures in Paris as soon as negotiations begin at the EC level.[51]

To encourage such coordination, the EC Commission has recommended that EC working parties and committees that include national experts and that work on draft directives also discuss implementation. That recommendation has been followed in the areas of standardization and pharmaceuticals, and the EC Commission is seeking to systemize the practice. The EC Commission also holds discussions, called "package meetings," with member states on such issues as treaty infringements and has extended its meetings in Spain and Portugal to cover implementation. Such meetings can set work schedules for implementation at the national level. As a result of package meetings, according to the EC Commission, Spain has increased the number of measures transposed from 51.7 percent of all measures in force in September 1989 to 75 percent in mid-1990. Similarly, Portugal went from 34.4 to 81.6 percent in 1 year. The EC Commission proposes to hold package meetings with other member states that have been slow to implement.[52]

Future Plans

In the past, the EC Commission has suggested that inadequate implementation might lead it to propose new measures as regulations, which become effective without implementation, rather than as directives.[53] Member states implement slowly, and sometimes the EC Commission has difficulty determining whether a given implementation measure truly follows the letter and spirit of the underlying directive. It has been argued that issuing regulations rather than directives, in increasing the direct effect of EC law within the member states, would enhance the psychological sense of unity within the EC.[54]

However, the EC Commission has not sought to replace directives with regulations. In accordance with the principle of subsidiarity, the EC Commission attempts to preserve for member states as much sovereignty as possible. In fiscal matters, for example, member states have had a major role, which would be undermined by the issuance of regulations that bypass national administrations. The use of directives, although it leads to the need for national implementation, is useful because it mobilizes national administrations, makes them feel more involved, and helps insure real application of EC law. Existing regulations on the free circulation of workers are good but often violated because no one is familiar with them. Furthermore, the EC Council and national parliaments reportedly prefer directives to regulations and are suspicious when regulations are proposed, regardless of their content.[55] Indeed, the member states may succeed in blocking an EC Commission move to have a proposed measure on trade in poultry products issued as a regulation.[56]

In order to encourage implementation, the United Kingdom has proposed in the intergovernmental conference on political union that the EC be authorized to impose fines for noncompliance with European Court of Justice decisions. The first discussion of this proposal was held during the week of January 21, 1991. The United Kingdom considers the principle of

[47] This move was made at the request of Parliament. Parliament has also suggested that member states be required to submit, soon after a directive is passed, a plan for implementing the directive. European Parliament, *Resolution*, *OJ* No. C 231 (Sept. 17, 1990), p. 231. Spain and France already refer to the EC directive in the recitals to an implementation measure, whereas Germany often does not, although sometimes the title of a German law will mention the directive. Official of the EC Commission, DG XV, interview by USITC staff, Brussels, Jan. 21, 1991.

[48] The usefulness of this new requirement may be somewhat limited because it does not apply when the member state considers that its preexisting laws need not be changed in order to conform to the directive, or when implementation is done by unpublished administrative measures. Another complicating factor is that many national implementing measures cover both EC and local matters. See, e.g., the French measure implementing the European Economic Interest Grouping regulation, Loi N.89-377 du 13/6/89, *Journal Officiel* June 15, 1989, p. 7440; Reuters News Service, Nov. 27, 1990; Bureau of National Affairs (BNA), *1992:The External Impact of European Unification*, Aug. 10, 1990, p. 5.

[49] The European Parliament supports this codification effort, pointing especially to the need to rework measures that have been amended many times. European Parliament, *Resolution*, *OJ* No. C 231 (Sept. 17, 1990), p. 231.

[50] EC Commission communication COM (90) 473, Oct. 5, 1990, p. 7.

[51] Ibid., p. 7.

[52] Ibid., p. 8.

[53] The European Parliament has also recommended that the EC in future issue more regulations because they need no implementation. European Parliament, *Resolution*, *OJ* No. C 231 (Sept. 17, 1990), p. 231.

[54] Official of the EC Commission, DG XV, interview by USITC staff, Brussels, Jan. 21, 1991.

[55] Official of the EC Commission, DG III, interview by USITC staff, Brussels, Jan. 22, 1991.

[56] *European Report*, No. 1619 (Oct 6, 1990), Internal Market, p. 5.

fines to be generally well received, but there is much uncertainty as to how much fines will be, whether they will be imposed per day of noncompliance, whether they will be scaled to a member state's gross domestic product, or whether the EC Commission would propose a figure to the Court in each case.[57] The United Kingdom favors imposing a fine only for a second failure to follow a Court judgment, because an initial judgment can be a complex and technical discussion of a directive's contents, whereas the second is a precise and simple declaration that a judgment has been flouted.[58] The United Kingdom also proposed to increase the authority of the European Parliament and the Court of Auditors and to authorize the Court of Justice to withhold regional development, structural, and agricultural funds from member states who fail to implement.[59]

The Record of Individual Member States

The EC Commission's October 5, 1990, report on implementation lists in annex 3 the status of implementation of all White Paper measures due to be implemented by December 31, 1990. The following discussion is based partly on that listing. In some cases, the list includes directives for which the implementation deadline has passed but provides no data on implementation.[60] A significant number of measures are regulations, decisions, or recommendations, none of which normally require implementation.[61]

Belgium

According to the EC Commission, Belgium had as of October 5, 1990, transposed 72, or 69.2 percent, of 104 applicable directives. Belgium's implementation record, and especially its failure to implement environmental directives, is seen by some as a serious blot on its credentials as a "good European." The principal obstacle to full implementation in Belgium appears to be the decentralized nature of its Government.[62] Belgium has federalized its administration differently from other federal member states such as Germany and Spain. Normally, a federal state retains a central government with a recognized set of responsibilities. Belgium split virtually all responsibilities between the regions Flanders, Wallonia, and Brussels, and retained little authority at the national level. Consequently, all directives must in essence be implemented by each region separately. Environmental measures are implemented sometimes only by one region, sometimes only by another.[63]

Implementation may be particularly hampered in that only the national Government, not the regional governments, is normally represented at the EC level and has a hand in formulating a directive.[64] The European Parliament has expressed concern that such decentralization, as an obstacle to the application of EC law, should be taken into account in future revisions of the EC's organic treaties.[65]

The EC Commission stated in October 1990 that Belgium had failed to implement directives on intra-Community trade in meat products, imports of personal property, spirit drinks, food additives, frozen foods, materials in contact with foodstuffs, appliance noise, tire pressure gauges,[66] competition rules for air transport, maritime transport, and road transport.[67]

The EC Commission has initiated infringement proceedings against Belgium with respect to directives on swine fever control; health problems in trade in fresh meat; imports of bovine animals, swine, and fresh meat from third countries; imports of frozen bovine semen; imports of meat products from third countries; food for particular uses; tower cranes;[68] hydraulic diggers; indication of nonfood prices; indication of food prices; cosmetics; mutual recognition of pharmacy diplomas; commercial agents; life insurance; legal costs insurance; nonlife insurance; securities transactions; special investment measures; air fares;[69] telecommunications terminal equipment;[70] and mobile telephones.[71]

Denmark

The EC Commission reported on October 5, 1990, that Denmark had transposed 89 out of 104 applicable directives, or 85.5 percent. The transposition rate had risen to over 88 percent by November 23, 1990.[72] By most accounts, Denmark is currently the best member state at implementation. This is apparently at least

[57] Some source are skeptical that the concept of fines will be approved by the EC Council.

[58] Official of the DTI, interview by USITC staff, London, Jan. 29, 1991.

[59] Official of the U.S. Mission to the EC, interview by USITC staff, Brussels, Jan. 30, 1991.

[60] See, for example, *Directive 90/425* on veterinary and zootechnical checks, which had an implementation deadline of Aug. 26, 1990. EC Commission communication COM (90) 473, Oct. 5, 1990, annex 3.

[61] EC Commission communication COM (90) 473, Oct. 5, 1990, annex 3. Totals for various countries differ because some directives are not applicable to all countries and because some member states have obtained derogations, or postponements, of implementation deadlines.

[62] *Financial Times*, Sept. 12, 1990, p. 4.

[63] Official of the EC Commission, DG III, interview by USITC staff, Brussels, Jan. 22, 1991.

[64] EC Commission, answer to written question No. 129/90 (Marc Galle), *OJ* No. C 125 (May 21, 1990), p. 53.

[65] European Parliament, *Resolution*, *OJ* No. C 231 (Sept. 17, 1990), p. 232.

[66] The EC Commission stated that the Belgian Government had notified the EC Commission of the passage of an implementation measure but that the EC Commission had found the measure did not comply with the directive.

[67] EC Commission communication COM (90) 473, Oct. 5, 1990, annex 3.

[68] This directive is listed as not implemented in the region of Wallonia.

[69] The EC Commission states that infringement proceedings have been suspended as to this directive but provides no reasons therefor.

[70] Reuters News Service, Nov. 27, 1990.

[71] EC Commission communication COM (90) 473, Oct. 5, 1990, annex 3.

[72] EC Commission report, COM (90) 552, Nov. 23, 1990, p. 16.

partly because of the simplicity of the Danish implementation process. In most cases, there is no need for Parliamentary legislation and the Government issues a decree that transposes a directive into Danish law almost verbatim.[73] Moreover, Denmark tends to collect all outstanding directives and pass them at one time.[74]

Nevertheless, Denmark has been cited by the EC Commission for failure to implement directives on imports of personal property, spirit drinks, food additives, frozen foods, and materials in contact with foodstuffs. The EC Commission has initiated infringement proceedings against Denmark with respect to directives on flavorings, content of fertilizers, dangerous and misleading products, legal costs insurance, and nonlife insurance.[75]

France

France had transposed, as of October 5, 1990, 77 of 105 applicable directives, or 73.3 percent.[76] Nearly 30 other directives, mostly dealing with veterinary and agricultural standards, are close to implementation but have been delayed because of their complexity. In France, the central coordination agency SGCI[77] assists the Prime Minister in overseeing implementation. The EC Commission has praised its work as excellent in spite of its small size—less than 100 people. Its job is made easier by the centralization of the French administration.[78] The normal implementation process takes approximately 3 months but can be delayed if a directive is complex or falls within the jurisdiction of several ministries.[79]

The French implementation effort was reorganized in 1990 after Prime Minister Rocard issued a circular on the subject on January 25, 1990. At the core of the Prime Minister's instructions was the requirement that the implementation process must begin before a directive is issued in Brussels. As early as possible, SGCI gathers all relevant ministry officials together to examine each directive before it is issued. The Government previews during negotiations in Brussels what impact each directive will have on French law, and in particular which laws will need modification. SGCI tries to have the same people negotiate a directive and then implement it, although this has often not been the case. Industries, banks, and other private sources are consulted.[80]

Once a directive is issued in Brussels and notified to Paris, all relevant ministries must develop proposed implementation measures. The SGCI encourages and coordinates the efforts of the various ministries and calls a meeting of Government officials 3 months after the issuance of the directive to set the schedule for implementation. Parliamentary input is requested in coordination with the office of the Prime Minister. It is rare for a directive to fall into the purview of only one ministry, so SGCI's interministerial coordinating role is important.[81]

A French official reported that ministries are not yet well organized to respond to EC measures. Most ministries are organized with a narrow sectoral focus. The ministries are reorganizing now to take a wider view. Minister for the Economy, Finance, and Budget Bérégovoy is planning to establish a small European affairs liaison office. The Ministry of Culture already has such an office. Other ministries, such as Interior and Equipment and Housing, plan to follow suit.[82]

Implementation reportedly imposes a heavy burden on the administration because of the large number of directives and the often complicated nature of their content. Directives on procurement and the mutual recognition of diplomas are particularly complicated to transpose, with the latter requiring major changes to many professions in order to accept foreigners. Some environmental measures are also difficult, as in the case of the French source prohibition of polluters, which must be dismantled in favor of the EC's concept of downstream regulation. According to French officials, failure to implement is not due to evil intent but to an administrative failure to catch up with the huge amount of legislation from Brussels. It takes time to teach, explain, and negotiate with interested parties. Thus implementation is a time-consuming process.[83]

The directives on the recognition of diplomas are implemented by laws passed by Parliament's two houses, the National Assembly and the Senate. Some measures, such as technical standards, can be implemented by ministerial decree. The Government chooses whether to implement by law or by decree according to distinctions established in articles 34 and 37 of the Constitution. Article 34 lists those matters covered by law, such as penal matters and the freedom to contract. In many areas, the Government has extensive "autonomous" authority to issue decrees without the need to go through Parliament.[84]

A decree is issued by the Government and has general application, as opposed to an "arrêté," which is more limited in legal effect and can be issued by a minister for internal consumption. On several

[73] Official of the DTI, interview by USITC staff, London, Jan. 29, 1991.
[74] Official of the Confederation of British Industry, interview by USITC staff, London, Jan. 28, 1991.
[75] EC Commission communication COM (90) 473, Oct. 5, 1990, annex 3.
[76] The ratio is slightly lower according to a source within the French Government, which stated that France has implemented 77 out of 109. U.S. Department of State Telegram, Dec. 26, 1990, Paris, message reference No. 38169.
[77] The acronym stands for the Secrétariat Général du Comité Interministériel pour les Questions de Coopération Economique Européene.
[78] Official of the EC Commission, DG III, interview by USITC staff, Brussels, Jan. 22, 1991.
[79] U.S. Department of State Telegram, Dec. 26, 1990, Paris, message reference No. 38169.
[80] Official of the SGCI, interview by USITC staff, Paris, Feb. 1, 1991.
[81] Ibid.
[82] Ibid.
[83] Ibid.
[84] Ibid.

occasions, France has been told by the EC that arrêtés were unacceptable means of implementation, especially in the environmental field. Consequently, France is replacing them with decrees in several areas. A decree is always signed by the Prime Minister and published in the French *Journal Officiel*. Upon publication, a decree that implements an EC directive is communicated to Brussels, and the SGCI enters into discussions with the EC Commission in case explanations are needed. The SGCI handles all communications between the EC and the French Government, through the French Ambassador to the EC.[85]

Recently, the Conseil d'Etat, the highest French administrative body, recognized that EC law is always superior to French law. This pronouncement was necessary because a complicated legal tangle had left unclear whether a French law enacted after an EC law was still subordinated to EC law. For years, the Conseil d'Etat considered the issue to be outside its competence, but it finally decided the issue.[86]

There is no compendium of French implementation measures because they are directly integrated into the French legal codes. To clarify the situation, according to a source within the agency, the SGCI is considering marking implementation measures as such and inserting EC regulations directly into the French codes. Already each decree notes which directive it implements, but that notation is in the recitals to the decree, and the recitals are deleted during codification.[87]

French companies complain to the Government about poor implementation in other member states, especially Italy. Notably, an Italian pharmacist can practice in France, but a French pharmacist is allegedly barred from Italy, because of 13 years of delay in implementation.[88]

According to the EC Commission, France has failed to implement directives on intra-Community trade in meat products, imports of personal property, spirit drinks, food additives, frozen foods, materials in contact with foodstuffs, nonlife insurance, competition rules for air transport, maritime transport, and road transport. The EC Commission has initiated infringement proceedings against France with respect to directives on plant health, imports of meat products from third countries, entry of organisms harmful to plants, indication of ingredients and alcoholic strength, flavorings, jams, fruit juices, food for particular uses, content of fertilizers, indication of nonfood prices, indication of food prices, cosmetics, commercial agents, and life insurance.[89]

[85] Ibid.

[86] Ibid.

[87] The EC Commission terms the attempt to better mark the link between EC law and member-state law as "interconnection." Official of the SGCI, interview by USITC staff, Paris, Feb. 1, 1991.

[88] Ibid.

[89] EC Commission communication COM (90) 473, Oct. 5, 1990, annex 3.

Germany

The EC Commission reported on October 5, 1990, that Germany had transposed 84 of 104 applicable directives. This yields a rate of 80.7 percent. The former East German territories have been granted postponements with respect to several requirements of EC law. Notably, the EC Commission gave firms in East Germany 3 months from unification to comply with certain EC competition rules.[90]

The Ministry of Economics serves as a clearinghouse for all communications between the EC and the German Government ministries and speaks to the EC on the German Government's behalf. In drafting German laws, a source within the German Government stated, the Government increasingly looks to other member-state laws as models. This European approach makes it easier to conform German laws to subsequent EC enactments. Each EC directive goes first to the Ministry of Economics, which coordinates all implementation and sends the directive, along with a deadline, to the ministry in whose area of responsibility the directive falls. The relevant ministry decides how to implement the directive. Talks are held in industry-Government working groups in each sector (e.g., toys, finance) before implementation occurs. According to an industry source, the Government tries to bring in industries and trade unions at an early stage in order to avoid opposition at a later stage.[91] Normally, the Government has planned how to implement even before the directive is issued in Brussels.[92]

EC directives are implemented using a variety of legal forms. A "verordnung" is an action by a ministry, taken when there is already an act of Parliament in place that authorizes the Government to issue regulations in a specific area. Depending on how the law reads, a verordnung may be issued by the Government as a whole, by a ministry, or by a Land. In the case of toy safety, the Government issued both a verordnung and a "verwaltungsverordnung," the latter being a general prescription applicable to administrative agencies, not to the public. The verordnung was published in the *Bundesgesetzblatt*, which collects German Federal laws and regulations. The verwaltungsverordnung appeared in the *Bundesanzeiger*, which is mainly for internal Government use. The latter is available to the public in order to permit aggrieved individuals to complain of violations of rules by public agencies. The *Bundesanzeiger* is particularly important in taxation, because individuals can rely on its provisions in court to obtain equal treatment.[93] No official translation of German implementation measures into English is available.[94]

[90] *Financial Times*, Oct. 4, 1990, p. 2. Under art. 85(1) of the Treaty of Rome, price fixing and production sharing deals are prohibited.

[91] Official of the BDI, interview by USITC staff, Cologne, Germany, Jan. 24, 1991.

[92] Official of German Ministry of Economics, interview by USITC staff, Bonn, Jan. 24, 1991.

[93] Ibid.

[94] Official of the BDI, interview by USITC staff, Cologne, Jan. 24, 1991.

When appropriate, the relevant ministry passes a directive on to the Länder, Germany's 16 regions. Environmental matters, especially water purity, are the domain of the Länder, and even sometimes of individual communities. The Länder are reportedly becoming increasingly aware of the flood of legislation from Brussels. They are seeking—and receiving—a seat at negotiations in Brussels. Actually, two seats are reserved for the so-called "A" and "B" Länder, usually corresponding to the group of Länder dominated by the Social Democrats and the group ruled by the Christian Democrats. Seating Land representatives is made more difficult because each party has internal splits and some Länder are governed by complex coalitions.

In theory, Germany's Federal structure can lead to implementation of each directive by 16 pieces of legislation, each issued by the Diet of a Land. In practice, however, this fragmentation has not occurred. Consensus is reached because the political parties that cross Land borders play a major role. There can be a difference of opinion between the Social Democrats and the Christian Democrats, leading one group of Länder ruled by one party to confront another group. Still, there is reportedly much less dissension than in Belgium.[95] The autonomy of the Länder is more limited than that of U.S. States so that, although on occasion the Länder disagree with the Federal Government, in principle the Länder are supposed to respect the Government, which must in turn solicit their views.[96]

Nevertheless, the need to consult the Länder on implementation measures may cause some of the delay experienced in German implementation.[97] Slow implementation is sometimes due to Länder that say they have only recently legislated on a subject and would like to wait some time before they do it again. The will to implement is there, however, even in the reportedly most independent-minded of Länder, Bavaria.[98]

The eastern Länder face problems in environmental compliance and administrative inefficiency. Because of their lack of administrative experience, they have difficulty writing laws. Some border restrictions between east and west halves of Germany persist, as in the status of tractors from the Soviet Union being delivered under old contracts that must be restricted to the eastern zone. However, according to a source within the German Government, reunification will not materially slow 1992, nor will recession. The EC has given Germany a long transition time for the eastern Länder reportedly in return for German openness about its problems with reunification and for German modesty in demands for derogations—more modest than the demands of some other member states.[99]

[95] Ibid.
[96] Official of German Ministry of Economics, interview by USITC staff, Bonn, Jan. 24, 1991.
[97] Official of the EC Commission, DG XV, interview by USITC staff, Brussels, Jan. 21, 1991.
[98] Official of German Ministry of Economics, interview by USITC staff, Bonn, Jan. 24, 1991.
[99] Ibid.

Other obstacles to implementation include the large output of directives from Brussels that reportedly outstrips the ability of the Government to keep up. Reunification has slowed the pace of both ministries and Parliament. It has become a preoccupation, with many personnel seconded to the eastern Länder. The entry of the eastern territories into the EC has been linked to the entry of a new member state.[100]

When Germany has a problem with another member state, it goes to the EC Commission, considering it inappropriate to sue a fellow state. A German firm encountering a problem with another member state's implementation can and does consult the Ministry of Economics,[101] as well as the industry group BDI, although it would usually start with the federation of industry it belongs to directly, which will try to resolve the matter on its own. The BDI may consult the German Embassy in Rome, the German Chamber of Commerce in Italy, the Ministry of Economics, the European industry federation UNICE, and the EC Commission to resolve the problem. The company generally would not itself deal directly with the EC. However, complaints are rare because companies are often unaware of EC law.[102]

According to the EC Commission, Germany has failed to implement directives on intra-Community trade in meat products, imports of personal property, simple pressure vessels, spirit drinks, emulsifiers, food additives, frozen foods, materials in contact with foodstuffs, good laboratory practices, legal costs insurance, competition rules for air transport, maritime transport, and road transport. The EC Commission has initiated infringement proceedings against Germany with respect to directives on imports of meat products from third countries, flavorings, jams, and food for particular uses.[103]

Greece[104]

According to the EC Commission, Greece had by October 5, 1990, transposed 54 of 98 applicable directives, achieving a transposition rate of 55.1 percent. That rate had increased to 60 percent by November 23, 1990. Nevertheless, the EC Commission reports that Greek implementation is falling behind schedule "to a worrying degree."[105] Greece has failed to implement measures on imports of personal property, spirit drinks, food additives, frozen foods, materials in contact with foodstuffs, appliance noise, good laboratory practices, competition rules for

[100] Official of the BDI, interview by USITC staff, Cologne, Jan. 24, 1991.
[101] Official of German Ministry of Economics, interview by USITC staff, Bonn, Jan. 24, 1991.
[102] Official of the BDI, interview by USITC staff, Cologne, Jan. 24, 1991.
[103] EC Commission communication COM (90) 473, Oct. 5, 1990, annex 3.
[104] Greece's implementation was discussed in detail in USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, pp. 1-24 to 1-26.
[105] EC Commission report, COM (90) 552, Nov. 23, 1990, pp. 16 to 17.

air transport, maritime transport, road transport, and the European Economic Interest Grouping.

The EC Commission has initiated infringement proceedings against Greece with respect to directives on bovine breeding, health problems in trade in fresh meat, imports of bovine semen, plant health, imports of meat products from third countries, entry of organisms harmful to plants, simple pressure vessels, type approval of motor vehicles and trailers, diesel particulates, car emissions, commercial vehicle emissions, motorcycle exhaust, lateral protection for cars, small vehicle standards, flavorings, jams, fruit juices, food for particular uses, liquid fertilizers, content of fertilizers, tower cranes, hydraulic diggers, indication of nonfood prices, indication of food prices, commercial agents, life insurance, legal costs insurance, nonlife insurance, and legal protection of microcircuits.[106]

Ireland

By October 5, 1990, Ireland had transposed 70 of 101 applicable directives, or 69.3 percent. The Irish Government fell behind in implementation during its presidency of the EC Council in the first half of 1990 and is establishing a more rigorous system for monitoring transposition of directives so that it can make up lost ground in 1991.[107] Irish law[108] may ease the process, because most EC directives can be implemented by ministerial orders or regulations, with no need for legislation by the Dail, the Irish Parliament.[109] Ireland's failure to rapidly implement EC measures seems due primarily to the relatively small number of Government officials involved in the process. No centralized body oversees implementation, but rather a directive is implemented by one or more of the various departments of the Government depending on the subject matter of the EC directive. Another problem appears to be that all implementation measures must be reviewed by the attorney general. This requirement reportedly creates a bottleneck.[110]

The EC Commission stated that Ireland has failed to implement directives on intra-Community trade in meat products, imports of personal property, spirit drinks, food additives, frozen foods, materials in contact with foodstuffs, appliance noise, good laboratory practices, competition rules for air transport, maritime transport, and road transport. The EC Commission has initiated infringement proceedings against Ireland with respect to directives on bovine breeding, imports of bovine semen, imports of meat products from third countries, VAT exemption for small import consignments, simple pressure vessels, flavorings, jams, fruit juices, food for particular uses, content of fertilizers, dangerous and misleading products, indication of nonfood prices, indication of food prices, cosmetics, life insurance, legal costs insurance, and nonlife insurance.[111]

Italy [112]

The EC Commission reported on October 5, 1990, that Italy had transposed 43 of 105 applicable directives. This translates to an implementation rate of 40.9 percent, the lowest in the EC. In Italy, however, the new La Pergola system for passing implementation legislation in bulk is reportedly working, with the first annual omnibus law passed on December 27, 1990 covering 132 directives.[113] This transposition into Italian law is to be followed by further implementation by ministerial decrees and regulations,[114] which must be issued within 1 year but which the Italian EC Affairs Ministry has stated it plans to issue within 2 to 3 months. The Italian Government had reportedly tried to pass the 1990 omnibus bill before the start of the Italian Presidency of the EC Council in mid-1990, but inexperience with the new La Pergola process, Parliamentary inefficiency, and special interest lobbying[115] delayed the bill for 6 months. The 1991 omnibus bill has not yet been finalized, but is estimated to cover 92 directives, and may pass more quickly than its predecessor if the Government follows through on its intention to leave out of the bill any controversial directives.[116]

According to the EC Commission, the La Pergola process is not a miracle cure, considering that the 1990 law only took care of one-third of the delays. The Italian administrative apparatus remains weak, with the EC Affairs Ministry still understaffed and lacking clear objectives. The Italian Government has not yet been able to successfully track its own implementation and relies on EC Commission reports of its progress.[117] Moreover, Parliament is reluctant to delegate regulatory authority to the Government.[118] Still, the new law is seen as a positive contribution to the implementation effort.[119]

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[106] EC Commission communication COM (90) 473, Oct. 5, 1990, annex 3.

[107] U.S. Department of State Telegram, Dublin, Jan. 9, 1991, message reference No. 00142.

[108] The European Communities Act of 1972.

[109] As a matter of convenience, the Government on occasion attaches implementation measures to related bills being presented to the Dail, but this is not legally required. The Dail committee on secondary EC legislation does review implementing orders and regulations, but generally after they are issued. U.S. Department of State Telegram, Jan. 9, 1991, Dublin, message reference No. 00142.

[110] Ibid.

[111] EC Commission communication COM (90) 473, Oct. 5, 1990, annex 3.

[112] Italy's implementation was discussed in detail in USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, pp. 1-20 to 1-24.

[113] That figure includes both White Paper measures and others.

[114] A decree is issued by a ministry subject to disapproval by a Parliamentary commission. A regulation is also issued by a ministry but is subject to review by the State Council, a judicial branch institution.

[115] For example, one-man auditing firms sought the same rights as larger, more diverse auditing firms.

[116] U.S. Department of State Telegram, Jan. 16, 1991, Rome, message reference No. 01041.

[117] Ibid.

[118] Official of the DTI, interview by USITC staff, London, Jan. 29, 1991.

[119] Official of the EC Commission, DG III, interview by USITC staff, Brussels, Jan. 22, 1991.

The EC Commission reported that Italy has failed to implement directives on intra-Community trade in meat products, imports of personal property, car emissions, spirit drinks, food additives, frozen foods, materials in contact with foodstuffs, price transparency for medicines, appliance noise, good laboratory practices, public work contracts, commercial agents, competition rules for air transport, maritime transport, road transport, air fares, and the European Economic Interest Grouping. The EC Commission has initiated infringement proceedings against Italy with respect to directives on the following:

- swine fever control (four, one of which is addressed solely to Sardinia);
- medical examination of personnel; pesticide residue in foodstuffs (two);
- intra-Community trade in meat products;
- imports of bovine animals, swine, and fresh meat from third countries;
- imports of bovine semen;
- imports of meat products from third countries;
- entry of organisms harmful to plants;
- VAT exemption for small import consignments;
- tax relief for small consignments;
- travel allowances;
- simple pressure vessels;
- information procedures;
- toy safety;
- small car standards;
- flavorings;
- food for particular uses;
- testing of medical specialties;
- veterinary products;
- nonionic detergents;
- liquid fertilizers;
- content of fertilizers;
- tower cranes;
- hydraulic diggers;
- dangerous and misleading products;
- indication of nonfood prices;
- indication of food prices;
- cosmetics;
- public supply contracts;
- coordination of pharmacy provisions;
- mutual recognition of pharmacy diplomas;
- medical training;
- life insurance;
- legal costs insurance;
- nonlife insurance;
- securities transactions;
- special investment measures; and
- value added tax (VAT).[120]

[120] EC Commission communication COM (90) 473, Oct. 5, 1990, annex 3.

Luxembourg

As of October 5, 1990, Luxembourg had transposed 67 of 102 applicable directives, or 65.6 percent. The transposition rate had increased to 67 percent by November 23, 1990.[121] Luxembourg has failed to implement measures on intra-Community trade in meat products, imports of personal property, spirit drinks, emulsifiers, food additives, frozen foods, materials in contact with foodstuffs, public work contracts, competition rules for air transport, maritime transport, road transport, and the European Economic Interest Grouping. The EC Commission has initiated infringement proceedings against Luxembourg with respect to directives on imports of frozen bovine semen, imports of meat products from third countries, entry of organisms harmful to plants, simple pressure vessels, toy safety, flavorings, jams, fruit juices, food for particular uses, liquid fertilizers, content of fertilizers, hydraulic diggers, dangerous and misleading products, mutual recognition of pharmacy diplomas, commercial agents, life insurance, legal costs insurance, nonlife insurance, and air fares.[122]

Netherlands

According to the EC Commission, the Netherlands had transposed by October 5, 1990, 71 of 104 applicable directives, for an implementation ratio of 68.2 percent, rising to 71 percent by November 23, 1990.[123] Although the Netherlands strongly supports EC integration, the Dutch refuse to give up sovereignty in the area of drug enforcement and oppose the issuance of obligatory identification cards.[124] The Netherlands has failed to implement directives on intra-Community trade in meat products, imports of personal property, spirit drinks, food additives, frozen foods, materials in contact with foodstuffs, appliance noise, public work contracts, securities transactions, special investment measures, competition rules for air transport, road transport, and air fares. The EC Commission has initiated infringement proceedings against the Netherlands with respect to directives on bovine breeding, imports of meat products from third countries, simple pressure vessels, information procedures, toy safety, small car standards, flavorings, jams, fruit juices, food for particular uses, indication of nonfood prices, indication of food prices, cosmetics, public supply contracts, legal costs insurance, and nonlife insurance.[125]

Portugal

Portugal had by October 5, 1990, transposed 80 of 100 applicable directives, or 80 percent. By November 23, 1990, the rate had increased to nearly 85

[121] EC Commission report, COM (90) 552, Nov. 23, 1990, p. 16.

[122] The EC Commission has suspended the proceeding with respect to the last directive listed. EC Commission communication COM (90) 473, Oct. 5, 1990, annex 3.

[123] EC Commission report, COM (90) 552, Nov. 23, 1990, p. 16.

[124] *Financial Times*, Sept. 5, 1990, p. 6.

[125] EC Commission communication COM (90) 473, Oct. 5, 1990, annex 3.

percent.[126] This is a high success rate, although it takes into account that Portugal has obtained more derogations than most member states. Portugal was lagging in implementation but has been catching up, in part because of onsite advisers from the EC Commission.[127] Now, Portugal is seen as having made good progress.[128] Portugal has failed to implement directives on imports of personal property, indication of ingredients and alcoholic strength, frozen foods, and materials in contact with foodstuffs. The EC Commission has initiated infringement proceedings against Portugal with respect to directives on swine fever control, two measures on medical examination of personnel, pesticide residue in foodstuffs, plant health, imports of meat products from third countries, entry of organisms harmful to plants, simple pressure vessels, jams, food for particular uses, content of fertilizers, cosmetics, life insurance, legal costs insurance, and nonlife insurance.[129]

Spain

The EC Commission reported on October 5, 1990, that Spain had transposed 75 of 102 applicable directives, or 73.5 percent. The EC Commission, industry sources, and member-state governments have praised Spain as having made strong progress toward improving implementation.[130] This improvement is in spite of the difficulties Spain has encountered, including the need to implement pre-White Paper EC laws passed before Spain's accession to the EC, as well as the political structure of the country. The decentralized nature of Spain's regime means the implementation process must include agreement between the local authorities and the central Government. Certain regions and communities in Spain have considerable autonomy. Such entities include Catalonia, the Basque region, and several other, some regions being more autonomous than others.[131]

Spain has failed to implement directives on production and trade in milk, intra-Community trade in meat products, imports of personal property, spirit drinks, food additives, frozen foods, competition rules for air transport, maritime transport, road transport, and the European Economic Interest Grouping. The EC Commission has initiated infringement proceedings against Spain with respect to directives on imports of meat products from third countries, simple pressure vessels, flavorings, fruit juices, food for particular uses, high-technology medicines, content of fertilizers, indication of nonfood prices, indication of food prices, good laboratory practices, commercial agents, life insurance, legal costs insurance, nonlife insurance, and VAT.[132]

United Kingdom

In its October 5, 1990, report, the EC Commission stated that the United Kingdom had transposed 85 of 103 applicable directives, achieving a rate of implementation of 82.5 percent, that rose to 84 percent by November 23, 1990.[133] The United Kingdom is seen as having a good record and considers implementation to be an integral part of the process of developing and negotiating the issuance of an EC directive. When appropriate, the British Parliament examines and debates the text of the EC directive, not just that of a British implementation measure.[134] In the United Kingdom in general, Government ministries have much power to regulate directly and avoid the lengthy Parliamentary process. The increase in ministerial power is relatively recent and is limited by the availability of judicial review.[135] According to British officials, the United Kingdom administration sets a premium on getting things done. The British have an easier legislative process than some other member states, although the process in Denmark and Portugal reportedly is even simpler because their Governments can just sign decrees.[136]

In the United Kingdom, the European Communities Act of 1972 stated that British law is subordinated to EC law. The law also provides in article 2 a catchall authorization for the Government to implement many technical directives without recourse to further Parliamentary legislation. Although every British implementation measure must be based on a British law, a provision of the act does away with the need to pass a law every time a new directive comes out. This provision is important because Parliamentary, or "primary," legislation is reportedly very time consuming, with debates in committee and on the floor of a Parliament that is distracted by the many pressing domestic and other items on its full agenda. Directives can be tedious, and more exciting measures grab Parliament's attention. The Government tried to package several EC measures into one single-market bill 2 years ago, but it failed to reach Parliament because of the hybrid nature of the bill. Getting through the initial administrative approval process can be harder than passing through Parliament. Consequently, the ability to respond to a directive with "secondary" legislation, that is, ministerial decrees and

[126] EC Commission report, COM (90) 552, Nov. 23, 1990, p. 16.
[127] Official of German Ministry of Economics, interview by USITC staff, Bonn, Jan. 24, 1991.
[128] EC Commission report, COM (90) 552, Nov. 23, 1990, p. 17; Official of the SGCI, interview by USITC staff, Paris, Feb. 1, 1991.
[129] EC Commission communication COM (90) 473, Oct. 5, 1990, annex 3.
[130] See, for example, EC Commission report, COM (90) 552, Nov. 23, 1990, p. 17; Official of the SGCI, interview by USITC staff, Paris, Feb. 1, 1991.
[131] Official of the EC Commission, DG III, interview by USITC staff, Brussels, Jan. 22, 1991.
[132] EC Commission communication COM (90) 473, Oct. 5, 1990, annex 3.
[133] EC Commission report, COM (90) 552, Nov. 23, 1990, p. 16.
[134] Official of the EC Commission, DG III, interview by USITC staff, Brussels, Jan. 22, 1991.
[135] Official of the American Chamber of Commerce, interview by USITC staff, London, Jan. 28, 1991.
[136] Official of the DTI, interview by USITC staff, London, Jan. 29, 1991.

regulations, can be very useful and reportedly explains in large measure why the United Kingdom is faster at implementation than some other member states.[137]

In addition, implementation is often by regulation rather than by legislation because British representatives often take the lead in drafting directives, and British legislation is already in compliance with many directives before they are issued. Toy safety is an example of a case in which the British Consumer Safety Act of 1987 did not need to be amended when the toy safety directive appeared in 1988.[138]

Another factor contributing to the British record may be that the same people who negotiate the issuance of a directive in Brussels tend to be the same people who implement it in London. This is important because in other countries negotiators may not always understand when a measure they support will be hard to implement. For example, the British recognized early on that the directive on electromagnetic machinery had to have a transitional period because without it the United Kingdom would have no such machinery for 15 years.[139] Government lawyers called "Parliamentary counsel" both participate in the negotiation process in Brussels and draft British implementation measures. Thus, although the British Government lacked a monitoring system to insure efficient implementation, implementation was efficient because of the close contact between Brussels and London.[140]

Sometimes, secondary legislation is not sufficient, and a law must be passed by Parliament. Implementation by primary legislation is never automatic, but the Government has a large majority in Parliament, so only a very controversial issue will lead to the Government's loss of a vote. Most directives are not politically contentious because committees and industry have looked at each directive before its final reading.[141]

The Department of Trade and Industry (DTI) oversees British implementation. According to a source within the DTI, it plans to systemize its procedure by establishing a data base for White Paper directives that would chart the relevant dates, such as when Parliament is to receive a measure and when the administrative deadline is set.[142] The DTI already issues periodic reports on implementation, which include such information as the name of the British Government contact point for each EC directive.[143]

Generally, few companies complain to DTI about poor implementation by other member states. Most complaints are about straight violations of the Treaty of Rome, not of directives. A source within the DTI stated that the DTI considers the most effective channel for company complaints about poor implementation to be through the EC Commission, which can bring legal action. Such action is seen as time consuming and to be avoided if possible. A political solution is often preferable.[144]

The Confederation of British Industry (CBI) strongly supports implementation, as evidenced by its recent report on the value of integration.[145] The CBI is interested in hearing from British companies that encounter difficulties in other EC member states, but firms do not always come to it. The CBI considers it appropriate that a firm be able to address itself both to the British Government and to the EC Commission, while receiving backing from its sectoral trade association and the CBI in London and Brussels. In the past, British firms complained of French treatment of lamb and apple imports, which led to ministerial meetings in Brussels to resolve the issues.[146]

British industry considers it possible that recession may slow the 1992 program if the downturn is a long one. However, the 1992 program is seen as irreversible and ongoing. Although British industry is no longer as focused on 1992 as it was a few years ago when every newspaper was filled with the "glories" of integration, companies are getting down to the details of implementation. Nevertheless, the feeling is that barriers will never go down completely, because of the continuing need for police and other protection.[147]

The United Kingdom has failed to implement directives on intra-Community trade in meat products, imports of personal property, simple pressure vessels, food additives, frozen foods, fruit juices, food for particular uses, hydraulic diggers,[148] and public work contracts. The EC Commission has initiated infringement proceedings against the United Kingdom with respect to directives on imports of frozen bovine semen, imports of meat products from third countries, entry of organisms harmful to plants, content of fertilizers, indication of nonfood prices, and indication of food prices.[149]

Implementation of Selected Directives

In view of the importance of implementation to the 1992 program, it would seem desirable to report in

[137] Ibid.

[138] Official of the Confederation of British Industry, interview by USITC staff, London, Jan. 28, 1991.

[139] Official of the DTI, interview by USITC staff, London, Jan. 29, 1991.

[140] Ibid.

[141] Official of the Confederation of British Industry, interview by USITC staff, London, Jan. 28, 1991.

[142] A simple form with boxes to check off is contemplated. Official of the DTI, interview by USITC staff, London, Jan. 29, 1991.

[143] DTI, *The Single Market—Progress on Commission White Paper*, Dec. 31, 1991.

[144] Official of DTI, interview by USITC staff, London, Jan. 29, 1991.

[145] The Confederation of British Industry, *Agenda Europe—Completing the Single Market*, November 1990. The report urges that the EC increase the EC Commission's authority to encourage implementation and the Court of Justice's power to enforce its judgments and that it provide fuller guidelines for national enforcement authorities. Ibid., p. 8.

[146] Official of the Confederation of British Industry, interview by USITC staff, London, Jan. 28, 1991.

[147] Ibid.

[148] The EC Commission noted that the directive has not been implemented in Northern Ireland.

[149] EC Commission communication COM (90) 473, Oct. 5, 1990, annex 3.

detail on how each White Paper directive is being implemented in each member state. With over 100 directives that should already have been implemented in 12 member states, however, any attempt to follow all implementing measures would require enormous resources. This problem will of course be aggravated when nearly 200 more directives become due for implementation. Consequently, a small number of key directives and member states was selected for detailed study. Although how one directive is implemented does not indicate exactly how another will fare, the case studies that follow do tend to illuminate the general nature of, processes for, and problems associated with implementation.

The Toy Safety Directive

EC Council Directive 88/378/EEC of May 3, 1988, provides for the "approximation," or harmonization, of the laws of the EC member states concerning the safety of toys.[150] Article 15 of the directive required the member states to issue implementing measures to be effective as of January 1, 1990. On March 18, 1991, the EC Commission reported that all member states except Italy, Luxembourg, and the Netherlands had transposed the directive into their national laws.[151] One industry source stated that Italy is failing to properly implement the Toy Safety Directive because its authorities are not accepting certifications from other member states such as the German or British bodies. Each product must be recertified by an Italian body. Even member states that have implemented the directive are encountering difficulties. As is discussed below, France and Germany have adopted controversial interpretations of the directive, and the EC Commission is investigating the matter. The EC Commission has begun an infringement proceeding against Belgium for failure to properly implement the Toy Safety Directive. Toy safety reportedly is a particular problem in Greece, where sellers are unaware of EC law and unsafe toys continue to be sold.[152]

According to the EC Commission, the Toy Safety Directive is the test case for determining whether the "new approach" toward technical harmonization will work. The treatment given the Toy Safety Directive by member states may indicate how member states will deal with all new approach directives, several of which have been issued or proposed.[153] According to the EC Commission, the member states' "negative attitude" casts doubt on the implementation of the other new approach directives, and ultimately on the credibility and success of the new approach as a whole.[154] However, the EC Commission reportedly has gained valuable experience, based on the reaction to the Toy Safety Directive, that is helping to improve the performance of subsequent new approach directives. The EC is investing heavily, as part of its regional development program, in the southern tier of member states to help set up testing laboratories and accreditation procedures.[155] Nevertheless, one industry source expressed concern that the EC Commission, being understaffed, is not interested enough in implementation to take forceful action, such as taking member states frequently to court.

The EC Commission finds that the difficulty member states encounter in attempting to implement new approach directives may stem from the fact that new approach directives clash with the national legislation systems of the member states. In contrast, the old approach directives are more easily implemented because that approach "dovetails" more easily with the national systems.[156] The new approach directives provide only general guidance to member states, unlike the old approach whose detailed requirement may be easier to transpose.

Concerned at the slow pace of implementation of the Toy Safety Directive, the EC Commission is supplementing its normal response to member states' failure to implement. In addition to the usual approach of initiating infringement actions for noncompliance, the EC Commission is monitoring progress in implementation of new approach directives at meetings with senior standardization officials.[157]

In November 1990, toy manufacturers and associations from several EC member states[158] formed a new trade association, the Toy Manufacturers of Europe (TME), one of whose express objectives was "to ensure the effective and complete implementation of the 1988 Toy Safety Directive, and to promote uniform development and application of quality and reliability standards." The TME has expressed concern at member states' attitudes, complaining to the EC

[150] *OJ* No. L 187 (July 16, 1988), p. 1. For a fuller discussion of the provisions of the directive, see USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, p. 6-115.

[151] EC Commission, database Info 92, Mar. 18, 1991. The EC Commission has also noted that the second new approach directive, concerning pressure vessels, has been transposed only by Denmark, France, and Belgium. Ibid.

[152] Official of the American Chamber of Commerce, interview by USITC staff, London, Jan. 28, 1991.

[153] The following is a list of notable new approach directives, along with their deadlines for implementation:

153—*Continued*

Subject	*Implementation deadline*
Simple pressure vessels	July 1, 1990
Safety of machinery (89/392)	Jan. 1, 1992
Mobile machinery and lifting appliances (proposed)	No deadline yet
Electromagnetic compatibility (89/336)	July 1, 1991
Nonautomatic weighing instruments (90/384)	July 1, 1992
Active implantable medical equipment (90/385)	July 1, 1992
Gas appliances (90/396)	July 1, 1991
Personal protective equipment (89/686)	Dec. 31, 1991

[154] EC Commission communication COM (90) 473, Oct. 5, 1990, p. 4.

[155] Official of the EC Commission, DG III, interview by USITC staff, Brussels, Jan. 22, 1991.

[156] EC Commission communication COM (90) 473, Oct. 5, 1990, p. 4.

[157] Ibid.

[158] The members include industry associations and manufacturers. *British Toys & Hobbies Briefing*, January 1991, p. 3. The TME is open to all toy and games companies with a registered office in Europe. Ibid.

Commission in particular of French and German positions that allegedly block free trade.[159]

Implementation by Standardsmaking Bodies and in Certification and Testing

The EC Commission recently issued a Green Paper that found member states to be significantly behind schedule in issuing standards and qualifying national bodies that will certify products as in conformity with those standards.[160]

According to industry sources, an important part of the process of bringing the Toy Safety Directive into effect is the issuance by European and national standardsmaking bodies of standards covering toys. Toys have a standard already within the EN 71 series of standards issued by the European Committee for Standardization (CEN), although conceivably some additions, such as on noise levels, could be added. As to national toy standards, an industry source stated, Denmark is close to completion, as is the Netherlands, which has been hampered by a change in government. Many European standards, such as that on simple pressure vessels, are not in place. An industry source stated that the British standards organization BSI is good at transposing European standards issued by European bodies, whereas the Italians and the French sometimes drag their feet. Denmark reportedly adopts European and international (ISO) standards virtually automatically.

The toy directive requires the establishment of bodies in each member state to test and certify conformity of toys to applicable safety rules. Most member states are behind schedule in approving laboratories.[161] The EC is putting together a list of notified bodies, as well as proposals on the EC mark and subcontracting of certification, but none are out yet. Each member state will have a local authority that supervises certification and testing. In the United Kingdom, that authority is the Trading Standards Officer; in France, it is the Répression des Fraudes. Industry sources find that authorities in different member states are beginning to work better with each other to improve safety, partly as a result of the EC Commission-sponsored exchange of officials. Nevertheless, industry sources report that many member states are reluctant to recognize others' laboratories.

Industry sources find that in practice few toys will be certified by notified bodies, because most toys are made in accordance with the EN 71 European standard. Major U.S. firms manufacture according to that standard and have no need to obtain certification but must merely submit samples for random testing by EC authorities. Certification will be needed when there is no European standard, as is the case with other directives such as those on construction products or lawnmowers. Certification will also be needed more by smaller companies.

One source noted that testing and certification can be a tool of protectionism. For example, several EC member states, such as the United Kingdom and Germany, as well as Switzerland and Sweden, use a U.S.-developed test for automobile pollution. The EC is pressing for a new European test, a move that some suggest is based on the fact that Japan, geared to the U.S. market, also uses the U.S. test and might be put at a disadvantage if a European test superseded the U.S. test in Europe. However, one industry source stated that, although member states can act from protectionist motives, in the toy sector the motive tends to be the protection of children's safety.

Implementation in France

France implemented the directive by a decree and a ministerial "arrêté."[162] The decree, issued by Prime Minister Rocard,[163] is the principal instrument by which the directive is transposed into French law. The decree follows the relevant parts of the directive closely, although in abbreviated form and with some differences.

Article 1 of the EC directive states in general terms that toys marketed in the EC must not endanger the health or safety of users. The French decree omits this broad declaration and imposes more specific requirements. Article 1 in both documents refers to an annex I, identical in both, that lists products not covered by the documents. The French article 1, however, adds that the products in annex I require special measures of supervision when used by children. Articles 2, 3, and 5 of the directive provide that a member state is to presume that a toy in compliance with essential safety requirements set out in annex II and bearing the "CE" mark can be marketed throughout the EC. The French decree is somewhat stricter in that it prohibits the marketing of a toy that does not comply with annex II and bear the mark. Article 7 of the decree provides for penalties for noncompliance. The directive makes no reference to such penalties.

Annex II of the decree, containing essential safety requirements, closely follows the second part of the directive's annex II. However, as in the body of the decree, the French annex does not copy the EC annex's

[159] Reuters News Service, Nov. 29, 1990. TME also supports the passage of strong EC trademark and copyright legislation with respect to toys. Ibid.

[160] *European Report*, No. 1619 (Oct. 6, 1990), Internal Market, p. 14.

[161] *European Report*, No. 1618 (Oct. 3, 1990), Internal Market, p. 9.

[162] Decret 89/662, Sept. 12, 1989, *Journal Officiel*, p. 11673, Sept. 15, 1989; arrêté ministeriel, Oct. 4, 1989, *Journal Officiel*, Oct. 14, 1989, p. 12872. These two measures are listed in the EC Commission data base Info 92 as the French measures that implement the directive. Info 92 was the principal source for the titles and locations of the implementation measures discussed below.

[163] Although signed principally by the Prime Minister, the decree is countersigned by several ministers and other high Government officials: the Minister of the Economy, Finance, and Budget; his Minister Delegate for the Budget and his Secretary of State for Consumption; the Keeper of the Seals; the Minister of Justice; and the Minister of Industry and National Development. These officials are charged under art. 9 with executing the decree.

broad declaration that toys must not be unduly hazardous or risky. Annex III of the French decree, setting out warnings and precautions for particular toys, is essentially identical to annex IV of the directive.

The decree does not itself list those bodies that are authorized to test toys and certify that they comply with safety requirements. That list was issued as an arrêté, which in this case is a brief entry in the French *Journal Officiel* from the Minister of Industry and National Development that refers to the decree of September 12, 1989. It lists three authorized certification laboratories, all in France.[164]

Article 8 of the EC directive requires each toy company to keep a dossier of information concerning the toy's compliance with safety requirements "available for inspection" in the EC. The French decree, in article 3, contains a similar requirement. Article 11 permits a member state to require that warning labels be in the national language. Article 8, concerning the compliance dossier, does not contain a similar provision. Nevertheless, French customs officials have refused to admit toy imports unless the documentation on compliance with safety standards is in French. This requirement is related to a law of 1976 that seeks to protect the French language. Because of this law, the EC's medical devices directive will have a provision requiring operating instructions to be in the local language. One industry source stated that the French language law has led to many delayed and rejected imports and even to the decline of Le Havre as a port in favor of Antwerp.

In addition to the language problem, importers have had to face an even more serious obstacle. In France, the authorities require that the entire technical file on how a toy was made and safety tested be translated into French and accompany each import shipment. The United Kingdom interprets the directive as merely requiring that the file exist somewhere and be available for inspection. Industry sources take the position that an import should have with it only a brief notice stating that the product conforms to requirements and listing local enforcement authorities and the location of the technical file. The file is reportedly a bulky, living collection that includes test results, laboratory names, and names of local enforcement authorities. Industry considers it technically unfeasible to translate the enormous records of test results. Consequently, toy importers find that the French requirement has become a barrier to trade.

The TME, including its French members, has asked the EC Commission to interpret the directive on this point. One problem is that toys fall under the Consumer Protection Service (CPS) at the EC Commission, not under DG III, which deals with the internal market. The TME finds it difficult to get all concerned parties together for meetings. It is expected that the EC Commission will say that only a brief (two pages) description of the technical file must accompany a toy import and only that need be translated into French. Once the EC Commission issues its interpretative letter, industry sources expect that France will comply.

The German industry association DIHT has received complaints by German toy exporters that French authorities have rejected toy imports that lacked the "CE" mark. German companies were working under a transitional arrangement provided for in the German verordnung whereby the mark was not necessary immediately, whereas the French required that toys bear the mark as soon as implementation measures were issued.[165]

Implementation in Germany

Before the Toy Safety Directive was issued, product safety in Germany was governed by the Product Safety Law of 1968, the Gerätesicherheitgesetz. Once the directive was issued, Germany decided that the law did not need to be changed but that Government measures would be needed to supplement it. A verordnung, or regulation, was issued by the Government, and a set of general guidelines was added to instruct the administrative services on how to handle the law and regulation. The verordnung must be published in the *Bundesgesetzblatt*, but the guidelines need not be. When the machine safety directive is issued, Germany is expected to amend the safety law itself, probably by the end of 1991.[166]

The German verordnung of December 21, 1989,[167] implements the directive by using language substantially similar to the directive throughout. Even the organization of the regulation follows that of the directive for the most part, although the German measure frequently combines several articles of the directive into one section. There are some significant differences, however.

The section of the verordnung concerning scope almost exactly follows the relevant portion of the EC directive. However, the German measure adds a new paragraph that states that section 30 of its foodstuffs and requirements law remains unchanged. The section of the German regulation referring to safety requirements combines several paragraphs of the directive into one. It omits, however, the explanation of "placed on the market" as including both sale and distribution free of charge.

The verordnung extensively discusses the EC mark. However, the discussion is limited to the means by which the EC mark is affixed to a toy, that is, verification of the process, and there are no

[164] Laboratoire national d'essais, Paris; Laboratoire Pourquery, Lyon; and Laboratoire Wolff, Clichy. *Journal Officiel*, Oct. 14, 1989, p. 12872.

[165] Officials of German DIHT, interview by USITC staff, Bonn, Jan. 25, 1991.

[166] Ibid.

[167] Verordnung uber die Sicherheit von Spielzug, *Bundesgesetzblatt* I S.2541, Dec. 30, 1989. This measure is supplemented by a circular to Government ministries, Allgemeine Verwaltungsverordnung Sicherheitgesetz, *Bundesanzeiger* 1989, S.5956, Dec. 30, 1989. Reference to the two measures can be found in the EC Commission's data base Info 92.

presumptions accorded to products to which the EC mark has been affixed. The German measure requires that, for toys manufactured in conformity with the harmonized standards, the certification or a verified copy of it must be available for inspection.

The regulation provides for the naming of the authorities who will administer the law and the publication of their names in a Federal periodical. The named authorities must fulfill the requirements of annex III to the directive and of a certain section of the German safety law. The verordnung also prohibits failure to affix declarations to toys manufactured in accordance with a model and failure to provide precautions or directions in German for certain toys.

The regulation does not address a number of matters encompassed within the directive. These issues include the referral of concerns that the harmonized standards do not entirely satisfy the essential safety requirements to a committee for an opinion, withdrawal of unsafe products from the market, provision of the EC type-examination and certificate by an approved body, sample checks of toys, means by which Germany will inform the EC Commission of its activities pursuant to the directive, and means by which restrictions are placed on toys.

As for technical standards for toys, Germany follows CEN's EN 71 and had done so long before the directive existed. A list of approved certification bodies is published in an announcement of the Ministry of Labor, in its official newspaper, as well as in other publications, such as the EC *Official Journal*.[168] Germany is expected to accept mutual recognition of other member states' certifications. The verordnung explicitly incorporates by reference the essential requirements of the directive.[169]

In Germany, according to an industry source, the interpretation of the Toy Safety Directive is causing difficulty. The German Food and Commodities Act is stricter on maximum permissible chemical content of certain plastic toys than is the directive, which is supposed to override German law. The Germans claim that national rules should remain in place because they give greater protection. The TME, including its German members, has complained. The EC Commission is investigating and is expected to reaffirm that the directive overrides the national law. However, there may be consideration of a possible need to strengthen the directive to reach an adequate level of safety. Toys, their use by children, and technology can change over time, so that the directive may need changing eventually. Article 100A of the treaty allows a member state to retain a stricter level of protection in certain areas such as the environment, as Denmark has done with car headlights, but it is considered likely that the EC Commission will be forced thereby to ratchet up safety levels in its own rules.

[168] Seven certification bodies are listed in the *Bundesarbeitsblatt* (the journal of the Ministry of Labor), 2/1990 p. 124 and 9/1990 p. 68.

[169] Officials of German DIHT, interview by USITC staff, Bonn, Jan. 25, 1991.

The German industry group BDI is aware of the German problem with implementation of the Toy Safety Directive and expressed concern that the dispute might not result in adequate safety rules. The Germans, Danes, and Dutch reportedly want a high level of safety, but the southern member states do not and often win a majority of votes in Brussels. EFTA also seeks a high standard of safety and may tip the scales in Germany's favor. A member state can sometimes obtain permission to maintain a higher safety level, but that makes its products less competitive. Permission may be more difficult to obtain in the toy area than in such areas as environmental protection. The level of standards reportedly is a political issue of importance in Germany. Even after the Court of Justice struck down German purity restrictions on beer imports, few such imports appeared in Germany.[170]

Implementation in the United Kingdom

In the United Kingdom, The Toys (Safety) Regulations of 1989 transposed the Toy Safety Directive into British law.[171] The regulations were not passed by Parliament but were issued by the Secretary of State by authority of the Consumer Protection Act 1987.[172] The regulations refer at several points to that act, notably in defining "safe" in accordance with the provisions of the act. The regulations transpose several parts of the directive verbatim. Notably, schedules 2 through 4 of the British regulations, concerning products not covered, essential safety requirements, and warnings, correspond exactly to the EC directive's annexes I, II, and IV.

As is the case with many EC measures, the Toy Safety Directive gives member states some discretion in implementation. For example, article 11 of the directive permits, and British Regulation 9 requires, that all required warnings affixed to a toy be in the national language, in this case English.

The British regulations contain provisions in addition to those appearing in the EC directive. Regulation 2 specifies that toys supplied in the EC before January 1, 1990, are not covered by the regulations. Schedule 1 provides a specimen of the CE mark. Regulation 14 sets out details of British judicial proceedings to enforce the regulations, and regulation 15 provides for imprisonment and fines for violations.

The regulations refer to bodies that will certify that products comply with safety standards. The Secretary of State will approve bodies in the United Kingdom, and article 3 of the regulations contemplates recognition of bodies in other member states. The

[170] Officials of BDI, interview by USITC staff, Cologne, Jan. 24, 1991.

[171] Statutory Instrument 1989, N.1275, July 26, 1989. An explanatory note to the regulations specifies that they are intended to implement the toy safety directive. The EC Commission's data base Info 92 lists the regulations as the British measure that implements the directive.

[172] The regulations were actually signed by the Parliamentary Under Secretary of State, DTI.

regulations set out procedures for bodies to follow, including a detailed description of the fees a body may charge. However, the regulations do not actually list approved bodies. The United Kingdom has not yet established a list of authorized certification bodies.

Because the Toy Safety Directive is the first new approach directive, the British DTI, according to a source within the Department, considers that it was inevitable that difficulties would arise. The difficulties will take time to resolve but, in spite of different traditions and approaches, the British have seen fewer problems than might have been expected. In the United Kingdom, the DTI stands ready to receive complaints from companies that encounter implementation problems. In the case of the allegedly obstructive French position on toy imports, companies made representations to the EC Commission directly and they also came to DTI, who went to the EC Commission and to the French Government. The British and the EC Commission have initiated discussions with the French on the matter.[173] Meanwhile, French importers into the United Kingdom have been complaining of British barriers to toys as well.[174]

The EEIG Regulation

In July 1985, the EC Council issued a regulation concerning the European Economic Interest Grouping (EEIG).[175] The EEIG was intended to be a legal entity that two or more persons or companies from different member states could form in order to conduct operations for the mutual benefit of the EEIG's members. Operations might include research and development and joint purchasing, selling, and manufacturing.[176]

The EEIG regulation is a test case, in that the EC Commission has stated that it considers the EEIG to be the first step on the way to a truly European company. As such, the EEIG may indicate by the treatment it receives at the hands of companies and Governments how the European Company Law Statute will fare if and when it is issued.[177] U.S. firms can use the EEIG regulation, provided they have a presence in the EC.

The EEIG measure is entitled a regulation. In most cases, a regulation is effective immediately upon enactment in all member states without the need for national implementing legislation, and regulations rarely do need implementation. In this case, however, the EEIG regulation specifically requires a form of member-state implementation. The measure was proposed by the EC Commission as a regulation because of the particular legal basis for action in this area, namely article 235 of the Treaty of Rome, rather than because implementation was not seen as desirable. Because the EEIG was to be a European creation and not merely a creature of member-state law, the EC Commission proposed a regulation in order to avoid requiring each member state to create EEIGs under national law. The European Company Statute would similarly be in the form of a regulation, a genuinely European rule for a European entity, not a member-state creation. An EEIG must register in a member state because the EC Commission decided that it would be inappropriate to set up a European registry. This decision was rooted in the same principle of subsidiarity that prompts the EC Commission to interfere as little as possible in member-state affairs.[178]

With respect to the regulation, as of October 5, 1990, the EC Commission reported that all member states except Spain, Greece, Italy, and Luxembourg had transposed the measure into their national laws.[179] The EC Commission commented that this is not a significant problem, because an EEIG can be created in any member state that has implemented the measure.[180]

Article 39 of the regulation sets out the steps the member states must take to implement the regulation. Each member state is to lay down regulations governing the registry of EEIGs within its territory. A registry must be specified and made available to the public, and a schedule of registration fees may be established. The member states must provide appropriate penalties for failure to comply with certain obligations arising under the regulation.

In addition, several aspects of EEIG conduct are left to member-state laws. Article 1(3) allows each member state to decide whether the EEIG registered in its territory has the status of a legal person.[181] The regulation explicitly provides in article 2 that member-state law governs the contract for forming an EEIG and the internal organization of the EEIG.[182] Although article 24 states that an EEIG's members have unlimited joint and several liability for the EEIG's

[173] Official of the DTI, interview by USITC staff, London, Jan. 29, 1991.

[174] *Financial Times*, Dec. 20, 1991, p. 2.

[175] Regulation No. 2137/85, *OJ* No. L 199 (1985), p. 1. For a detailed discussion of the regulation's provisions and possible effects, 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. 9-23.

[176] D. Murphy, "The European Economic Interest Grouping (EEIG): A New European Business Entity," *Vanderbilt Journal of Transnational Law*, vol. 23, No. 1, pp. 65, 69.

[177] *EC-US Business Report* (Boodle Hatfield, C&M International Ltd., and Crowell & Moring), Feb. 1, 1990, p. 19.

[178] Official of the EC Commission, DG XV, interview by USITC staff, Brussels, Jan. 21, 1991.

[179] EC Commission communication COM (90) 473, Oct. 5, 1990, annex 3.

[180] Ibid., p. 6.

[181] This provision may be due to differences in tax rules among the member states. Some member states, such as Germany and Italy, levy taxes on legal persons as well as on any members of such legal persons. However, the EC regulation provides only for the members of an EEIG to pay taxes. In order to avoid inconsistency between EC and national law, then, Germany and other similar member states would have an incentive to determine that EEIGs do not have legal person status. D. Murphy, p. 73, footnote 40. However, as discussed below, Germany chose to consider an EEIG as a legal person.

[182] Similarly, the EEIG's contract of formation and internal organization are governed by the local law of a member state's provinces or regions if such territorial units have their own laws on such matters. This may be particularly applicable to federal states such as Germany and Belgium, in which Länder or regions have significant autonomy.

debts and other liabilities, member-state laws determine the consequences of such liability. Member-state law governs EEIG insolvency and cessation of payments. Under article 38, a member state may prohibit any activity of an EEIG that contravenes that state's public interest. Social and labor law, competition law, and intellectual property law are specifically not addressed in the regulation and are left to the laws of the member states and the EC. Under article 4, a member state may limit the number of members of an EEIG to no more than 20 and may prevent certain classes of persons or firms from joining an EEIG. Similarly, article 19 allows a member state to block the appointment of certain persons to management of an EEIG and may permit legal persons to be managers. A member state may provide under article 14 that an EEIG cannot move its official address so that applicable law is changed without the permission of the Government.

Implementation in France

In France, a law and an arrêté implement the EEIG regulation.[183] The law, adopted by the National Assembly and the Senate and promulgated by the President,[184] covers both the EEIG and the purely French equivalent, the Groupement d'Intérêt Economique (GIE). This is significant both because the EEIG concept was based originally on the French GIE,[185] and because article 8 of the law makes it a simple matter to transform a GIE into an EEIG or vice versa.

The French law fills some of the gaps left by the directive. Under article 1, an EEIG registered in France is a legal person. Article 6 permits a legal person to manage an EEIG. Article 5 describes the form of liability attaching to managers of an EEIG. The law also adds certain provisions. Notably, an EEIG cannot, on pain of penalties, make a public appeal to investors. Penalties are also established for failure to properly mark EEIG correspondence.

The arrêté, issued by the Keeper of the Seals and Minister of Justice and the Minister of Industry and National Development, goes into administrative matters in more detail than does the law. The arrêté sets out an extensive list of information, such as name, purpose, and list of members, that must be entered into the EEIG registry at such times as the formation and dissolution of an EEIG. An EEIG formed in another member state must submit similar information, translated into French.

According to industry sources, the EEIG has not proven popular so far. Only one major U.S. firm in France is known to have considered using the concept. Companies are uncertain as to how EEIGs will be treated. Issues include whether the EEIG would be taxed as a partnership or a corporation, how withholding would be done, and how profits would be apportioned. Also, member states might object to the use of an EEIG as a cost center. In the United Kingdom and France, a cost center EEIG would be treated as a noncommercial operation without normal profits but taxes would be paid on the basis of the firm's costs, whereas other countries might not recognize such a cost center as without profits. Tax advisors are exploring the possibility that the EEIG might be useful as an operational vehicle rather than as just a cost-sharing mechanism.

Although there seems to be little demand for EEIGs so far, one industry source in France stated that cross-border activity has been rising in the EC. Previously, a U.S. company entering Europe would have, in accordance with advice from tax advisors, set up subsidiaries, and even plants, in each country. Now a company will pick the best country for its plant and sell products throughout the EC. This change is reportedly due to the 1992 program. French companies are doing it too, such as putting their headquarters in one place and their plant in another. The change is expected to complicate tax accounting and the apportionment of profits made in different countries.

Implementation in Germany

Because the EC's EEIG measure is a regulation, it did not require implementation per se, but in Germany it reportedly needed a "smoothening," or supplemental, enactment. This is because the EC fixed certain rules for the EEIG but left some gaps that member-state law must fill. The EEIG is a new creation that does not fall easily into the existing framework of German company law. Neither partnership law nor the law of capital societies fits the EC level.[186]

Prior to the appearance of the EEIG, the German Civil Code provided a set of rules for partnerships such as those between lawyers. Article 104 of the Civil Code created the "open commercial society," which is a form of partnership for commerce in its widest sense, involving purchases and sales, industrial activity, and services. The rules are stricter for commercial persons than for natural persons, requiring that a commercial partnership must be registered. Each partner can be fully liable (partnership "en nom collectif"), or one partner can be fully liable and the others' liability is limited to their registered contribution (partnership "en commandite").[187]

Germany passed two implementation measures.[188] The first is an Ausfuhrungsgesetz, an "implementation

[183] Loi N.89-377 of June 13, 1989, *Journal Officiel*, June 15, 1989, p. 7440; arrêté of June 20, 1989, *Journal Officiel*, June 30, 1989, p. 8101.

[184] The law is also countersigned by the Prime Minister, the Minister of State, Economy, Finance, and Budget; his Minister Delegate for the Budget; the Keeper of the Seals and Minister of Justice; the Minister of Industry and National Development; his Minister Delegate for Commerce and Handicrafts; and the Minister of the Overseas Departments and Territories and Government Spokesman.

[185] D. Murphy, "The European Economic Interest Grouping," p. 67.

[186] Officials of German DIHT, interview by USITC staff, Bonn, Jan. 25, 1991.

[187] Officials of German DIHT, interview by USITC staff, Bonn, Jan. 25, 1991.

[188] (1) EWIV-Ausführungsgesetz vom 14/4/88, *Bundesgesetzblatt* 1988, I N.16, S.51; and (2) Achte Verordnung zur Anderung der Handelsregisterverfügung vom 19/6/89, *Bundesgesetzblatt* 1989, I N.28, S.11.

law" that establishes rules for the organization of EEIGs. German law likens the EEIG to a sort of partnership, although the EEIG retains elements of corporation law. An EEIG can have capital of its own, and its own legal personality, unlike a partnership "en nom collectif." A German EEIG can have a legal person as its manager.[189]

The second implementation measure is a verordnung, a ministry regulation that sets out rules for the organization of the registry of EEIGs in Germany. All commercial companies must appear in the official register. This register, the Handelsregister, is under the Amtsgericht, the municipal court, which maintains the register and consults the local chamber of commerce as to whether the company's chosen name is appropriate. Germany has strict rules on how to name companies. A name that includes "European" must be Europewide; "German" means all through Germany.[190]

The free professions, such as lawyers and accountants, have used the EEIG, but companies have rarely taken advantage of the new form, except for one purpose, that is, to have a name that includes the word "Europe." The EEIG has not shown itself to be very useful, because the regulation that created it placed strict limits on its scope, such as a cap on employment.[191]

Implementation in the United Kingdom

The United Kingdom implemented the measure in the European Economic Interest Grouping Regulations 1989.[192] Regulation 3 provides that a British-registered EEIG is a body corporate, which is equivalent to a legal person. Regulation 4 allows the Registrar of Companies[193] to block the transfer of an EEIG seat if it would result in a change of applicable law. A legal person can, under Regulation 5, manage an EEIG.

In addition to issuing the regulations, the United Kingdom has responded to the EEIG measure with a consultative document issued by the Inland Revenue concerning the taxation of EEIGs. The document provides that a British member of an EEIG will be subject to British taxes regardless of where the EEIG is registered. The British approach reportedly leaves areas of uncertainty, notably in its lack of reference to the treatment of EEIG currency transactions, withholding tax, stamp duty, and VAT.[194]

Neither British nor U.S. companies in the United Kingdom have expressed significant interest in the EEIG concept, and approximately four EEIGs have been created. It has not been a major irritant as an issue, although some express concern that this is corporate statism rearing its head, or "socialism by the back door." Some are leery of the EC Commission tinkering with corporate law, perhaps creating the EEIG unnecessarily just for the sake of creating.[195] The lack of demand is explained in part by the recession and the fact that an EEIG's tax consequences are unclear. Most firms choose to expand by merger or extension of operations. Another source of concern has been that, unlike on the Continent, British law requires that more than one person participate in the formation of a corporation. The United Kingdom may soon change its rules to conform to the rest of the EC.[196]

Although created long before the EEIG regulation was issued, the multinational consortium Airbus Industries is often cited as an example of how the EEIG should function. Indeed, EC Commissioner Bangemann wanted to turn it into an EEIG, but it is too large to fit into the category. Airbus may be put under the European Company Statute when it is passed.[197]

The EEIG regulation was implemented in two measures with geographically distinct coverage, that is, one for Great Britain and one for Northern Ireland. According to a source within the British Government, Northern Ireland tends to be a problem for implementation because of its uncertain political status. The British Government must always leave open the possibility of a return to home rule for the territory and is therefore reluctant to impose United Kingdom-wide laws on it, preferring to pass a separate law for Northern Ireland in most cases. However, Northern Ireland is a small territory with few administrators, who cannot by law be supplemented by personnel from Great Britain. Technical directives generally have been easy to transpose into local law, but the lack of technical bodies reportedly makes application difficult. The EC Commission has already accused the United Kingdom of failing to implement one directive in Northern Ireland.[198]

The Second Banking Directive

Directive 89/646 was issued in December 1989 as the second EC Council directive on the coordination of laws, regulations, and administrative provisions relating to the taking up and pursuit of the business of credit institutions.[199] This Second Banking Directive was intended to "constitute the essential instrument for

[189] Officials of German DIHT, interview by USITC staff, Bonn, Jan. 25, 1991.
[190] Ibid.
[191] Ibid.
[192] Statutory Instrument 1989, N.638. A similar measure was passed for Northern Ireland, the European Economic Interest Grouping Regulations (Northern Ireland), Statutory Instrument 1989, N.216.
[193] EEIGs are registered in the United Kingdom at the Registrar of Companies, which is overseen and staffed by the DTI and headquartered in Cardiff, although different registrars exist for England, Wales, and Scotland. Official of the DTI, interview by USITC staff, London, Jan. 29, 1991.
[194] *EC-US Business Report*, Feb. 1, 1990, p. 21.
[195] Official of the Confederation of British Industry, interview by USITC staff, London, Jan. 28, 1991.
[196] Official of the American Chamber of Commerce, interview by USITC staff, London, Jan. 28, 1991.
[197] Official of the DTI, interview by USITC staff, London, Jan. 29, 1991.
[198] Ibid.
[199] *OJ* No. L 386 (Dec. 30, 1989), p. 1. For a full discussion of the provisions and possible effects of this directive, see USITC, *Effects of EC Integration*, USITC Publication 2204, July 1989, p. 5 9; USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, p. 5-3.

the achievement of the internal market" with respect to credit institutions.[200]

Some sources opined that it is somewhat premature to examine the implementation of the Second Banking Directive, because the deadline for implementation is only January 1, 1993. However, Denmark has already transposed the directive into national law and several other member states have started the implementation process.[201] One problem that authorities and industry sources foresee is based on the failure of the EC to issue other financial sector directives as fast as the Second Banking Directive. In particular, capital adequacy and insurance measures are lagging in the EC institutions far behind banking. The Investment Services Directive was reportedly supposed to be, but was not, issued at the same time as the Second Banking Directive, and should contain the same reciprocity provisions as the banking directive. Capital adequacy has been much slower, with six working drafts, opposition from the Germans, and no common position reached yet. Since it is supposed to have the same implementation deadline as the banking directive, time for passage is short and running out. Insurance is reportedly even worse, with only a sporadic issuance of drafts. The slower directives are issued, the less time there will be for implementation.[202] This means that 1993 could arrive before important financial measures are in place.[203]

The slowness of insurance and other financial measures could become a problem because there could be partial discrimination against securities and insurance firms if no legislation for them is in place. Thus, two contradictory forces may be at work in member states: a push from the EC to implement the banking directive because it is seen as representing the future of financial services and an EC reluctance to push because the nonbanking measures are not yet in place. In the United Kingdom, this possible contradiction may raise the question of whether the British want to continue their tradition of prompt implementation at the price of unequal treatment for different financial services. Progress at the EC level is particularly hampered because discussions on Economic and Monetary Union currently overshadow all financial matters.[204]

In banking, implementation can be hard to follow because a member state's central bank tends to regulate the country's banks by internal administrative circulars rather than by laws. Although certain parts in the directive, such as the requirement that banks use "adequate controls," can lead to differences in interpretation and thus to errors in implementation, the EC Commission can bring infringement proceedings to correct them. The EC Commission considers that the banking directive is unlikely to encounter problems in implementation. If problems arise, such as the failure of one member state to implement, banks in other member states will likely complain to their supervising authorities. A member-state government may complain to the EC Commission, but the latter tends to respond to such moves by referring the government to article 170 of the treaty, under which the member state can sue another member state directly. Member states are reluctant to sue each other, however, and generally reserve such action for major political issues.[205]

The Second Banking Directive gives member states certain choices in implementation. Article 4 permits a member state to authorize the formation of a bank with an initial capital of less than ECU 5 million, which is the normal threshold for authorization of banks under the directive. Under article 13, it is up to member states to insure that banks have "sound administrative and accounting procedures and adequate internal control mechanisms," but the directive does not define such terms. Although article 12 provides for limits on how much a bank can hold of a firm that is not a credit institution, member states may waive those limits in certain cases. These choices are given only in areas that are reportedly relatively unimportant. The White Paper specified that harmonization will only be imposed when and to the extent necessary, with all other aspects reserved for the member states.

Implementation can be complex, considering the existence of 12 sets of jargon and technical terms. Transposition is not enough, moreover, and member states must apply the law correctly. Banking authorities maintain many contacts, both bilateral and multilateral, across borders and can cooperate to insure effective implementation.[206]

The EC Commission's DG XV has formed a new enforcement unit to monitor implementation in the financial sector. The unit was asked how priorities were assigned among directives—for example, were oldest directives examined first, or did each EC Commissioner assign priorities. The response was that a bit of both approaches was used, with certain areas given clear priority. Notably, when a new directive largely supersedes an old one, the focus shifts exclusively to the new directive. For example, the Second Banking Directive would be looked at, not the First Banking Directive. Similarly, when a new directive modifies an old one, the focus is on the new measure. Mostly, however, the EC Commission waits for companies to complain of poor implementation by member states.[207]

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[200] *OJ* No. L 386 (Dec. 30, 1989), p. 1.
[201] Official of the EC Commission, DG XV, interview by USITC staff, Brussels, Jan. 21, 1991.
[202] Official of Her Majesty's Treasury, interview by USITC staff, London, Jan. 29, 1991.
[203] Official of the American Chamber of Commerce in Belgium, interview by USITC staff, Brussels, Jan. 22, 1991.
[204] Ibid.
[205] Official of the EC Commission, DG XV, interview by USITC staff, Brussels, Jan. 21, 1991.
[206] Official of the Secrétariat Général de la Commission Bancaire, interview by USITC staff, Paris, Feb. 1, 1991.
[207] Official of the American Chamber of Commerce in Belgium, interview by USITC staff, Brussels, Jan. 22, 1991.

Implementation in France

According to a source within the French Government, the Government considers that implementing the Second Banking Directive will not pose any particular problems for France, and only minor modifications of French law are required. The directive has already been implemented in part by "reglement" of the Banking Regulation Committee. In France, the banking law delegates extensive regulatory power to the Government ministries. The relevant agencies are essentially the Banque de France and the Finance Ministry, although the legal structure is more complicated. The Banking Regulation Committee is chaired by the Finance Minister assisted by the Governor of the Banque de France but legally is independent of those institutions. Article 12 of the Second Banking Directive, concerning the limits on a bank's participation in nonbank interests, did not need to be implemented by a law or a decree but simply by a "reglement" of the committee.[208] Although a reglement is issued by the Banking Regulation Committee, it is published in the French *Journal Officiel* only after it has been countersigned, or "homologué," by the Finance Minister.[209]

The major part of the directive, concerning mutual recognition, would permit operating in France without French authorization, in violation of the Banking Law of 1984. Consequently, the law will be amended. A source within the Government stated that the Government expects to submit the amendment to Parliament in September 1991 and seeks to have the measure adopted by the end of the year. The law is expected to be a short, framework measure, because there is a strict separation in France between the domain of law and the domain of decrees. The Government will issue a decree at the same time as the law or just after, and then the Banking Regulation Committee will come out with reglements. In legal effect, a decree is virtually identical to a law and differs merely in its source. A reglement too has the force of law, by delegation of authority under the banking law. Consequently, all these measures are expected to satisfy the EC Commission.[210]

One of the French officials responsible for implementing the Second Banking Directive also participated in its issuance. Before taking up his present position, he worked at the EC Commission on drafting the directive. In this case, there was no tension between his role as EC staffer and his French nationality because, according to him, France is fully in favor of banking liberalization and already has universal banking without large administrative barriers.[211]

The French are concerned that the Investment Services Directive will pose problems in the financial sector. The EC Commission reportedly drafted that directive the same way it did the Second Banking Directive because it thought the main goal was to let investment services operate freely. However, markets differ among member states. In Latin states from Belgium to Portugal, the markets are strictly regulated, whereas other member states have freer markets. The two types of market generally are difficult to reconcile. The French prefer an organized, regulated market that insures better liquidity and transparency and prevents insider trading.[212]

Even if it is not implemented, a directive can create rights and obligations in a member state if it is sufficiently clear, so that a member state may not evade its obligations simply by failing to implement. According to one source, some parts of the Second Banking Directive are so clear that they provide rights that citizens can rely on even in the absence of implementation. When a French bank gets French approval to start a subsidiary in Spain, the Spanish authorities must concur, under articles 18 to 20 of the directive. If Spanish law forbids the operation of the French bank and Spanish authorities take the bank to court, the Spanish court will consult the European Court of Justice and, according to the source, hold the Spanish law invalid.[213]

Implementation in Germany

Some problems are foreseen in German implementation of the Second Banking Directive. Germany has been slow in implementing the Own Funds and Solvency Ratio Directives, in part because it is constrained by its detailed Constitution to implement most directives by Parliamentary legislation, rather than by the short cut of decrees and regulations. The domain of law is reportedly larger in Germany than in countries such as France.[214] As discussed above, Germany's Parliament and its administration are already distracted from implementation in general by issues such as reunification. This suggests that implementation of the Second Banking Directive may be slow as well.[215]

Another problem may be reconciling the German banking system with others. Germany is regarded as having a more conservative policy toward the granting of credit than some other EC states. Depending on prevailing conditions, a bank that grants easy credit has a competitive advantage over other, more conservative banks. German banks also reportedly adhere to a stricter definition of equity than other states, which permit banks to include in their equity things that Germany would not. Another concern is confidentiality. Investors and depositors must be confident that their transactions are kept confidential. German banks have appealed to the EC to strengthen and harmonize rules on this point and to impose stricter control by central banks.[216]

[208] The Own Funds Directive has been dealt with in the same fashion.

[209] Official of the Secrétariat Général de la Commission Bancaire, interview by USITC staff, Paris, Feb. 1, 1991.

[210] Ibid.

[211] Ibid.

[212] Ibid.

[213] Ibid.

[214] Ibid.

[215] Once a law is passed, it will be administered primarily by the Bundesaufrichtsamt, in Berlin. This agency focuses on enforcement of regulations on the granting of credit and covers all banks operating in Germany, whether German or foreign. Officials of German DIHT, interview by USITC staff, Bonn, Jan. 25, 1991.

[216] Officials of German DIHT, interview by USITC staff, Bonn, Jan. 25, 1991.

Implementation in the United Kingdom

The Second Banking Directive reportedly was the subject of much British Government thinking long before it was issued. The British Treasury's solicitors, who draft the implementation measures, examined the proposals during negotiations. Last summer, the Treasury began working on implementation in a major way. As of now, Treasury is thinking of implementing by secondary legislation rather than primary, Parliamentary legislation, because of the general preference for secondary measures. The relevant primary legislation is the Banking Act of 1987, particularly chapter 22 of that act. Unlike the detailed banking laws of the United States, the Banking Act provides a broad framework within which the Bank of England has wide powers to regulate banks and protect depositors. The Banking Act in large part was a response to the EC's First Banking Directive. The act's framework is sufficiently flexible that the Second Banking Directive fits within it without requiring a major reworking of the act itself. The act sets out minimum criteria, stating that net assets, accounting procedures, and controls must be adequate. These criteria are similar to those of the Second Banking Directive, which only sets out broad precepts.[217]

Treasury and the Bank of England reportedly work closely together to resolve problems and policy issues. The Bank supplements legislative enactments with its own "prudential notices" to banks in the United Kingdom. Through its prudential notices, the Bank of England states how it interprets the act, such as how it will restrict or revoke directorships. The Bank provides policy notes and guidelines, as opposed to the U.S. approach of using detailed statutes and regulations. Certain directives are implemented solely by Bank of England policy papers and notes. This was the case with the Own Funds and Solvency Ratio Directives. The Bank's administrative action implementing the Solvency Ratio Directive has legal force under schedule 3 of the Banking Act in that banks are required to act to satisfy the Bank's criteria. Consequently, such Bank of England actions reportedly should satisfy the EC requirement that implementation measures be legally binding.[218]

The measure implementing the Second Banking Directive will be regarded as secondary legislation but of a high order, because the order will amend the Banking Act. It will be a "statutory instrument," an order amending the act, made up of regulations. Thus, one will have to read the act and the order together. This procedure is considered to be fully consistent with the act, of which several provisions specify that they can be amended by order. The order will not be a major overhaul of the act, so that although Parliament will be consulted, the order will not go through the entire primary legislative process. Parliament is expected to agree to the order. There is some question as to the legality of the order, however, because the European Communities Act sets limits on the criminal offenses that secondary legislation can impose. Those limits must be extended, and therefore the Treasury is contemplating the possibility that a small piece of primary legislation will be necessary in this case. Treasury foresees the issuance of the order and a new law in 1992. The Dutch reportedly are at the same stage of the implementation process.[219]

The Treasury expressed confidence that granting increased freedom of action to foreign banks will not cause significant problems in the United Kingdom. The authorities of all member states already cooperate to a significant extent in the supervision of banks. The Second Banking Directive is in a sense only the law catching up with practice. If a bank misbehaves, article 21 of the directive contains emergency overrides that permit a host country to protect the general good and investors. These are regarded as exceptional remedies, but they are available. London is reportedly already very open to foreign banks. The directive will just mean that British authorities supervise less in areas where other member states' authorities regulate already.[220]

Unlike the Solvency Ratio and Own Funds Directives, the Second Banking Directive does not give a large amount of discretion to member states on how to implement it. A provision that permits certain banks to be authorized with less than 5 million ECU is essentially a grandfather clause for existing institutions. Although the directive permits a member state to impose stricter limits than the minimum EC requirements, the possibility that different member states will impose restrictions of varying degrees of strictness will reportedly not be a problem. Bank supervision is highly subjective and depends on the type of activity a bank engages in. The member states could never have agreed to precise maximum and minimum limits on supervision. Moreover, any member state that imposed stricter limits would find no banks willing to operate in that country, so the market would sort out that problem. The directive does provide some discretion in that a host state can monitor liquidity by requiring information, and one member state could demand more information than another. Nevertheless, only such information can be required as is necessary to insure liquidity and protect the general good. An abusive government could be taken to court. The Treasury and the Bank of England support open banking and consider that it would be short-sighted of them to obstruct banks in that way.[221]

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[217] Official of HM Treasury, interview by USITC staff, London, Jan. 29, 1991.

[218] Official of HM Treasury, interview by USITC staff, London, Jan. 29, 1991. Others suggest, however, that in some cases the British Government permits the Bank of England so much flexibility that the EC Commission may take issue with some of the Bank's measures. Official of the Secrétariat Général de la Commission Bancaire, interview by USITC staff, Paris, Feb. 1, 1991.

[219] Official of HM Treasury, interview by USITC staff, London, Jan. 29, 1991.

[220] Ibid.

[221] Ibid.

The American Chamber of Commerce in the United Kingdom issued a position paper recommending that the Second Banking Directive and the Investment Services Directive should be implemented at exactly the same time.[222] A problem is that an implementation deadline is just a deadline; it does not prohibit early action. Thus, the banking directive could be in operation long before the Investment Services Directive becomes effective. Some are concerned that if that happens, banks will have a significant competitive advantage over other financial institutions.[223] In view of the imminence of the Investment Services Directive, Treasury is going slow on the banking directive in order to insure consistent implementation. The investment directive appears to be somewhat bogged down. Some say this is not a cause for alarm, because the Second Banking Directive, supported by the Solvency Ratio and Own Funds Directives, can arguably stand without the investment directive. However, according to a source within that Government, the British Government has not taken a position on whether that is the case.[224]

In principle, the same people who negotiate the issuance of a directive also work on implementing that directive. In practice, however, Civil Service personnel are very mobile, and the Treasury official responsible for implementing the Second Banking Directive is actually the successor to the person who negotiated it. It helps that the predecessor kept a good filing system, which pinpoints potentially difficult areas for implementation.[225]

Industry sources foresee several problems in opening financial markets. In the United States and the United Kingdom, a distinction is recognized between the small individual investor and the large institutional investor. Countries on the European Continent reportedly fail to see that distinction. As a result, they push for safeguards for small investors that some say will unnecessarily restrict large investors who can take care of themselves and who want freedom of action. Another source of tension is the role of stock markets. In the United Kingdom and the United States, many transactions are off-market, outside of official channels. Such informality is just beginning on the Continent, where authorities prefer to impose strict controls on investment service and related businesses. Both issues are unresolved, with the cry of "protect the small investor" remaining a large political issue.[226]

Also unresolved is the issue of capital adequacy, for both banks and investment services: How much is enough? The United Kingdom distinguishes between banks and investment services, but some other member states reportedly do not. Consequently, the Investment Services Directive is held up, both on capital adequacy and technical grounds.[227]

Some fear that London's preeminence as a banking center may be reduced as other cities compete for business. Still, British industry considers that London is assured its position at least in the short term because other cities lack the infrastructure and network to compete. The long term will be affected by such factors as the potential enlargement of the EC by the inclusion of Eastern Europe, which may change the balance of power in the EC.[228]

External Relations

Countries around the world are responding with interest and apprehension to the challenges posed by the EC's movement towards the creation of a single, integrated market. The nations of the European Free Trade Association,[229] which represent the EC's largest trading partner, are pursuing a more structured partnership with the Community through negotiations to establish a European Economic Area (EEA). Although only one EFTA member, Austria, has officially applied for membership in the EC, most other EFTA nations are considering applying for EC membership in order to take full advantage of the benefits of the internal-market process. Developing countries, particularly those benefiting from the Lome Convention, continue to seek assurances that the preferential access their products now receive will continue or be expanded as the Community is enlarged and in the post-1992 EC market. A unified Germany is now a full member of the EC, although transitional measures are allowing time for eastern Germany to meet all of the Community's standards and regulations. The EC is pursuing a second generation of bilateral agreements with central and Eastern European nations and the U.S.S.R. to expand trade and economic cooperation and, eventually, to create a free trade zone.

Central and Eastern Europe and the U.S.S.R.

EC relations with the countries of central and Eastern Europe intensified further in 1990 as these countries made significant progress in implementing political and economic reforms. Moscow's slower pace in implementing economic reforms and backpedaling on political liberalization in the Baltics prompted the EC to postpone considering any new economic initiatives with the U.S.S.R. until late in 1990.

An October 1990 agreement signed with Romania marked the completion of the EC's round of

[222] This is the only time the Chamber has taken a position on an issue relating to implementation. Official of the American Chamber of Commerce in the United Kingdom, interview by USITC staff, London, Jan. 28, 1991.

[223] Ibid.

[224] Official of HM Treasury, interview by USITC staff, London, Jan. 29, 1991.

[225] Ibid.

[226] Official of the American Chamber of Commerce in the United Kingdom, interview by USITC staff, London, Jan. 28, 1991.

[227] Ibid.

[228] Official of the Confederation of British Industry, interview by USITC staff, London, Jan. 28, 1991.

[229] EFTA countries are Austria, Finland, Iceland, Norway, Sweden, and Switzerland. This report also includes Liechtenstein, an associate member, as an EFTA country.

first-generation bilateral trade and economic cooperation agreements signed with all of the European nations that had been members of the Council for Mutual Economic Assistance (CMEA)[230]. On August 1, the Commission announced plans to begin a second generation of trade accords, the Europe Agreements, to encourage continued free-market reforms and the democratization process.

Status of Trade and Economic Cooperation Agreements

The status of EC negotiations with central and Eastern European countries and the U.S.S.R. to expand bilateral trade and economic cooperation agreements is discussed below.

Central and Eastern Europe

By the end of 1989, the EC had concluded bilateral trade and economic cooperation agreements with Poland and Hungary.[231] The Community concluded trade agreements with Romania, Bulgaria, Czechoslovakia, and the former East Germany in 1990.[232] Romania was the last of the European CMEA countries to sign an agreement with the EC,[233] marking the last of the Community's first-generation trade agreements. Under these first-generation agreements, the EC is to lift discriminatory quantitative restrictions (QRs) and will suspend nonspecific QRs until December 31, 1991,[234] in exchange for improved market access for EC products.[235] Unlike the agreements with Poland and Hungary, however, the agreement with Romania does not include EC assistance under the PHARE program.[236] However, the Community may take up Romanian eligibility for PHARE assistance at a later time.[237]

On August 1, 1990, the Commission released a communication announcing its intention to initiate a second generation of bilateral association agreements, the European Association Agreements, with the countries of central and Eastern Europe. These new association agreements will replace existing first-generation agreements and will provide benefits almost equal to those enjoyed by Community members through preferential trade arrangements within the GATT framework. The first round of negotiations for the new association agreements began in December 1990 with Poland, Hungary, and Czechoslovakia—the more established democracies and more reform-minded countries in the region. The EC will monitor political developments and economic reforms in Romania and Bulgaria with a view towards eventually signing association agreements with these countries.[238] While the Europe Agreements will neither extend EC membership status nor "prejudice any future enlargement of the European Community,"[239] these agreements will offer an institutional framework for political dialog. The agreements also will include freer movement of goods through a gradual phasing out of tariffs and customs duties on industrial products; relaxation of import rules; phased liberalization in rules

[230] CMEA (also abbreviated as COMECON) members included the U.S.S.R., Czechoslovakia, Hungary, Poland, Romania, former East Germany, Bulgaria, Mongolia, Cuba, and Vietnam. The European CMEA includes all of the CMEA countries except Mongolia, Cuba, and Vietnam.

[231] The agreement with Hungary, the first extensive bilateral trade agreement concluded between the EC and a CMEA country, was signed in 1988. The EC's agreement with Poland was signed in 1989. For an overview of these bilateral trade agreements, 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, March 1990, pp. 1-7 to 1-8. For further discussion of these trade agreements, see U.S. International Trade Commission, *U.S. Laws and U.S. and E.C. Trade Agreements Relating to Nonmarket Economies*, (Staff Research Study 16), USITC publication 2269, March 1990, pp. IV-4 to IV-9.

[232] For a discussion of the EC's 1990 trade agreements with Bulgaria, Czechoslovakia, and the former East Germany, 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, September 1990, pp. 1-13 to 1-14. For more information on the EC's 1980 agreement with Romania and a limited 1988 agreement with Czechoslovakia, see USITC, *Effects of EC Integration*, USITC Publication 2268, March 1990, pp. 1-7 to 1-8. For further discussion, see *U.S. Laws and E.C. Trade Agreements*, pp. IV-3 to IV-10. The status of the EC's agreement with East Germany after German unification is discussed below.

[233] The agreement was originally initialed by the two parties on June 8, 1990, but the Community suspended relations with Romania because of Bucharest's violent response to political unrest in mid-June. The Commission also proposed, but never implemented, a decision to suspend Romania's GSP benefits. The EC Council gave the Commission a go-ahead to resume contacts with Romania in September, and the final signing occurred in October 1990. This agreement supersedes a 1980 accord between the EC and Romania on trade in industrial products.

[234] Under the EC's earlier agreements with Poland and Hungary, specific QRs were lifted on Jan. 1, 1990, and nonspecific QRs were suspended until Dec. 31, 1990. For the EC's legislation governing the removal of specific and nonspecific QRs for Bulgaria, Czechoslovakia, East Germany, and Romania, as well as the extension of the suspension on nonspecific QRs for products originating in Poland and Hungary through Dec. 31, 1991, see *Council Regulation No. 2727/90 Liberalizing or Suspending Quantitative Restrictions Applying to Certain Countries of Central and Eastern Europe, Official Journal of the European Communities (OJ)* No. L 262 (Sept. 26, 1990), pp. 11-14.

[235] The EC will phase out specific and nonspecific QRs applied to Romanian imports by 1992. See "EEC/Romania: Council Welcomes Romania Back into Fold," *European Report*, No. 1614 (Sept. 19, 1990), sec. 5, pp. 5-6.

[236] PHARE—Poland Hungary Aid for Restructuring of Economies—is a special program administered by the EC to coordinate economic aid to Poland and Hungary from the Group of 24 industrialized countries. The PHARE program was extended to include East Germany, Bulgaria, Czechoslovakia, and Yugoslavia in September 1990. East Germany was no longer eligible for the program after German unification in October 1990. "EEC/Eastern Europe: Council Sanctions Extension of PHARE Programme," *European Report*, No. 1614 (Sept. 19, 1990) sec. 5, p. 5. For more information on the PHARE program, see USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, p. 1-7.

[237] "EEC/Eastern Europe: Council Sanctions Extension of PHARE Programme," *European Report*, No. 1614 (Sept. 19, 1990), sec. 5, p. 5.

[238] *Resolution on Cooperation with the U.S.S.R. and the Countries of Eastern Europe, OJ* No. C 284 (Nov. 12, 1990), p. 139.

[239] Ibid.

governing trade in services; phased application of Community rules governing capital movement, environmental regulations, and technical specifications; and phased freer movement of people.[240] These measures eventually could lead to the establishment of free trade areas with the EC. Following exploratory discussions on the new association agreements in October 1990, the Commission was instructed to conclude agreements "as quickly as possible," with negotiations starting "before the end of the year."[241]

The Soviet Union

The EC signed a first-generation trade and cooperation agreement with the Soviet Union in 1989.[242] Moscow's slow progress in adopting an economic reform package[243] and EC concern about Soviet backpedaling on political liberalization in the Baltic republics delayed the establishment of closer EC-Soviet ties for most of 1990.[244]

The U.S.S.R. was not specifically mentioned as a future candidate for the proposed European Agreements. However, the European Parliament, in its resolution proposing the European Agreements, cited the "fast deteriorating economic situation in the U.S.S.R." and the Community's desire "to avoid any risk of economic breakdown" as reasons for pursuing further trade and cooperation agreements with the Soviet Union.[245] However, any such agreements will be "conditional upon political democratization and market economic structures,"[246] and the Community pledged to "judge developments by deeds rather than by words."[247] The Commission noted at its December 14-15 summit in Rome that it had been directed to develop "proposals for a framework for longer-term cooperation," and to explore "the idea of a major agreement between the Community and the U.S.S.R." covering political, economic, and cultural cooperation targeted for signing by the end of 1991.[248] The Commission's final communique issued following the December summit supported Soviet economic reform efforts and agreed on a series of short- and long-term measures. In the communique, the Commission promised immediate food aid and assistance to finance Soviet food purchases in 1991 and pledged to provide technical assistance "as soon as possible" in 1991 and 1992.[249]

German Unification

The rapid pace of the German unification process forced the EC Commission to accelerate provisional plans it had established to integrate East Germany into the Community and the 1992 single market.[250] In September 1990, the Council granted extraordinary powers to the EC Commission to apply transitional measures to smooth East Germany's integration into the Community following Germany's October 3[251] political unification.[252] Under these transitional measures, the former East Germany will have until 1995 to meet all of the EC's environmental, pharmaceutical, veterinary, health care, and food safety standards. Goods manufactured in the East German region during the transition period that do not meet EC environmental and safety standards will be allowed to circulate only in the East German zone.[253]

The Community's trade and economic cooperation agreement with East Germany[254] remained in effect until Germany's October 3, 1990, unification. However, the agreement's provisions for phasing out QRs were accelerated under a transitional customs union established between the EC and East Germany on July 1, 1990.[255] The Commission also suspended antidumping measures it had enacted against East Germany.[256] After unification, other interim measures necessary to smooth eastern Germany's integration into

[240] "EEC/Eastern Europe: Association Accord Negotiations Underway," *European Report*, No. 1642 (Jan. 9, 1991), sec. 5, p. 1.

[241] Bureau of National Affairs, Inc.,"Eastern Europe," *1992: The External Impact of European Unification*, special supplement, Dec. 18, 1990, p. 3.

[242] This agreement was signed in December 1989 and entered into effect in April 1990. For a discussion of this bilateral trade agreement, see USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, pp. 1-7 to 1-8.

[243] After months of protracted debates, the Soviet legislature finally passed an economic reform program on Oct. 19, 1990. This compromise plan was widely criticized for vagueness, the absence of key details specifying how the reforms are to be implemented, reliance on extraordinary powers of decree rather than voluntary cooperation and free-market incentives, and failure to fully endorse ownership of private property.

[244] The European Parliament expressed its concern about the impact of reforms in the U.S.S.R. and the right of self-determination of the Baltics on future EC-Soviet relations in a resolution promulgated Oct. 10, 1990, *B3-1834/90 Resolution on Cooperation with the Countries of Central and Eastern Europe, OJ* No. C 284 (Nov. 12, 1990), p. 140. See also "EEC/Soviet Union: Summit To Keep Aid on Hold; Treaty Reaction Generally Positive," *European Report*, No. 1625 (Oct. 27, 1990), sec. 5, p. 5.

[245] *Resolution on Cooperation with the U.S.S.R.*, p. 139.

[246] Ibid.

[247] *B3-1834/90 Resolution*, p. 140.

[248] Ibid.

[249] BNA, "Soviet Aid," *1991: The External Impact of European Unification*, special supplement, Dec. 18, 1990, p. 3.

[250] For a discussion of EC Commission president Jacques Delors' April 1990 outlined proposal for a three-stage process for integrating East Germany into the Community, as well as a discussion on a provisional customs union established between the EC and East Germany, see USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, p. 1-14. See also "East Germany and the European Community: The Other Walls To Break Down," *European Report*, No. 1608 (Aug. 4, 1990), supplement.

[251] German economic and monetary union occurred on July 1, 1990.

[252] "German Integration: Council Approves Commission's Special Powers," *European Report*, No. 1614 (Sept. 19, 1990), sec. 1, p. 1.

[253] David Buchan, "Brussels Offers Sweetener to East European Traders," *Financial Times*, Sept. 6, 1990, p. 6. For the EC legislation on the movement of goods within the East German zone only, see *Council Directive of 4 December 1990 on the Transitional Measures Applicable in Germany With Regard to Certain Community Provisions Relating to the Protection of the Environment, in Connection With the Internal Market, OJ* No. L 353 (Dec. 17, 1990), pp. 79-80.

[254] The EC-East German first-generation trade and economic cooperation agreement was signed in May 1990.

[255] For a discussion of the EC's customs union with East Germany, see USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, p. 1-14.

[256] "German Unification Requires Different Initiatives in the Anti-Dumping Arena," *European Report*, No. 1608 (Aug. 4, 1990), supplement, pp. 14-15.

the EC were handled as temporary derogations to Community rules.[257]

One of the EC's principal concerns was the issue of providing for the continuation of East Germany's bilateral trade with its former CMEA trading partners after German unification.[258] To facilitate eastern Germany's integration into the Community, the EC sought a temporary derogation from GATT rules.[259] The Commission argued that the immediate application of GATT rules, eliminating the former East Germany's preferential bilateral agreements with the CMEA countries,[260] would harm trade and industrial production and lead to higher unemployment in central and Eastern Europe. The EC insisted that the former East Germany's CMEA trading partners "must not have to suffer unduly as a result of German unification."[261] In December 1990, GATT approved a 1-year waiver, with a possible 2d-year renewal, permitting transitional measures for trade between the former East Germany and CMEA countries.[262] These transitional measures[263] permit duty-free tariff quotas for CMEA goods entering East German territory, with the maximum trade volume as allowed under East Germany's bilateral agreements. The EC will impose "strict controls" to ensure that CMEA-region imports into the East German region "would be for final consumption only in the previous East German territory."[264] The United States attempted to block this EC waiver request[265] on the grounds that the former East Germany would enjoy the benefits of EC and GATT membership without sharing in the obligations of the multilateral trading system.[266] In recognition of these objections, GATT announced that it will establish a working group to monitor East German trade flows during the transitional period.[267]

[257] *Proposal for a Council Directive on Interim Measures Applicable After the Unification of Germany, in Anticipation of the Adoption of Transitional Measures by the Council in Cooperation with the European Parliament*, COM (90) 400 final, Sept. 15, 1990.

[258] "Trade Policy To Be Conducted on a Case-by-Case Basis," *European Report*, No. 1608 (Aug. 4, 1990), supplement, p. 20.

[259] "EEC/GATT: East German Trade Rules Derogations Sought," *European Report*, No. 1619 (Oct. 6, 1990), sec. 5, p. 3.

[260] These agreements, which were still in force at the time of German unification, did not conform with GATT requirements that most-favored-nation treatment be extended to all trading partners. See "East German Trade Waiver Sought," *Financial Times*, Oct. 4, 1990, p. 5.

[261] "Economic and Social Committee: Opinions on German Unification," *European Report*, No. 1632 (Nov. 24, 1990), sec. 1, p. 5.

[262] William Dullforce, "EC Secures a GATT Waiver on Trade with East Germany," *Financial Times*, Dec. 14, 1990, p. 6.

[263] *Council Regulation (EEC) No. 3568/90 of 4 December 1990 on the Introduction of Transitional Tariff Measures for Bulgaria, Czechoslovakia, Hungary, Poland, Romania, the U.S.S.R., and Yugoslavia until 31 December 1992 to Take Account of German Unification*, OJ No. L 353 (Dec. 17, 1990), pp. 1-3.

[264] "East German Trade Waiver Sought," p. 5.

[265] Also supporting the U.S. objection to the waiver were Australia, Canada, and Hong Kong. The waiver was approved by GATT in December 1990, with the United States, Hong Kong, and Japan voting against.

[266] "Trade: East German GATT Waiver Blocked," *EC-US Business Report*, Dec. 1, 1990, p. 10.

[267] Dullforce, "EC Secures a GATT Waiver."

Unification, and the addition of new German consumers and producers to the Community, is having an impact on the EC's external trade agreements. The larger German market may lead to an increase in Germany's quotas for developing-country banana and rum exports under the Lome[268] agreement.[269] The unified Germany already has obtained an increase in its share of the Community's import quota for tobacco under the GSP scheme[270] to allow the former East Germany to maintain its trade relations with Cuba.[271]

Future Relationship

The future relationship between the European CMEA countries and the EC is expected to depend on the level of political and economic reforms they embrace. Whereas the first generation of trade and cooperation agreements has been concluded and both sides reportedly are anxious to expand these ties, the EC has made it clear that it will pursue further agreements only with countries that demonstrate a commitment to follow through on implementing internal reforms. This position could make it easier for Czechoslovakia, Hungary, and Poland—which are already negotiating with EFTA to create free-trade areas—to establish even closer relations with the EC before the single market is complete.

European Free Trade Association

The EC and the European Free Trade Association (EFTA) are each other's largest trading partner. Consequently, EFTA is concerned about any aspect of the EC's internal-market process that could disproportionately favor EC firms over EFTA firms and thus transform the EC into a trade fortress.

EC and EFTA foreign ministers began formal negotiations on June 20, 1990, to establish a more structured relationship based on the creation of a European Economic Area.[272] The purpose of the EEA is "to enable to the greatest possible extent, the free movement of goods, persons, services and capital"[273] between the 19 EC and EFTA countries. EC and EFTA officials hope to have an agreement creating the structure for a formal partnership completed and ratified in time to allow the EEA to come into force on January 1, 1993, concurrently with the EC's single-market initiative.[274]

[268] See discussion on Lome below.

[269] "Trade Policy To Be Conducted on a Case-by-Case Basis," p. 20.

[270] See discussion on GSP below.

[271] "GSP: Political Agreement on 1991 Scheme," *European Report*, No. 1636 (Dec. 8, 1990), p. 4.

[272] "European Economic Area" (EEA) has become the official English designation to replace the term "European Economic Space" (EES). See BNA, "European Economic Space: Talks Are Deadlocked, Swiss Trade Minister Says," *1992: The External Impact of European Unification*, Nov. 2, 1990, p. 5.

[273] "EEC/EFTA: Joint Declaration Calls for Launch of EEC Negotiations," *European Report*, No. 1550 (Dec. 18, 1989), sec. 5, p. 8.

[274] BNA, "European Economic Space: Talks are Deadlocked, Swiss Trade Minister Says," *1992: The External Impact of European Unification*, Nov. 2, 1990, p. 5.

Since negotiations began in June 1990, talks on the creation of the EEA have stalled on two key obstacles. First, EC and EFTA officials remain deadlocked over EFTA's level of participation in the EEA's decisionmaking process. While EC proposals would allow the EFTA nations' input "at all stages of the early process of elaborating future EC legislation," including participation in EC committees "either as permanent or partial members,"[275] the EC position excludes joint decisionmaking.[276] EFTA's objective in the negotiations, outlined by its chairman on October 23, is not to become "merely satellites of the EC."[277] Some EFTA ministers have expressed the concern that their countries would not accept an EEA treaty that would give the EFTA nations little input into the EEA's future direction.[278]

The second obstacle slowing negotiations on the EEA stems from EFTA requests for exemptions to EC rules. Switzerland has requested derogations from EC rules providing for the free movement of EC citizens, the right of nonresidents to buy real property (Switzerland imposes strict limits), the transit of trucks over 40 metric tons,[279] and less stringent EC environmental laws.[280] Iceland seeks special treatment for its domestic fishing industry, and Finland desires to prohibit foreign investment in forestry.[281]

Following a deadlocked October 1990 EC and EFTA ministerial meeting, EFTA representatives appealed to the EC to speed up negotiations and offered to "reduce to a minimum" the number of derogations from Community rules EFTA had initially sought.[282] Ministerial meetings in November and December 1990 reportedly resulted in some progress in the EEA negotiations. At the December 19 EFTA-EC ministerial meeting, the chief EFTA negotiators reportedly were prepared to recommend to their governments that they should drop all demands for permanent exemptions from EC rules[283] except in two cases—the transit of trucks heavier than 40 metric tons through Austria and Switzerland and safeguards limiting access to Iceland's offshore waters by fishing boats from EC countries.[284] EFTA also sought a satisfactory legal and institutional framework for the EEA, transitional periods for the implementation EEA legislation, and safeguard mechanisms for specific situations.[285] For its part, the EC was prepared to raise its safety standards for automobile exhaust emissions and food sanitation to meet EFTA's stricter standards.[286] The EC and EFTA negotiators' current timetable is to produce a draft agreement on the EEA by spring 1991.[287]

Several EFTA countries are closer to considering application for EC membership, although Community officials have indicated that the EC 92 process must be complete before any new members will be permitted to join. The rapidly changing political and economic environment in the U.S.S.R. and in Eastern Europe reportedly is helping some EFTA countries to become less apprehensive about EC membership and to consider abandoning their longstanding political neutrality in favor of political union with the EC. In December 1990, the Swedish Parliament reversed its longstanding opposition to membership in the EC by approving legislation to permit an application for EC membership.[288] Norway's newly elected Government announced in November 1990 that, though it was not yet ready to move quickly on EC membership, it was prepared to repeal safeguards sheltering important sectors of the economy from foreign ownership in order to join the EEA.[289] According to 1990 public opinion polls, Iceland's voters are showing increased interest in EC membership, particularly if other Scandinavian countries are admitted.[290] Switzerland has decided to consider EC membership despite longstanding Swiss concerns about maintaining political neutrality. Although public opinion polls show that most Finns now favor EC membership,[291] Finland continues to offer, as grounds for not seeking EC membership, the desire to remain politically neutral.[292]

Preliminary talks between EFTA and Turkey on the possibility of an interim free-trade agreement began on July 6, 1990.[293] EFTA and Turkish authorities agreed to keep the Community informed of progress in their discussions[294] as negotiations continued through the end of 1990.[295] Turkey may view EFTA membership

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[275] David Buchan and Robert Taylor, "EFTA Comes Closer To Setting Out its European Stall," *Financial Times*, Nov. 21, 1990, p. 3.

[276] "European Economic Space: Talks Are Deadlocked."

[277] Ibid.

[278] David Buchan, "Gloom in EFTA After Talks with EC Fail," *Financial Times*, Nov. 27, 1990, p. 2.

[279] Switzerland and Austria impose a 28 metric ton limit on trucks. See BNA, "European Economic Area: EFTA Offers Concessions in EC Talks, Official Says," *1992: The External Impact of European Unification*, Nov. 30, 1990, p. 6.

[280] "European Economic Space: Talks Are Deadlocked."

[281] Ibid.

[282] "EEC/EFTA: EFTA Ministers Appeal to Commission To Speed Up EEA Negotiations," *European Report*, No 1625 (Oct. 27, 1990), sec. 5, p. 5.

[283] David Buchan and Robert Taylor, "EFTA Comes Closer to Setting Out its European Stall," *Financial Times*, Nov. 21, 1990, p. 3.

[284] BNA, "European Economic Area: Draft EEA Expected by June, but EFTA Members Pessimistic," *1992: The External Impact of European Unification*, Jan. 11, 1991, p. 6.

[285] EFTA, "EEA Negotiations," *EFTA News*, No. 9, Dec. 10, 1990, p. 2.

[286] BNA, "European Economic Space: EC Agrees to Raise Standards on Environment, Foodstuffs," *1992: The External Impact of European Unification*, Oct. 5, 1990, p. 5.

[287] "Summit News Briefs," *1992: The External Impact of European Unification*, special supplement, Dec. 18, 1990, p. 4.

[288] BNA, "Sweden: Parliament Approves Bill to Apply for EC Membership," *1992: The External Impact of European Unification*, Jan. 11, 1991, p. 7.

[289] Buchan and Taylor, "EFTA Comes Closer."

[290] "EFTA-EC Relations: Scandinavian Nations."

[291] "Finland: Out in the Cold," *The Economist*, Sept. 8, 1990, p. 58.

[292] David Buchan and Enrique Tessieri, "Finland Pushes for Say in EC Policy," *Financial Times*, Aug. 17, 1990, p. 4.

[293] "EFTA-Turkey Free Trade Talks," *EFTA News*, Aug. 1, 1990, p. 3.

[294] Ibid.

[295] EFTA, *Ministerial Meeting of the EFTA Council, Geneva, 13 and 14 December 1990*, communique, 26/90/F, Dec. 14, 1990. p. 2.

as a way to expedite its request for full EC membership. Turkey has an association agreement with the EC and has applied for EC membership, although full Turkish membership in the EC is not likely until after 1993.

The rapid political and economic changes in central and Eastern Europe are adding new dimensions to EC-EFTA talks. Several central and Eastern European countries are seeking EFTA membership as a stepping stone to full EC membership. All of the Eastern European countries have bilateral trade agreements with each of the EFTA countries.[196] Both the U.S.S.R. and Hungary already have approached EFTA for possible membership.[197] Yugoslavia already has a form of EFTA associate membership.[198] In June 1990, Czechoslovakia signed an economic cooperation agreement with EFTA patterned after agreements EFTA already had in place with Hungary and Poland.[199] As a result of these cooperative economic agreements, EFTA subcommittees were established to discuss the drafting of free-trade agreements with Czechoslovakia, Hungary, Poland,[200] and Yugoslavia.[201]

Lome

The more than 60 African, Caribbean, and Pacific (ACP) nations granted trade preferences by the EC under a series of agreements known as the Lome Convention[202] are concerned that completion of the internal market may jeopardize the special access they currently enjoy with respect to EC agricultural markets. These nations reportedly fear that the southward enlargement of the EC, with the eventual full inclusion of Spain and Portugal into the EC's Common Agricultural Policy, will make the Community less dependent on ACP agricultural products such as semitropical and citrus fruits.[203] The ACP countries also have expressed concern that increased EC attention and resources channeled into Eastern Europe or an EC-EFTA agreement will result in reduced EC trade and aid flows to ACP countries. Finally, the ACP countries have expressed concern that preferences the EC currently gives to the ACP countries may be eroded if enlargement of the EC leads to pressure from other GATT countries for the Community to open its markets further to non-EC members.

After difficult negotiations between EC and ACP officials, a fourth Lome Convention was signed on December 15, 1989, and became valid on March 30, 1990.[304] Although the Community did not make EC 92 "an object of negotiation in the agenda of Lome IV," on the grounds that the 1992 program was a domestic issue, the EC Commission promised to consult with ACP representatives if measures contemplated to be undertaken by the EC might directly affect ACP countries.[305] The renewal of agricultural protocols under Lome IV, including the extension of the EC's national-based trade preferences for ACP banana exports to the EC single market, is of particular concern to ACP countries.[306]

As Lome IV currently stands, the protocol on bananas does not realign the national-based banana import quotas to the EC 92 single market—the second-largest global market for bananas after the United States. Lome's banana protocol was renewed largely as it stood before.[307] The new protocol declares that the market access and the relative competitive advantages of traditional ACP suppliers will be maintained once the EC's internal market is completed, thus eliminating the possibility of a free-trade regime but falling short of guaranteeing the ACP countries' market share.[308] Some ACP officials have expressed concern that the EC might enforce quotas after 1992 under pressure from the French and the British to continue to ensure preferential access to exports from their traditional suppliers.[309]

ACP banana exporters eventually may receive higher quotas as a result of Germany's larger post-unification market[310] or because of a recent

[296] Carl Hamilton and others, "Trade Patterns and Trade Policies," *Monitoring European Integration: The Impact of Eastern Europe* (London: Center for Economic Policy Research, 1990), p. 25.

[297] "EC and EFTA Countries Move Closer to Establish the 'European Economic Space,'" *EC-US Business Report*, vol. 2, No. 2, Feb. 1, 1990, p. 13.

[298] Hamilton and others, "Trade Patterns," p. 30.

[299] EFTA, "Co-operation With Czechoslovakia," *EFTA NEWS*, No. 9, Dec. 10, 1990, p. 2.

[300] Ibid.

[301] EFTA, *Ministerial Meeting of the EFTA Council*, p. 2.

[302] The first of these Lome agreements between the EC and the African, Caribbean, and Pacific countries was signed in 1975, and the Convention has been renewed and expanded every 5 years since. For a detailed discussion of Lome IV, see USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, p. 1-12.

[303] Stefan Brune, "The EC Internal Market, Lome IV and the ACP Countries," *Intereconomics*, vol. 25, No. 4, July/August 1990, pp. 193-201.

[304] As of Jan. 1, 1991, the convention had not been ratified. Ratification by all EC member states and at least two-thirds of the ACP states is required before Lome IV comes into full force. Full ratification is not anticipated until mid-1991. "Lome IV: Aid Disbursement May Be Effected as Early as 1993," *European Report*, No. 1619 (Oct. 6, 1990) sec. 5, p. 3.

[305] Alfred Tovias, "The European Communities' Single Market: The Challenge of 1992 for Sub-Saharan Africa," *World Bank Discussion Papers*, No. 100, p. 46.

[306] For a discussion of EC preferences granted under the rum and sugar protocols, see USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, pp. 1-12 to 1-13.

[307] Under existing arrangements, EC members have exclusive agreements ensuring preferential access for bananas produced by their traditional suppliers—primarily their former colonies (Cameroon and Cote d'Ivoire for France, the Caribbean region for the United Kingdom, and Somalia for Italy). Under a supplementary protocol to the Treaty of Rome, West Germany was allowed to import bananas duty-free from the Central American dollar zone, whereas other EC countries must charge a 20-percent import tariff on bananas imported from the dollar zone.

[308] Tovias, "The European Communities' Single Market," pp. 31-33.

[309] "Producers Fear Single Market: Will the EC Have Quotas After 1992?" *Latin American Commodities Report*, Sept. 15, 1990, p. 12.

[310] "Trade Policy To Be Conducted on a Case-by-Case Basis."

opening in Greece's banana market.[311] Options reportedly being discussed to adapt the banana trade regime to the single market include (1) replacing national trade regimes with a Community-based regime and eliminating non-ACP banana imports into Germany, (2) voluntary restraint agreements with ACP banana exporters, or (3) a global quota on non-ACP producers coupled with a Community tariff reduction for bananas.[312]

Lome IV postpones an agreement on services until after Uruguay Round negotiations are concluded. Within the ACP group, the African countries have expressed particular concern that EC deregulation of air transport and Communitywide standards, such as those for aircraft noise levels, do not discriminate against African air carriers.[313]

Generalized System of Preferences

Like the Lome Convention, the EC's Generalized System of Preferences (GSP) scheme provides nonreciprocal tariff concessions to developing countries. The GSP also provides more favorable preferences for those countries appearing on the United Nations list of least developed countries. However, the GSP regime is significantly less generous than Lome in many commodities of greatest interest to the ACP countries. In addition, GSP provisions contain 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.

In late 1989, an EC Court of Justice ruling required the EC to abolish national quotas and to fix and use a Community quota, on a product-by-product basis, to be binding on all member states.[314] On October 17, 1990, the EC Commission submitted its proposals for the 1991 GSP.[315] These changes, based on the Commission's July 1990 guidelines for the GSP for the years 1992 through 2000, recommended realigning EC trade policy in terms of the 1993 single-market requirements and "replacing all preferential national quotas on industrial and agricultural products by Community administered quotas."[316]

The collapse of Uruguay Round negotiations of the GATT in 1990 impeded the Community's ability to agree on modifications to the GSP. The EC reportedly had hoped to use finalized Uruguay Round decisions to determine the reforms needed to keep the GSP in line with the expectations of developing countries.[317] The Council finally agreed to a compromise GSP scheme in December for the proposed 1991 GSP. This compromise includes extending preference benefits to several countries in Eastern Europe. The EC Commission has indicated that it plans to extend the assistance already in place for Hungary, Poland, and Romania to Bulgaria and Czechoslovakia for 1 year.[318] In addition, Commission proposals include increasing farm, textile, and industrial concessions for goods from Poland, Hungary, and Romania, three countries that already receive limited preferential treatment.[319]

After studying a proposal[320] to extend preferences[321] to several South American countries, the EC Council granted GSP benefits to Bolivia, Colombia, Ecuador, and Peru for 4 years to help these countries offset the effects of cocaine trafficking on their economies. Furthermore, the Council has agreed to increase the allowed imports of tobacco from Cuba to allow Germany and former East Germany to respect trade ties predating German unification.[322]

Schengen Countries

The Schengen Agreement was signed in June 1990[323] to get a head start on EC 92 proposed integration measures. The agreement's aim is to eliminate controls on the movement of people, goods, and services at member countries' common borders.[324] In addition to the abolition of border checks for individuals (random checks and checks at airports are still permitted), the agreement provides for a common visa policy, the reduction to a minimum of border checks on goods (checks for tax evasion and for health and sanitary purposes are still permitted), increased police cooperation and the right of police to cross borders in "hot pursuit" of suspects, and a commitment to extradition.[325]

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[311] Under a 1989 agreement with the EC, Greece opened its fully protected banana market and established quotas for bananas from the ACP group. This agreement on quotas expired in April 1990. See "Bananas: Greece Renounces Protection From Intra-EEC Competition," *European Report*, No. 1613 (Sept. 13, 1990), sec. 4, p. 12.

[312] Tovias, "The European Communities' Single Market," pp. 31-33.

[313] Ibid., pp. 36-37.

[314] Economic and Social Committee (ECSC) of the European Communities, "Opinion on the Proposal From the EC Commission to the Council on the EC's Generalized Preferences Scheme for 1990," *OJ* No. C 298 (Nov. 27, 1989), p. 46.

[315] "GSP: Central and East Europe Changes Included in Transitional 1991 Scheme," *European Report*, No. 1623 (Oct. 20, 1990) sec. 5, p. 10.

[316] Ibid.

[317] "GSP: Council at Odds Over Innovations," *European Report*, No. 1629 (Nov. 14, 1990), sec. 5, p. 5.

[318] Ibid.

[319] "GSP: Central and East Europe Changes," p. 10.

[320] European Parliament, Session Documents, Doc. A3-0225/900 (Sept. 24, 1990), p. 3.

[321] These preferences consist of exemptions from quotas and ceilings and accords of duty-free treatment for industrial goods, textiles and a specified list of agricultural products. See *Council Regulation No. 3211/90 in Respect of the System of Generalized Tariff Preferences Applied to Certain Products Originating in Bolivia, Colombia, Ecuador, and Peru, OJ* No. L 308 (Nov. 8, 1990), p. 1.

[322] "GSP: Political Agreement," p. 4.

[323] The five original signatories of the Schengen Agreement were France, West Germany, Belgium, the Netherlands, and Luxembourg.

[324] "Movement of Persons: Five-Nation Pact Nears Stage; East German Visa Question Resolved," *1992: The External Impact of European Unification*, May 18, 1990, p. 1.

[325] "Five E.C. States Sign Treaty to Scrap Border Controls," *Europe-1992, The Report on the Single European Market*, June 27, 1990, p. 690.

Italy, after first tightening visa requirements for visitors from North Africa, became the sixth full member of the Schengen group in November 1990.[326] Spain has observer status and expects to become a full member in 1991 after Madrid tightens visa controls for North African visitors.[327] Portugal also has applied for entry into the Schengen group.[328] Spain and Portugal, in anticipation of eventual Schengen group membership, established their first control-free border crossing for EC citizens on July 15 and may pursue easing controls at other crossings in 1991.[329]

Signature of the Schengen Agreement was postponed from December 1989 to June 1990 reportedly because of West German concerns about the applicability of the agreement to movements of East Germans after unification.[330] Security details on the free movement of Germans still have not been completely spelled out, and some border controls may not be fully removed until early 1992.[331] Despite these delays, the Schengen group has a significant headstart over the EC in moving towards the elimination of European border controls. With EC border controls not due to be fully removed until the start of the single market on January 1, 1993, some Schengen members feel that "the only real free movement of people in the short term will occur among the Schengen signatory nations."[332]

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[326] (Untitled), *1992: The External Impact of European Unification*, Dec. 14, 1990, p. 9.

[327] Ibid.

[328] "Welcome to Schengenland," *The Economist*, June 16, 1990, p. 56.

[329] BNA, *1992: The External Impact of European Unification*, Aug. 10, 1990, p. 8.

[330] "Schengenland Shenanigans," *The Economist*, Dec. 23, 1989.

[331] BNA, *1992: The External Impact of European Unification*, Oct. 19, 1990, p. 10.

[332] Ibid.

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 other, nonmember countries.

Economists have long assessed the 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 are likely to increase consumption from other member countries and decrease consumption of domestic products and nonmember imports. On the other hand, the creation of a customs union could 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 would 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 away from production for domestic consumption toward member imports and production for export to other member countries; and (2) trade diversion: the shift away from consumption of nonmember imports and from exports to nonmember countries in favor of trade with member countries.

This conventional dichotomy serves to highlight the gains to efficiency arising from trade creation, which shifts production toward low-cost producers, and the offsetting losses to efficiency arising from trade diversion, which shifts production away from low-cost producers. On balance, whether 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 production to migrate to relatively efficient locations, economies of scale and learning-curve effects are more readily realized in select 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 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 EC 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-substitution 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 EC Commission, commonly referred to as the Cecchini Report, predicts that the total gains from completion of the internal market 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, and an easing of domestic budget balances and trade balances of between 1.5 and 3.0 percent of GDP and between 0.7 and 1.3 percent of GDP, respectively, over the medium term (5 to 10 years). It is also estimated that the labor market would improve, with the creation of between 1.3 million and 2.3 million jobs in the EC as a whole over the medium term. However, it is expected that the unemployment rate would fall by only 1 to 2 percent in the medium term.

Recent Research on the 1992 Program

This section presents a review of recent economic research on the EC 1992 market integration program. The first three articles examine the impact on the United States in three industries: banking and securities, automobiles, and telecommunications. In the banking and securities sector, Carter Golembe and David Holland predict a major impact from the EC 1992 program over the long term because of the likely

legislative and regulatory changes that will take place in the United States as the EC liberalizes its financial sector. In the automobile sector, Alasdair Smith and Anthony Venables contend that the U.S. firms operating in the EC are well positioned because they already have a pan-European orientation. Moreover, they assert that the United States could gain significantly because exports from the United States are likely to expand. In the telecommunications sector, Peter Cowhey contends that the EC 1992 program could significantly open telecommunications services to competition in the long run. Finally, this chapter briefly reviews the comprehensive study by the staff of the EC Commission on moving from an integrated market to a complete economic and monetary union. They argue that the EC could benefit significantly by moving beyond the EC 1992 initiative to a complete economic union.[1]

Carter Golembe and David Holland

In their article "Banking and Securities," Golembe and Holland examine how changes in the EC's financial services sector will affect U.S. firms. They note that EC 1992, in combination with forces already under way in the United States, may have long-term implications for U.S. financial services. They state that all U.S. financial institutions will be affected by EC 1992 in the long run primarily because of the legislative and regulatory changes that are likely to occur in the United States.

Golembe and Holland examine the effect of EC 1992 on U.S. financial institutions in the context of the three major U.S. banking acts: (1) the McFadden Act, which prohibits a national bank from branching outside its home state; (2) the Glass-Steagall Act, which effectively separates commercial banking from investment banking; and (3) the Bank Holding Company Act, which states that a corporation that owns at least one bank cannot have affiliates that engage in a business that is not "so closely related to banking as to be a proper incident thereto" (p. 92). The authors point out that since the EC modified its position on reciprocity, the EC 1992 program will have little effect on the U.S. financial system over the next several years. However, in the long term Golembe and Holland argue that EC 1992 would set the stage for a complete restructuring of the U.S. financial system. In particular, they contend that the restrictions imposed by the Glass-Steagall and McFadden Acts will be removed, resulting in an acceleration of bank consolidations, which would lead to a decline in the number of U.S. banking firms and the adoption of universal banking.[2] Golembe and Holland argue that as restrictions are removed throughout the EC, the EC will continue to pressure the United States to ease its restrictions or potentially face some of the harsh provisions of the original Second Banking Directive proposal. Moreover, they point out, it is likely that Japan will also liberalize its banking system, leaving the United States isolated from the rest of the world with respect to restrictions on its banking system.

Golembe and Holland also examine the effects of the EC 1992 program in the context of U.S. regulatory institutions. They note that in the United States there is a balance of power among Federal agencies and between Federal and State agencies. They argue that EC 1992 will have a strong influence on the continual shift of power among these institutions.

Golembe and Holland identify the four Federal agencies that regulate and supervise the U.S. financial system: the Securities and Exchange Commission (SEC) for securities firms; the Office for the Comptroller of the Currency (OCC), the Federal Reserve Board (FRB), and the Federal Deposit Insurance Corporation (FDIC) for commercial banks.

Golembe and Holland note that banks in the United States do engage in some securities activities and come under regulation by the SEC in the area of disclosure and permissible activities. They point out that the SEC depends heavily on disclosure and market punishment of transgressors whereas banking regulators depend on regulatory enforcement and shield the public from distressing information. They contend that pressure for more market-oriented enforcement (similar to the SEC) for the banking agencies is building and that EC 1992 might accelerate this trend.

Golembe and Holland contend that the EC 1992 program is likely to have a direct impact on the three U.S. banking agencies. They point out that of the three, only the OCC is a true regulatory agency. It charters banks and supervises them. The FDIC regularly examines and supervises State-chartered banks that are not members of the Federal Reserve System (FRS). The FRB supervises those State-chartered banks that have opted to join the FRS. Golembe and Holland assert that once EC 1992 takes effect, the FRB will move into a dominant position among the bank-regulating agencies. They note that the OCC and the FDIC could even become part of the Federal Reserve itself. Golembe and Holland argue that the EC 1992 program enhances the power struggle among the Federal banking agencies. They contend that there may be a resurgence of efforts to create a new super regulatory body for U.S. financial institutions, apart from the central bank.

Alasdair Smith and Anthony Venables

In their article "Automobiles," Smith and Venables examine the impact of the EC 1992 program on the U.S. automobile producers, including the European subsidiaries of Ford and General Motors (GM) as well as the Japanese transplants producing in the United States. They note that both Ford and GM have long-established European operations that are organized on a pan-European basis to a greater extent

[1] An economic union is a step beyond a customs union. When an economic union is established, members integrate all economic policies.

[2] Universal banking refers to virtually unrestricted financial services being offered by an institution, including traditional commercial as well as investment banking activities.

than are Europe's own car producers. Since foreign direct investment by U.S. firms in the EC is likely to be the dominant mode of investment, Smith and Venables state that general lessons on the effects of EC 1992 may be drawn from focusing on the automobile industry. Smith and Venables point out that it is important to make the distinction between the interests of U.S. multinationals operating in the EC (e.g. Ford and GM) and the interests of exporters operating from the United States (e.g. the Japanese transplants).

Smith and Venables contend that Ford and GM are better positioned than most European producers to cope with the effects of the EC 1992 program. They point out that the sales of Ford and GM are spread across the EC and they are not overly committed to markets in which the competitive effects are likely to be the fiercest. They also assert that Ford and GM have the ability to shift production among countries, which may give them an edge in cutting costs.

On the issue of U.S. automobile exports to EC, Smith and Venables make several points. Although customs union theory would predict trade diversion away from U.S. producers exporting to the EC, exports of cars to Europe from the United States have risen over the past few years and are expected to continue to rise. In fact, Smith and Venables state that the EC 1992 program may facilitate these exports because it lowers the cost of obtaining the necessary type-approvals.

Despite the recent controversy over the British-produced Nissans, Smith and Venables state that they do not believe that the EC will subject U.S.-produced Japanese cars to import restraints unless their Japanese content is too high. In fact, they argue that the United States should oppose any such sanctions on transplants because the United States will likely gain more from the export of U.S.-produced Japanese cars than from the earnings of the U.S. multinationals operating over there. They argue that the real danger is not a new formal trade barrier on U.S.-produced Japanese cars but an implicit market-sharing arrangement (or cartelization of the automobile market) between Japan and the EC.

Smith and Venables assert that the fate of U.S. interests after the EC 1992 program is implemented depends less on U.S. Government efforts and more on the commercial interests of U.S. producers. They point out that in the short run, if EC producers become more competitive, life will be harder for U.S. producers, but better for U.S. consumers. In the long run, they contend that countries will generally gain from the increased efficiency of their trading partners.

Peter Cowhey

In his article "Telecommunications," Peter Cowhey examines some of the implications of the EC 1992 process on U.S. firms in the telecommunications industry. He notes that the EC proposed procurement directive (88/378) effectively binds both public and private entities that provide telecommunications services. He points out that the proposal governs procurement of network equipment, terminal equipment, software, and installation and service contracts. Although the local telephone authorities can require 50-percent EC content, Cowhey points out that all purchases are subject to greater transparency and tougher rules on nondiscrimination.

Cowhey contends that U.S. firms should have several worries about the procurement directive. First, he questions whether the EC will extend the coverage of this directive to other public entities because some of the largest purchasers of telecommunications equipment are other Government agencies such as defense and transport. Second, he contends that this directive is a negotiating tool by the EC to gain access to the markets of the regional Bell operating companies in the United States. He argues that the EC wants the GATT code on public procurement extended to cover telecommunications.[3] Third, Cowhey questions what constitutes 50-percent EC content? He notes that much of the value added in telecommunications equipment resides in the research and development (R&D) and software that are generally part of a broader effort. Finally, he asks how this directive will be effectively enforced? He points out that much will be left to national discretion because procuring for a telecommunications network requires considerable judgement.

Cowhey contends that the directive on competition in telecommunications services[4] could open a significant segment of voice services to competition in the long term. He notes that this directive allows private corporate networks to provide voice services. He argues that measures like this will eventually liberalize competition in voice services at least for large users. Moreover, he notes that the services directive also liberalizes enhanced services.[5] However, he points out that the practical meaning of this directive will rely on the Open Network Provision Directive (89/325), which will set the tariffs and establish how enhanced service providers may access the basic network.

Cowhey also makes several recommendations regarding U.S. international trade and regulatory policies. First, he states that the United States should seek more uniform antitrust standards for the EC's R&D consortia and how R&D expenditures will factor into local content requirements. Second, he argues that the United States should negotiate for adequate

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[3] Cowhey points out that the United States adamantly argues that private firms should be exempt.

[4] The directive "On Competition in the Markets for Telecommunications Services," adopted July 1989, retains public telephone services and the requisite network infrastructure as the only permissible monopolies.

[5] Enhanced services include any value-added service that substantially manipulates the format of the message. For example, a packet-switched network converts data into "packets" with addresses and error control codes, transmits the data, and then reassembles it. Other enhanced services include information services that provide content over the network (e.g., access to a remote data base) or that manipulate content (e.g., remote processing on a computer).

representation in the EC telecommunications advisory process. Third, he contends that the United States should oppose anything besides minimal licensing requirements for enhanced services. Finally, Cowhey warns about potential entanglements that may result from disputes likely to arise between the EC and Japan over their trade balance in telecommunications equipment. He advocates negotiating the opening of markets to avert two-sided disputes that can randomly affect third parties.

Directorate-General for Economic and Financial Affairs

The study "One Market, One Money," written by the staff of the Directorate-General for Economic and Financial Affairs (DGEFA) of the EC Commission, evaluates the benefits and costs of forming an economic and monetary union (EMU) in the EC. The DGEFA concentrates on comparing the net advantage of moving the EC, which has completed the EC 1992 program and membership in the European Monetary System (EMS), to a regime composed of a monetary union with a single currency and an economic union.

The DGEFA notes that the economic advantages of EC 1992 to its member states, especially financial market integration, are not fully achievable without a single currency. The Directorate-General also points out that the EMS in its present form may not be compatible with complete market liberalization as required by the EC 1992 program. It contends that if the move to an EMU were not to take place, it is likely that either the EMS would become a less stable arrangement or capital market liberalization would not be fully achieved or maintained.

According to the DGEFA, the EMU will involve a new single currency (the ECU), a new central bank (EuroFed), completion of the single market (EC 1992), and a changed role for national budgets. It points out that compared to the economic impact of EC 1992, which essentially improves the efficiency of the economy, EMU will also have an impact in lowering the average rate of inflation as well as lowering the variability of both the level of output and inflation.

The DGEFA points out that the three main objectives of the EMU are efficiency, stability, and equity. It contends that the addition of a single currency to a single market will enhance the resource allocation function of prices at the EC level as a whole. It contends that the EMU, with a well-designed institutional structure, is a highly probable means of securing price stability. Finally, they argue that there is no reason to believe that the net balance of relative advantage from the EMU will systematically favor one region over another.

The DGEFA states that an EMU will amplify the economic benefits that result from the EC 1992 program. In fact, it argues that only a single currency would allow the full potential benefits of a single market to be achieved. The DGEFA identifies several potential effects of an EMU for the EC. It points out that an EMU will reduce exchange rate variability, which would be highly beneficial to the EC business community. It notes that a single currency will eliminate transactions costs from bank transfers of different currencies. It estimates that these transactions costs for the EC as a whole are approximately 13 to 19 billion ECU per year. It asserts that the EMU may also trigger an increase in the underlying growth rate of the EC economy resulting in larger dynamic gains for the community.[6] They note that the most cost-effective way to achieve goals such as price stability will require a central bank that has the statutory duty to seek price stability as its primary objective. They contend that a major impact brought about by an EMU would be recasting the role of national budget policies and the intensified competitive pressure on national public expenditure and tax systems since a new central bank will have to be established. However, the DGEFA points out that the loss of the ability by national Governments to affect nominal exchange rates will result in the most important economic cost of an EMU. They assert that this consequence of an EMU will not significantly affect the EC overall. Table 2-1 presents the potential effects of an EMU by major category.

The DGEFA examines some of the benefits and costs of an EMU by EC countries. It contends that the price stability objectives of the EMU will benefit Greece, Italy, Portugal, Spain, and the United Kingdom, all of which have higher inflation rates relative to the other EC countries. The Directorate-General notes that Germany is apprehensive about the potential monetary policy of an EC central bank. However, the DGEFA contend that an EMU will benefit Germany. Without an EMU, Germany's trading partners are likely to be less committed to the goal of price stability. This would raise the risk to Germany of importing inflation from their trading partners since the theoretical option of a floating exchange rate is now excluded in practice. The Directorate asserts that all exchange rate mechanism (ERM) countries except Germany and the Netherlands will gain from lower real interest rates with the establishment of an EMU.[7] The Directorate points out that the elimination of transactions costs will especially benefit the countries with poorly developed financial markets and traditionally weak currencies. Finally, the DGEFA argues that the member states will benefit from an improved business climate and a stronger international presence for the ECU and the EC.

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[6] See Baldwin (1989) for an estimation of the potential dynamic effects of the EC 1992 program. This paper was reviewed in the second followup report.

[7] Currently Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, and the Netherlands adhere to the narrow-band variant of the ERM of the EMS. Spain and the United Kingdom joined the broader band of the ERM on June 20, 1989 and October 8, 1990, respectively. Greece and Portugal remain outside the ERM. All member states are committed to joining the narrow band of the ERM as well as completing the liberalization of capital movements.

Table 2-1
The potential effects of an EMU by major category

Item	*Nature of the final impact*	*Main channels of action*	
		Direct	*Indirect*
Microeconomic efficiency	Steady state level of output and income in the Community	Savings in transactions and hedging costs	Strengthening of the internal market
		Disappearance of exchange rate uncertainty and instability	Integration of goods and capital markets
			Effects of lower uncertainty on the riskiness of investment
			Induced dynamic effects
			Seigniorage[1] revenue losses for some member states
			Effects on taxation and provision of public goods
Macroeconomic stability	Steady state rate of inflation	Loss of an adjustment instrument for asymmetric shocks	Price stability as consequence of EuroFed policy
	Variability of output and inflation, with associated consequences for welfare		Sound, coordinated fiscal policies
Regional equity	Distributional effects among member states and regions	Spatial distribution of direct micro and macro gains	Differentiated impacts of EMU depending on initial macroeconomic conditions and economic policy strategies
External effects	Both micro and macro effects for the Community	Additional savings on transaction costs, revenues from international seigniorage and reduction in the need for exchange reserves	Better coordination internationally
Transitional effects	Changes in macroeconomic transition path towards EMU	Disinflation costs	Drop in real interest rates
		Costs of fiscal adjustment	Effects on the dollar/ECU exchange rate

[1] Seigniorage is government revenue from the manufacture of currency (coins and paper money) calculated as the difference between the face value of the currency and the value of the raw material embodied in the currency.

Source: Directorate-General for Economic and Financial Affairs, "One Market, One Money," *European Economy*, vol. 44 (October 1990), p. 50.

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CHAPTER 3
U.S. TRADE AND INVESTMENT IN THE EC

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CHAPTER 3
U.S. TRADE AND INVESTMENT IN THE EC

Developments Covered in the Previous Reports

Trade

Changes in trade flows between the United States and the EC, as well as analysis of current conditions between the EC, Eastern Europe, and the rest of the world were analyzed in the first followup report. In the second followup report, the impact of changes in trade, both internal and external to the EC, was studied. The effect of trade integration of the European market was analyzed in a recent study, which examined the issues and developments surrounding patterns of intra-EC trade and the resulting gains from such trade. Producers who specialize in certain sectors of industry within member countries would tend to raise levels of intra-country trade for that industry sector. The study concluded that the greatest gains would likely occur in the highly specialized electronics and pharmaceuticals sectors.

The likelihood of a "Fortress Europe" arising because of an increasing share of intra-EC trade was examined in another recent study. The study concluded that over a period of years a rise in import penetration into the EC by faster growing, higher technology industries may lead to increasing external import dependence on such higher technology products. Many across many industrial sectors believed that a "Fortress Europe," is very likely. By "Fortress Europe," they mean a large, interdependent market with little penetration from external trade. The study also suggested that the concept of "Fortress Europe" is supported by only a few European producers. These producers, often in infant industries, may seek protection against imported products that compete directly with their own while attempting to lower costs for any basic or intermediate goods required for their production processes. The result for many sectors of industry is an unstable set of conflicting interests of protection against end-product competition but ease of obtaining basic or intermediate materials used to make the final product.

Investment

U.S. direct investment abroad, as a measure of the book value of U.S. private assets held in foreign markets, was at a level of $333.5 billion in 1989. Increases in the direct investment position in 1988 totaled nearly $40 billion, resulting in a cumulative total of nearly $373.4 billion in 1989, or an increase of almost 12 percent. The 1989 rate of increase was greater than that recorded in 1988, particularly because of sustained economic growth overseas, especially in Europe and in the Far East. Overseas interest rates also rose, narrowing the gap between U.S. and foreign interest rates. Because of the strong economic growth, higher overseas earnings were available to many overseas affiliates of U.S. parents, allowing for a higher percentage of foreign affiliate's earnings to be reinvested.

Overall, U.S. direct investment in the EC made up approximately 40 percent ($150.0 billion) of total U.S. direct investment abroad in 1989. U.S. direct investment in other industrialized nations made up a sizable proportion of total foreign direct investment, including Canada (18 percent, or $66.9 billion) and Japan (5 percent, or $19.3 billion). U.S. direct investment in Canada and Japan as a share of total investment did not change appreciably from 1988 levels.

Developments Since the Second Followup Report

Trade With the EC

Introduction

The European Community, as defined by its current member states, continues to be one of the largest trading partners of the United States (tables 3-1 and 3-2). In terms of exports, the EC ranked first in 1990, with Canada and Japan second and third, respectively. Since 1987 the EC has been the most important U.S. export market. In terms of imports, the EC consistently accounted for between 18 and 24 percent of total U.S. imports during 1986-90. The EC ranked second during 1990 and Japan and Canada ranked first and third, respectively.

U.S. Trade Balance

The U.S. trade balance for all commodities traded between the United States and the EC was a surplus of $2.3 billion during 1990, compared with a deficit of $12.7 billion recorded in 1988 and $1.5 billion in 1989 (fig. 3-1).

The individual SITC divisions that provided the largest impact on the current trade balance are shown in table 3-3. U.S. exports of Transport Equipment (SITC division 79) exceeded imports by about $8.4 billion and provided the greatest positive balance with the EC during 1990. Various other SITC divisions (75, 87, and 77) encompassing primarily manufactured goods also provided positive trade balances. Road vehicles (SITC division 78) provided the greatest negative trade balance, primarily as a result of U.S. imports of automobiles from West Germany, the United Kingdom, and Italy.

Table 3–1

All Commodities: SITC–based U.S. exports to the European Community and rest of world, by leading markets, 1986–90

(1,000 dollars)

Market	*1986*	*1987*	*1988*	*1989*	*1990*
European Community:					
United Kingdom	10,579,464	13,140,470	17,255,779	19,642,736	22,236,156
West Germany	9,782,804	10,921,061	13,207,099	16,069,190	17,635,380
France	6,877,322	7,504,518	9,572,988	10,919,097	12,957,924
Netherlands	7,580,579	7,868,764	9,504,410	10,876,043	12,280,559
Belgium and Luxembourg	5,197,739	5,942,610	7,131,084	8,376,121	9,869,932
Italy	4,667,600	5,305,449	6,457,502	6,928,581	7,641,529
Spain	2,536,657	3,050,673	3,931,387	4,702,732	5,087,893
Ireland	1,409,114	1,752,008	2,104,344	2,389,077	2,436,350
Denmark	727,013	831,511	877,337	1,016,577	1,270,067
Portugal	572,282	569,497	718,383	907,894	895,335
Greece	321,260	343,517	545,312	696,662	748,401
Total	50,251,834	57,230,078	71,305,625	82,524,710	93,059,526
Rest of World:					
Canada	53,165,113	57,001,048	68,243,191	74,977,469	78,217,958
Japan	22,890,847	26,903,632	36,041,575	42,764,273	46,138,436
Mexico	11,924,851	14,045,175	19,853,345	24,117,255	27,467,595
South Korea	5,795,704	7,486,064	10,381,436	13,207,742	14,073,883
Taiwan	5,057,124	7,019,239	11,599,286	10,974,696	11,141,956
Australia	5,150,286	5,329,630	6,671,722	8,130,170	8,304,492
Singapore	3,240,763	3,865,229	5,423,053	7,001,752	7,597,516
Hong Kong	2,863,408	3,746,011	5,356,076	5,892,622	6,081,398
Brazil	3,746,982	3,889,272	4,106,260	4,636,110	4,876,461
China	3,076,023	3,459,595	5,004,317	5,775,478	4,775,734
Switzerland	2,049,020	2,479,298	3,276,890	4,119,530	4,069,927
Saudi Arabia	3,227,443	3,010,754	3,534,532	3,495,164	3,958,040
Sweden	1,772,604	1,770,747	2,542,386	2,998,921	3,264,878
Malaysia	1,694,610	1,867,298	2,052,982	2,710,709	3,169,302
Soviet Union	1,246,831	1,477,399	2,762,754	4,262,336	3,071,629
All other	39,401,762	43,278,459	52,190,895	51,844,021	55,267,908
Total	166,303,371	186,628,850	239,040,700	266,908,248	281,477,113
Grand Total	216,555,202	243,858,925	310,346,325	349,432,947	374,536,647

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

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

Table 3–2

All Commodities: SITC–based U.S. imports for consumption from the European community and rest of world, by leading sources, 1986–1990

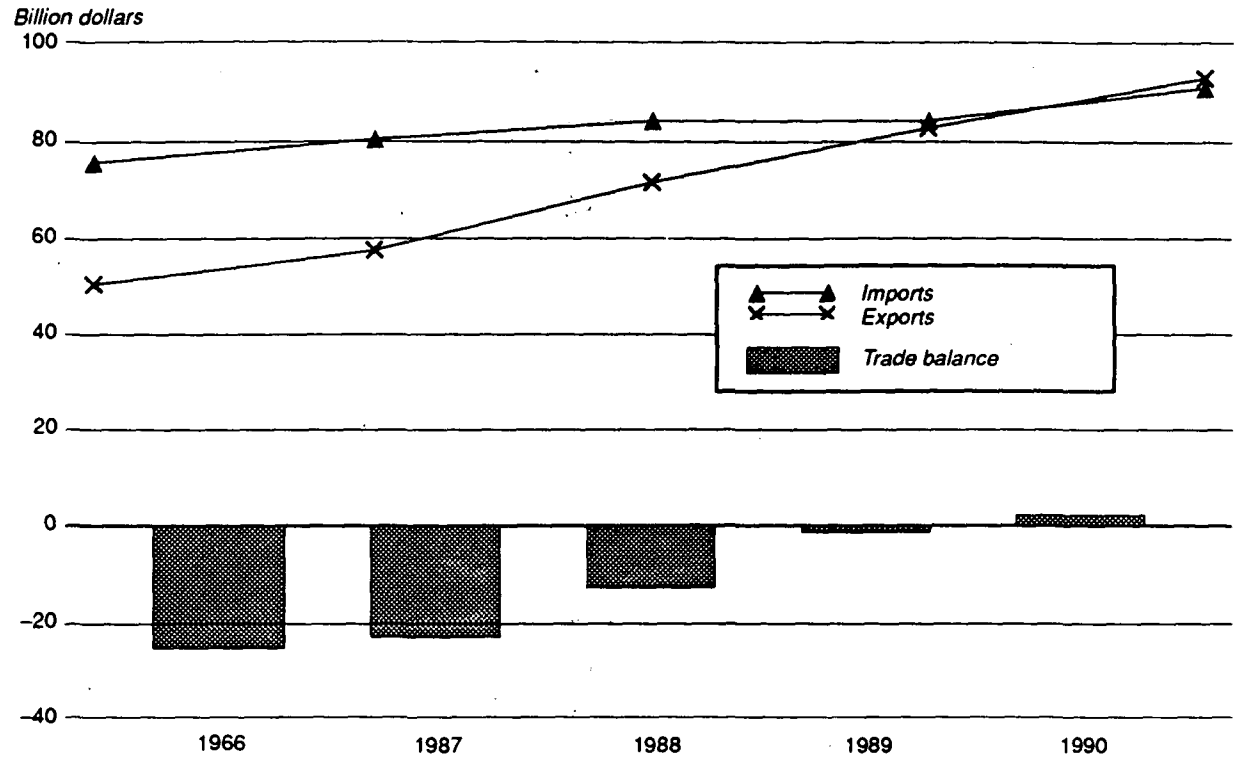
(1,000 dollars)

Market	*1986*	*1987*	*1988*	*1989*	*1990*
European Community:					
West Germany	25,300,982	27,053,535	26,491,655	24,774,389	28,035,442
United Kingdom	15,307,926	16,930,902	17,752,304	17,924,428	19,928,916
France	9,961,897	10,501,843	11,910,300	12,666,411	12,794,916
Italy	10,505,016	10,819,220	11,459,798	11,785,957	12,576,638
Netherlands	4,057,041	3,941,770	4,532,008	4,734,241	4,935,263
Belgium and Luxembourg	3,970,234	4,135,233	4,492,625	4,541,556	4,563,714
Spain	2,670,767	2,792,105	3,145,993	3,253,897	3,259,100
Ireland	1,000,327	1,097,547	1,362,264	1,558,928	1,735,927
Denmark	1,757,624	1,777,546	1,665,879	1,526,625	1,668,701
Portugal	550,649	660,352	691,668	786,637	822,293
Greece	391,874	434,294	531,712	472,283	478,037
Total	75,474,337	80,144,347	84,036,206	84,025,352	90,798,947
Rest of world:					
Canada	68,146,979	70,850,625	80,678,621	87,987,651	91,198,308
Japan	81,985,873	84,008,499	89,110,486	91,841,766	88,834,279
Mexico	17,196,360	19,765,789	22,617,177	26,556,570	29,505,962
Taiwan	19,770,612	24,575,682	24,710,730	24,203,285	22,566,115
South Korea	12,682,819	16,888,153	20,071,989	19,566,725	18,336,960
China	4,671,469	6,243,877	8,412,930	11,859,172	15,119,852
Saudi Arabia	3,604,469	4,412,861	5,549,315	7,081,853	9,964,557
Singapore	4,713,065	6,178,365	7,958,537	8,886,073	9,784,855
Hong Kong	8,865,395	9,832,528	10,184,949	9,668,914	9,400,255
Venezuela	4,982,012	5,374,366	5,044,996	6,492,623	9,132,322
Brazil	6,682,597	7,612,206	9,058,916	8,483,765	7,762,112
Nigeria	2,521,601	3,573,685	3,284,465	5,228,107	5,978,803
Thailand	1,753,355	2,221,261	3,197,899	4,363,400	5,280,317
Switzerland	5,180,543	4,183,379	4,553,135	4,669,555	5,263,422
Malaysia	2,406,792	2,884,574	3,697,181	4,668,791	5,223,815
All Other	48,018,316	53,315,808	54,972,658	62,428,425	66,402,855
Total	293,182,257	321,921,658	353,103,984	383,986,67	399,754,789
Grand Total	368,656,594	402,066,002	437,140,185	468,012,021	490,553,739

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

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

Figure 3-1
SITC-based U.S. trade with the EC, 1986-90



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

U.S. Exports

U.S. exports to all markets amounted to $375 billion during 1990, representing an increase of 7.2 percent over those in 1989. Exports to the EC during 1990 made up 25 percent of total exports. The EC was the most significant export market during 1990 and has been since 1987.

The largest categories of exports from the United States to the EC during 1990 include Other Transport Equipment, which includes rail coaches, airplanes, and ships; 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)(table 3-3).

Total exports to the EC for these top 5 SITC divisions during 1990 were $38.0 billion, representing nearly 41 percent of total U.S. exports to the EC.

Primary markets among EC nations during 1990 were the United Kingdom, accounting for 6 percent of U.S. exports to the world; Germany, 5 percent; and France and the Netherlands, 3 percent each. Other major markets for U.S. exports were Canada, accounting for 21 percent of the total, and Japan, representing about 12 percent.

U.S. Imports

Total U.S. imports during 1990 amounted to $491 billion, representing an increase of 4.8 percent over those in 1989. Imports from the 12 EC countries totaled $91 billion during 1990, constituting 18.5 percent of the total. The EC currently ranks second behind Canada as the largest source of U.S. imports.

The five largest SITC commodity groupings of U.S. imports from the EC in 1990 were Road Vehicles; Machinery Specialized for Particular Industries; Power Generating Machinery and Equipment; Miscellaneous Manufactured Articles; and General Industrial Machinery and Equipment (SITC divisions 78, 72, 71, 89, and 74, respectively). These five groupings accounted for $33 billion, or 36 percent of total U.S. imports from the EC.

Trends in EC Trade

One of the more significant trends in EC trade, as recorded by the U.N. OECD data base, is an increase in the intra-EC trade as a share of total EC trade with the world. Total EC exports plus imports amounted to $1,304 billion in 1985 and increased to $1,671 billion in 1989. Over the period, the share of total trade accounted for by intra-EC trade increased from 53 percent in 1985 to 60 percent in 1989. The EC balance of trade with the world rose from a negative $16.0 billion in 1985 to a positive $23.7 billion in 1988, but declined to a negative $111.3 billion in 1989 (fig. 3-2).

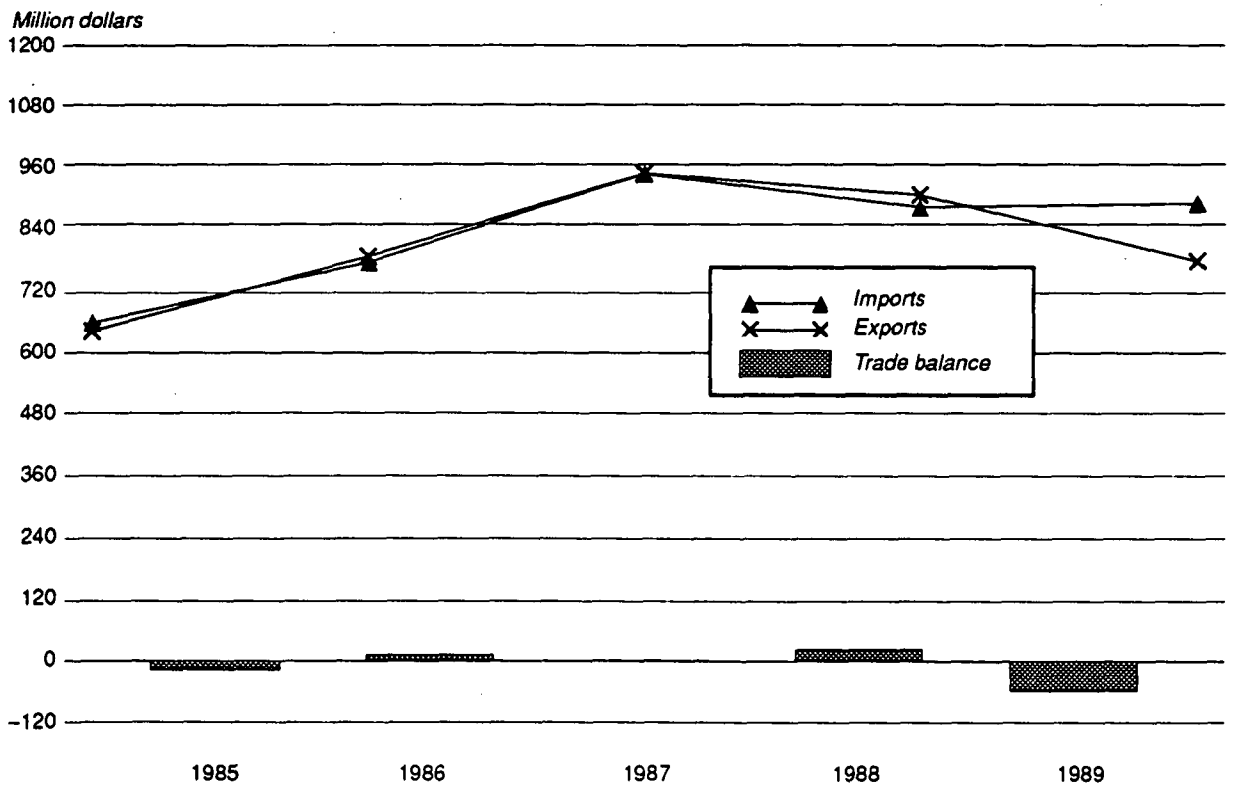
Table 3-3
SITC divisions providing the largest impact on the U.S. trade balance with the EC, 1990

(Million dollars)

SITC division	*U.S. exports*	*U.S. imports*	*Balance*
79-Other transport equipment	11,759	3,320	8,439
75-Office machines and automated data processing	10,605	2,345	7,260
87-Professional and scientific equipment	4,175	2,130	2,045
77-Electrical machinery	5,358	4,579	779
71-Power generating machinery	5,290	5,599	(309)
89-Miscellaneous manufactures	5,009	5,506	(497)
51-Organic chemicals	3,038	3,474	(436)
84-Apparel and clothing accessories	367	1,751	(1,384)
74-General industrial machinery	3,152	4,687	(1,535)
72-Specialized machinery	3,411	6,290	(2,879)
33-Petroleum and petroleum products	972	4,397	(3,425)
78-Road vehicles	2,551	10,639	(8,088)

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

Figure 3-2
SITC-based EC trade with the world, 1985-89



Source: United Nations.

In 1985, total exports of $644 billion were recorded by the 12 EC nations (table 3-4). EC trade with other EC countries accounted for approximately 55 percent of this total amount, or about $352 billion. The percentage of intra-EC exports increased gradually to about 62 percent in 1989 (fig. 3-3). The growth in intra-EC exports during this period was 36 percent, or about 7.3 percent per year.

EC imports reflect a similar phenomenon. Intra-EC imports made up approximately 59 percent of a total trade figure of $891 billion of imports in 1989, or about $529 billion (table 3-5 and fig. 3-4). This amount represents an increase of 52 percent from 1985, when intra-EC trade amounted to $349 billion out of total imports of $660 billion. The percentage of intra-EC imports has also gradually increased by an average of about 10 percent per year since 1985.

Table 3-4
All commodities: EC exports to the European Community, Eastern Europe, and rest of world, by markets, 1985-89

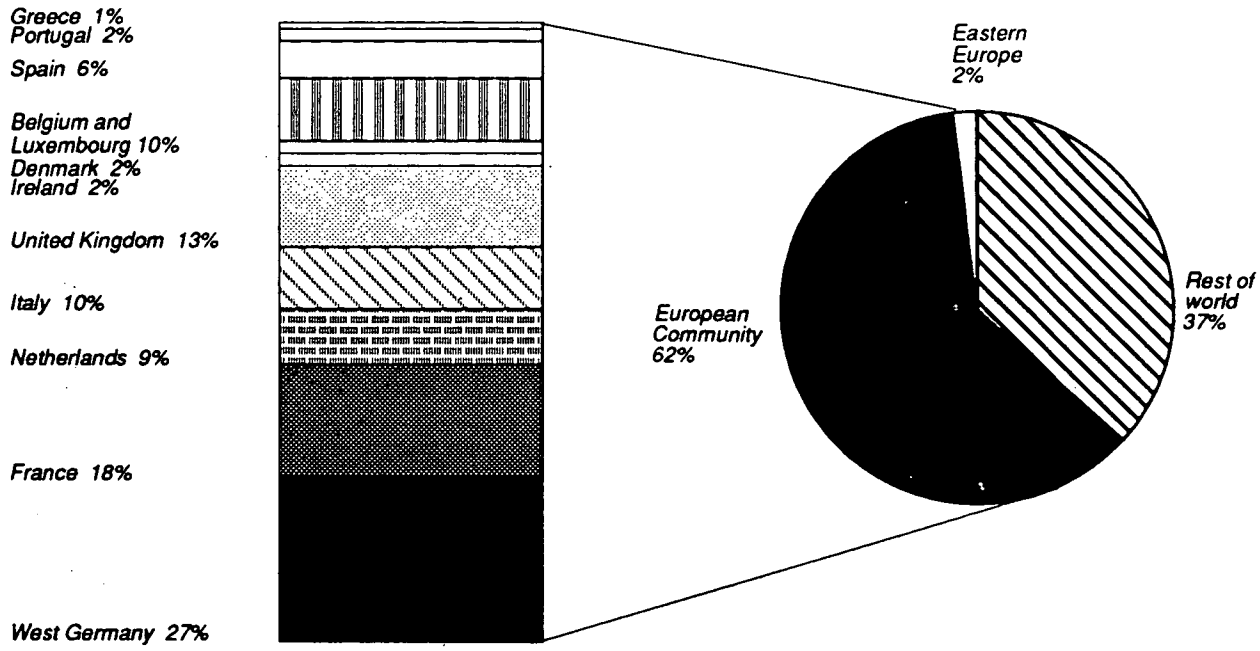
(1,000 dollars)

Market	*1985*	*1986*	*1987*	*1988*	*1989*
European Community:					
West Germany	76,974,497	96,214,880	115,819,164	107,332,888	129,306,459
France	66,586,957	84,319,586	105,629,782	103,019,020	84,231,989
United Kingdom	49,386,249	62,500,549	76,947,436	90,473,106	64,196,573
Italy	39,736,634	52,560,772	67,263,823	67,826,680	48,388,586
Belgium and Luxembourg	38,701,153	50,301,527	61,297,338	60,322,953	46,171,690
Netherlands	43,324,589	52,138,690	63,558,756	59,481,655	43,952,297
Spain	11,989,726	19,333,033	28,857,442	30,450,826	29,632,412
Ireland	6,998,646	8,125,355	9,490,105	3,519,556	10,189,633
Portugal	3,628,393	5,447,845	8,656,651	9,738,644	9,951,359
Denmark	9,286,978	12,230,284	13,557,931	11,885,977	7,582,880
Greece	5,646,787	6,861,799	8,080,545	8,460,851	7,092,405
Total	352,260,607	450,034,321	559,158,974	552,512,156	480,696,282
Eastern Europe:					
Soviet Union	9,509,898	9,693,321	10,617,005	10,818,175	7,359,955
Poland	2,078,545	2,312,510	2,686,932	2,873,356	1,870,987
East Germany	728,584	1,057,244	1,249,025	1,229,355	1,707,938
Hungary	1,890,245	2,398,563	2,734,423	2,500,983	1,289,178
Czechoslovakia	1,504,694	1,922,171	2,399,835	2,253,302	1,072,927
Bulgaria	1,252,310	1,453,744	1,678,511	1,478,140	754,907
Romania	883,691	966,738	751,689	632,123	399,230
Total	17,847,967	19,804,291	22,117,420	21,785,435	14,455,123
Rest of World:					
United States	65,014,752	73,406,724	82,732,574	64,546,368	59,731,290
Switzerland	22,093,968	30,556,873	37,496,254	37,636,340	22,580,602
Sweden	15,832,476	18,709,710	23,226,303	20,703,731	16,130,464
Japan	7,909,085	11,220,690	15,676,402	16,577,548	14,798,596
Canada	7,586,087	8,988,273	10,458,721	8,205,336	8,837,598
Austria	13,763,116	18,949,497	23,193,324	25,443,659	8,790,613
Special categories	717,059	575,327	698,927	8,303,224	8,153,931
Saudi Arabia	8,300,678	8,057,688	8,893,831	5,740,283	7,871,703
Norway	7,267,984	9,858,418	10,915,525	8,081,184	6,466,955
Australia	5,465,462	5,721,209	6,409,258	4,980,567	6,182,788
Finland	4,895,352	6,435,701	8,084,697	7,556,843	6,040,500
India	4,360,934	5,601,284	6,555,938	4,576,302	5,997,725
Hong Kong	3,396,663	4,137,137	5,442,814	4,856,891	5,463,780
China	5,458,232	6,399,130	6,352,603	5,971,884	4,396,497
Israel	2,983,482	4,212,386	5,449,173	4,648,031	4,279,064
All other	98,748,939	105,683,467	117,965,938	105,975,782	99,054,348
Total	273,794,269	318,513,514	369,552,282	333,803,973	284,776,454
Grand total	643,902,843	788,352,126	950,828,676	908,101,564	779,927,859

Note.—Because of rounding, figures may not add to the totals shown. The market 'Special categories' is used to prevent disclosure of individual company exports to specific countries.

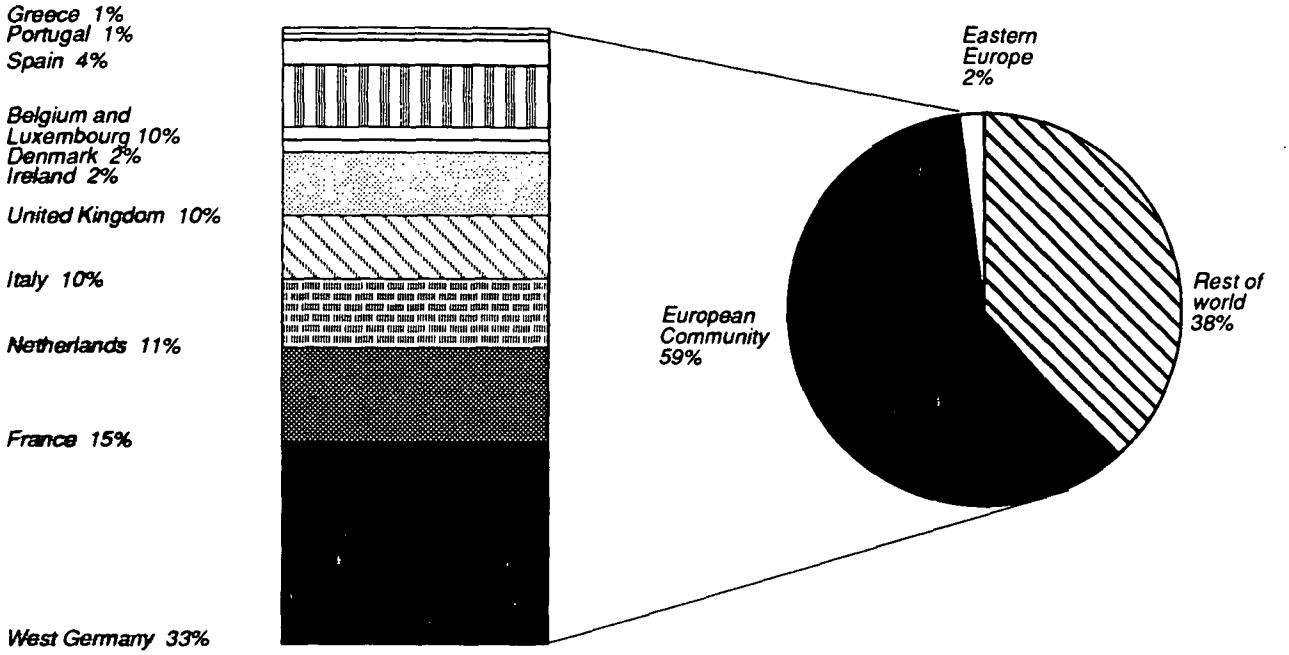
Source: Preliminary data compiled from official statistics of the United Nations OECD External Trade Database.

Figure 3-3
SITC-based EC exports to the world, by major world area and by EC member nation, as a percent of total, 1989



Source: United Nations.

Figure 3-4
SITC-based EC imports from the world, by major world area, and by EC member nation, as a percent of total, 1989



Source: United Nations.

EC Trade With Eastern Europe

The EC balance of trade with Eastern Europe increased gradually from a deficit of over $8 billion in 1985 to a deficit of about $7 billion in 1989. The lower deficit was largely due to much lower levels of imports from the Soviet Union than other countries in this group.

EC exports to Eastern Europe, as defined by the country grouping of Bulgaria, Czechoslovakia, East Germany, Hungary, Poland, Romania, and the Soviet Union, amounted to $17.8 billion in 1985, rising significantly to $22.1 billion in 1987 before reaching a level of nearly $15 billion in 1989. Exports decreased by 19 percent during this period. In 1989, exports to the Soviet Union made up 51 percent of total EC exports to Eastern Europe. East Germany and Poland each received about 12 percent of total EC exports to Eastern Europe (table 3-4).

Exports more than doubled to East Germany but decreased from other countries in Eastern Europe over the period. Exports to East Germany increased by 135 percent, from $729 million to $1.7 billion, whereas exports to Romania decreased by 55 percent, from $884 million in 1985 to $399 million in 1989.

EC imports from these countries fluctuated between 1985 and 1989. EC imports from these countries increased from $25.9 billion in 1985 to $28.0 billion in 1987 before decreasing to the 1989 level of $21.4 billion. The overall decrease recorded in imports for 1985-89 was about 17 percent. The largest supplier in this country grouping was the Soviet Union, which accounted for nearly 56 percent of total imports. The next largest supplier was Poland, which supplied 11 percent of total EC imports from Eastern Europe (table 3-5).

Impact of Trade With East Germany

An event significant to the implementation of the single market in 1992 is the unification of West and East Germany. As of July 1, 1990, the two German economies were merged, with the implementation of the Treaty of Economic and Monetary Union.

The impact of a united Germany on trade and investment at this point is uncertain. EC imports from East Germany made up no more than 1.6 percent of West German imports and less than 1.0 percent in 1989. EC exports from East Germany made up about 1 percent of EC exports to West Germany during 1985-89. In terms of both trade flows, East German trade never exceeded 0.5 percent of total inter-EC trade.

As of July 1, 1990, the EC Commission began a series of measures to allow East Germany some of the benefits of reunification with West Germany. The Commission suspended any antidumping measures that were in effect against East Germany, although the

Table 3-5
All commodities: EC imports from the European Community, Eastern Europe, and rest of world, by source, 1985-89

(1,000 dollars)

Source	1985	1986	1987	1988	1989
European Community:					
West Germany	85,888,647	117,280,728	147,691,269	135,463,415	176,523,275
France	54,816,141	71,138,298	88,894,155	85,009,691	77,909,759
Netherlands	52,740,729	61,542,862	71,850,133	64,977,981	58,194,954
Italy	36,667,885	51,063,347	64,371,870	61,876,457	54,042,965
Belgium and Luxembourg	37,531,481	49,612,601	61,230,885	59,512,590	53,799,363
United Kingdom	46,105,845	49,190,910	60,304,835	66,516,838	52,814,463
Spain	13,405,294	17,096,184	22,354,322	21,793,429	23,136,626
Ireland	6,982,030	8,739,489	11,414,729	6,626,651	12,136,912
Denmark	7,774,426	10,013,085	12,447,042	10,226,596	9,522,883
Portugal	3,789,830	5,164,159	6,883,744	6,447,306	7,313,805
Greece	3,145,748	3,963,418	5,094,599	4,511,430	3,902,508
Total	348,848,056	444,805,080	552,537,582	522,962,386	529,297,514
Eastern Europe:					
Soviet Union	15,810,164	13,688,734	14,947,512	12,905,682	11,939,131
Poland	2,695,947	2,865,119	3,386,153	3,397,166	2,393,301
Romania	2,210,872	2,409,208	2,739,411	2,475,610	1,958,885
East Germany	1,368,827	1,567,920	1,587,120	1,347,799	1,762,759
Czechoslovakia	1,734,897	2,094,029	2,393,644	2,336,341	1,500,425
Hungary	1,557,931	1,889,812	2,348,406	2,399,826	1,452,849
Bulgaria	474,526	552,624	602,668	516,132	422,459
Total	25,853,163	25,067,446	28,004,915	25,378,557	21,429,809
Rest of World:					
United States	53,007,909	56,787,541	66,263,945	59,433,264	69,504,252
Japan	22,643,583	33,962,336	41,979,061	38,598,434	35,507,725
Switzerland	16,315,882	23,244,619	28,913,976	24,937,676	21,712,378
Sweden	14,897,504	19,015,230	23,197,537	20,342,349	21,448,689
Norway	13,784,154	12,058,380	14,126,422	9,337,974	13,277,254
Austria	9,767,230	13,744,330	17,552,132	18,310,749	9,685,211
Brazil	7,957,014	7,212,166	8,359,274	9,351,210	8,589,547
Finland	5,922,635	7,132,837	9,260,980	7,649,224	8,415,075
Canada	5,736,789	6,398,826	7,934,209	6,305,290	8,351,597
Taiwan	3,151,159	4,794,805	7,904,390	7,698,438	7,421,612
Saudi Arabia	7,724,401	8,748,030	6,556,023	5,278,826	6,373,972
Hong Kong	3,985,737	5,569,093	7,393,656	5,531,355	6,144,324
China	2,966,708	4,097,390	5,853,631	6,927,554	6,077,987
Algeria	8,959,767	6,618,387	6,162,085	4,372,396	5,785,261
All other	109,331,600	97,559,755	117,691,877	111,993,968	112,203,929
Total	285,152,072	306,943,725	369,149,198	336,068,707	340,498,813
Grand total	659,853,291	776,816,251	949,691,695	884,409,650	891,226,136

Note.—Because of rounding, figures may not add to the totals shown.

Source: Preliminary data compiled from official statistics of the United Nations OECD External Trade Database.

authority does exist within the Commission to revoke the suspension if it feels that free trade does not exist or if a member state is being injured.[1] In addition, East Germany has begun to apply the Common Customs Tariff used by EC member states for trade with non-EC members. The country will also be applying the Generalized System of Preferences to those developing countries that are eligible.[2]

There are several indications for rapid development in the future. In the first 6 months of 1990, approximately 63,500 new businesses were started in East Germany. It has been estimated that 150,000 new jobs were created as a result. This trend is expected to continue, resulting in an estimated 100,000 new businesses starting by the end of 1990, resulting in 500,000 jobs. Most of the new businesses are in

[1] "East Germany and the European Community: The Other Walls to Break Down," *European Report*, supplement, No. 1608 (Aug. 4, 1990), p. 14.
[2] Ibid., p. 20.

handicraft, retail, transport, and tourism sectors of the economy.[3]

Investment in the EC

Current Business Conditions

A current survey conducted by the EC Commission in early 1990 resulted in a less-than-favorable outlook by many business managers in the EC.[4] The overall economic outlook, however, is still thought to be bright. Current economic indicators as of April 1990 showed that economic growth was projected at 3 percent for 1990, compared with an earlier figure of 3.2 percent estimated in January 1990. The largest concerns among European businesses surveyed appear to be the expected rates of inflation and the resulting international competitiveness of the EC. More recently, according to government estimates by EC members, business conditions in some individual EC member states have softened. As of August 1990, inflation in France is expected to rise by an annual rate of at least 0.4 percent because of increasing consumer prices. The United Kingdom reported the first incidence of double-digit inflation in that month. Similarly, Portugal reported a rise in the index of the cost of living that would result in an annual inflation rate of 12.7 percent. All of the increases in each of the countries was attributed to the current situation in the Middle East and its continuing effect on energy costs.[5]

Overall, inflation in the EC has risen. Eurostat announced that the inflation rate based on 6-month rates recorded through June 1990 rose the least in Denmark (0.5 percent per year), the Netherlands (1.1 percent), and Ireland (1.3 percent). The highest rates of inflation were recorded for the United Kingdom (6.6 percent per year), Portugal (7.5 percent), and Greece (12.0). The rate of inflation between July 1989 and June 1990 was reported at 5.4 percent for the EC. This rate compares less favorably with other industrialized countries such as the United States (4.7 percent per year) and Japan (2.2 percent).[6]

The current economic conditions in the EC are thought to have resulted from a number of factors, including certain restrictive monetary policies implemented in 1989. A report published by the United Nations Economic Commission for Europe (ECE), forecast that growth for 1990 would be lowest in the United Kingdom. The ECE estimates the fastest geographic areas of economic growth will likely occur in Germany, as a result of inter-German economic and monetary union. Overall, annual GNP growth forecast by the ECE has been set at 2.5 percent for 1990, compared with a figure of 3 percent estimated in 1989.[7] The ECE also reported that the potential revitalization of Eastern Europe could form an important source of economic growth in the world. However, substantial investment from the EC and western nations would be required. The study further stated that concentration of investment in Eastern Europe may be detrimental to the economies of the EC, Western Europe and North America.

In order to promote EC-U.S. trade and business relations, 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 will be located in Washington, DC and 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. Although the Netherlands-American Chamber of Commerce is not currently part of the EACC, it is expected that it will become a member soon.[8]

Government Support for Investment

Government-supported financing and investment continues to assist the development of many of the rural and agricultural areas of the EC. Various support programs, including the European Seed Capital Scheme, "Eurotech" capital investments and the European Investment Bank (EIB) were covered in the second followup report.[9]

As the EC becomes more unified, more funds are consolidated by the EC through investment by individual EC members. As a result of swift changes in Eastern European economies, the EC has taken steps to form the European Bank for Reconstruction and Development (EBRD). The EBRD, first proposed in October 1989, will serve to provide economic assistance to the emerging Eastern bloc democracies. The founding of the bank was officially approved in May 1990, and it will open in March 1991.[10]

The EBRD will start with a capital base of 10 billion ECU contributed by the European Investment Bank, other private investors, and individual countries. The bank will also be involved in the assistance to the Soviet Union in its own formation of a market economy over the next 2 years. The Soviet Union is a founding member of the EBRD and is currently seeking to secure economic assistance of $20 billion for its own economic reform programs.[11]

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[3] "Germanys Unite Economies, Pursue Political Merger," *Europe-1992*, vol. 2, No. 14 (July 11, 1990), p. 703.

[4] "Economic Outlook: Company Bosses Less Optimistic," *European Report*, No. 1604 (July 18, 1990), sec. 2, p. 1.

[5] "In Brief: Inflation Update," *European Report*, No. 1614 (Sept. 19, 1990), sec. 3, p. 5.

[6] "Consumer Prices: June Inflation Rate in the EEC on the Low Side," *European Report*, No. 1608 (July 28, 1990), sec. 2, p. 1.

[7] Ibid.

[8] "EC-US Trade: Two New EC-US Trade Groups Are Established," *EC-US Business Report*, vol. II, No. 7 (July 1, 1990), p. 7.

[9] 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, September 1990, pp. 3-7 to 3-8.

[10] "EBRD: EEC Poised to Sign Bank Statutes," *European Report*, No. 1590 (May 30, 1990), sec. 2, p. 2.

[11] "EBRD: Bank Looks Set for March Opening," *European Report*, No. 1615 (Sept. 22, 1990), sec 1., p. 1.

The United States has also indicated some interest with the introduction of House of Representatives bill H.R. 5153, titled "African Development and Eastern European Recovery Act of 1990." The bill, introduced on June 26, 1990, by Delegate Fauntroy of Washington, DC, contained parts of other proposed legislation introduced by Mr. Fauntroy, as well as Congressman Russo of Illinois.[12] Although the bill was cleared for full committee approval, no other consideration was given to the measure. If enacted, the legislation would have provided for U.S. contributions of $1.167 billion to the EBRD over a 5-year period.[13]

Programs for Investment

The framework of programs for development of the EC was covered in the second followup report.[14]

Another such program, combining the efforts of individual EC members and the European Free Trade Agreement (EFTA) countries (Austria, Finland, Iceland, Norway, Sweden, Switzerland, and Turkey) is the EUREKA program. This program is a technology-oriented program primarily aimed at the competitiveness of Europe in high-technology areas, including medical technology, biotechnology, communications, energy, environment, lasers, robotics, and others. The program achieves development of technologies through sponsoring cooperation between businesses and research institutes. Some 41 new projects, [primarily for the environment area, were introduced in 1990.[15]

Currently, EUREKA sponsors 295 projects, 179 of which are short or medium-term projects less than 2 years in duration. There are 446 research organizations involved in projects, including 209 universities. Slightly over 31 percent of the 1,027 firms participating are small or medium-sized enterprises.[16]

[12] *Congressional Record*, vol. 136, No. 83 (June 26, 1990), p. H4213.

[13] "Banking: House Passes EBRD BILL," *EC-US Business Report*, vol. II, No. 9 (Sept. 1, 1990), p. 18.

[14] USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, p. 3-8.

[15] "Eureka: Annual Report on 1989 Projects," *Tech-Europe*, Tech Supplement (May 1990), pp. 1-2.

[16] Ibid., pp. 13-16.

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

CHAPTER 4
STANDARDS, TESTING, AND CERTIFICATION

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CHAPTER 4
STANDARDS, TESTING, AND CERTIFICATION

Developments Covered in the Previous Reports

Elimination of standards-related barriers is a key component of the 1992 program. Of the 279 directives called for in the 1985 White Paper, more than half pertain to standards. At the end of the process, the EC will have moved closer to creating EC-wide regulatory agencies similar to the U.S. Food and Drug Administration (FDA), Environmental Protection Agency (EPA), and Consumer Product Safety Commission (CPSC) and will have eliminated many of the legal and technical barriers that have effectively segmented member-state markets from one another. The stakes for the United States are high. Banner U.S. export industries—such as machinery, auto parts, computers, pharmaceuticals, telecommunications, chemicals, and medical equipment—may be fundamentally affected. Agricultural and manufacturing industries that could be affected accounted for about $41 billion in U.S. exports to the EC in 1988. The standards framed are also likely to be an important variable in future competition in the EFTA countries and Eastern Europe, markets of increasing interest to U.S. business. While supporting the overall thrust of the EC's standards agenda, some segments of U.S. business have expressed concern about a lack of timely information during the EC standards-setting process and about delays and higher costs in product approval.

Background and Anticipated Changes

Divergent national standards and the need for costly and duplicative tests have held back the competitive potential of U.S. suppliers in the EC market. In its 1985 White Paper, the EC Commission proposed to eliminate technical barriers by two primary means: (1) mutual recognition of existing member-state standards when possible, and (2) harmonization in those cases in which there are legitimate but conflicting views among the member states on essential public policy matters.

The harmonized standards developed as part of the 1992 program will be used to pursue key EC policy goals. The EC is committed to setting high standards for protecting the environment and consumers and for safeguarding public health and safety. Common standards are also expected to contribute to the liberalization of public procurement, the deregulation of services, and the creation of commercially viable markets for new technologies.

To achieve these goals, member states will need to develop common answers to questions such as: Must government prevent quality-related problems, or can the market decide? How are responsibilities for the safe use of products divided among government, employers, consumers, and workers? What is an acceptable environmental risk? How much and what type of information must consumers have before making purchasing decisions?

In pursuing EC-level regulation, the Community has changed how it approaches technical legislation. Instead of instituting directives that define all characteristics of a particular product, the Community now favors directives that define broad requirements for whole categories of products. These "new approach" directives are regarded as much more flexible, because manufacturers are only legally required to meet the key objectives of the legislation, such as user safety, as spelled out in so-called "essential requirements." Producers are to be allowed to choose among standards developed in the private sector to achieve conformity with them or to test innovative products directly against the essential requirements.

Product approval is also being simplified. Manufacturers will have several options for proving conformity to EC regulations, often being allowed to use a simple self-declaration of conformity. Once a product is approved in one member state, the manufacturer will have a ticket good for entry in all 12 national markets.

Because EC-level harmonization was already well advanced, the EC decided to regulate some major industries—such as agriculture and automobiles—differently. "Old approach" directives, which contain binding technical specifications and testing protocols, will continue to be used for such products. Products subject to such requirements generally must be approved by government authorities.

Possible Effects

The regulatory harmonization envisaged as part of the 1992 program holds considerable potential for benefiting U.S. firms. If such standards and approval procedures are biased against U.S. suppliers, however, the United States could experience an erosion of its competitive position and a drop in actual EC sales levels, as time is lost retooling production lines and securing necessary clearances and approvals. Lack of timely information during the EC standards-setting process and the potential for delays and discrimination in product approval continue to be sources of concern for many U.S. businesses. Others worry that the influence of environmentalists, consumers, and unions could result in stricter EC regulations in areas such as emissions and product safety. The EC's unified approach has also led some to question the adequacy of the present U.S. standards, testing, and product-approval system. Nevertheless, most U.S. suppliers expect to benefit from the EC's move to a single set of regulations and standards and a more coherent system of conformity assessment, believing it will be an improvement over the present fragmented regime.

Developments During July-December 1990

Overview

Standards-related developments during the second half of 1990 shifted from high gear to a more measured pace. With the broad parameters of EC policies and of U.S. reaction to them fairly clear, the EC began putting together the myriad of specific implementing measures that will be needed to translate achieve these goals into practical reality. In Europe, the EC continued its efforts to finalize standards-related directives and to put in place conformity-assessment procedures. In the United States, the Advisory Committee for Trade Policy and Negotiations issued a set of recommendations on standards and certification issues with the EC and a new Federal Advisory Committee on EC 92 Standards got off the ground, channeling the considerable expertise of the private sector to help the U.S. Government sort through the issues associated with the program and to make recommendations for action to respond to them.

U.S. business remained cautiously optimistic about the EC's movement from 12 separate sets of technical requirements to a single one. Although still taking a "wait and see" attitude, few U.S. firms seem to have run into major market access difficulties so far. Moreover, some progress was made in improving coordination between international standards bodies and Europe's regional standards institutes. Nevertheless, fundamental U.S. concerns about the EC standards program were not appreciably allayed during the period. Improvements have been made, but problems in transparency and in the lack of input in standards setting remain, as do concerns about confusion, delays, and possible discrimination in product approval.

If anything, the EC Commission's release of its final draft Green Paper on standards development in October served to heighten fears among the EC's trading partners that the Community was using standards to effect a more activist and mercantilist industrial policy. The paper appeared to reflect some backtracking by the EC on its commitment to use international standards, implicitly discourage the inclusion of non-European experts in standards-drafting work, and suggest that Eastern European suppliers be given privileged access to information relative to their counterparts in the rest of the world. At the same time, the Green Paper's emphasis on accelerating the pace of standards development dimmed hopes that non-EC participants could exert meaningful influence over the process.

These concerns were tempered by a sense that the absence of harmonized standards when EC directives come into effect will prevent U.S. companies from taking full advantage of the unified EC market and will thus cause considerable uncertainty. The United States has expressed support for the goal of ensuring the timely completion of the program.[1] It was widely agreed that the efficiency of standards development in the EC could be improved and that greater opportunities were needed for input by public authorities, users, and other affected interests. Moreover, the EC's willingness to subject the Green Paper to a formal public comment period was welcomed by U.S. business and Government alike.

The tenor of bilateral and multilateral discussions of standards took a turn for the worse during the period under review. The longstanding U.S.-EC dispute on meat was brought again to the forefront when the EC effectively banned imports of U.S. pork as of October 31 and all remaining imports of U.S. beef on December 31, 1990. EC officials also seemed to suggest that acceptance of U.S.-generated test results would not come as readily as some in U.S. industry had initially hoped. A partial breakthrough on conformity assessment was made in the Uruguay Round of the Multilateral Trade Negotiations (MTN), which was reviewing the Agreement on Technical Barriers to Trade, but negotiations remained blocked at yearend by U.S.-EC disagreement over several issues. The EC is seeking more stringent reporting requirements on state and local government bodies issuing binding regulations and standards and has pressed for adoption of a code of good practice for non-governmental standards bodies, both of which have drawn strong objections from the United States.[2]

The U.S. Government continued to closely monitor standards-related developments and to formally express its concerns to the EC. Among other things, there was an exchange of letters between Thomas Duesterberg, Assistant Secretary of Commerce for International Economic Policy, and EC Commission officials. Moreover, Secretary of Commerce Robert Mosbacher raised standards, testing, and certification issues during a meeting held in Brussels with Internal Market Commissioner Martin Bangemann on September 27.[3] The occasion of Deputy Director General for Internal Market Affairs John Mogg's visit to Washington in late October also provided U.S. officials and private sector representatives an opportunity to raise their concerns about the Green Paper and about the EC's policies toward conformity assessment.

The U.S. FDA plans to continue its cooperation and consultations with EC officials involved in regulating biotechnology, food safety, medical devices, veterinary medicines, and human drugs and biologicals. A meeting in Brussels is planned for early 1991. FDA and EC officials plan to explore further prospects for possible conclusion of mutual recognition agreements

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[1] *Response of the Government of the United States of America to the European Community on the Green Paper* (Nov. 30, 1990, draft), pp. 1-2.

[2] For a discussion of these sources of disagreement, 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, September 1990, pp. 4-14 to 4-15.

[3] Minutes of the Federal Advisory Committee on the EC Common Approach to Standards, Testing and Certification in 1992, p. 6.

in the area of good laboratory and good manufacturing practices. The EC will be asked to report on the status of its consideration of bovine somatotropin (BST) and to describe the proposed EC Medicines Agency.[4]

In the meantime, the private sector intensified its efforts to get ready for 1992. The American National Standards Institute (ANSI) organized meetings with the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC), the European Telecommunications Standards Institute (ETSI) and the European Quality System (EQS) to gauge their current thinking and build upon previous commitments for information exchange. A series of workshops in the United States on testing and certification was also kicked off. In addition, planning and other organizational work was being done to ensure that the largely private U.S. testing and certification system was in a position to interact with the conformity-assessment system being formed in the EC.

The sections below discuss in greater detail the major developments during the period under review. The first part deals with overarching issues, such as the standards-drafting process, conformity assessment, bilateral and multilateral discussions, and member-state implementation. The second part reviews developments regarding technical regulations, inspection and approval systems, and voluntary standards for the 10 specific industries identified as being particularly affected by the EC's 1992 standards agenda.

Standards Development

Green Paper on Standards

Background

The last report[5] discussed the initial draft of the EC Commission's Green Paper on Standards. The paper represented an effort to accelerate the pace of work by the private regional standards bodies—CEN, CENELEC, and ETSI. As noted previously, these bodies have been charged by the Community with translating the essential requirements contained in "new approach" directives into the voluntary standards needed to ensure that these objectives are achieved. While the new approach, adopted by a Council resolution of May 7, 1985, has been seen as a "vote of confidence" by public authorities in the private standards-writing organizations, it has also relieved EC legislators (and the EC Commission) from the arduous task of thrashing out the detailed specifications for thousands of products. This simplification made it easier for EC legislators to agree on technical regulations. However, a substantial body of work remains to be done by the regional standards bodies and the private sector experts that support them. The EC Commission has expressed concern that without changes in the work methods and organization of these standards bodies, few of the hundreds of supporting standards needed would be ready in time for the planned implementation of directives. If these standards aren't ready, it will be hard for firms to realize the benefits of the Internal Market, and regulatory authorities, consumers, and businesses will be in a confusing situation.

A final draft of the paper was forwarded to the Council of Ministers on October 3 and released by the EC Commission on October 8.[6] The main issues dealt with in the paper are the same as those covered in the initial draft: accelerating the pace of standardization work, reorganizing the system for developing and issuing standards, and interfacing with EC trading partners. The challenge before the system remains daunting. In the Commission's words, "[T]he completion of the Internal Market requires the adoption of at least 800 additional standards, or about one standard a day" before December 31, 1992.[7] It takes an average of 3 years to draft and adopt each European standard now, the EC Commission reports.[8] Terming the need for reform of the European standards system "urgent," the President of the Council scheduled an exchange of views for the October 9 meeting of Internal Market Ministers.[9]

Anticipated Changes

To achieve these ambitious goals within the timeframe, the EC Commission calls upon European industry to become more involved in standardization work and to commit greater financial and technical resources to that effort.[10] The regional standards bodies are asked to improve their efficiency, to make efforts to become more financially self-reliant, and to restructure. National standards bodies in the member states are asked to subsume their work to that of the regional bodies.[11]

The paper confirms that the EC Commission's "highest priority" is to improve the efficiency of the process for developing European standards. The EC Commission states that "it is probable that without a fairly radical change in working methods, delays will occur which will have a tangible economic cost for

[4] For further information, contact Merton Smith, International Affairs Staff, Office of Health Affairs, FDA, 5600 Fishers Lane, rm. 11-45, Rockville, MD 20857. Tel. (301) 443-4480.

[5] 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, September 1990, pp. 4-10 to 4-3.

[6] EC Commission, *Green Paper on the Development of European Standardization: Action for Faster Technological Integration in Europe*, COM (90) 456 final, Oct. 8, 1990. The paper was reprinted in the *Official Journal of the European Communities (OJ)*, No. C (Jan. 28, 1991).

[7] *Green Paper*, p. 3.

[8] "Standards Setting Needs a Push, EC Commission Green Paper Says," *1992—The External Impact of European Unification* (a looseleaf published by Bureau of National Affairs (BNA)), Oct. 5, 1990, p. 1.

[9] *European Report*, No. 1610 (Oct. 6, 1990).

[10] "Standards: Bangemann's Green Paper Set To Be Given Commission Appraisal," *European Report*, (Sept. 26, 1990).

[11] *Green Paper*, pp. 5-6. In order the bring industry more directly into the standards-drafting process, the EC Commission reportedly foresees the "eventual transfer of responsibility for drafting product standards from existing national standards

European manufacturers."[12] In particular, the Commission asks those bodies to "shift way from an unqualified commitment to consensus,"[13] to make greater use of industry associations to prepare first drafts of standards, and to shorten the time for public inquiry and for handling of comments.[14] It also calls for an end to the current anomaly whereby European standards are not available from the regional standards bodies themselves and have no standing until they are transposed into national standards, a process that may take 6 months or more.[15] The paper urges the regional bodies to concentrate on adopting only those standards needed to ensure conformity with essential requirements and to concentrate on performance-based rather than design-oriented standards.[16]

The EC Commission backed away from its original effort to immediately reorganize the existing regional standards system. However, over the longer term the Commission is proposing to add a new body to oversee the operation of regional standards bodies and to exert policy direction over their activities. The EC Commission also suggested that it might be beneficial to create new regional standards bodies in particular industries, such as aviation, that would circumvent national standards bodies by permitting direct input from industry.[17]

The Green Paper contains several ominous statements regarding the relationship of European regional standards bodies to third countries. Among other things, it urges closer ties with the emerging Eastern European market, including preferential access to the inner workings of CEN/CENELEC. At the same time, the paper more or less discourages informal participation by non-European countries in the work of European standards bodies and suggests that cooperation with international standards bodies should be based on reciprocity to "ensure the effective two-way flow of information."[18] This recommendation may be particularly unfortunate for non-EC suppliers such as those in the United States because, as the EC Commission acknowledges, "Those who are most aware of European activity, and most prepared to contribute to it, will be in the best position to defend their own (and their country's) economic interests at the European level."[19]

The paper suggests that standards should play a role in promoting EC exports and in achieving foreign policy objectives.[20] The EC Commission states that "The widespread adoption and use of European standards outside the member countries of the EC and EFTA is in Western Europe's economic interest," and suggests that "it would be desirable for the European standardization bodies to offer [other] European countries the possibility of participation in their work."[21]

Countries outside of central and Eastern Europe get far less charitable treatment in the Green Paper. While acknowledging that "it is primarily up to the European standardization bodies to decide whether it is in their interest to offer a limited degree of input into their work [by non-European] countries," the EC Commission warns that such involvement "has potential costs," such as "delays in arriving at consensus."[22] Moreover, the Commission suggests that such participation should be conditioned on assurances of "reciprocity."[23]

The EC Commission also signals its intention to provide technical assistance on standards to the countries of central and Eastern Europe as well as to non-European countries in the Mediterranean, South America, India, the Association of Southeast Asian Nations (ASEAN), and the Andean Pact.[24] Separately, the European Community's Research Ministers have called for expanded scientific and technological cooperation with non-EC countries in Eastern Europe and elsewhere, placing particular emphasis on the environment, health, telecommunications, and nuclear safety.[25]

In terms of cooperation with international standards bodies, the final Green Paper seems to suggest that only work that is not related to EC product legislation should be referred to the international level.[26] This suggestion runs counter to U.S. industry efforts in fields such as industrial automation and medical instruments which are intended to influence the shape of 1992-related standards by initiating international work in the same area. It is also inconsistent with the International Standards Organization's (ISO) efforts to get the regional bodies to refer all new work items to international standards bodies first.

On the other hand, the revised Green Paper no longer calls for bloc voting in international forums by the national standards bodies of the EC member states and EFTA—a prospect that has been worrisome to U.S. business and government alike[27]. The paper also

11—*Continued*
institutes to a network of European entities" and a shift "toward a more sectoral approach to standards." *1992—The External Impact of European Unification*, Oct. 5, 1990, p. 2.

[12] Green Paper., p. 22.
[13] Ibid., p. 23.
[14] Ibid., pp. 24-25.
[15] Ibid., p. 26.
[16] Ibid., p. 26.
[17] Ibid., pp. 27-30.
[18] Ibid., p. 31.
[19] Ibid., p. 48. It should be noted that this statement was used as an exhortation to European business to become more involved in European standardization.
[20] Ibid., p. 31.
[21] Ibid., p. 32.
[22] Ibid., pp. 32-33.
[23] Ibid., p. 33, par. 54, reads in part "[I]t seems appropriate for each European standardization body to take its own decision on the matter [of non European sources], provided that reciprocity is assured."
[24] Ibid., pp. 31 and 33.
[25] "Research: Scientific and Technical Cooperation With the Countries of Eastern Europe," *European Report*, No. 1600 (July 4, 1990) External Relations, pp. 4 and 5.
[26] Ibid., p. 34. For example, in summarizing its recommendations, the EC Commission suggests that there should be a continuation of requests by Europe's regional standards bodies for international bodies "to take on work required by Europe outside the legislative framework." Ibid., p. 51.
[27] See, for example, U.S. Department of State Telegrams, July 16, 1990, and Mar. 17, 1990, Brussels, message reference Nos. 10811 and 04266.

continues to encourage the regional bodies to "keep international standards organizations fully informed of their work," to invite "observers from the relevant technical committees in ISO/IEC [International Electrotechnical Committee] to participate in European working groups or technical committees," and "to continue to ask the international standards bodies to take on some of the work which is now being proposed at the European level."[28]

Of potential benefit to U.S. industry, the EC Commission complains that "information on European standardization activity is not yet made available in a clear and comprehensive way."[29] The paper calls for "greater openness in the process of European standardization. . . in order to enhance public interest and confidence in European standards."[30] It also urges national standards bodies to allow "any party within the Community" that wishes to participate and is willing to comply with normal rules of participation to do so.[31]

The paper contains several other notable changes from the previously analyzed draft. Among other things, it suggests a greater emphasis on the development of Europewide standards in areas not covered by EC legislation. The prior draft had confined itself to the operation of regional standards bodies insofar as it relates to products regulated at the EC level. But in its introductory remarks, the EC Commission suggests a need to expand that work to the nonregulated sphere. The "immediate goal of the European standardization process" will be the harmonization of standards directly related to technical legislation that will come into force by January 1, 1993. However, the EC Commission suggests that this harmonization will be followed by efforts to achieve the gradual voluntary harmonization of national standards in the nonregulated sphere. This is suggested because "as the regulatory barriers to free circulation of industrial products are removed, differences in national technical standards will still constitute a significant obstacle to the acceptability of those products in the market."[32]

The final Green Paper also links the issues of intellectual property and patents to standardization. The EC Commission says that "the inclusion of such elements within a standard can lead to reinforcement of a dominant position within the market unless satisfactory conditions for the use of such property have been agreed.[33] "In the exceptional cases where it proves difficult to reach agreement," the Commission continues, "pragmatic procedures should be at hand to find solutions that reconcile the need to adopt effective standards, the legitimate interests of intellectual property rights (IPR) as patent owners, and the need to maintain the transparency of procedures and compliance with competition policy."[34] In summarizing its recommendations, the EC Commission goes on to say that "the inclusion of IPR and patents within standards should be subject to clear rules, which provide for the right of use of IPR and patents either free or on fair and reasonable terms."[35]

The revised Green Paper highlights the importance of standards to the EC's industrial policy. In the EC Commission's words, "Nothing less than the future technological environment for products on the European market is at stake."[36] This is particularly true for newly developing technologies with worldwide markets, such as new industrial materials and information technology. According to the EC Commission, "it is crucial that in these sectors. . . standardization should proceed. . . at the international or at least the European level from the outset." The paper goes on to note that the EC research and development programs, such as ESPRIT, "already have an important role in pre-standardization," and indicates that "efforts to foster links between research, standardization, and certification policies" will be reinforced.[37]

The paper contains a thinly veiled threat by the EC Commission to take additional steps should the private standards bodies fail to respond to its demands.[38] These steps could include greater EC Commission regulation and control over the system, the Green Paper suggests.[39]

U.S. Industry Response

Although the public comment period on the Green Paper will last through April, some in the U.S. Government and U.S. industry have already responded to the EC Commission's call for comment. The National Association of Manufacturers (NAM), believing that "the continuation of differing national standards within the EC will inhibit the ability of U.S. firms to plan," stated that it "supports the overall objective of the Green Paper." But it goes on to conclude that "in a number of specific areas, the Green Paper makes proposals which, either directly or by implication, would actually weaken the ability of U.S. producers to ensure that they are not disadvantaged in the adoption of new EC-wide product standards."[40]

[28] Ibid., p. 34.
[29] Ibid., p. 16.
[30] Ibid., p. 36.
[31] Ibid., p. 36.
[32] Ibid., p. 4.
[33] Ibid., p. 46.
[34] Ibid., p. 46.
[35] Ibid., p. 53.
[36] Ibid., p. 4.
[37] Ibid., pp. 10-11.
[38] For example, the EC Commission states, "The Commission is responsible for the operation of the common market, not only for traders but also for producers and consumers. In order not to have to return to the old approach of detailed harmonization, it wishes to assist the standards organizations to respond to the growing demand for standardization in anticipation of 1992." Ibid., p. 3.
[39] See, for example, ibid., p. 41, par. 79.
[40] National Association of Manufacturers, "Statement on European Commission Green Paper on the Development of European Standardization: Action for Faster Technological Integration in Europe," Dec. 20, 1990, p. 2.

For example, NAM expresses concern about some of the procedural changes proposed in the Green Paper. The proposed shortening of the public comment and voting periods for draft standards "will reduce the ability of entities outside the EC to provide meaningful comments."[41] NAM is also concerned about a movement away from consensus-based standards, particularly in areas such as information technology, could frustrate the objective of achieving harmonization between European and international standards.[42]

NAM expressed concern about some of the underlying policies proposed in the paper. NAM observes that the Green Paper suggests that participation in regional standards work by ISO/IEC observers will be "episodic" rather than a requisite first step and fails to call for the routine "prior reference to the international level" of EC standards work, effectively short-circuiting U.S. efforts to indirectly influence European standards through ISO/IEC.[43] NAM is also concerned that the EC's policy towards participation by Eastern European countries in CEN/CENELEC "could clearly lead to discrimination against. . .non-EC standard products and technologies in those markets."[44] Finally, NAM is dubious about the Green Paper's proposals regarding intellectual property rights and patents, calling changes from international norms embodied in ISO/IEC rules "inappropriate."[45]

Others in U.S. industry are concerned that the EC Commission's emphasis on speed in the production of standards may result in the adoption of bad standards.[46] In words of one U.S. expert, "A bad standard is still a worse situation than no standard."[47] Furthermore, U.S. industry would like assurances that every effort will be made to ensure "maximum use of international standards development work" in the EC.[48]

Warning that "fundamental changes in the standardization policies, priorities, and structures in Western Europe will undoubtedly have a major impact on ISO and IEC," those two international bodies argued that the Green Paper's "disproportionate concentration on the rapid development of standardization for Europe" makes it "all too easy to envisage the formation of several regional groupings which could quickly drain effort away from international work and revert to 'Fortress Regions' vis-a-vis standardization."[49] ISO/IEC concludes that—

> *[I]n practical terms, regional and global activity must rely on a finite resource of experts who by virtue of their language competence, diplomatic skills, industrial overview and standards system experience are able to participate in multinational standardization work. The inevitable result of redirecting this scarce resource to multinational work for Europe is to take it away from global work in ISO/IEC, ITU [International Telecommunications Union], etc.*[50]

At the same time, the Green Paper contains several recommendations viewed as helpful by U.S. industry. U.S. industry continues to complain about information gaps.[51] For example, the National Association of Manufacturers says that information on European standards "is still often incomplete, hard to locate, and not provided in a timely manner." Therefore, the EC Commission's acknowledgement of this problem and proposals to deal with it are welcomed by NAM as a step in the right direction.[52] The proposal to eliminate the need for transposition of standards at the member-state level is also seen as positive. Moreover, one firm welcomed efforts to ensure that customers of standards—public authorities, user industries, and consumers—play a more integral role in Europe's standards development system.[53] Finally, expediting the system's responses to comments was viewed as helpful by both NAM and others in U.S. industry.[54]

Next Steps

The EC Commission has cast the Green Paper as a discussion document and has urged all interested parties to comment. After the public comment period closes on April 28, the EC Commission is expected to sponsor a Europewide seminar on the Green Paper, probably in June or July. Initial reports suggest that the discussion will be lively.[55]

Private Sector Initiatives

A U.S. delegation under the auspices of the American National Standards Institute (ANSI) held discussions in Brussels on Oct. 1-2, 1990, with representatives of CEN/CENELEC, the European Organization for Testing and Certification (EOTC) and the Commission of the European Communities. The two sides agreed that access to the European standards system had improved over the past two years, and that the mechanisms put in place to identify issues of

[41] *NAM statement*, p. 3.
[42] Ibid., p. 3.
[43] Ibid., p. 4.
[44] Ibid., p. 4.
[45] Ibid., p. 5.
[46] Daniel Smith, Vice President of ANSI's Brussels office, says in the November 1990 *ANSI Reporter* that "Comments we have received to date have expressed concern about some of the recommendations that have been put forth by the Commission in an attempt to speed the standards development process."
[47] Formal comments by Caterpillar, Inc., on the Green Paper, appendix, p. 3.
[48] Ibid., appendix, p. 6.
[49] ISO/IEC Recommendations on the EC Commission's Green Paper Concerning the Development of European Standardization, December 1990, p. 2.
[50] *ISO/IEC recommendations*, p. 6.
[51] One analyst observes, "[A]t least it seems that all businesses, not just those outside Europe, are suffering from the lack of transparency in the European standards-setting process." Robert S. Smith, "Technical Standards 'Green Paper,'" *Europe 1992 Law and Strategy*, October 1990, p. 3.
[52] *NAM statement*, p. 3.
[53] *Caterpillar comments*, appendix, p. 5.
[54] *NAM statement*, p. 3; *Caterpillar comments*, appendix, p. 5.
[55] Staff of the Office of European Community Affairs, U.S. Department of Commerce, conversation with USITC staff, Jan. 30, 1991.

concern to U.S. industry and provide indirect means to communicate them had been largely effective. The U.S. delegation pressed CEN/CENELEC to make a more concerted effort to clarify the product coverage of particular EC product directives. The EC side reported that a data base was in the works which could partly address this need, and said that it would publicize the issuance of particular standardization mandates, including the aim of and schedule for the work.[56] Moreover, CEN/CENELEC agreed to provide a copy of its monthly notification of planned meetings to the ISO/IEC Secretariat in Geneva and the ANSI office in Brussels.[57]

Concern was expressed about the lack of coherent procedures for the handling of comments received on draft standards. The two sides agreed that a running list of U.S. comments awaiting answers would be prepared by ANSI for purposes of following up with CEN/CENELEC.[58] There appeared to be shared interests and concerns by ANSI and CENELEC regarding the Green Paper, including the need to ensure that the standardization system remain in private hands, responsive to market needs, and not subject to undue oversight and control by governments. Both sides agreed that although the press of EC business was indeed important, the top priority should be "the completion of a valid set of European standards to be used in the internal market."[59]

Testing and Certification

Few concrete changes were announced regarding the EC's policies towards testing and certification during the period under review. The most significant source of interest by U.S. business remained the conditions under which the EC would permit required conformity-assessment procedures to be conducted outside the EC. U.S. industry has been lobbying hard to maximize the situations in which U.S.-generated tests and manufacturers' declarations of conformity will be acceptable to demonstrate conformity to EC directives and regulations.[60]

Quality Assurance

A new development during the period was the heightened concern among some in U.S. industry about requirements to undergo quality assurance registration to comply with EC directives. The Medical Device, Personal Protective Equipment, and Construction Products Directives all require manufacturers to employ quality assurance to demonstrate conformity with EC requirements. Two concerns have emerged: (1) how responsibility is divided during the design phase between the manufacturer and the quality assurance body and (2) whether the EC will permit non-EC bodies to conduct the required initial quality assurance inspections (perhaps under subcontracting arrangements).[61] U.S. firms in the medical device, paper, wood, and information technology industries have reportedly expressed concern about these issues.[62]

In a December 14, 1990, letter from ANSI to the EC Commission, the institute said that firms that choose modules that depend on assessment of quality systems[63] are concerned that—

> *the lack of subcontracting, particularly for initial assessments at the outset of the New Approach directives, will create a huge backlog because there will be a limited number of QA inspectors working for a limited number of EC notified bodies. Initially, less than a dozen EC notified bodies will likely be empowered to conduct QA inspections.*

Moreover, "[a] restriction on the ability to subcontract would render many of the agreements in Europe [on mutual recognition] in the QA area inoperative, resulting in harm to trade within and outside the Community." Finally, since "product testing and QA inspections represent the two major and distinct procedures for product approval" when third-party intervention is required, "the lack of subcontracting for quality assessment will artificially distort a manufacturer's" choice of assessment procedure. ANSI urged the EC to "allow subcontracting for both product tests and QA inspections subject to the understanding that the Notified Body remains legally responsible for his actions."[64]

CE Mark, Modular Approach, EOTC

The EC made little progress in establishing the mechanisms that will be needed to effect its "Global Approach to Testing and Certification."[65] The draft regulation on the CE mark of conformity was not formally proposed by the EC Commission, although a revised draft did become available on November 5, as did a working document prepared by the EC

[56] American National Standards Institute, "Executive Summary: European-U.S. Meetings, Oct. 1-2, 1990," pp. 1-2.
[57] ANSI, "European/U.S. Meeting on Private Sector Standards, Testing, and Certification Issues," Oct. 1, 1990, p. 1.
[58] Ibid., p. 3.
[59] Ibid, p. 4.
[60] See, for example, the policy statements on standards, testing, and certification approved by the Advisory Committee for Trade Policy and Negotiations on May 7, 1990, and transmitted to the Honorable Julius L. Katz, Deputy United States Trade Representative by a letter dated June 11, 1990.
[61] These concerns are tied in with the general issue of subcontracting and are described in USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, pp. 4-22 to 4-23.
[62] Staff of the U.S. Department of Commerce, conversion with USITC staff, Jan. 30, 1991.
[63] The "Global Approach," module D, production quality assurance; module E, product quality assurance; and module H, full quality assurance.
[64] Peter Yurcisin, Senior Vice President and General Counsel, ANSI, letter to John Farnell, Chief of Division, Standards, Certification, and Relations With Standards Bodies, DGIII, EC Commission, Dec. 14, 1990 (Yurcisin letter).
[65] See USITC, *Effects of EC Integration*, USITC Publication 2268, March 1990, pp. 6-17 to 6-32, for a detailed analysis of the EC's "Global Approach to Testing and Certification."

Commission concerning the CE mark.[66] U.S. industry representatives have expressed concern that any effort to require that products undergoing third party testing bear an identification mark or code in addition to the CE mark could make the option of self certification all but useless. Similarly, permitting other marks of conformity such as marks of conformity to CEN/CENELEC standards, national standards, or of particular notified bodies to be applied could result in continued discrimination and market segmentation, some in U.S. industry believe.[67]

The "modular approach" to conformity assessment was, however, finally acted upon.[68] The final version reportedly includes language, such as that ensuring the protection of proprietary business information, that had been sought by U.S. firms.[69]

The newly created European Organization for Testing and Certification (EOTC) reportedly got off to a rough start with its first Council meeting on November 27, 1990, in London.[70] The organization's council apparently rejected the charter developed by the EC Commission for its activities and structures and decided to form its own basis for organizing work in the conformity-assessment sphere.[71] In the meantime, a meeting by CENELEC in October regarding the EOTC suggested that four sectoral committees in the field of electronic technology would be set up: domestic products, industrial goods, electronic components, and new technology applications.[72]

Acceptance of U.S.-Generated Tests

There are basically three options for EC acceptance of U.S.-generated tests: subcontracting by notified bodies, mutual recognition agreements, and acceptance of U.S.-based labs as notified bodies. During the period under review, little progress was made in achieving U.S. objectives in these areas.[73] There was no discernible movement by the EC from previously expressed policies on these subjects.

The Commission did not finalize the negotiating mandates it has been drafting. These mandates will spell out the terms and conditions for reaching agreements with third countries on the mutual recognition of conformity-assessment results and procedures. In the meantime, there was renewed concern about the EC's intention to declare existing arrangements on mutual recognition null and void pending their transference to EC-wide arrangements.[74]

The EC Commission also did not finish its communication clarifying the situations in which subcontracting by EC notified bodies would be permitted.[75]

In an effort to secure "notified body" status for U.S.-based labs, the United States was seeking to amend the Tokyo Round Standards Code to include a requirement on parties to permit nondiscriminatory participation in their conformity-assessment schemes by bodies located outside their territory. The ad referendum agreement reached in October on a revised Standards Code encourages parties to permit such participation but does not require them to. U.S. testing labs, particularly in the electromagnetic interference (EMI) area, had threatened to pursue unilateral options, such as filing unfair trade practice cases, if the EC refused to accept results issued by U.S. labs.[76]

In the meantime, an exchange of letters between U.S. and EC officials clarified the EC Commission's thinking somewhat. In a September 7, 1990, letter, Dr. Duesterberg reaffirmed the United States' general support for the EC's efforts to introduce a single set of conformity-assessment requirements and a single mark

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[66] See USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, pp. 4-27 to 4-28, for a discussion of an earlier version of the CE mark regulation.The revised draft released during the period under review appears to differ only slightly from the draft analyzed in the above-cited report.

[67] Staff of the Equipment Manufacturers Institute (EMI), conversation with USITC staff, Feb. 27, 1991.

[68] The Council of Ministers unanimously adopted the decision on the "modular approach" on Dec. 13, 1990.The decision finally adopted includes nine modules, rather than the eight originally proposed. The decision, 90/683, was reprinted in the Dec. 31, 1990 *Official Journal*, No. L 380/13 to 380/26. *European Report*, No. 1638 (Dec. 15, 1990), sec. 4, p. 10. See USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, pp. 4-25 to 4-27, for a discussion of the "modular approach."

[69] The decision contains nine certification procedures, from which modules are chosen that are suitable to the case in point. Staff from the National Machine Tool Builders' Association (NMTBA) reports that on Nov. 21, 1990, during the European Parliament's second reading of the EC Commission's proposal for a decision establishing modules for assessing conformity with technical harmonization directives, Parliament reportedly upheld three amendments rejected by the Council, and the EC

The EC Commission accepted the three amendments to the Council of Ministers' common position. These three concern the confidential treatment of information provided to notified bodies for conformity assessment; the assurance that subcontracted assessment labs also meet the standards of conformity in EN45000; and the provisions for manufacturer contestation of a denial of certification.

[70] See USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, pp. 4-19 to 4-21, for a description of the EOTC's goals, structure, and operation.

[71] Staff of the U.S. Department of Commerce, conversation with USITC staff, Jan. 30, 1991.These objections appear to be centered on the preliminary EC Commission document on the establishment of agreement groups and sectoral committees, which EOTC participants objected were in contradiction to the signed Memorandum of Understanding creating the EOTC.The document's description of the criteria and qualifications for agreement, specialized, and sectoral committees, as well as of the criteria for third-country participation, were all apparently sources of dispute. See Oct. 12, 1990, memo to files regarding Oct. 8, 1990, meeting by CENELEC on EOTC.

[72] Sectoral committees are described in USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, p. 4-20.

[73] For a discussion of EC policy towards the acceptance of foreign-generated tests and U.S. positions regarding them, see USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, pp. 4-21 to 4-25.

[74] See, for example, Yurcisin letter, p. 3 of attachment.

[75] Staff of the U.S. Department of Commerce, Office of European Community Affairs, conversation with USITC staff, Jan. 9, 1991.

[76] See, for example, Bureau of National Affairs, "EMI Testing by European Labs Seen as Lever for U.S. Labs," *1992—The External Impact of European Unification*, May 4, 1990, pp. 2 and 3.The report indicated that the EC has asked the American Council of Independent Laboratories for a list of its members wishing to be accorded notified-body status for the EMI testing.

of conformity for use throughout the EC market, and noted that efforts to increase mutual recognition of test results in the private sphere, as evidenced by the creation of the EOTC, were welcome. Nevertheless, the U.S. official expressed concern about the potential costs of complying with the new EC system, particularly if it sharply limits the circumstances in which manufacturers' declarations of conformity are sufficient and precludes the acceptance of non-EC-generated results.

Assistant Secretary Duesterberg reiterated the United States' interest in securing notified-body status for U.S. test labs and in ensuring that subcontracting to U.S.-based bodies would be permitted. This has been a source of particular concern in the quality assurance area, where the EC is considered to be taking a fairly restrictive approach. He also emphasized the United States' interest in EC flexibility in dealing with the U.S. testing, accreditation, and certification system, since responsibility for performing such functions is currently dispersed among Federal, State, and local governments as well as in the private sector.[77]

Subsequently, the United States presented a demarche to member-state governments emphasizing similar points.[78] The British Government apparently responded by assuring the United States that it "continues to take a fairly liberal view on these issues," but remained noncommittal on the conditions that will be attached to mutual recognition agreements.[79]

In a mid-December letter responding to Assistant Secretary Duesterberg, G. Crauser of the EC Commission stressed that the underlying philosophy of the "Global Approach" was to provide manufacturers with flexibility in demonstrating the conformity of their products with EC requirements. This flexibility would, he suggested, enable manufacturers and regulators to achieve the goal of the "Global Approach"—improving the quality of products and services sold in the Community—without facing unnecessary financial or administrative burdens.[80]

He apprised the Assistant Secretary that the EC Commission was still drafting the mandates the Council will need to approve before negotiations on mutual recognition agreements with third countries can begin. Those mandates will establish sectors, procedures, and criteria for such agreements, including how the EC "will go about recognizing the bodies of third countries," he said.[81] The EC Commission expects that such agreements will include assurances from third-country governments that notified bodies will "do their job properly" and that the government has the means for withdrawing notifications if that is no longer the case, Crauser continued, but "does not exclude the possibility of relying on accreditation systems in third countries provided such systems are sufficiently reliable." He further indicated that the EC Commission would likely "further refine the language of the Council Resolution of December 21, 1989," dealing with the Community's intention to seek a "balanced situation" in future mutual recognition agreements.[82]

A February 27, 1991, EC working document on mutual recognition agreements further elaborates upon the EC Commission's thinking.[83] It should be noted, however, that the EC's perspective may evolve over the coming months, as the document is refined.

On the need for mutual recognition agreements to create a "balanced situation," the EC Commission says that[84]—

> *The concept of a balanced situation is not connected with the volume of trade between the parties. Nevertheless, it 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. Furthermore, the concept of a balanced situation has to take account of a number of appraisal criteria relating to the respective practices of the parties, in particular the nature of the technical rules of the third country concerned, the type of regulation (liberal or strict), the conformity assessment procedures, the geographical restrictions (part or all of the territory) and the administrative problems relating to market access.*

The document confirms that the EC Commission views the scope of the regulated product sphere as including all products subject to EC- and/or national-level legislation intended to protect the public interest on the grounds of protecting safety, health, environmental, consumer, or for other collective interests. For products subject to EC-wide regulation,

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[77] Thomas J. Duesterberg, Assistant Secretary of Commerce for International Economic Policy, U.S. Department of Commerce, letter to Ernesto Previdi, Acting Director, Directorate B, Internal Market and Industrial Affairs, EC Commission, Sept. 7, 1990.The Advisory Committee on Trade Policy and Negotiations summed up the reason for this concern in a May 7, 1990, report on standards, testing, and certification.The report notes,—

> *The United States does not have government-sponsored national testing and certification programs comparable to those in the United Kingdom, Germany, or France.For those products where manufacturers' declarations of conformance are not considered sufficient, the U.S. has relied almost entirely on private sector testing and certification programs for verifying conformance with voluntary standards as well as mandatory standards (regulations). Over 132 private sector organizations are involved in product certification activities in the U.S.*

[78] U.S. Department of State Telegram, Oct. 25, 1990, Washington, DC, message reference No. 361576.

[79] U.S. Department of States Telegram, Dec. 3, 1990, London, message reference No. 23240.

[80] G. Crauser, Director of Directorate B, Directorate General III (Internal Market), letter to Thomas J. Duesterberg, Assistant Secretary of Commerce for International Economic Policy, transmitted via telecopier on Dec. 19, 1991 (G. Crauser letter).

[81] The Federal Advisory Committee on EC 92 Standards has reported that U.S. industry favors negotiation of mutual recognition agreements on a sector-by-sector basis, rather than generic mutual recognition agreements.

[82] G. Crauser letter.

[83] Commission of the European Communities, "Working Document on Negotiations with Third Countries Concerning the Mutual Recognition of Product Conformity Assessment," doc. certif. 91/1, Feb. 27, 1991.

[84] Ibid., p. 2.

mutual recognition agreements will generally be tied to one or several directives, but they will cover broad sector ranges "as far as possible."[85]

Member states that have non-harmonized national regulations and that wish to conclude mutual recognition agreements with third countries are to notify the EC Commission. The EC Commission will then consult with other member states and "request the Council to either authorize the member state concerned to negotiate a bilateral agreement, or give it the negotiating directives when there exists a general interest for the subject to be treated at the Community level."

The obligations of the third party with respect to the conformity-assessment bodies in its territory appear, on initial analysis, to be consistent with statements made by EC Commission officials over the past year and a half and reported on in previous editions in this series of ITC reports. For example, the EC Commission states that "each party must have a body which has the powers, the responsibilities, and the authority required to notify the competent bodies. Notification consists of two acts: the act of designating the competent body and the act of recognizing its competence to ensure objectivity, transparency, and conformity with the criteria." Notified bodies must be able to withdraw notifications, verify technical competence, and demonstrate that competence to the EC.[86]

When establishing its timetable for conclusion of mutual recognition agreements, the report says that the EC Commission's priorities will be first, fields covered by "new approach" directives, and second, fields covered by other EC directives or national legislation. The EC Commission will also take into account the level of trade involved and whether the third country is a signatory to the Tokyo Round Standards Code.[87]

The scope of such agreements is also clarified in the working documents. Agreements involving EC-level legislation will apply throughout the entire EC. Those involving national legislation may be restricted to the signatories, but all products from the EC that are processed by the bodies covered by them are to be accorded the benefit of the agreement. Finally, the EC Commission states that "the benefit of the agreements concluded by the Community under this mandate may be extended to all of the EFTA countries and Liechtenstein in accordance with the terms of the agreement on the European Economic Area being negotiated."[88]

On the subject of subcontracting, the EC official indicated that the Commission was still examining "how the notion of subcontracting can be extended to other activities which do not involve subjective evaluation, such as quality system audit activities."[89]

[85] Ibid., p. 4.
[86] Ibid ., p. 7.
[87] Ibid ., p. 8.
[88] Ibid. , p. 9.
[89] Ibid.

Deputy Director General Crauser expressed a willingness to continue bilateral talks on the subject after the Community has made more precise progress and the Uruguay Round has come to a close.[90] A meeting between Assistant Secretary Duesterberg and Deputy Director John Mogg of the EC Commission is reportedly being planned for sometime in March, to be followed by a meeting between Secretary Mosbacher and Commissioner Bangemann in June or July.[91]

On January 14, 1991, the EC Commission issued a draft of principles to govern subcontracting by notified bodies.[92] The principles are generally consistent with earlier statements made by EC Commission officials reported on in earlier reports. Initial analysis suggests that the document reflects a fairly strict approach by the EC to subcontracting, both in terms of the types of things that can be subcontracted and in the legal and procedural requirements for such arrangements.

In the meantime, the U.S. Department of Commerce's National Institute for Standards and Technology announced that it was sponsoring a series of workshops on testing and certification issues. The workshops, to be conducted in cooperation with specific industries, will "explore the possibility of developing a national accreditation scheme for conformity assessment that is consistent with internationally recognized and accepted criteria," according to Richard White, Under Secretary of Commerce for Technology.[93]

Private Sector Initiatives

During a meeting held in Brussels on October 1-2, 1990, a U.S. delegation under ANSI auspices stressed the preference by U.S. business for the EC to permit "the greatest possible use of manufacturers' self-declarations of conformity." The delegation also urged the EC to permit notified bodies wide latitude in subcontracting work, so long as the notified body is held ultimately accountable for all work and for the use of their marks of conformity. In terms of emerging EOTC Agreements Groups, the U.S. side stressed the desirability of permitting the continuation and possible expansion of existing arrangements between private sector testing and certification organizations in the

[90] Ibid.
[91] Staff of the Department of Commerce, phone interview by USITC staff, Jan. 9, 1991.
[92] Commission of the European Communities, "Guiding Principles for Subcontracting by 'Notified Bodies' Pursuant to the Council Decision of 13 December 1990 Concerning the Modules for the Various Phases of Conformity Assessment Procedures," doc. certif. 90/5, Jan. 14, 1991.
[93] BNA, "Commerce Pushes Uniformity in U.S. Conformity Assessment," *1992—The External Impact of European Integration*, June 29, 1990, pp. 8 and 9.Based on recommendations by the Interagency Task Force on EC 92 and in consultation with International Trade Administration staff, the Office of Standards Services of NIST has identified the following workshop topics for FY 91 and FY 92: pressure vessels; electromagnetic emission; plywood, softwood lumber, and other wood products; wood windows and doors; medical devices; machine tools; and personal protective devices. NIST will publish schedules for these workshops in the *Federal Register*.

United States and the EC.[94] This meeting provided ANSI with an opportunity to elaborate upon proposals[95] it had made earlier to the EC Commission.[96]

ANSI and the U.S. Chamber of Commerce cosponsored a workshop on June 25, 1990, dealing with future U.S. interaction with Europe on testing and certification matters. The workshop provided organizations such as the Society for Automotive Engineers and the Air Conditioning and Refrigeration Institute with an opportunity to share their experiences in working with counterparts in the EC on the acceptance of each other's tests and inspections. It also served as a forum for identifying U.S. business "needs for information, coordination, accreditation, and problem resolution." In a July 1990 article, ANSI reported that participants at the meeting recommended that ANSI develop a process and a structure for interacting with the sectoral committees of the EOTC and become more active in accreditation of third-party certification systems.[97]

ANSI had also organized an August 1-2 meeting between U.S. representatives and representatives of European organizations involved with quality system assessment. The meeting revealed that private bodies competent to assess manufacturers' conformity with international standards for quality assurance (the ISO 9000 series) were being set up throughout Europe. The European Committee for Quality System Assessment and Certification—EQS—was set up in early 1990 to obviate the need for multiple assessments of manufacturers' quality systems. Accreditation of quality system registration organizations is also being considered. EQS will endeavor to ensure uniform interpretation of the European standards implementing the ISO requirements: the EN 29001, 29002, and 29003. Creating conditions for developing confidence in quality system assessment and registration should make it possible for such bodies to accept the results generated by bodies in other EC countries.

Many of the participants in EQS are likely to be named notified bodies by their governments for purposes of attesting conformity to EC regulations, ANSI reports. EQS is also a candidate to become one of the specialized committees under the EOTC structure, although no such specialized or sectoral committees will be announced until the spring of 1991. According to ANSI, "The United States does not now have a system in place to certify assessors to the international requirements which are in development," something which the Europeans felt "will be important for the United States to establish." Moreover, the expected widespread use of the ISO 9001, 9002, and 9003 standards both in the regulated and the nonregulated sphere means that U.S. industry should familiarize itself now with their requirements, the group said.[98]

The next general meeting between Europe's regional standards bodies and ANSI is tentatively slated for April 11 and 12, 1991, in Washington, DC.[92] Open public meetings were scheduled for March 18 and 19 to prepare for upcoming discussions with the Europeans.

Domestic Considerations

A new Federal Advisory Committee on EC 1992 Standards formally began its work during the period under review. The committee, whose formation was announced in the February 2, 1990, *Federal Register*, is to advise the Secretary of Commerce on standards-related developments that are likely to significantly affect U.S. exports to the EC. Composed of some 29 representatives from industry, trade associations, and standards groups, it supplements the existing Industry Functional Advisory Committee on Standards established as part of the President's Advisory Committee for Trade Policy and Negotiations.[100] The committee's work will help the U.S. Government craft policy responses to EC actions and will identify areas where the U.S. Government and private sector can take action to better position U.S. industry to respond to the challenges of selling in a unified EC market.[101]

The committee met for the first time on October 10, 1990. In addressing the group, Assistant Secretary of Commerce for International Economic Policy Thomas Duesterberg reported that some problems remain in U.S. access to the work of CEN/CENELEC. According to Duesterberg—

> *Some companies are reporting closer ties and better working relationships with members of relevant European technical committees. Others report that CEN committees in particular are focusing on 'European' solutions to technical issues, to the exclusion of international or non-European solutions. This bias. . .carried to an extreme can mean loss of market share for U.S. manufacturers that are currently marketing their products successfully in individual EC member state markets.*[102]

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[94] ANSI, "Executive Summary: European-U.S. Meetings, Oct. 1-2, 1990," pp. 2-4.

[95] American National Standards Institute, "ANSI Views on Relationships between the United States and Europe on Testing and Certification," July 23, 1990. It also followed a September decision by the ANSI Board of Directors for the Institute to place greater priority on developing an accreditation program for Third-party certifiers as a means to facilitate the acceptance of U.S. test results by the EC.

[96] Staff of ANSI's Washington office, conversation with USITC staff, Feb. 20, 1991.

[97] ANSI, "Testing and Certification Workshop Examines EC Initiatives," *ANSI Reporter*, July 1990, p. 3.

[98] ANSI, *Draft Report on U.S./European Discussions on Quality System Issues* (no date).

[99] *ANSI Reporter*, November 1990, p. 2.

[100] BNA, *1992—The External Impact of European Unification*, Oct. 19, 1990, pp. 5-6.

[101] U.S. Department of Commerce, Charter of the Advisory Committee on the European Community Common Approach to Standards, Testing, and Certification in 1992.

[102] Minutes of the Federal Advisory Committee on the EC Common Approach to Standards, Testing, and Certification in 1992, Oct. 10, 1990, p. 4.

Under Secretary of Commerce for International Trade J. Michael Farren urged the group to recommend "the appropriate U.S. response to EC demands for coherence and openness in the U.S. [standards] system, U.S. support of international standards, and mutual interests in testing and certification."[103]

Under Secretary of Commerce for Technology Robert M. White said that "public-private sector coordination is essential" and highlighted the need for a critical examination of the U.S. testing and certification system. He suggested that (1) "the Government should establish a coordinating body for all Federal [conformity assessment] activities and develop some common standards for these programs," and (2) "industry should see to it that a corresponding coordinating body is established in the private sector."[104]

The committee was asked to focus their efforts on eight issues related to standards and 10 issues related to testing and certification.[105] Among the issues to be addressed are:

- How can U.S. access to the standards-development process in Europe be improved?
- What can be done to clarify the relationship between directives, product coverage, and standards being developed by CEN/CENELEC?
- What can be done to ensure that the United States is represented adequately in international standards organizations having a bearing on access to the EC market?
- Which aspects of the Green Paper will help or hinder U.S. business interests?
- What are acceptable conditions for concluding mutual recognition agreements with the EC?
- What criteria should be used to determine the competence of U.S. certification and accreditation bodies?
- What adjustments should the United States consider in U.S. testing and certification practices to make them more compatible with those of the EC and other U.S. trading partners?
- How should the United States interface with the EOTC?

[103] Ibid., p. 7.
[104] Ibid., pp. 8-9.
[105] BNA, "Advisory Committee Defines U.S. Concerns Involving EC Standards and Certification," *International Trade Reporter*, vol. 7 (Nov. 14, 1990), p. 1741, and "Advisory Panel Looks at U.S. Government Role," *1992—The External Impact of European Integration*, Nov. 2, 1990, pp. 4-5. The list was published in 55 F.R. 43396, Oct. 29, 1990.

The list was subsequently shortened somewhat. Papers discussing many of these issues were drafted and discussed at the Advisory Committee's next meeting on January 8.[106] Final versions of the papers are to be submitted to the Secretary of Commerce on March 10, 1991.[107]

Implementation

The EC Commission reported in October 1990 that "since 1986 about 30 standardization mandates related to EC legislation have been given to the two main European standardization bodies," CEN and CENELEC. The mandates reportedly call for the development of approximately 800 European standards, most of which are to be completed by 1992.[108] ETSI has also been given nine mandates, which will result in some 300 European telecommunications standards.[109]

There are reports that the EC will delay full implementation of several "new approach" directives pending the completion of harmonized European standards. The directive on medical devices will reportedly be delayed until 1995, and that on electromagnetic compatibility until 1996. The pressure vessels directive has already been delayed until 1992.[110] U.S. industry sources report that their primary concern about these delays has to do with what the EC will do in the transition period, during which the essential requirements of EC directives must be met by manufacturers but harmonized European standards (i.e., those developed by CEN/CENELEC or ETSI) are not available.

The national standards bodies in the member states apparently are only slowly implementing the standards adopted by CEN/CENELEC. A representative of the French Standards institute, AFNOR, was reported to have said that fewer than half of the common standards developed by those bodies have been instituted in France.[111] In August, the British Standards Institution (BSI) reportedly came under fire for failing to rapidly adopt European standards. According to the

[106] These papers are public and can be obtained by calling Charles Ludolph, Director, U.S. Department of Commerce, Office of European Community Affairs, tel. (202) 377-5276.
[107] Staff of the Office of European Community Affairs, conversation with USITC staff, Jan. 30, 1991.
[108] *Green Paper*, p. 9. Annex 1 of the paper provides a listing of the mandates given.These include standardization programs relating to iron and steel, toys, simple pressure vessels, pressure vessels, self-propelled industrial trucks, gas appliances, motor vehicle fuels, construction products (timber, concrete, masonry, pitched roofing products, cement, and building limes), aeronautics, personal protective devices, machinery safety, low voltage electrical equipment, household appliances, electromagnetic compatibility, advanced ceramics, nonautomatic weighing instruments, and information technology. A mandate associated with the EC's government procurement directives on water, energy, and transport has also been issued.
[109] Ibid., p. 17.
[110] Staff of the Office of European Community Affairs, conversation with USITC staff, Jan. 30, 1990.
[111] "EC Member States Urged to Keep Own Standards Bodies," *1992—The External Impact of European Unification*, p. 4.

account, BSI has adopted only 44 percent of European standards and had been slow to introduce an approval and certification mechanism for the Construction Products Directive.[112]

Environmental Protection

Overview

EC environmental legislation involving the management of hazardous waste is likely to have cross-sector impact. There are existing and proposed measures addressing waste disposal and recycling,[113] transborder shipment of hazardous waste,[115] radioactive waste shipment,[115] waste-water treatment,[116] air pollution caused by waste incineration,[117] and civil liability for damage caused by waste.[118] Consistent with the prevention principle in article 130r of the Single European Act, these measures reflect the EC's intention to limit the production of waste under Proposed Directive (89) 560.[119]

Update

The EC Council was expected to adopt the amended EC Commission Proposal (89) 560 amending EC Council Directive 75/442[120] on waste at a meeting of Environment Ministers on October 29, 1990. The two items that the Environment Ministers were to resolve were the amended directives' scope and the use of taxes under the polluter-pays principle. France, Denmark, and Italy are the only countries that support Amended Proposal (89) 560.[121]

On October 12, 1990, the European Parliament approved EC Commission Proposal COM (90) 9[122] on pollution caused by dangerous substances discharged into the aquatic environment. After the EC Council adopts this proposal, the EC Council may adopt EC Commission proposals made pursuant to article 6 of EC Council Directive 76/464[123] using the cooperation procedure. The EC Council has adopted limit values and quality objectives for only 14 of the 129 dangerous substances in the annex to Directive 76/464 using the current unanimous procedure.[124] The EC Council is expected to adopt this proposal.

The vast majority of EC environmental instruments are directives that must be implemented by the member states. Several of these directives are likely to affect U.S. investment in the EC. One proposal, COM (90) 319,[125] would encourage coordination between the European Environmental Agency (EEA) and the Statistical Office of the European Communities (EUROSTAT). The Netherlands, Spain, Portugal, and the United Kingdom desire data on the cost of installing and operating investment in environmental protection, the quantity and disposition of dangerous substances and wastes, the quality of water at certain locations, and comparisons with sector-specific data and environmental data collected by satellite. Denmark, Greece, Ireland, and the United Kingdom are opposed to mandatory reporting of these data.[126]

Agriculture

Overview

The primary focus of EC integration measures in the agriculture sector continues to be promoting the free movement of animals and products within the EC and replacing border control inspections between member states with inspections at the site of production.[127] The EC Court of Justice still explicitly excludes sanitary and phytosanitary questions from the principle of mutual recognition, contending that the risks involved are too large. The EC continues to develop animal and plant health standards at the governmental level in consultations with member-state authorities. In some cases, the EC Commission has accepted advice from non-member-state authorities and U.S. interests.

The most significant development in U.S.-EC trade relations in the farm-based agriculture sector during June-December 1990 was the EC ban on imports of pork from the United States. The action was taken under the EC's so-called Third Country Meat Directive. The EC contends that the United States does not meet EC veterinary standards, a contention disputed by the United States. Among other U.S.-EC disputes, there appears to have been little or no progress. The EC continues to prohibit imports of meat from countries, such as the United States, where the use of animal growth stimulants (hormones) is authorized. The United States contends that the EC prohibition is scientifically unjustifiable. The EC uses

[112] "British Standards Body Called on Carpet by MPs," *1992—The External Impact of European Unification*, Sept. 5, 1990, p. 3, and *Europe 1992 Law and Strategy*, September 1990, p. 5.

[113] *Council Directive 75/442* and COM (89) 560.

[114] *Council Directive 84/631* and COM (90) 415.

[115] COM (90) 328 final (July 25, 1990).

[116] *Council Directive 76/464* and COM (90) 9.

[117] *Council Directives 89/369* and *89/429*.

[118] COM (89) 282 final (Sept. 15, 1989).

[119] *OJ* No. C 42 (Feb. 22, 1990), p. 19. USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, pp. 4–33 and 4–34.

[120] EC Council, *OJ* No. L 194 (July 25, 1975), pp. 39–41.

[121] "Hazardous Waste: National Experts Debate New Draft Directive," *European Report*, No. 1618 (Oct. 3, 1990), sec. 4, p. 1.

[122] EC Commission, *OJ* No. C 55 (Mar. 7, 1990), pp. 7–8.

[123] EC Council, *OJ* No. L 129 (May 18, 1976), pp. 25–26.

[124] "Dangerous Substances: European Parliament Wants to Speed Up Decision-Making," *European Report*, No. 1621 (Oct. 13, 1990), sec. 4, p. 11.

[125] EC Commission, *OJ* No. C 209 (Aug. 22, 1990), pp. 29–33.

[126] "Environment: Statistics Programme Outlined," *European Report*, No. 1636 (Dec. 8, 1990), sec. 4, p. 2.

[127] See USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, p. 6–16.

a so-called fourth criterion, which takes into account socioeconomic factors to prohibit the importation of certain products, including some types of meat from the United States and BST.[128] The United States objects to the EC's use of the fourth criterion to stop imports.

Earlier USITC reports have analyzed a wide range or directives and proposals concerning farm-based agriculture. In this report, several new issues were reviewed including veterinary inspection, movement of horses within and into the EC, phytosanitary standards, and fish inspection.

The U.S. industry could conceivably be affected significantly by changes in regulations contained in one of the directives relating to the movement of horses from and into the EC. If the EC regulations relating to a disease afflicting horses are implemented, horses brought into the United States from the EC will be required to be quarantined in a U.S. Department of Agriculture (USDA) facility for 60 days. The quarantine would apparently be applicable to horses that are routinely sent to and from the United States and the EC for races and exhibitions. The quarantine would effectively prohibit much of the movement of horses between the EC and the United States.[129]

Another proposed Council regulation is designed to deal with the growing problem of overfished waters and depleted fish stocks in the EC. It would authorize financial support to vessel owners who are willing to cease fishing or to move to other, less economical fisheries. If enough vessels are persuaded to switch fisheries, the total volume of the EC fish harvest could actually increase, thereby reducing EC import demand. Although this would have no significant effect on EC supply of, or import demand for, the main U.S. fish export, frozen and canned salmon, it could cause diversionary effects on U.S. imports. Reducing EC imports of frozen cod and other fish from Scandinavia and canned sardines, herring, and anchovies from Scandinavia, Morocco, and elsewhere could cause such exports to land in the U.S. market, where they would compete with the output of U.S. canned-fish producers.

The EC is proceeding with the harmonization of member-state laws regarding phytosanitary standards as they apply to plant health. The EC is considering a proposal for a third-country "plant passport" system, in which imports bearing a certificate of approval would be allowed to circulate freely within the Community. The EC has also expressed its intention to continue recognizing U.S. inspection procedures so that plants and the facilities in which they are grown may be certified before being exported to the EC.

[128] See USITC, *The Effects of Greater Economic Integration Within the European Community on the United States: First Follow-Up Report*, USITC publication 2268, March 1990, pp. 6–48 to 6–49.

[129] Based on ITC staff conversations with officials of the American Horse Council and the U.S. Department of Agriculture Animal and Plant Health Inspection Service, Jan. 14, 1991.

Update

Equines (Horses)

Background

The EC adopted a number of directives during the period under review, and it is considering a proposal concerning equines.[130] Probably the most significant change for U.S. horse interests resulting from the EC developments stems from a directive that would permit movement of horses from Spain to other EC members. Previously, intra-EC movement of horses from Spain had been virtually prohibited because of the presence of a horse disease in that country.

Anticipated Changes

The U.S. industry could conceivably be affected significantly by the subject directives. Apparently, if EC regulations relating to a disease afflicting horses (African horse sickness) are implemented, horses brought into the United States from any member of the EC will have to be quarantined in a USDA facility for 60 days, in contrast to the current USDA policy requiring only a 3- to 7-day quarantine for horses brought from any EC member except Spain. Horses entering the United States from any country where African horse sickness is found , including Spain, are required to undergo a 60-day quarantine in a USDA facility. The problem arises because the EC regulations would apparently allow horses from Spain to move throughout the EC under certain carefully controlled circumstances. Consequently, the entire EC would be considered by the USDA a region where African horse disease is found. The quarantine would apparently be applicable to horses that are routinely sent to and from the United States and the EC for races and exhibitions. The expense associated with the quarantine, and the undesirability of confining normally active race and show horses to stables for an extended time would effectively prohibit much of the movement of horses between the EC and the United States.[131]

Possible Effects

U.S. exports to the EC

U.S. exports of horses to the EC were valued at $139 million in 1989, the most recent year for which

[130] *Council Directive of 26 June 1990 on Trade in Equidae Intended for Competitions and Laying Down the Conditions for Participation Therein* (90/428/EEC), *OJ* No. L 224 (Aug. 18, 1990); *Council Directive of 26 June 1990 on the Zootechnical and Genealogical Conditions Governing Intra-Community Trade in Equidae* (90/427/EEC) *OJ* No. L 224/55 (Aug. 8, 1990); *Council Directive of 26 June 1990 on Animal Health Conditions Governing the Movement and Import From Third Countries of Equidae* (90/426/EEC) *OJ* No. L 224/42 (Aug. 181990.); *Proposal for Regulation I COM (89) 503 Proposal for a Council Regulation on Animal Health Conditions Governing Intra-Community Trade in and Import From Third Countries of Live Equidae, OJ* No. L 149/267 (Aug. 18, 1990).

[131] Officials of the American Horse Council and the U.S. Department of Agriculture Animal and Plant Health Inspection Service, conversations with USITC staff, Jan. 14, 1990.

data are available. However, as mentioned earlier, many horses are shipped to the EC for races or exhibits and the value of such animals is not recorded in official U.S. export statistics. Most of those involved in the horse sector are individual entrepreneurs rather than corporations.

Diversion of trade to the U.S. market

There appears to be no reason to believe that the directives or proposal will result in diversion of horses to the United States because apparently the most important effect of the developments will be the prevention of movement of animals to and from the EC for specific horse-related events.

U.S. investment and operating conditions in the EC

Statistics concerning the level of U.S. direct investment in the EC horse sector are not available, although it appears that there is some limited U.S. investment in the sector by individual entrepreneurs. It is not clear whether U.S. investors are likely to change their investment plans or EC-based production strategies as a result of the directives or proposals.

U.S. Industry Response

A representative of the American Horse Council has expressed serious concern about the previously discussed effect of the regulations with respect to African horse sickness.[132]

Hormones

On November 13, the EC Court of Justice ruled on the complaint filed by the European Federation of Animal Health (FEDESA) challenging the 1988 hormone directive, which banned hormones in the production of meat.[133] FEDESA had argued that there should be no ban until there is concrete proof that hormones pose a health risk. The Court rejected the argument and stated that there was no proof that the hormones were harmless and that the EC has discretionary authority to act in the interests of its citizens, especially when the European Consumers Union, the European Parliament, and the EC's Economic and Social Committee all supported the ban. The Court of Justice is the court of last resort.[134]

Another significant event relates to the EC's moratorium on the use of the hormone BST, which was due to expire at the end of 1990. The EC's Scientific Veterinary Committee reported during its November 27 meeting that it needed more time to review the evidence before making a decision on Monsanto's application to market the hormone and would make that decision at its next meeting in mid-January 1991.[135] Also on February 4, 1991, the EC Agriculture Council approved an extension of the moratorium on marketing and sale of BST until December 31, 1991, to allow another 8 months for completion of a report concerning the socioeconomic impact of BST. It is unclear whether this will delay the release of the Scientific Veterinary Committee's report.

Interested persons in the United States believe that more testing will not show that BST is harmful and will only delay its marketing.[136] U.S. FDA scientists have reported that over 120 studies show that milk and meat from dairy cows treated with BST are safe.[137] Although the FDA has not yet sanctioned the use of BST, approval is expected after all pertinent information has been gathered and analyzed.[138]

A problem posed by the EC's ban of hormones that is not often mentioned is the reconciliation of such a ban with the need to allow veterinarians to prescribe hormones for therapeutic uses. The exemptions provided in the directive for such use have been criticized as leaving the ban prone to abuse. As a result, a proposed EC Commission directive proffered in April 1989 to exempt testosterone from the ban if used to treat ovine balanoposthitis, a sheep disease known as pizzle-rot, was recently amended to provide clearer details of the use of the hormone and controls to prevent its illegal use. The amended proposal clearly states that the use of the hormone is not authorized in the case of animals intended for fattening and mandates that certain guarantees be provided for sheep imported from third countries.[139]

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[132] Animal and Plant Health Inspection Service conversations.

[133] *Directive 88/146/EEC.* For background information concerning the ban of hormones and the ensuing litigation, see USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, pp. 4-42 to 4-43, and USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, pp. 6-48 to 6-49.

[134] "Court of Justice Upholds Validity of EEC Hormone Ban," *European Report*, No. 1630 (Nov. 17, 1990), sec. 4, p. 1; BNA, "EC Ban on Beef Imports Left Standing by EC Court," *1992—The External Impact of European Unification*, Nov. 16, 1990, pp. 8-9; "Court of Justice Rejects Industry Bid to Overturn Ban on Use of Beef Hormones," *International Trade Reporter*, vol. 7 (Nov. 14, 1990), p. 1734. When the ban went into effect

134—Continued

in 1989, $100 million in U.S. exports of beef was halted and the United States imposed retaliatory tariffs on equivalent amounts of EC imports. Ibid.

[135] Authorization would be granted under Directive 87/22/EEC, which pertains to market authorization for medicinal products derived from biotechnology. Eli Lilly also has an application pending before the committee for a similar product."EEC Committee to Consider Monsanto Marketing Authorisation," *European Report*, No. 1630 (Nov. 17, 1990), sec. 4, p. 5.

[136] See "Current Operations," *Europe 1992 Law & Strategy*, vol. 1, No. 11 (November 1990), p. 5.

[137] "Commission Considering Six-Month Extension," p. 10.

[138] FDA officials, telephone conversations with USITC staff, Washington, DC, Jan. 9, 1991.Upon conclusion of a technology assessment conference held by the National Institutes of Health Dec. 5-7, it was recommended that BST be approved. Ibid.

[139] *Amended Proposal for a Council Directive Amending Directives 81/602/EEC and 88/146/EEC s Regards the Prohibition of Certain Substances Having a Hormonal Action and Any Substances Having a Thyrostatic Action*, COM (90) 396 final, *OJ* No. C 245 (Sept. 29, 1990), pp. 16-17; "Commission Tries Again With Therapeutic Exemption From EEC Ban," *European Report*, No. 1619 (Oct. 6, 1990), sec. 4, p. 10.

Meat Inspection

Background

The EC's concern with regulating, by the third-country meat directives,[140] the health and sanitary inspection systems for meat consumed within the member countries resulted in a ban in late 1990 against pigmeat imported from the United States. The prohibition began with a decision on October 23 by the EC's Standing Veterinary Committee that the United States does not meet EC veterinary standards and poses a threat to the health of EC consumers, namely because of a general lack of adequate hygiene and veterinary controls as well as postmortem inspections of animal carcasses. This decision was followed by a letter from the EC to the U.S. Secretary of Agriculture stating that if inspections of U.S. slaughterhouses on a list of EC-approved, third-country slaughterhouses were not improved, the EC would disallow imports of pigmeat from them by delisting them by November 1, 1990, a deadline that was later extended by 3 weeks for shipments in transit. The ban would be applied to other meats, except sheep and horsemeat, delisting them by January 1, 1991. Exports of meat used to manufacture pet food and for pharmaceutical processing would be allowed to continue.[141]

U.S. officials are concerned because they claim there is no basis for prohibiting U.S. meat exports to Europe, because U.S. hygiene standards are equivalent to those of the EC. The EC monitors the entire slaughtering process, whereas the United States concentrates on the end product.[142]

Commensurate with these actions, the EC has proposed and adopted other measures to strengthen and consolidate veterinary standards. The EC Council on June 26 adopted Directive 90/423/EEC, which addresses control of foot-and-mouth disease and rules affecting third-country imports of live animals and certain animal products.[143] It requires annual spot checks to ensure that minimum standards are met, with the first to occur before January 1, 1992. A uniform code of good conduct may be adopted, and emergency vaccination against foot-and-mouth disease may be introduced. Third countries from which live animals are imported must be free of certain diseases for varying periods, depending on the disease, and certain guarantees must be made regarding those animals susceptible to foot-and-mouth disease and imported from third countries. Prophylactic vaccination is to cease by January 1, 1992, and vaccinated animals are not to be introduced into member states from the date on which vaccination is stopped. Member states are to comply with the directive by January 1, 1992.

On the same day the previous directive was adopted, the EC Council adopted Directive 90/425/EEC regarding veterinary and zootechnical checks.[144] The crux of the directive is the emphasis on veterinary checks at the place of dispatch and the coverage of all animals and products subject to veterinary requirements. Health certificates and/or other relevant documents are to accompany the animals and products when transported. The directive does not affect checks on the welfare of animals during transport[145] or checks carried out by authorities responsible for the application of a member state's laws in a nondiscriminatory fashion. Inspections at the point of destination are to be nondiscriminatory veterinary spot checks. If agents responsible for a disease likely to constitute a serious hazard to animals or humans are discovered during a check at the place of destination or during transport, or if the products come from a region contaminated by certain disease, the animals may be quarantined, slaughtered, or destroyed. The directive also enunciates dispute-settlement procedures and

[140] The initial directive, 72/462/EEC, has been amended, and related directives have been approved.See, e.g., 89/227/EEC, *OJ* No. L 93 (Apr. 6, 1989), p. 25, the preamble of which lists and describes such directives. For background information on this topic, see USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, p. 4-49; USITC, *Effects of EC Integration*, USITC publication 2268, March 1990,, pp. 6-49 to 6-50. For information on a progress report providing an overview of relevant policies and plans initiated in 1989/90, see "Controlling Animal Disease in the EEC," *European Report*, No. 1638 (Dec. 15, 1990), sec. 4, p. 2.

[141] "US Given Three Week Extension to Respect EEC Ban on Meat Imports," *European Report*, No. 1628 (Nov. 10, 1990), sec. 5, p. 19; "EC Bans Imports of U.S. Pork Products, Citing Unsatisfactory 'Slaughter Hygiene,'" *International Trade Reporter*, vol. 7 (Nov. 7, 1990), p. 1701; "Deadlock Fast Approaching on EEC Imports of US Meat," *European Report*, No. 1625 (Oct. 27, 1990), sec. 5, pp. 6-7; "Dispute Over Abattoir Hygiene Heats Up," *European Report*, No. 1624 (Oct. 24, 1990), sec. 5, p. 12; "EC Set to Block Imports of Most U.S. Pork, Claims Veterinary Standards not Being Met," *International Trade Reporter*, vol. 7 (Oct. 24, 1990), p. 1610.The 3-week extension was accorded in order to hedge the problem of handling pigmeat loaded on October 31 and shipped to the EC."US Given Three Week Extension," p. 19. U.S. Trade Representative, "Hill Initiates Investigation of European Community Meat Rules," press release 91-1, Jan. 10, 1991.

[142] "EC Set to Block Imports," p. 1610; "GATT Panel to Be Opened by US Over Meat Plant Dispute," *European Report*, No. 1632 (Nov. 24, 1990), sec. 5, p. 10.The Secretary of Agriculture has termed the EC's action a nontariff barrier like the ban on hormone-treated beef.He has also stated that the United States has repeatedly recommended to the EC that technical methodologies be subjected to scientific arbitration, but the EC has refused to accept this recommendation."U.S. Pork Producers Call for Retaliation Against Planned EC Ban on U.S. Imports,"

142—Continued

International Trade Reporter, vol. 7 (Oct. 31, 1990), pp. 1641, 1642.There is a risk that the EC's actions will intensify the dispute with the United States over agriculture in the Uruguay Round of GATT negotiations.See "EC Bans Imports," p. 1701.

[143] *Council Directive of 26 June 1990 Amending Directive 85/511/EEC Introducing Community Measures for the Control of Foot-And-Mouth Disease, Directive 64/432/EEC on Animal Health Problems Affecting Intra-Community Trade in Bovine Animals and Swine and Directive 72/462/EEC on Health and Veterinary Inspection Problems Upon Importation of Bovine Animals and Swine and Fresh Meat or Meat Products from Third Countries*, 90/423/EEC, *OJ* No. L 224 (Aug. 18, 1990), p. 13.

[144] *Council Directive of 26 June 1990 Concerning Veterinary and Zootechnical Checks Applicable in Intra-Community Trade in Certain Live Animals and Products With a View to the Completion of the Internal Market*, 90/425/EEC, *OJ* No. L 224 (Aug. 18, 1990), p. 29.

[145] See *OJ* No. C 113 (May 7, 1990), p. 206, for a discussion of a proposed Council regulation to protect animals during transport.The proposal itself appears at OJ No. C 214 (Aug. 21, 1989), p. 36.

establishes a transition period lasting until December 31, 1992.[146]

Also on June 26, the EC Council issued a decision regarding expenditures pertaining to veterinary measures aimed to protect and raise the level of public and animal health.[147] Specifically, provisions are made to defray the costs of the eradication of any outbreak of a serious infectious disease as well as the eradication and monitoring of certain other animal diseases, the prevention and reduction of zoonoses[148] posing a threat to human health, the implementation of harmonized controls for products imported from third countries, and technical and scientific means to protect the public health, including the creation of a data base.

The EC Commission recently sent to the EC Council a draft regulation setting forth a set of common principles to govern the organization of veterinary checks and the traffic of non-EC products of animal origin.[149] The rules cover imported plant products if there is a risk that they could spread contagious diseases to animals.[150] They require that each consignment of products from third countries be subjected to documentary checks upon importation. Inspection posts must be located in the immediate vicinity of the point of entry. If the product does not satisfy the EC's requirements or national rules in matters not subject to harmonization, the consignment may be redispatched or destroyed after consultation with the importer or the importer's representative, although derogations may be allowed (such as using the product for purposes other than human consumption). A safeguard provision allows the prohibition of imports in the event of a serious animal or public health threat. The EC Commission proposes that the regulation apply from July 1, 1991, in order that the necessary procedures be in place by 1993.[151]

Anticipated Changes

The situation respecting EC imports of U.S. meat in the future is unclear. It is possible that the delisted slaughterhouses will again be approved by the EC. It is also possible that the Uruguay Round could be used as a basis for alleviating the problems. However, this route is not likely, because of the current status of the Round and because U.S. industry has filed a formal complaint seeking relief.[152] If retaliatory action is instituted as a result of the complaint, then relations between the EC and the United States may be expected to deteriorate. The advent of a European alliance to promote safe meat through legislative means[153] may add to the decline in the relationship.

Possible Effects

U.S. exports to the EC

In 1989, the United States exported about $2 million in pork products to the EC. This figure is low enough that most U.S. plants have not been able to justify the cost of conforming their procedures and plant design with the EC requirements,[154] although it is claimed that at least some companies have spent millions to modify their facilities.[155] However, another estimate places the value of pigmeat and pig offal exported from the United States to the EC at $13.5 million for 1989.[156] The difference may be explained by the fact that the latter estimate places U.S.

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[146] A related proposal calls for a decision regarding veterinary safeguard measures.Its concern is with the development of contingency plans for dealing with animal diseases. *Proposal for a Council Decision Concerning Safeguard Measures in the Veterinary Field in the Framework of the Internal Market*, COM (89) 493 final, OJ No. C 327 (Dec. 30, 1989), p. 37, and COM (90) 479 final, OJ No. C 268 (Oct. 24, 1990), p. 13, (amendment to proposal).

Another proposed directive of limited scope addresses the liberal importation of glands and organs, including blood, for pharmaceutical manufacturing purposes. It replaces a directive declared void by the EC Court of Justice. *Proposal for a Council Directive Amending Directive 72/461/EEC on Health Problems Affecting Intra-Community Trade in Fresh Meat and Directive 72/462/EEC on Health and Veterinary Inspection Problems Upon Importation of Bovine Animals and Swine and Fresh Meat or Meat Products from Third Countries* COM (90) 175 final, *OJ* No. C 154 (June 23, 1990), p. 8.

[147] *Council Decision of 26 June 1990 on Expenditure in the Veterinary Field*, 90/424/EEC, *OJ* No. L 224 (Aug. 18, 1990), p. 19.

[148] A zoonosis is a disease, such as malaria or rabies, that can be transmitted from animals to humans.

[149] *Proposal for a Council Regulation (EEC) Laying Down the Principles Governing the Organization of Veterinary Checks on Products Entering the Community from Third Countries*, COM (90) 385 final, *OJ* No. C 252 (Oct. 6, 1990), p. 13.

[150] The EC Commission has issued directives specifically designed to protect against the importation of organisms harmful to plants or plant products. See, e.g., *Ninth Commission Directive of 26 September 1990*, 90/506/EEC, *OJ* No. L 282 (Oct. 13, 1990), p. 67; *Eighth Commission Directive of 25 September 1990*, 90/490/EEC, *OJ* No. L 271 (Oct. 3, 1990), p. 28; See also 90/C 182/05, *OJ* No. C 182 (July 23, 1990), p. 16, and 90/C 168/06, *OJ* No. C 168 (July 10, 1990), p. 6, for related opinions.

[151] *Proposed Regulation Organizing Veterinary Checks*, COM (90) 385 final, p. 13; "Guidelines for Checks on Imported Meat Products," *European Report*, No. 1621 (Oct. 13, 1990), sec. 4, p. 1.

In April 1990, the EC Commission proposed another regulation setting forth health requirements for animals and products of animal origin not covered by specific EC rules. See COM (89) 658 final, *OJ* No. C 84 (Apr. 2, 1990), p. 102.The EC Council subsequently issued an opinion on the proposal. See *OJ* No. C 182 (July 23, 1990), p. 25.

[152] American Meat Institute official, telephone conversation with USITC staff, Jan. 11, 1991. See below, "U.S. Industry Response," for a discussion of the industry complaint to USTR.

[153] The European Alliance for Safe Meat (EASM), established in late 1989, includes meat importers, traders, processors, distributors, scientists, and private persons as members.Its primary goal is to help reform EC legislation concerning meat production, processing, and distribution in the interests of animal and human health, employment, and consumers' rights.The EASM held a convention in Brussels at the end of August in which representatives from eight EC member states participated."European Alliance for Safe Meat Rallies in Support of Meat Industry," *European Report*, No. 1613 (Sept. 15, 1990), sec. 3, p. 1.

[154] It has been reported that the EC method costs three to four times as much as the U.S. system."EC Set to Block Imports," p. 1610.

[155] "U.S. Industry Files Formal Complaint With USTR Over EC Ban on Pork Imports," *International Trade Reporter*, vol. 7 (Dec. 5, 1990), p. 1837; "EC Bans Imports," p. 1701.

[156] "US, EC to Meet in Bid to Solve Dispute Over Pork," *Journal of Commerce*, Nov. 14, 1990, p. 4A; "Deadlock Fast Approaching," p. 7.

exports at 300 tons of pigmeat and 15,000 tons of offal, most of which was processed into animal feed.[157] However, yet another estimate places a value of $11 million on affected U.S. pork exports.[158]

The ban will also encompass exports of U.S. beef to the EC. Although most such exports ended with the adoption of the hormone directive,[159] the EC had approved nine U.S. plants for shipment of non-hormone-treated beef. However, these plants were delisted as of December 31 for failure to bring their procedures in line with EC standards.[160]

Before the ban on hormone-treated meat was extended to third countries in January 1989, the EC imported about $100 million a year of meat and offal from the U.S., including approximately 80,000 tons of offal and 5,000 tons of high-quality Hilton beef. In 1989, when that ban went into effect, the EC only imported 500 tons of hormone-free Hilton beef and 4.2 million dollars' worth of offal.[161] The ban on pigmeat, together with the hormone-treated beef prohibition, will completely shut U.S. meat products out of the EC market.[162]

Diversion of trade to the U.S. market

It has been reported that the United States is contemplating a retaliatory ban on EC meat and poultry worth $400 million.[163] It is estimated that EC pig farmers sold approximately 131,400 tons of pork products to the United States in 1989[164] and that the value of EC meat products imported by the United States in that year was more than $200 million.[165]

U.S. investment and operating conditions in the EC

All plants delisted were in the United States.

U.S. Industry Response

The pork-producing and meatpacking industries filed a petition under section 301 of the Trade Act of 1974 with the Office of the United States Trade Representative (USTR) on November 28, 1990, seeking Government action to reverse the EC's decision to ban beef and pork, after unsuccessful GATT consultations between the United States and the EC.[166] The groups claim that the action is an artificial trade barrier and that food safety is not an issue. An industry representative has said that greater than two-thirds of the meat consumed in the EC does not comply with the artificial barriers imposed on U.S. meat imports.[167]

USTR has accepted the complaint and reportedly may seek a ruling by an independent GATT panel. If the problem is not resolved in a timely fashion under the GATT, section 301 allows for retaliation against EC goods imported into the United States. However, USTR has indicated that bilateral discussions may yield an agreement to recertify the delisted plants and resolve the fundamental issues. Accordingly, USTR will reportedly delay seeking a GATT panel decision for up to 90 additional days.[168]

Fisheries

Background and Anticipated Changes

In an effort to reduce fishing capacity and redeploy fishing effort from depleted resources to less strained ones, the Commission proposed a Council Regulation (90) 358 amending Regulation No. 4028/86 on Community measures to improve and adapt structures in the fisheries and aquaculture sector in certain major fishing nations of the EC. These nations, whose fish resources have been depleted by heavy overfishing in recent years, include Britain, Ireland, and the northern continental states from Germany to France. This directive authorized financial support to vessel owners who are willing to cease fishing or move to other, less economical fisheries, including those found in international waters or in third-country waters subject to negotiated access agreements with such countries.

Possible Effects

U.S. exports to the EC

U.S. exports of finfish products to the EC totaled $290 million (estimated) in 1990, or about 12 percent of total U.S. exports to all markets. Little effect on EC-destined U.S. exports is expected if the directive succeeds in boosting the output and productivity of EC harvesters, because most such exports consist of frozen and canned salmon products, of which EC production is negligible.

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[157] "Deadlock Fast Approaching," p. 7.

[158] "EC Bans Imports," p. 1701; "U.S. Pork Producers Call for Retaliation," p. 1641.

[159] See the section in this chapter concerning the use of hormones in foodstuffs for more information.

[160] "Deadlock Fast Approaching," p. 6; "EC Set to Block Imports," p. 1610.

[161] "Deadlock Fast Approaching," p. 7; "US, EC to Meet," p. 4A.

[162] "US, EC to Meet," p. 4A.

[163] Ibid.

[164] "GATT Panel to Be Opened," p. 10.

[165] "U.S. Industry Files Formal Complaint," p. 1837.

[166] The petition was filed by the National Pork Producers Council (NPPC) and the American Meat Institute (AMI). Ibid.; "Retaliatory Measures in the Pipeline Over Meat Plant Dispute," *European Report*, No. 1634 (Dec. 1, 1990), sec. 5, p. 6. The NPPC represents over 100,000 pork producers in 45 States. These producers are responsible for more than 90 percent of U.S. commercial pork production. The AMI represents all segments of the U.S. meat packing and processing industry. "U.S. Industry Files Formal Complaint," p. 1837.

[167] Ibid.; "Retaliatory Measures in the Pipeline," p. 1837.

[168] American Meat Institute, "AMI Pleased USTR Has Accepted 301 Complaint Against EC," press release, Jan. 10, 1991. The two sides are reportedly discussing accepting each other's inspection standards and procedures. "U.S. Postpones GATT Action Against EC Ban on Pork, Beef for 90 Days, Citing Progress," *International Trade Reporter*, vol. 8, No. 3 (Jan. 16, 1991), p. 84. If the EC does not show goodwill in resolving the problem in the near future, USTR can request formal consultations, which last 60 days. Thereafter, formal GATT dispute-settlement procedures are invoked and must conclude within 18 months. "Hills Accepts Section 301 Case on EC Pork, Beef Ban, but Seeks Informal Solution," *Inside U.S. Trade*, (Jan. 11, 1991), p. 4.

U.S. investment and operating conditions in the EC

There is little or no U.S. investment in EC-based fish harvesting, so this directive has little or no direct implications for U.S. business operating conditions. There are indirect implications, caused by changes in EC production and trade, which are explained below.

Despite the anticipated decrease in EC harvesting capacity caused by future retirement of some vessels, there is likely to be an increase in the quantity of fish harvested by EC-flag vessels as a result of this directive. Currently, the harvest rate per vessel is low (and cost per unit of harvested fish is high) because of resource depletion; yet despite such underutilized capacity, the vessels remain in operation because of high fish prices caused by low supply. As some vessels are removed from these depleted grounds, the resource will recover and the harvest by remaining vessels should rise. Those vessels that are diverted to undepleted fishing grounds will benefit from high harvest rates in those new fishing grounds that will reduce their operating costs. Therefore, they should remain profitable even as market supply rises and prices fall.

The EC will provide financial assistance to EC-flag vessel owners to help them overcome the initial costs of switching fishing grounds or of retirement. Such financial assistance will vary by vessel size, will go to vessels in operation for more than 5 years, and will depend on certain (unspecified) conditions relating to fishing zones, methods and gear, and targeted species. "Primary consideration (will be) given to the supply of the Community market," i.e., those vessels harvesting for sale within one or more member states.

Diversion of trade to the U.S. market

There will probably be some diversion to the U.S. market. Frozen seafood exported from Scandinavia will directly compete with the cod, haddock, and other fish whose EC harvest is expected to increase. U.S. imports of Scandinavian frozen seafood totaled almost $150 million (estimated) in 1990; if diversion causes such imports to rise by 25 percent, total U.S. imports would increase by about 5 percent. There is no significant U.S. production of these products that would be directly affected by such diversion.

Other potential diverted products include canned sardines and herring from Scandinavia and canned sardines and anchovies from Morocco if EC-flag harvesters shift more of their fishing effort to the herring stocks in the Baltic and North Seas and the herring and anchovy stocks of the Mediterranean Sea. Such diverted imports would compete with the $20 million sardine industry and the $13 million canned herring and mackerel industries on the east and west coasts of the United States.

U.S. Industry Response

The U.S. industry response to frozen seafood diverted to the U.S. market would probably be increased marketing activity by U.S. importers and distributors. (As noted, there is no significant U.S. production.) Depending on how large the diversion is, U.S. market prices could fall and consumption could rise, particularly in the "fast-food" sector, where breaded-fish sandwiches are enjoying growing popularity. Such increased consumption would not be at the expense of the large number of U.S. fresh-fish producers, because their products are sold through very different marketing channels.

However, adverse effects could be felt from increased imports of canned herring, sardines, and anchovies, which would probably cause contraction among U.S. producers of similar products. The largest adverse effects would be felt in Maine, where, unlike their Pacific coast rivals, the sardine canners have few alternative uses for their inputs. However, the probable diversion of third-country imports is small ($1 million to $2 million) and so the expected U.S. industry contraction would also be small relative to total production.

Organisms Harmful to Plants and Plant Products

Background

The EC has passed a directive amending Council Directive 77/93/EEC on protective measures against the introduction of organisms harmful to plants and plant products. The purpose of the original directive (77/93/EEC) and subsequent amendments has been to codify EC inspection procedures with the intention of eliminating internal barriers to trade. Annex IV of the directive contains a list of plants and plant products and the special inspection procedures required for their entry. Whereas a number of these items refer to diseases and pests found in Europe, others refer to phytosanitary conditions found in other parts of the world. The current amendment (90/506/EEC)[169] addresses plant organisms commonly found in the Americas.

In 1988, the EC Commission put forth its basic plant health policy in a report entitled "A New Strategy in the Field of Plant Health." Among other issues addressed, the document states the EC's intention to issue a "plant passport" to third-country plants and plant products that would ensure free movement throughout the Community. Point-of-origin or point-of-production inspections would also be instituted. The United States currently has such an arrangement with the EC, in which the U.S. Animal and Plant Health Inspection Service (APHIS) is authorized to inspect U.S. exports to the EC to ensure that they comply with EC regulations.

Anticipated Changes

The EC is still working on the details of its phytosanitary regulations and has not yet made an

[169] *OJ* No. L 282 (Oct. 13, 1990), p. 67.

official proposal. Because imported plants and plant products from the United States are already accompanied by a certificate once they are approved, the proposed plant passport system does represent a major departure from current practice. However, the proposed system does suggest that shipping plants within the Community will be more efficient and less burdensome. With regard to the proposed point-of-origin inspections, the EC already recognizes U.S. plant and health inspection procedures. Although this contract of mutual recognition may have to be renewed at some later date, officials at APHIS do not anticipate any problems with receiving the EC's continuous approval of its standards. Rather, the problem may lie with U.S. plant and plant-product imports from the EC. One USDA report alluded to a "worst case scenario" in which the United States would have to treat the EC as one country. Thus, the United States may be forced to apply the same standards to the EC as those applied to a member state that has been historically infested with a particular disease or pest.[170]

The subject amendment (90/506/EEC) concerns harmful organisms belonging to the genera *amauromyza* and *liriomyza*, which are commonly found throughout the United States and other American countries. Organisms belonging to these genera infest leafy plants and vegetables such as lettuce, tomatoes, capsicum peppers, celery, and plants belonging to the broad category known as herbaceous perennials (e.g., chrysanthemums). The amendment requires an inspection of the seedling varieties of these plants that have been found to harbor pests of these genera.[171] Either the plants themselves or the facilities in which they are grown must be certified as pest free within a specified period before export to the EC. Those items passing inspection must be accompanied by an official document stating that they are free of such pests before they can circulate within the EC market.

Possible Effects

U.S. exports to the EC

Neither the amendment nor the overall proposed changes in EC phytosanitary laws is expected to have a negative impact on U.S. exports to the EC. According to industry sources, APHIS rigorously inspects and treats plants suspected of being infested with pests of the genera *amauromyza* and *liriomyza*. One source in Florida stated that nurseries and farms are routinely inspected as often as three or four times per year.[172] Florida grows most of the plants and vegetables affected by these genera, but all sources contacted there stated that the amendment should not create any problems for U.S. exporters to the EC. One source stated that the EC is probably concerned with Latin American countries affected by the subject pests that have lower inspection standards.[173] Any improvement in the enforcement of EC standards regarding these pests would likely benefit U.S. exporters, because APHIS inspections are reportedly more rigorous than those actually required by the EC. Some U.S. exporters have argued that the United States is disadvantaged by these rigorous U.S. inspection standards, because many third-country suppliers are subject to lesser standards in their own country and are thus able to benefit from the loose enforcement at EC points of entry.

U.S. exports of herbaceous perennials affected by amendment 90/506/EEC are negligible, amounting to an estimated $179,000 in 1989. However, U.S. exports of plants and plant products (i.e., foliage plants, cut flowers, etc.) that could be affected by changes in EC directive 77/93/EEC were $46 million in 1989. Exports of fresh foliage, branches, and other parts of plants were the most significant in this grouping.

Diversion of trade to the U.S. market

None of the aforementioned changes in EC phytosanitary laws are likely to result in the diversion of trade to the U.S. market, because the inspection procedures here either meet or exceed those of the EC. Leading third-country competitors for the affectedproducts include Latin America, Canada, and non-EC European countries (such as Austria or Poland). These products are also produced throughout the EC itself but are most often found in the warmer climate countries of Italy, Greece, and Spain.

U.S. investment and operating conditions in the EC

There is no known U.S. investment in the plants and plant products covered in this analysis. U.S. firms do not typically own farms or nurseries in the EC, nor vice versa. Thus, any change in EC phytosanitary laws or their enforcement is not likely to have any impact on U.S. business operating conditions in the EC.

U.S. Industry Response

U.S. industry sources contacted were not aware of the changes taking place in EC phytosanitary regulations. One source, however, did comment that some growers believe that phytosanitary regulations are sometimes used as barriers to free trade.[174] Most sources believe that U.S. phytosanitary standards and their enforcement exceed those of the EC. In fact, one source commented that APHIS is too exacting in its enforcement of EC plant and health standards (e.g., point-of-origin inspection) and that he had lost a contract to sell palm trees to Spain because, according to APHIS' interpretation of EC standards, the trees had

[170] See USDA, APHIS, *EC 1992 and Potential Impacts on APHIS*, March 1990.

[171] The amendment provides a list of such plants and plant products by their Latin names: Apium graveolens, brassica, Capsicum annuum, Chrysanthemum, Cucumis, Dendranthema, Dianthus, Gerbera, Gypsophila, Lactuca sativa, Leucanthemum, Lycopersicon esculentum, Solanum, melongena, and Tanacetum.

[172] Specialist at the Florida State Department of Agriculture, conversation with USITC staff, Jan. 15, 1991.

[173] APHIS personnel, conversation with USITC staff, Jan. 15, 1990.

[174] Specialist at the Florida State Department of Agriculture, conversation with USITC staff, Jan. 16, 1991.

to be replanted in sterilized soil 1 year before shipping. The contract was then awarded to a Caribbean producer, who did not replant the trees as required but had no difficulty in passing EC border inspection.[175]

Pesticide Residues[176]

The EC Council on Agriculture finally approved Directive 90/642/EEC[177] for the establishment of maximum levels of pesticide residues on numerous agricultural products. The directive calls for the Council to establish specific pesticide residue levels for specific groups of fruits and vegetables and for member states to set up inspection programs. The original proposal was submitted in February 1989 and has been subject to protracted legal and technical debate by the European Parliament and the scientific community. During the debate, U.S. industry concerns were centered on the retail labeling requirement of postharvest chemical treatment of fruits and vegetables. Sources contacted believed that consumers would be unnecessarily alarmed by the references to pesticide use and would treat the label as a warning. This requirement has now been deleted in the final directive.

Another U.S. industry concern was the exemption of exports from the proposed regulations. This exemption would have allowed EC-based growers to bypass established tolerance levels in the EC if the product was intended for export. The final directive now states that the residue tolerance levels will apply to exports, except in cases in which (1) the recipient country prefers the additional pesticide treatment, or (2) the treated crops are intended for uses other than as foodstuffs or animal feed (e.g., sowing, planting, or manufacturing products). U.S. industry sources reportedly approve of this change.

Finally, it has been reported that the EC will now begin the process of establishing residue tolerance levels for each agricultural grouping. Soybeans will be one of the first items considered. The EC Commission has expressed its willingness to share information with the U.S. Government during the process.

Processed Foods and Kindred Products

Overview

Previous USITC reports have explained that the majority of production and trade within the EC market is done by large firms that are integrated both horizontally and vertically. As in the United States, the EC industry has been characterized by mergers and acquisitions in recent years. U.S. multinational corporations have been major participants in this trend and currently own either part or all of 12 of the 20 largest EC food-manufacturing firms.[178] In 1989, U.S. direct investment in EC food manufacturing reached $8.7 billion,[179] representing about a 17-percent increase over the 1988 investment level of $7.4 billion. U.S. cigarette companies also have substantial investments in EC production facilities and are estimated to account for over 30 percent of the EC cigarette market. U.S. exports of processed foods and kindred products to the EC are estimated to have totaled $300 million in 1989. The EC typically accounts for 10 to 15 percent of U.S. exports in this area.

Earlier USITC reports have analyzed a wide range of directives and proposals concerning processed foods and kindred products. This report updates earlier analyses in which legislative activity in the EC was reported during July-December 1990. The issues updated in this report are the advertising of tobacco products[180] and foods treated with ionizing radiation.[181] In addition, several new issues have been covered, including nutrition labeling,[182] meat preparations, sweeteners, and laboratory analysis of wine.

In September 1990, the EC adopted a directive on nutrition labeling of foodstuffs. After much debate, the EC Council decided that nutrition labeling in the EC would be voluntary, except in cases where the manufacturer makes a particular nutrition claim. This directive is much less restrictive than requirements in the United States under the Nutrition Labeling and Education Act passed by Congress in November 1990. This Act requires nutrition labeling for most packaged food products. In 1989, the EC was the third-largest U.S. market for packaged food products, with exports totaling an estimated $280 million.

The EC has advanced a proposal on minced meat, preparations of meat, or meat comminuted for industrial use. The proposal requires that all establishments producing such meats be subject to periodic inspection by competent authorities; in addition, certain standards would be set with regard to temperature controls, microbiological testing, and the freshness of the meats. The Economic and Social Committee has adopted an opinion on this proposal expressing basic disagreement over the temperature guidelines and the methods of determining the freshness of meat. Industry and government experts indicate that the proposal, if passed, could harm U.S. exports to the EC, which totaled about $100 million in 1989 (this figure does not include trade in food products containing meat, which are not available).

[175] Florida grower, conversation with USITC staff.

[176] For a full discussion on pesticide residues on fruits and vegetables, see USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, pp. 6-52 to 6-53.Previous EC legislation concerning pesticide residues include *Council Directive 76/895, OJ* No. L 340 (1976), as last amended by *Council Directive 88/298, OJ* No. L 126 (1988).

[177] *OJ* No. L 350 (Dec. 14, 1990).

[178] U.S. Department of Agriculture, "Europe 1992: Implications for Food and Agriculture," *National Food Review*, October-December 1989, p. 18.

[179] U.S. Department of Commerce, *Survey of Current Business*, vol. 70, No. 8, (August 1990), p. 64.

[180] USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, pp. 4-55 to 4-56.

[181] See "Labeling, Advertising, and Presentation of Foodstuffs," USITC *Effects of EC Integration*, publication 2318, September 1990, pp. 4-53 to 4-54.

[182] Ibid, pp. 4-53 to 4-54.

The EC has recently adopted a directive on the use of certain high-intensity (i.e., low calorie) sweeteners in foodstuffs. The directive provides a list of approved sweeteners and the amounts allowed for use in foodstuffs. There is not likely to be any effect on the U.S. prepared-foods industry, since the EC list of approved sweeteners is actually more comprehensive than the list approved for use in the United States. The extent of U.S. exports to the EC of products containing high-intensity sweeteners is not known, but such sweeteners can appear in a wide range of products, including soft drinks, confectionery, baked goods, and frozen foods.

In September 1990, the EC passed a Council regulation on the methods and procedures of laboratory testing of wine. U.S. industry sources do not believe that the regulation is a major departure from current EC practice; thus, it should not hurt U.S. exports, which were $29 million in 1989 (or $33 million during January-October 1990). The U.S. industry, instead, is more concerned with the future of the U.S.-EC Wine Accord, which is scheduled to expire in mid-1991, and the potential effects of all EC regulations affecting wine imports in the absence of such an accord.

The EC has proposed an amendment to the Council directive on tobacco-product advertising. This amendment would regulate advertisements in the press or on posters and would place certain restrictions on the content of tobacco-product advertising. Among the more controversial features of the proposed amendment are health warning requirements and restrictions on promotional activities that involve the use of trademarks or emblems associated with the product. The extent to which restrictions on tobacco advertising would affect U.S. sales in the EC is unclear, because research on the link between tobacco advertising and overall consumption is inconclusive. U.S. industry sources are concerned that the proposed restrictions are disproportionate to the objective of reducing smoking. They add that any restrictions on trademarks and symbols are a violation of intellectual property rights and can diminish the commercial value of product diversification.

Update

Nutrition Labeling of Foodstuffs

Background

In September 1990, the Council of the European Communities adopted a directive[183] on nutrition labeling of foodstuffs. After almost a year of debate, the Council decided to reject the European Parliament's proposal for compulsory nutrition labeling on all foodstuffs. Proponents of compulsory labeling had argued that consumers had the right to be supplied with the needed data in order to make proper dietary decisions. Opponents of compulsory labeling had argued that smaller firms in the EC would not be able to handle the research costs associated with providing such information. The Council decided to make nutrition labeling optional, except for cases in which a nutrition claim is made. Firms selling foodstuffs in the EC will have a 5-year transition period to begin complying with the new law.

Anticipated Changes

The directive reflects the growing public awareness in Europe of the link between nutrition and health and the consumer's desire to have more information on the foodstuffs that they purchase. If the food manufacturer decides to make a nutrition claim, a label bearing information on the energy value and the amount of protein, carbohydrates, and fat in the food will be required. If the nutrition claim pertains to either sugars, saturates, fiber, or sodium, information on all of these items must also be provided. The information need only be stated in one of the EC languages and be expressed per 100 grams or per 100 milliliters. These labeling rules apply not only at the retail level, but also to foodstuffs distributed to restaurants, hospitals, canteens, and other mass caterers. Natural mineral waters and dietary food supplements (i.e., vitamins) are exempt.

Possible Effects

U.S. exports to the EC

Nutrition labeling laws on processed foods are common in both the United States and the EC. Factors such as the format and content of the nutrition label have always been different between the United States and the EC and have been perceived by exporting firms as obstacles to trade. However, such obstacles have usually been overcome by those U.S. firms that are most interested in selling food products in the EC. In most cases, these have been large U.S. firms with the financial resources to alter their food labels in order to comply with the laws of the receiving country.

Most U.S. industry sources report that the harmonization of EC labeling laws into one single code will be a net positive benefit to U.S. exporters; however, in the last year, the U.S. Government has also been considering and will be proposing changes in nutrition labeling, and these changes are more substantive than those described in this directive. Specifically, the U.S. Food and Drug Administration is currently drafting proposals[184] based on the Nutrition Labelling and Education Act passed in November 1990. That would make nutrition labeling compulsory on virtually all foodstuffs sold in the United States. Both the EC and the proposed U.S. labeling laws would emphasize protein, fat, carbohydrates, and sodium instead of vitamins and minerals.

[183] *OJ* No. L 276, (Oct. 10, 1990), p. 40.

[184] Proposal of the Institute of Medicine, "Nutrition Labels Urged for Most Foods," *Washington Post*, Sept. 27, 1990, p. A-3..

U.S. exports to the EC of food products likely to be affected by this directive are substantial. In 1989, U.S. exports to the EC of packaged food products that could be affected by this directive were $273 million. The EC was the third-largest U.S. market for packaged food products, following Japan ($493 million) and Canada ($304 million).

Diversion of trade to the U.S. market

The changes in EC labeling laws resulting from this directive are not likely to result in diversion of trade from the EC to the U.S. market, because most third-country suppliers perceive U.S. labeling laws as being more stringent. In the United States, food manufacturers are already required on most prepared foods to list the ingredients and support any nutrition or health claims. The EC, in effect, is simply approaching a level of regulation already present in the United States.

U.S. investment and operating conditions in the EC

The subject directive on nutrition labeling should have little effect on U.S. investment portfolios in the European Community. Industry sources have commented that the advantages of producing only one label for marketing within all 12 member states far outweigh the costs of complying with the new format. Nevertheless, U.S.-owned subsidiaries in the EC will probably show greater flexibility in complying with the new changes than will U.S.-based firms, because their primary purpose is to sell in the EC market.

U.S. direct investment in food manufacturing is quite large and accounts for over half of U.S. overseas investment in this area. In 1989, U.S. investment in EC food manufacturing totaled $8.7 billion,[185] more than double the 1981 level of $3.7 billion.[186] The leading U.S. investors include Pepsico, Mars, Food Manufacturers, Kellogg, and Heinz.[187] U.S. companies either partially or wholly own 12 of the 20 largest EC food-manufacturing firms.[188]

U.S. Industry Response

U.S. firms and trade associations[189] have indicated that the integration of EC labeling laws is likely to facilitate U.S. exports to the EC. However, they are concerned that the differences in U.S. and EC labeling regulations (e.g., format and serving size) are unnecessarily burdensome and should be addressed through a bilateral forum. A delegation headed by the FDA will be meeting with EC officials in Brussels in early 1991 in order to discuss differences in nutrition labeling regulations. At least one source was optimistic because the changes in the EC and the United States are taking place at approximately the same time; thus, it is hoped that the two Governments will be able to settle any differences and better coordinate regulations in the future.

[185] U.S. Department of Commerce, *Survey of Current Business*, vol. 70, No. 8, (August 1990), p. 64.

[186] U.S. Department of Commerce, *EC 1992: A Commerce Department Analysis of European Community Directives*, vol. 2, SIMIS No. L-131, p. 22.

[187] "Blueprint for a New Europe," *Financial Times*, Mar. 5, 1990.

[188] U.S. Department of Agriculture, "Europe 1992: Implications for Food and Agriculture," *National Food Review*, October-December 1989, p. 18.

[189] Grocery Manufacturers of America, the National Food Processors Association, and the American Frozen Food Institute, conversations with USITC staff.

Meat Minced, Prepared, and Comminuted for Industrial Use

Background

On March 1, 1990, the Economic and Social Committee, at the request of the EC Council, reviewed a proposal for a Council regulation laying down health rules for the production and placing on the market of minced meat, meat preparations, and comminuted meat for industrial use.[190] After reviewing the proposal, the committee adopted an opinion on July 5, 1990. The proposal has not been adopted by the Council.[191]

Anticipated Changes

The Council regulation will establish detailed requirements applicable to the production and placing on the EC market of minced meat, meat preparations, and comminuted meat for industrial use. For example, under the proposal, inspection and supervision by "competent authority" of establishments producing the subject meats are to be mandatory. Such authority must have free access to the establishments. A veterinary inspection to verify compliance would be at the option of the authority. The proposal also sets temperature controls and requires microbiological tests for meat. Another requirement is that fresh meat (meat derived from animals within 6 days of the slaughter) must be used for the production of minced meat and meat preparations and that compliance with this requirement be guaranteed by a method of identification.

In its opinion on the proposal, the committee suggested, among other things, the drafting of detailed directives for the inspection and supervision of establishments. In addition, they prescribed limiting access of the authorities to those parts of the establishment involved in production and storage. The committee would prefer to see veterinary inspections as mandatory. The committee reported that the regulation's proposed internal temperature requirement of +2° C within 1 hour for minced meat wrapped for the final consumer is technically too exacting and suggested that an internal temperature of +4° C within 1 hour is sufficient. It is also the committee's opinion that the time limit set on fresh meat could be extended to a maximum of 9 days for beef (but not for pork) and

[190] *OJ* No. C 84, (Apr. 2, 1990), p. 120.

[191] Melinda Bills, Delegation of the European Communities, EC Library, Washington, DC, telephone conversation with USITC staff, Jan. 29, 1991.

that the time limit should be applied to products intended for direct consumption. The committee indicated that problems will arise regarding a method for identifying freshness of meat, as there are no known methods for the exact determination of such freshness.

Possible Effects

U.S. exports to the EC

This directive could discourage U.S. exports to the EC, since certain requirements appear to be inconsistent with practices of some U.S. processors. Such requirements are expected to be difficult and expensive to meet.

In 1989, U.S. exports of prepared or preserved meat amounted to nearly $100 million but the EC accounted for only about $2 million of that total. Statistics are not available for the value of products containing meat exported to the EC.

Diversion of trade to the U.S. market

All EC member countries produce at least some products of the type subject to this regulation, and many third countries supply various amounts of the subject imports. The directive is not likely to result in diversion to the U.S. market. Third-country producers are not thought to export significant quantities of these kinds of prepared meats to the EC. Countries that could not meet the requirements of this proposal would likely export carcasses or cuts rather than minced, prepared, or comminuted meat.

U.S. investment and operating conditions in the EC

The U.S. industry services the EC primarily through direct exports from the United States. U.S. investment in the subject EC industry are thought to be small. No changes in U.S. investment plans are anticipated as a result of this directive.

U.S. Industry Response

Industry sources contacted have expressed concern that the directive is too restrictive and costly. Among the measures considered too restrictive and costly are the microbiological tests, temperature controls, and facility standards.

Sweeteners for Use in Foodstuffs

Background

Concerns about differences between national laws relating to the use of sweeteners and the need to protect consumers led to this proposal affecting sweetener use (COM (90) 381 final). This directive draws upon Council Directive 89/107/EEC of December 21, 1988, on the approximation of the laws of member states concerning food additives. The annex of the new directive lists 12 approved sweeteners and the amounts in foodstuffs allowed for use within the Community. The directive addresses only the sweetening function of these sweeteners and does not concern the safety of these products beyond setting limits for the amounts used in foods. By April 30, 1992, all European Community member states will be required to allow trade in and the use of products that conform to the directive guidelines. After April 30, 1993, trade in products not conforming to this directive will be prohibited.

Anticipated Changes

This directive is likely have an impact on both EC and non-EC food producers who use sweeteners in the products they market in the EC. The markets for the high-intensity sweeteners addressed in the directive are experiencing considerable growth because of their use in "light foods". The bulk of light foods industries are concentrated in the northern United States, Western Europe, and Japan. The directive specifies that the approved sweeteners may only be used in those foodstuffs listed in the annex and under the conditions specified. Except when specifically provided for, the sweeteners addressed may not be used in the preparation of foods intended for particular nutritional use by infants and young children. The directive also applies to other specific directives that permit the additives listed in the annex to be used for purposes other than sweetening. In order to have a foodstuff appended to the annex, the matter must be referred to the Standing Committee on Foodstuffs by the chairman or a member-state representative.

Possible Effects

The sweeteners addressed in the new directive are what are generally identified in the United States as "high-intensity" or "low calorie" sweeteners. Currently in the United States only three of the high-intensity sweeteners addressed in the directive are approved for use: saccharin, aspartame, and ace-sulfame-K. Sucralose—developed by the British firm Tate & Lyle—cyclamate, and alitame are all awaiting U.S. Food and Drug Administration approval.

U.S. exports to the EC

Due to the concentration of the high-intensity sweeteners industry in both the United States and the EC, data on the amount of direct imports of the sweeteners themselves is not available. A high-level of diet consciousness has led to considerable growth for products using alternatives to sugar in both the EC and U.S. markets. New "light foods" fall into almost every category of U.S. exports of prepared and processed foods and drinks to the EC. U.S. exports most likely to contain items affected by the new directive are soft drinks, confectionery, bakery, and frozen foods. In 1989, U.S. exports of these items totaled $870 million.[192] Data for exports of products containing the

[192] U.S. Department of Commerce, *1990 Industrial Outlook: Prospects for Over 350 Industries*, ch. 34.

sweeteners addressed in this directive are not maintained. The EC has historically accounted for 10 to 15 percent of U.S. exports of all foods items.

U.S. investment and operating conditions in the EC

The concentration of the high-intensity sweeteners industry precludes specific knowledge of the level of U.S. direct investment in the European Community. However, domestic industry sources indicate that the effect of this directive on U.S. investment in the EC will likely be to strengthen their EC-based operations. One reason that U.S. firms might expand their EC-based operations rather than increase exports from U.S.-based plants is that the EC has approved more sweeteners for use than has the U.S. Food and Drug Administration.

Diversion of trade to the U.S. market

Large-scale production of high-intensity sweeteners is currently almost exclusive to the EC, North America, and Japan. The likelihood that this directive will encourage third-country suppliers to divert food exports to the United States is small, not only because few countries produce products affected by this directive, but also because the United States has approved fewer sweeteners for use.

U.S. Industry Response

The U.S. industry is maintaining a cautious attitude towards the proposal and is generally waiting to see what is in the final directive before making any direct responses. One concern voiced by industry representatives is that the ADI (Average Daily Intake) of sweeteners allowed by the EC remain in line with those of the United States. In the current proposal, amounts for foodstuffs in the annex are in line with U.S. guidelines.

Laboratory Analysis of Wine

Background

Commission Regulation No. 2676/90 of September 17, 1990, is a compilation of the methods and procedures acceptable for laboratory testing of wines. In the wine trade, laboratory analysis is often required for government certification procedures and some commercial transactions. For example, the EC requires that imported wines be certified as to content of sugar, acids, and sulfur dioxide.

In previous regulations, the EC Council authorized methods of analysis for establishing the composition of wines and verifying that production took place using authorized enological practices.[193] The new regulation states that scientific progress has made revisions necessary, particularly to conform with methods approved by the International Office of Vine and Wine (OIV) and to authorize automated methods under certain conditions.

Anticipated Changes

Experts indicate that the new regulation is not a substantial change from current EC requirements. Moreover, U.S. producers are exempt from EC rules on laboratory analysis of wines under the terms of the U.S.-EC Wine Accord. In the accord, the EC agreed to accept certification of U.S. wines on the basis of laboratory analyses performed in facilities approved by the U.S. Bureau of Alcohol, Tobacco, and Firearms.

Possible Effects

U.S. exports to the EC

The regulation apparently does not supersede the Wine Accord, so U.S. exporters would not face any new requirements as a result of the regulation. Should the Wine Accord terminate,[194] however, U.S. exporters could be required to obtain laboratory analyses in the EC, following the methods described in the regulation. Such a requirement would add to the complexity of the EC certification process and, according to U.S. industry sources, may effectively bar most U.S. exports from the EC. The United States exported $29 million in wine to the EC during 1989. U.S. exports to the EC during January-October 1990 exceeded $33 million, 15 percent more than the 1989 total.

Diversion of trade to the U.S. Market

No diversion of trade to the U.S. market is expected to result from this regulation.

U.S. investment and operating conditions in the EC

U.S. firms do not have substantial investments or operations in the winemaking industry in EC countries.

U.S. Industry Response

U.S. wine exporters are concerned that the certification process required for U.S. exports to the EC remain as smooth as possible. The major issues of contention for U.S. exporters relate more specifically to EC rules on other matters rather than the subject regulation regarding methods of analysis. The U.S. industry is concerned about future implementation of the Wine Accord and the potential effects of all EC certification requirements in the absence of a satisfactory bilateral accord.

Advertising of Tobacco Products

Background and Anticipated Changes

The EC Commission passed an amended version of the proposed directive on the advertising of tobacco

[193] *Council Regulation No. 822/87 of Mar. 16, 1987, OJ* No. L 84 (Mar. 27, 1987); and *Council Regulation No. 1108/82, OJ* No. L 133 (May 14, 1982).

[194] The Wine Accord has been extended through mid-1991, and negotiations regarding its terms are in progress.

products.[195] The revised EC Commission proposal would regulate advertisements of tobacco products in the press or in bills and posters rather than ban tobacco advertisements in any medium, as considered in an earlier proposal. The proposed directive states that its purpose is to harmonize only those regulations of the member states that permit advertising and that these common rules shall not apply in the event of a complete ban. The proposal requires health warnings on advertisements for tobacco products, restricts the content of advertisements to the presentation of the tobacco product package and additional information on features of the product, and prohibits advertisements that do not directly mention the tobacco product but refer to a trademark, emblem, symbol, or other distinctive feature of the product. In addition, advertising of tobacco products in publications mainly intended for people under 18 years of age is prohibited.

Possible Effects

The extent to which restrictions on tobacco advertising will affect direct U.S. exports to the EC is unclear. Research on the relationship of tobacco advertisements to overall consumption has not provided definitive evidence that limiting advertising reduces the level of consumption. Some experts state that advertisements only encourage smokers to switch among various brands of tobacco products. To the extent this is true, the proposed directive may have little effect on EC consumption of U.S. products, particularly 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 restrictions were implemented.

Cigarettes are the primary type of tobacco product advertised and are likely to be affected most should the directive be implemented. However, direct U.S. exports of cigarettes to the EC are limited because of the 90-percent EC common customs tariff on cigarettes. U.S.-based tobacco manufacturing companies have significant market share in the EC through production by licensees or subsidiaries in EC countries.

U.S. Industry Response

In comments submitted to the USITC, industry officials question whether this proposal meets the stated objective of measures adopted on the basis of article 100A of the Treaty of Rome, to promote establishment and functioning of the internal market. Industry officials state that the proposal would endorse the segregation of national markets through laws of member states because it allows the adoption of various sets of national rules regarding tobacco product advertising in member states.

The industry 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 the content of advertisements run counter to treaty rules on competition and the principle of proportionality and they cannot be justified in view of scientific evidence that advertising does not affect the level of tobacco product consumption.

By prohibiting press and poster advertising for certain nontobacco products and services, the proposal would nullify the commercial value of trademarks, emblems, and symbols—a proposal that is unprecedented and disproportionate to its objective, according to the industry. This proposal would thus place an unjustified penalty on past, current, and future diversification by tobacco manufacturers. Industry sources claim that the proposal would infringe on intellectual property rights, which are the basis of commercial relations.

Foods Treated With Ionizing Radiation

The issue of irradiating foodstuffs and deciding which foods to allow for such treatment has been controversial in the EC. In December 1988 the EC Council adopted a proposal to allow irradiation for preserving a variety of foodstuffs. The proposal was discussed in one previous report.[196] The proposed directive was so controversial that the European Parliament asked that the list of food products eligible for irradiation be reduced. In December 1989 a version of the original proposal, but with a greatly reduced list of eligible food products, failed to win approval. The current compromise proposal is that the list of eligible food products be reduced to include only herbs and spices. The original list had included meat, seafood, fresh and dried fruit, fresh and dried vegetables, and cereals.

Herbs and spices present a considerable risk of disease if untreated and so would be ideally suited for irradiation. However, Germany remains opposed to all uses of food irradiation, despite wide acceptance by the majority of EC member states. The compromise proposal would also allow national authorizations of food irradiation, but some argue that the objective of harmonization would be defeated if national approvals were allowed.

Another related directive concerns the labeling of food products that have been subject to irradiation. Most member states favor required labeling for all food products that contain a minimum threshold of irradiated product. No agreement has been reached regarding the threshold—that is, the percentage of product (by weight) that has been subjected to irradiation—although most member states favor a range between 5 and 25 percent. However, Germany has objected to the marketing of product in which any portion can be irradiated, regardless of labeling.

[195] USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, pp. 4–55 to 4–56.

[196] "Labeling, Advertising, and Presentation of Foodstuffs," USITC, *Effects of EC Integration*, publication 2318, September 1990, pp. 4–53 to 4–54.

Overview

Previous reports discussed the general thrust of 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 Information Network.[197] The second followup report also 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 by U.S. chemical and pharmaceutical firms in this market.[198] In addition, a separate section of the standards chapter of the second followup report was devoted to the analysis of specific chemical directives. The chemicals directives analyzed in the second followup report focused primarily on restrictions on the marketing, use, classification, packaging, and labeling of certain dangerous substances and preparations.[199]

This report focuses on directives proposed during the second 6 months of 1990 and updates the status of directives concerning dangerous substances. A total of six chemicals and related products directives were analyzed in this report. These directives essentially amend or adapt earlier directives. Subject coverage includes amending a directive that prohibits placing on the market and use of plant-protection products containing certain active substances. There was also an adaptation of an earlier directive on laws, regulations, and administrative provisions relating to classification, packaging, and labeling of dangerous preparations to change the basis of hazard assessment for mixtures of gases to volume percent from weight percent. However, only four of these amending directives were considered to be of potential interest to U.S. industry, and they are discussed below as updates to previously published analyses. These directives essentially extend previous directives on dangerous substances and preparations to include specific chemical coverage or modify date, tolerance, or limit specifications.

[197] USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, pp. 6-65 to 6-70.
[198] USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, ch. 22.
[199] Ibid., pp. 4-58 to 4-61. These directives restrict the use of cadmium in certain goods, address the process of updating current EC directives to technical progress, and amend the laws pertaining to classification, packaging, and labeling of dangerous substances toward harmonization of information exchange and human or environmental risk assessment on notified substances.

Update

Limit Values and Quality Objectives of Certain Dangerous Substances

Background

EC Council Directive 86/280[200] established limit values for discharges of carbon tetrachloride, trichloro-bis(chlorophenyl)ethane (DDT), and pentachlorophenol from industrial plants and quality objectives for these substances in the aquatic environment. These substances are 3 of the 129 substances that the EC Commission submitted to the EC Council[201] for subsidiary directives on dangerous substances categorized in the annex to Council Directive 76/464,[202] the framework directive to regulate pollution in the aquatic environment. EC Council Directive 88/347[203] established limit values for discharges of aldrin, dieldrin, endrin, isodrin, hexachlorobenzene, hexachlorobutadiene, and chloroform and quality objectives for these substances in the aquatic environment.

Anticipated Changes

EC Council Directive 90/415[204] establishes limit values for discharges of 1,2-dichloroethane (EDC), trichloroethylene (TCE), perchloroethylene (PERC), and trichlorobenzene (TCB) and quality objectives for these substances in the aquatic environment. This directive results from the adoption of EC Commission Proposal (88)432[205] on July 27, 1990. Member states are required to bring into force the laws, regulations, and administrative provisions necessary to comply with this directive no later than December 31, 1991, and will inform the EC Commission of the text of national law in the field governed by this directive.

Industrial plants' effluents will be sampled and the pollutant, extracted and measured. Limit values in effluents have been adopted for certain organic chemicals, measured in micrograms of the chemical per liter of effluent, for a daily average and a monthly average. For European producers of EDC, the average limit values will be 2,500 and 1,250, respectively, after January 1, 1995. For European producers of ethylene diamine, ethylene polyamine, 1,1,1-trichloroethane, TCE, or PERC, they will be 2,000 and 1,000 after January 1, 1993. For other European processors of EDC, they will be 5,000 and 2,500, respectively, after January 1, 1995. In a European metal-degreasing plant, limit values will be 200 and 100 when the discharge exceeds 30 kilograms of EDC per

[200] EC Council, *OJ*, No. L 181 (July 4, 1986), p. 23.
[201] EC Commission, *OJ* No. C 176 (July 14, 1982), pp. 3-10.
[202] EC Council, *OJ* No. L 129 (May 18, 1976), pp. 28-29.
[203] EC Council, *OJ* No. L 158 (June 25, 1988), pp. 35-36.
[204] EC Council, *OJ* No. L 219 (Aug. 14, 1990), pp. 49-57.
[205] EC Commission, *OJ* No. C 253 (Sept. 29, 1988), pp. 4-10.

year after January 1, 1993. For European producers of ion exchange resins, the limit values will be set by the member states in accordance with Council Directive 76/464.

For European producers of TCB by dehydrochlorination of hexachlorohexane, TCB limit values will be 2,000 and 1,000 after January 1, 1995. For European processors of chlorobenzenes, these limit values will be 1,000 and 500 after January 1, 1993, and then 100 and 50 after January 1, 1995. However, the TCB limit values effective January 1, 1995, will become 500 and 250 for small plants discharging less than 50 kilograms of TCB per year.The limit values for TCE and PERC are not presented here because they are more lenient than the U.S. standards in all cases.

The quality objectives for EDC, TCE, and PERC in the aquatic environment are 10 micrograms of each substance per liter. The quality objective for TCB is 0.4 micrograms per liter.

Possible Effects

U.S. exports to the EC

U.S. exports of EDC to the EC increased from 2,687 metric tons, valued at $914,000, in 1987 to 60,492 metric tons, valued at $14.4 million, in 1989.[206] U.S. exports of EDC to the EC accounted for 11.2 percent of total U.S. exports of EDC in 1989, compared with less than 1 percent of total U.S. exports of EDC in 1987 and less than 0.1 percent of the apparent consumption of EDC in the EC also in 1987. U.S. exporters of EDC to the EC are not likely to be affected significantly by EC Council Directive 90/415.

U.S. exports to the EC of the HTS subheading that includes TCB increased from 1,943 metric tons, valued at $3.9 million, in 1987 to 12,340 metric tons, valued at $15.3 million, in 1989.[207] U.S. exports under this subheading to the EC accounted for 38.4 percent of total U.S. exports of these products in 1989, compared with 41.0 percent of total U.S. exports of these products in 1987. The apparent consumption of TCB in the EC is not available. U.S. exporters of TCB to the EC are likely to benefit from implementation of EC Council Directive 90/415.

U.S. exports of TCE to the EC increased from 15,335 metric tons, valued at $7.8 million, in 1987 to 19,552 metric tons, valued at $9.8 million, in 1989.[208] U.S. exports of TCE to the EC accounted for 73.0 percent of the total of such exports in 1989, compared with 48.3 percent of total U.S. exports of TCE and 36.2 percent of its apparent consumption in the EC in 1987. U.S. exporters of TCE to the EC are not likely to be affected significantly by EC Council Directive 90/415.

[206] Compiled from official statistics of the U.S. Department of Commerce.
[207] Ibid.
[208] Ibid.

U.S. exports of PERC to the EC increased from 20 metric tons, valued at $10,000, in 1987 to 97 metric tons, valued at $109,000, in 1989.[209] These exports accounted for less than 0.5 percent of total U.S. exports of PERC in both 1987 and 1989. The apparent consumption of PERC in the EC is not available. U.S. exporters of PERC to the EC are not likely to be affected significantly by EC Council Directive 90/415.

U.S. exports to the EC of all machinery, apparatus, and parts for filtering or purifying water increased from an estimated $67 million in 1987 to $82 million in 1989, then rose to $72 million in January-October 1990, 4 percent more than U.S. exports of these products during January-October 1989.[210] These exports consisted of a wide range of products that serve all of the major water treatment markets, including drinking water, commercial and institutional, residential, bottled water, and industrial. Export data consisting of machinery and apparatus to treat EDC, TCE, PERC, and TCB effluents from producer and user establishments are not available, but these exports are believed to be a minor part of the total exports to the EC reported above. Exports to the EC of all machinery, apparatus, and parts for filtering and purifying water accounted for 28 percent of such exports to all markets in 1987, compared with 31 percent in 1988 and 27 percent in 1989, but dropped to 22 percent in January-October 1990. Exports to non-EC regions rose in 1990 as these countries increased their efforts to deal with water and the environment. EC Council Directive 90/415 is not expected to generate a significant increase in U.S. exports of these products, since the EC is not an important market for the U.S. water treatment industry, and this EC market may not grow appreciably, as substitute chemicals are used to accomplish metal degreasing.

Diversion of trade to the U.S. market

The directive establishing limit values and quality objectives for EDC, TCE, PERC, and TCB affects the relative competitiveness of EC-based companies, but third-country suppliers are unlikely to be affected significantly. Transitional standards in this directive make it unlikely that EC-based companies will increase their exports to the United States solely on the basis of this directive. The primary suppliers in the EC are BASF AG, Hoechst AG, and ICI, Ltd. The leading non-EC competitors are based in Sweden and the Soviet Union.

U.S. investment and operating conditions in the EC

Implementation of this directive will most likely have little effect on existing U.S. investment in the EC. The U.S.-owned European plants use technology designed to keep the maximum amount of EDC

[209] Ibid.
[210] Ibid.

discharged per day at a level that is less than one-third of the limit value established for implementation on January 1, 1995. U.S. investors are unlikely to change their investment plans or EC-based production strategies as a result of this directive, but many U.S. companies have decided to assist purchasers of their products in complying with environmental regulations. Purchasers of EDC will need assistance to meet limit values in the EC for 1993 that are approximately one-third of the U.S. daily maximum for EDC in effluents at plants existing on November 5, 1990, and processors of chlorobenzenes will need similar assistance in order to meet limit values in the EC for 1995 that are approximately one-eighth of their current U.S. daily maximum.[211]

U.S. Industry Response

The American Chamber of Commerce in Brussels is tracking this directive. U.S. industry has not expressed any concerns with this directive as adopted by the EC Council.

Marketing and Use of Certain Dangerous Substances

Background and Anticipated Changes

EC Commission Proposal (88) 190,[212] the ninth amendment[213] to EC Council Directive 76/769,[214] was adopted by the EC Council on October 9, 1990. Preparations and substances containing 0.1 percent by weight or more of pentachlorophenol shall not be placed on the EC market unless such preparations or substances are intended for use in the treatment of wood in industrial installations, in the impregnation of heavy-duty textiles in industrial installations, or as a synthesizing or processing agent in industry. These exceptions are to be reexamined in the light of developments in knowledge and techniques in not more than 5 years since Denmark, Germany, and the Netherlands have already banned all uses of pentachlorophenol.[215]

On September 12, 1990, the European Parliament asked the EC Commission to amend COM (89) 548,[216] the tenth amendment[217] to EC Council Directive 76/769,[218] to change the timeframe and date that cadmium and its compounds, in excess of 0.01 percent by weight, are banned in polyvinyl chloride, polyurethane, low-density polyethylene, cellulose acetate, cellulose acetate butylate, epoxy resins, expandable polystyrene, polymethylmethacrylate, melamine-formaldehyde resins, urea-formaldehyde resins, unsaturated polyesters, and transparent polystyrene.[219] Previously, the ban would take place in stages over 3 to 5 years. This tenth amendment shortens the staging period to over 2 to 3 years. The EC Council reached a common position on Proposal (89) 548 on December 13, 1990.[220] Specific coverage and changes are delineated in the text that follows.

Producers of paints containing zinc would now have 3 years (previously 5 years) to reduce cadmium content to 0.1 percent by weight. The producers of polyethylene terephthalate, polybutylene terephthalate, acrylonitrile methylmethacrylate, cross-linked polyethylene, high-impact polystyrene, and polypropylene would also have 3 years (previously 5 years) to restrict use of cadmium compounds to 0.01 percent by weight.

Products containing cadmium would be designated if their cadmium content exceeds 0.01 percent by weight. Products that use a cadmium-containing stabilizer for safety reasons would be exempt from compliance with reduction of cadmium levels below 0.01 percent by weight for up to 1 year (previously for up to 3 years) for certain products.[221]

The producers of equipment and machinery for the production of paper and paperboard, textiles and clothing, industrial handling, road and agricultural vehicles, rolling stock, and vessels would now have to comply within 2 years (previously 5 years) from the time limit for incorporation of this proposal in the law of the member states.

Immediately after the time limit for incorporation of this proposal in the law of the member states has expired, the EC Commission would commence an assessment of all available substitutes for cadmium for adequate levels of environmental safety. The EC Commission would bring forward a proposal on any substitutes that do not achieve adequate safety levels. Further, the EC Commission would draw up a report on substitutes for cadmium so the EC Council can reassess the situation within 3 years (previously 7 years) of adoption of this proposal.

On December 13, 1990, the EC Council reached a common position on Proposal (89) 665,[222] the eleventh amendment[223] to EC Council Directive 76/769,[224] relating to restrictions on the

[211] 40 CFR pt. 414.

[212] EC Commission, *OJ* No. C 117 (May 4, 1988), pp. 14–15.

[213] The eighth amendment, Proposed Directive (89) 606, was discussed in the second followup report, USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, pp. 4–58 to 4–60.

[214] EC Council, *OJ* No. L 262 (Sept. 27, 1976), pp. 201–203.

[215] "Dangerous Substances: PCP Directive Approved in Principle and Dichloromethane One Amended," *European Report*, No. 1620 (Oct. 10, 1990), sec. 4, p. 14.

[216] EC Commission, OJ No. C 8 (Jan. 13, 1990), pp. 8–11.

[217] The eighth amendment, Proposed Directive (89)606, was discussed in the second followup report, USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, pp. 4–58 to 4–60.

[218] EC Council, *OJ* No. 262 (Sept. 27, 1976), pp. 201–203.

[219] European Parliament, *OJ* No. C 260 (Oct. 15, 1990), pp. 89–92.

[220] "Dangerous Substances: Common Position Reached," *European Report*, No. 1638 (Dec. 15, 1990), sec. 4, p. 12.

[221] Including packaging materials, office or school supplies, fittings for furniture or coachwork, apparel, floor or wall coverings, treated textile fabrics, imitation leather, phonograph records, tubes and pipes, swing doors, vehicles, steel sheet coatings, and electrical insulation.

[222] EC Commission, *OJ* No. C 24 (Feb. 1, 1990), pp. 20–21.

[223] The eighth amendment, Proposed Directive (89) 606, was discussed in the second followup report, USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, pp. 4–58 to 4–60.

[224] EC Council, *OJ* No. L 262 (Sept. 27, 1976), pp. 201–203.

marketing and use of tetrachlorobitoluene (TCBT), dichlorobitoluene (DCBT), and dibromobitoluene (DBBT).[225]

Possible Effects

U.S. exports of pentachlorophenol and its salts to the EC amounted to 12,000 kilograms, valued at $23,000, in 1989, compared with total U.S. exports of pentachlorophenol and its salts of 154,000 kilograms, valued at $285,000, in 1989. U.S. imports of pentachlorophenol and its salts from Germany amounted to 17 kilograms, valued at $9,000, in 1989, compared with total U.S. imports of this product of 4.4 million kilograms, valued at $1.9 million. The primary source of these imports was Mexico.[226] The impact of this directive on U.S. exports to the EC and U.S. investment in the EC is expected to be negligible.

It is believed that if these restrictions are adopted by the European Parliament and at a subsequent EC Council meeting, their implementation by the member states would be irrelevant to the U.S. chemical industry since no U.S. exporters to the EC or U.S. investors in European production of these products have been identified. But importation or production of capacitors or transformers containing DCBT or DBBT in the EC would be banned under this directive. Marketing of TCBT and capacitors, transformers, or hydraulic fluids containing this product would be phased out over 3 years.[227]

The U.S. industry that would be hurt most by adoption of Proposal (89) 548 is primary smelting and refining of zinc (SIC 33392) because the costs of disposal of byproduct cadmium would be increased by marketing restrictions. The Occupational Safety and Health Administration has already established maximum exposure levels for U.S. workers concerning substances and preparations containing cadmium, but the annex to this proposal limits exposure in the EC to levels that are not comparable to those currently authorized in the United States.

U.S. exports to the EC

U.S. industry serves the EC primarily through direct exports of chemicals covered by the proposal. Total U.S. exports of these products to the EC amounted to 173,000 kilograms, valued at more than $357,000, of 787,000 kilograms, valued at $2.6 million, exported to all markets in 1989.[228] Cadmium is also incorporated into other products, but statistics are not available on the exports of these products affected by adoption of this proposal.

The leading U.S. exporters are ASARCO, Inc.; Big River Zinc Corp.; Harstan Chemicals Div. of Chemtech Industries, Inc.; Mallinckrodt, Inc.; SCM Chemicals, Inc. None of them are considered small or medium-size enterprises.

Diversion of trade to the U.S. market

The leading EC and third-country firms competing with U.S. firms are Pechiney, S.A.; Cominco, Inc.; Rio Tinto Minera, S.A.; and Degussa AG. This proposal directly affects the relative competitiveness of these and other EC- and Canadian-based companies, but ongoing efforts to make a smooth transition to alternative products should reduce any possible diversion to the U.S. market.

U.S. investment and operating conditions in the EC

U.S. direct investment in the EC in this product area in 1988 amounted to approximately $6.9 billion. Texasgulf, Inc., is the leading U.S. investor in the EC. Its current investments in the EC can comply with the change. The development is expected to discourage future U.S. investment in cadmium compounds and preparations in the EC, but any substitute developed for the U.S. market will probably also be acceptable in the EC. Suppliers of substances and preparations containing cadmium are expected to comply with this proposal with controls that are already in place and continue to recommend substitutes as they are identified.

Classification, Packaging, and Labeling of Dangerous Substances

Background

On October 10, 1990, the European Parliament recommended that the EC Commission amend proposal COM (89) 575,[229] the Seventh Amendment[230] to EC Council Directive 67/548,[231] on the classification, packaging, and labeling of dangerous substances.[232] If the amendments by the European Parliament are accepted by the EC Council, then notification of the environmental authorities of marketing of dangerous substances would be changed.

[225] "Dangerous Substances: Common Position Reached," *European Report*, No. 1638 (Dec. 15, 1990), sec. 4, p. 12.

[226] Compiled from official statistics of the U.S. Department of Commerce.

[227] "Dangerous Substances: Agreement in the Offing," *European Report*, No. 1637 (Dec. 11, 1990), sec. 4, p. 14.

[228] U.S. exports to the EC of inorganic pigments containing cadmium amounted to 154,000 kilograms, valued at $254,000, out of 405,000 kilograms, valued at $1.6 million, exported to all markets in 1989.U.S. exports to the EC of unwrought cadmium amounted to almost 19,000 kilograms, valued at $101,000, out of 369,000 kilograms, valued at almost $857,000, exported to all markets in 1989.U.S. exports to the EC of cadmium sulfide amounted to 6 kilograms, valued at $2,231, out of 13,000 kilograms, valued at almost $97,000, exported to all markets in 1989.

[229] EC Commission, OJ No. C 33 (Feb. 13, 1990), pp. 3-26.

[230] The Seventh Amendment, Proposed Directive (89) 575, is discussed in the second followup report, USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, pp. 4-60 to 4-61.

[231] EC Council, *OJ* No. 196 (Aug. 16, 1967), p. 1.

[232] European Parliament, *OJ* No. C 284 (Nov. 12, 1990), p. 95.

Anticipated Changes

EC standard notification procedures would require only the identity, production, and uses of dangerous substances with annual sales exceeding 5 metric tons per manufacturer or total sales exceeding 25 metric tons per manufacturer; however member states may require mutagenesis studies, and basic toxicokinetic information (level 1) on these substances. For dangerous substances with annual sales exceeding 50 metric tons per manufacturer or total sales exceeding 250 metric tons per manufacturer, level 1 studies would be required by every member state. Level 2 toxicity studies would be required for dangerous substances with annual sales exceeding 500 metric tons per manufacturer or total sales exceeding 2,500 metric tons per manufacturer. Dangerous substances with annual sales of less than 1 metric ton per manufacturer could not be marketed earlier than 30 days after receipt of their notification with reduced requirements by the competent authority. The 60-day waiting period following standard notification for dangerous substances with annual sales amounting to at least 1 metric ton was accepted by the European Parliament. Any manufacturer who submitted a notification with reduced requirements would be required to submit a standard notification 15 days before annual sales reached 1 metric ton per manufacturer or total sales reached 5 metric tons per manufacturer. Flavors would be regulated under Directive 88/388.

Products for process-oriented research and development would need to be qualified for an exemption from notification of 1 year, but the European Parliament recommended to the EC Council that the EC Commission establish criteria for granting this exemption and did not accept the EC Commission's proposal to allow a further year of exemption. The European Parliament also recommended that the EC establish a fund paid for by later notifiers of previously notified dangerous substances in order to develop new test methods involving fewer animals and less suffering for the animals concerned. The amount to be contributed by later notifiers would be subject to negotiations with the first notifier for 12 months, after which the EC Commission may issue a binding ruling.

Adoption of the recommendation of the European Parliament would direct competent authorities to ensure that their tasks and responsibilities are carried out as efficiently as possible and that confidentiality would not apply to consumer protection, public health, or occupational safety and health, including the content, results, and conditions of toxicological and ecotoxicological tests.

Containers filled with no more than 5 liters would be required to have child-resistant fastenings. Member states may prescribe these fastenings on containers intended for industrial as well as domestic use. EC packaging and labeling provisions would be required on EC exports of dangerous substances unless labeling rules equivalent to articles 17 and 18 of Directive 67/548, as amended, are in force in the importing country. The use of official languages on labels would be mandatory, except on laboratory chemicals in containers of no more than 125 milliliters. EC companies exporting to non-EC countries would be required to notify the recipient country unless that country participates in prior informed consent procedures adopted by the United Nations Environmental Program. In addition, the EC would adopt the definition for polymers already adopted by the Organization for Economic Cooperation and Development (OECD).

Recommending or praising a dangerous substance without mentioning its hazard categories would be prohibited. Referring to a substance in a manner that is misleading about its effects on man or the environment would also be prohibited. The EC regulation on material safety data sheets (MSDS) would be proposed by the EC Commission no later than 12 months after Proposal (89) 575 is adopted. Member states would be allowed to require MSDSs on substances the EC has not regulated as dangerous.

Under the Seventh Amendment, information that was compiled for the U.S. Environmental Protection Agency would be resubmitted to a competent authority in the EC. The most significant effects would be on manufacturers of dangerous substances with U.S. production less than 1,000 pounds and EC sales quantity greater than 100 kilograms because the EPA would grant an exemption and the competent authority in the member state of importation could require substantial information for conforming to the reduced notification requirements. The substances that had not been placed on the EC market prior to September 18, 1981, but were included in the Toxic Substances Control Act Chemical Substance Inventory would be subject to significant testing prior to being placed on the EC market in quantities of at least 100 kilogram per year per manufacturer.

Possible effects

U.S. exports to the EC

U.S. exports to the EC of reaction initiators, reaction accelerators, catalytic preparations, and composite diagnostic or laboratory reagents amounted to 15,273 metric tons, valued at almost $270 million, in 1989. Total U.S. exports of these products amounted to 82,023 metric tons, valued at $741 million, in 1989. Approximately 5,000 metric tons of these products, valued at $81.8 million in 1989, were substances which have been placed on the EC market since 1981. The leading U.S. exporters are Sherex Chemical Co., Inc.; Union Carbide Corp.; and the Davison Chemical Division of W.R. Grace & Co. None of these companies are considered small or medium-size enterprises.

Diversion of trade to the U.S. Market

The leading EC firms competing with U.S. firms are Akzo Chemicals NV; Albright & Wilson, Ltd.; and Chemische Werke Hüls. This directive is not likely to

affect relative competitiveness or result in diversion to the U.S. market, because the EPA set similar requirements under the Toxic Substances Control Act but established a higher action level before notification review than is proposed for the EC.

U.S. Investment and operating conditions in the EC

The U.S. Chemicals and Allied Products Industry (SIC Major Group 28) supplied the EC as shown in table 4-1.

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 has to be considered in investment plans, although many products are exempted if placed on the EC market prior to 1981.

Pharmaceuticals

Overview

The general direction of EC work in the pharmaceuticals area, some background on the process being employed to accomplish it, and an analysis of the effect of certain conditions in the pharmaceutical industry were discussed in the last two USITC reports on this subject.[233] The reports covered in detail the transparency directive and its effect on continuing national pricing/reimbursement systems, the proposed directive on the creation of the single market authorization procedure, a regulation concerning patent term restoration, and the recent implementation of new guidelines on the granting of duty suspensions on certain EC imports. The last report also discussed the institutional framework for regulating pharmaceuticals, noting the EC's intention to establish a new agency to approve the introduction of new pharmaceuticals.

[233] USITC, *The Effects of Greater Economic Integration Within the European Community on the United States: First Follow-up Report*, March 1990, pp. 6-70 to 6-84 and USITC, *The Effects of Greater Economic Integration Within the European Community on the United States: Second Followup Report*, September 1990, ch. 22.

Update

As of the last report, a number of fundamentals were hammered out in regard to issues identified as being of concern to the industry.[234] For example, a proposal to create a European Medicines Agency was formally submitted and a regulation was issued in regard to patent term restoration. In three of the four issues cited above, however, no directives have yet been formally proposed. For the most part, the approach to these issues has remained the same. Some aspects have, however, been amended.

Single Market Authorization Procedure

The proposal now reportedly consists of one regulation and three directives.[235] This structure allows for the immediate adoption of new Community procedures for the authorization and supervision of medicinal products for human and veterinary use and the creation of the European Agency for the Evaluation of Medicinal Products. The structure also provides for the replacement of the current multi-state approval system by a decentralized system for both human and veterinary products and for the repeal of a past directive that called for the approximation of national measures relating to the placing on the market of high technology medicinal products, particularly those derived from biotechnology (known as the "concertation" procedure).

For the most part, the contents of the current drafts are said to be similar to those discussed in the last report. There would be three avenues by which a company could get a product approved. The first of these is a centralized procedure that would use a reinforced version of the current Committee for Proprietary Medicinal Products and would be

[234] These issues were (1) the creation of a single-market authorization procedure; (2) the continued existence of national pricing/reimbursement systems; (3) patent term restoration; and (4) the recent EC-wide implementation of duty-suspension guidelines that are perceived by industry as being more restrictive.

[235] A regulation, once enforced, immediately has force of law within all member states.

Table 4-1

U.S. chemicals and allied products: U.S. exports to the EC, 1984-88

(Billion dollars)

Item	*1984*	*1985*	*1986*	*1987*	*1988*
Direct investment	6.903	8.071	10.022	12.974	14.409
Capital outflows	-0.107	1.053	1.688	3.230	1.657
Equity outflows	[1]0.143	0.092	-0.467	0.033	0.211
Reinvested earnings	-0.130	0.972	2.167	2.552	1.297
Debt outflows	[1]0.123	[1]-.077	-0.012	0.645	0.150
Income	0.375	1.665	2.739	3.509	2.630
Export value	[2]5.467	[2]5.603	6.274	7.155	8.366

[1] Excluding Spain.
[2] Excluding Spain and Portugal.

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

mandatory for biotechnology products and optional for high-technology products or new-chemical entities. The second route would be a decentralized procedure involving binding multistate approval. The third would be a national route that would be used solely for products intended for consumption in an individual member-state market.

According to the Pharmaceutical Manufacturers Association (PMA), the industry agrees with the EC Commission that "the fundamental goal should be to establish a system which ensures the rapid and efficient review and approval of new medicines in the Community." The industry is concerned, however, about the oversight of the European Agency for the Evaluation of Medicines (the Agency) and about transition arrangements in implementing the new single-market authorization procedure.

The EC is reportedly proceeding carefully in establishing an institutional body to regulate the approval of new pharmaceutical products in an effort to avoid a proliferation of spinoff agencies.[236] In late October 1990, the EC Commission issued a proposal to create an Agency that would be responsible for all marketing approvals of new biotechnology and certain high-technology products by the year 2000.[237] The new Agency would have three principal duties: the evaluation of new medicines, arbitration of international disputes within the EC concerning the authorization of existing pharmaceuticals, and coordination of national inspection systems. The Agency would also manage an alert system by which information may be quickly distributed and dangerous products may be withdrawn from the EC market.[238] Beginning in 1996, a manufacturer would no longer have to apply for 12 different approvals to market pharmaceuticals within the EC, as is now required. The Agency is viewed by some as a less bureaucratic version of the U.S. Food and Drug Administration.[239]

PMA recommends that oversight of the Agency be dually controlled by both the Commission and by a "strengthened" Management Board. They recommend the following changes in order to "ensure the efficiency of the proposed new Agency":

a) the Executive Director of the Agency should report to the Management Board;

b) the Board should have the authority to dismiss the Director for cause; and

c) the Board (consisting of national representatives) should be accountable to the Council of Ministers and respond to questioning by the European Parliament.

[236] "Commission Decision Held Up by New Agency Issue," *European Report*, No. 1600 (July 4, 1990), sec. 4, pp. 2, 3.

[237] BNA, "Proposed European Agency Would Approve All New Drugs," *1992: The External Impact of European Unification*, Nov. 30, 1990, p. 4.

[238] Ibid.

[239] "Commission Finalises Proposal for European Agency," *European Report*, No. 1623 (Oct. 20, 1990), sec. 4, p. 10.

In regard to the establishment of the new registration system, PMA has stated that the industry would like to see the implementation of a transition period during which the new registration system could be phased in. This transition period, which would have to be of sufficient duration to allow the new registration system to be tested and proven, would be expected to reduce the potential overload of the new system.

As such, PMA suggests that the current transition provisions be amended by:

a) eliminating the right of a member state to suspend review of an application during the transition period;

b) retaining the right of companies to seek national marketing authorizations for the foreseeable future, until the new procedures have been fully tested and proven in practice; and

c) restricting the right under the decentralized procedure of a member state to object to the approval granted by the first member state to issues directly related to safety, efficacy, or quality.

Other issues important to the industry in regard to the registration procedure include decision making procedures, consultation with applicants, and pharmacovigilance. In regard to the evaluation process, PMA welcomes the fact that a uniform period of 210 days has been proposed for the evaluation of submissions under either the centralized procedure or for the first member state approval under the decentralized procedure. PMA proposes, however, that "companies should have the right to appeal before the Management Board at any stage of the process if time limits are being exceeded unjustifiably." PMA states that "as it is unrealistic to expect applicants to resort to legal action against member states or Community institutions, it is essential that the Commission should develop further proposals for effective, speedy, and acceptable enforcement mechanisms."[240]

Advertising

The industry has also been watching with concern developments in a directive in regard to the advertising of pharmaceutical products in the EC. The directive was formally proposed on June 6, 1990. In the United States, advertising of prescription products is allowed, but regulated by the FDA so that consumer interests are protected. The EC Commission is currently looking at providing separate rules for advertising to the general public versus health professionals. According to information provided recently by the EC Commission, advertisements to the public would be limited to "self-medication" products, subject to certain conditions. Advertising to health professionals would be subject to a more complex set of rules that

[240] According to comments by PMA, entitled "The Future System for the Free Movement of Medicinal Products in the European Community."

would concern, among other things, medical sales representatives, financial inducements, and the distribution of free samples. The proposed directive also sets guidelines for national monitoring, including the use of self-regulatory bodies.

In general, PMA has raised the following points in regard to this directive:[241]

a) the necessity of harmonization of medicinal advertising practices is debateable, given that advertising is already adequately regulated under national law, under the framework of the Misleading Advertising Directive, and under national and international industry codes of marketing/advertising practice;

b) if the directive is issued, its goal should be to provide the most useful information to doctors and patients. Moreover, the directive should be limited to a framework of principles adaptable to national medical practice;

c) although member state prohibitions of prescription drug advertising to the public exist, "allowance should be made for 'health messages,' which, without mentioning a product, raise consumer awareness of a health problem, inform consumers that medicines are available, and advise them to consult physicians where necessary;" and

d) in that pharmaceutical companies are already highly regulated in their product claims and information and self-regulatory mechanisms have proven to be effective in quickly resolving breaches of industry codes of good practice, the directive should "limit member state responsibility for implementation to instances where self-regulatory proceedings have been exhausted."

Medical Equipment

Overview

The previous reports discussed proposed directives on active (electromedical) implantable medical devices, active nonimplantable devices, nonpowered sterile devices (including nonactive implants), and in vitro diagnostics (tests made outside the body).[242] They also discussed the basic thrust of EC efforts to harmonize regulations and conformity-assessment procedures for medical equipment. This report updates the status of those directives.

Update

The directive on active implantable medical devices was approved by the EC Parliament on May 16, 1990, and adopted by the EC Council on June 20, 1990. EC regulatory officials estimate that implementation of the directive by EC member states through the adoption of national legislation and regulations will take from 18 months to 2 years.[243]

After consulting with industry and the member states, the EC Commission went ahead with its decision to combine the proposed directives on active nonimplantable and nonactive sterile devices into a single directive to be called the "directive on medical devices." The EC Commission was expected to finalize the directive by the end of December 1990, take it through EC Commission translation procedures in January 1991, and send the proposed directive forward to the Council for a first reading in March 1991. The directive on medical devices is expected to be definitive with respect to the majority of medical devices. In response to industry concerns, the EC Commission is expected to develop further guidelines that will clarify how various medical devices are to be classified under the new directive.[244]

The EC Commission reportedly plans to begin work on the in vitro device directive in early 1991. Major issues to be addressed in that directive are classification schemes for in vitro devices, appropriate conformity-assessment procedures, and the scope of application of the directive. In addition to in vitro devices, the directive is now also expected to cover analytical instruments used in medical laboratories.[245]

U.S. medical industry officials monitoring the EC integration process indicated that the most important issues currently facing the U.S. industry are in the area of testing and certification. It is still unclear whether European notified bodies will be able to subcontract with U.S. quality assurance (QA) inspection facilities for initial assessments.[246]

In December 1990, the EC Commission was reported to be completing a draft proposal on subcontracting by EC notified bodies that would go to the EC Council in mid-January. U.S. industry officials were concerned that the proposal might limit initial QA inspections to notified bodies, with subcontractors only being able to perform followup audits.[247] The U.S. industry representatives were concerned that lack of subcontracting for initial QA inspections could create a large backlog of firms seeking QA inspections from a limited number of EC notified bodies. Such a backlog, they feared, could lead to de facto discrimination

[241] According to communications between Commission staff and PMA.

[242] USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, pp. 6-7 and 6-17; USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, pp. 6-71, 6-72, and 6-81 through 6-84; and USITC, *Effects of EC Integration*; USITC publication 2318, September 1990, pp. 4-62 to pp. 4-64.

[243] Officials of the Health Industry Manufacturers Association (HIMA), telephone conversation with USITC staff, Dec. 27, 1990.

[244] Officials of HIMA, Dec. 27, 1990.

[245] Officials of HIMA, Dec. 27, 1990.

[246] Officials of HIMA, Dec. 27, 1990; and U.S. industry officials at *First Global Medical Device Conference*, interviews by USITC staff, Washington, DC, Oct. 21-23, 1990.

[247] American National Standards Institute, "EC-1992: Getting Quality Assurance Inspections Done in Reasonable and Timely Manner," memorandum, Dec. 27, 1990.

between large and small firms and between EC firms and firms based outside the EC, as well as create unnecessary confusion in the market. It could also require firms to go through third-party testing to demonstrate conformance with relevant directives, thus eliminating any element of choice in the conformity-assessment procedures.

U.S. representative bodies and associations encouraged the EC Commission to establish a flexible policy for subcontracting, in which the notified bodies would be allowed to subcontract some of their QA work by ensuring that their subcontractors met the EN 45000 and other relevant EC standards.[248] The U.S. representatives also urged the EC to utilize existing agreements like EQNET and bilateral agreements such as a British Standards Institute-Underwriters' Laboratories memorandum of understanding on certification and testing.

Officials of the U.S. FDA, the Federal agency responsible for approving the use and sale of medical devices in the United States, planned to meet with EC officials involved in medical device regulatory and standards issues in early 1991.[249] The FDA previously agreed to meet regularly with their EC counterparts to exchange information and to work in parallel directions with respect to new rules concerning the regulation and approval of medical devices. Many industry officials hope that such discussions may lead to future memorandums of understanding (MOUs) between the FDA and the EC that would allow for mutual recognition of testing and certification activities.

Automobiles

Overview

As part of the EC 1992 program, the EC will approximate member states' laws on auto standards and implement a single type-approval procedure, known as whole-type approval. Numerous technical standards related to automobiles, auto parts, and emissions have been passed in the process toward harmonizing EC laws. In general, U.S. industry representatives from the auto, auto parts, and engine industries have indicated their support for these efforts. Although there is some concern within the U.S. industry about emission test procedures and the certification process, there is widespread support for harmonization and a belief that it will facilitate marketing efforts in the EC.[250] Recently, there have been a number of developments related to EC directives as part of the 1992 harmonization of technical standards in the industry. These developments are described below.

[248] HIMA, "EC Policy on the Subcontracting Issue," memorandum, Dec. 19, 1990.

[249] Officials of the U.S. FDA, telephone conversation with USITC staff, Jan. 3, 1991.

[250] See USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, ch. 20, pp. 4–7, 4–10 to 4–11.

Update

A minor amendment to Directive (89) 573[251] affecting the weights and dimensions of trucks was approved. The directive extends by 3 years, to 1998, the period in which certain types of heavy trucks that exceed the maximum length of 18 meters will be permitted to operate on EC member-state roads. In Directive (90) 486, the EC proposed to amend Directive 85/3/EEC,[252] thereby creating minor technical modifications related to acceptable truck weights. U.S. industry representatives note that the effect of these changes will be insignificant.

USITC staff also reviewed the proposal for a council directive amending Directive 88/77/EEC relating to the measures to be taken by member states against the emission of gaseous pollutants from diesel engines for use in vehicles. This proposal seeks to reduce the limit values for emissions of carbon monoxide, hydrocarbons, and nitrogen oxides by 60 percent for large diesel trucks weighing over 3.5 tons, in accordance with a two-stage process beginning in mid-1992. The proposal would also limit particulate emissions, which EC officials view as a definite threat to public health.

According to U.S. industry representatives, U.S. manufacturers do not expect to be affected significantly by this proposal. U.S. manufacturers believe that their products can meet these standards, claiming that the EC standards were modeled after U.S. standards. The United States is recognized as the worldwide leader in the diesel engine technology necessary to comply with more stringent emission levels.

Although U.S. manufacturers do not foresee any problems in meeting the proposed emission limit values, U.S. manufacturers continue to voice their concerns over EC emissions testing and certification requirements. As in Directive 88/77/EEC, this proposal would also require manufacturers to use the steady-state testing method instead of the transient testing method required by the U.S. EPA. As a result, U.S. manufacturers claim that some facility modifications will be necessary. However, they claim that these modifications should not result in significant cost increases. In addition, U.S. manufacturers are 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.

This directive may slightly increase the level of U.S. exports to the EC. Because the United States is the world leader in diesel engine technology, EC manufacturers are very interested in purchasing U.S.-produced diesel engines. This proposal is not expected to alter U.S. imports appreciably. U.S. imports from third countries are not expected to increase, since U.S. standards for certain gaseous pollutants, such as nitrogen oxides and particulate, are

[251] Covered in USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, app. C, p. C-20.

[252] EC Council, *OJ* No. L 2 (Jan. 3, 1985), p. 14.

more stringent than EC emission standards and since U.S. emission standards require all diesel engines entering the United States to undergo transient testing. The proposal may encourage future investment as European diesel engine producers seek association with leading U.S. technologists and may benefit U.S. business operating conditions by allowing U.S. companies further access to the EC market.

USITC staff have also examined a Council directive amending a previous directive on the "harmonization of the laws of the Member States relating to simple pressure vessels," 90/488/EEC. Simple pressure vessels include mainly compressor cylinders and breaking systems for heavy transport vehicles. It should be noted that the deadline for member-state implementation has been extended because the CEN standards will not be ready in time.

Despite the lack of recent tangible written material on the subject, EC laws regarding car emissions should be examined continuously. Based on followup phone calls with EC personnel and informal communications with the U.S. Department of Commerce,[253] the following other developments can be construed.

Last December, the EC Council approved a directive which will discontinue, by 1994, the current practice of allowing automotive manufacturers the possibility of submitting U.S. test cycle results to certify that their cars meet EC requirements. Advocates of the directive claim that European driving patterns (speed, commuting distances) call for a uniquely European test cycle.

On December 21, 1990, the EC Council approved a directive amending Directive 70/220/EEC on the approximation of the laws of the member states relating to "measures to be taken against air pollution by emissions from motor vehicles." The directive concerns medium- and large-cylinder motor vehicles (over 1.4 liters). The amendments increase the speed for trial cycles to 120 km per hour for all vehicles as opposed to 90 km per hour for some cars, as proposed by the EC Commission. The Parliament also proposed changes in the limits for gaseous pollutants and supported the maintenance of U.S. testing to measure pollution, a single durability test based on mileage to 80,000 km (instead of 30,000), and the application of stricter norms for light commercial vehicles. It is estimated by those opposed to the new proposals that the testing would be from 15 to 45 percent stricter than U.S. tests, depending on the pollutant. In addition, new recitals were added requiring that emissions due to evaporation of fuel be better controlled, that quality standards be applied to fuels, that vehicles that are too run down be taken off the road, that the installation of a catalytic converter be encouraged for older models, that propulsion techniques be developed, and that the use of alternative fuels be promoted.

While U.S. car manufacturers acknowledge that the EC and the U.S. driving habits and test cycles are different sets of tests are almost identical. Furthermore, any products which passes the U.S. test will also pass the EC's given that the former corresponds to stricter limits. Over the past few months, General Motors' Brussels office has been lobbying the Commission on this issue. The Motor Vehicle Manufacturers Association (MVMA) is representing the interests of the U.S. car industry at large and has briefed the U.S. Government on this issue and on their position, MVMA is also closely working with its European counterpart (Comite de Liaison de la Construction Automobile) to find an alternative solution acceptable to both sides.

On November 27, all U.S. embassies in both EC and EFTA countries were instructed to make a demarche to environment and industry officials on this issue, encouraging member states to vote against this EC directive. This was done because the U.S. Government feels this directive will add significant certification burden on non-EC car manufacturers. The United States will get another chance to consult with the EC on this issue, when the EC establishes stricter (read matching ours) emission standards before the end of 1992. Interestingly, the European Parliament supports the alternative favored by the United States. Parliament members want to ensure that European environmental regulations are at least as strict as in the United States. For them, this makes sense both from an environment point-of-view and a competitive one. The EC Commission, on the other hand, appears to want to protect EC auto industrial interests by increasing costs for non-EC manufacturers.[254]

The Danish law setting antipollution standards for cars which are considerably stricter than those in the rest of the Community as examined by the EC Commission on October 24, 1990. Based on a provision of the Single Act (art. 100A, par. 4) that leaves it up to the member states to apply stricter national provisions when they are justified by environmental consideration, Denmark retained the right to set standards that were more stringent than EC-wide emission standards. The EC Commission is concerned that excessive use of article 100A, paragraph 4 will lead to the creation of "islands" within the single market. Additionally, the EC Commission's view is that such recourse should be justified by previous national legislation that was historically more strict or more suitable to national conditions than EEC legislation. Such justification was not demonstrable in the Danish case. A lawsuit by the EC Commission is being considered if other measures to persuade Denmark from activating its new standards should fail.

As of December 21, 1991, the Environment Ministers were not in full agreement on the draft directive to revise existing legislation on emission standards for medium-sized (1.4 to 2.0 liters) and large

[253] Informal transmittal from U.S. Department of Commerce, Feb. 21, 1991.

[254] Ibid.

(over 2.0 liters) cars to bring them in line with the tougher standards agreed for small cars in June 1989. Disagreements lingered over the value limits for emissions and how to keep them in line with anticipated technological developments. For example, Germany went on record demanding even stricter norms than proposed and called for additional value limits. Final passage of this directive is expected before the end of 1992[255]

Other Machinery

Overview

The previous reports discussed EC efforts to harmonize regulations and conformity-assessment procedures for machinery and focused primarily on various aspects of the Machinery Safety Directive. This report updates the status of machinery-related directives and concentrates on the critical points of the Machinery Safety Directive. Voluntary standards developed by CEN/CENELEC and the EC's policy toward testing and certification will be major factors in assessing the impact of these measures on U.S. suppliers. Therefore, the status of these factors has been monitored during the second half of 1990 and will be reported here. EC acceptance of U.S. test data remains a key industry objective.

Update

During the period under review, the EC Commission introduced a series of proposed directives and updated others in the machinery sector. Among the more noteworthy areas covered are machine safety (including mobile), aircraft noise, electrical equipment for use in explosive atmospheres, and nonautomatic weighing instruments. Simple pressure vessels will be covered in the section on automobiles.

Machinery Safety

The Machinery Safety Directive (89/392/EEC), adopted on June 14, 1989, sets forth essential health and safety requirements that must be met in the production and marketing of machinery within the European Community. Perhaps the most important development concerning the Machinery Safety Directive is the Mobile/Lifting Machinery Amendment (9071/90). A common position was reached on this amendment on December 13, 1990, and it faces a second reading before the European Parliament. The Machinery Safety Directive is expected to be finally adopted by the summer of 1991.

Many of the problems with language in the Mobile/Lifting Machinery Amendment reported on earlier have been ironed out to the satisfaction of U.S. manufacturers, including problems with the roll over protection structures (ROPS) provision for excavators. There is now a consensus on the types of mobile machines that should be equipped with ROPS. An amendment to the proposal for a Council directive amending the Machinery Safety Directive was submitted by the EC Commission on September 28, 1990,[256] changing the wording of the proposed amendment from "hydraulic excavators on tracks or wheels" to "hydraulic excavators on tracks or wheels with boom pivoting both horizontally and vertically." Since then, hydraulic excavators have been struck from the list entirely. Officials from Caterpillar consider this a victory.

A problem still exists, however, in clause 4 of the amendment dealing with lifting, according to industry sources. This clause was written for cranes, but earthmoving machinery engages in incidental lifting as well. The regulations in clause 4, according to certain U.S. earthmoving machinery manufacturers, are too stringent for the lifting that earthmoving equipment performs. The ROPS and (FOPS) directives (86/295/EEC and 86/296/EEC, respectively) became effective in June 1990 and will be canceled in 1995, when they will be superseded by the Machinery Safety Directive. The directive for lift trucks (86/663/EEC) will also be canceled in 1995 for the same reason. These directives were developed over 10 to 12 years and closely follow ISO standards. These directives have been easily adapted to by U.S. firms, and the increased use of ROPS and FOPS on machines has reportedly increased the revenues of these firms. Industry sources have expressed some concern that, as they stand now, ROPS and FOPS must go under third-party certification; as they are rolled into the Machinery Safety Directive, they will only require manufacturer's declaration of conformity. Some feel the level of safety will decrease with this development.

Progress has been made on the subject of product testing, as subsidiaries of EC testing laboratories have been set up in the United States and Japan. Although this is a positive development, saving U.S. manufacturers time and money, industry sources say it is preferable that U.S. testing facilities be EC accredited. Industry sources believe that when all the standards are finalized, the United States will be in a good position to demand that its testing labs be EC accredited. The estimated timeframe for this to be achieved is 4 to 5 years.

Assessment of production facilities is still a problem for U.S. manufacturers. CEN series of EN29000 standards, based on ISO 9000, will likely be used in establishing the requirements for manufacturers' quality assurance programs. Under this standard, the EC will not certify foreign facilities to perform qualitative assessment of production sites. Some U.S. industry sources fear a serious backlog for this type of assessment. Questions that need to be answered are: Will U.S. firms requiring certification have to go to the back of the line? What does this all mean in terms of time and cost? Some U.S. sources believe that quality assessments will eventually be

[255] Ibid.

[256] Reprinted in *OJ* No. C 268, p. 10.

subcontracted to U.S. facilities; Underwriters Laboratories (UL) reportedly is having certain of its personnel trained for this procedure. The British Standards Institution is currently considering U.S. manufacturers' quality assurance programs for conformance, some through UL and others directly.

Concerns have abated that custom-made products would require third-party certification, even though these products may have only undergone minor changes from previously approved machines. Industry officials report that a combination of quality assessment under EN29000 and self-certification for most products is likely.

According to an official at the NMTBA, concern over product liability has waned. Should the EC achieve its goal of uniform product liability laws, the situation in the EC will reportedly be more amenable to U.S. manufacturers than that which they face domestically. EC action in the area of product liability seems to be progressing well, and sources do not anticipate that U.S. manufacturers will be faced with anything different or more stringent than what they face here in the United States.

The NMTBA has been lobbying for ISO to begin work on certain machinery that would be covered by the Machinery Safety Directive. In connection with these efforts, a group to be known as TC 169 is being formed in ISO to work on machinery. TC 169 will cover a broad range of products as yet undefined. A U.S. technical advisory committee must be formed for TC 169; without such a committee, the United States will be endowed with observer status only.

New work on electrical requirements has been proposed to be initiated in IEC TC 44, rather than in CENELEC. This is an important development for the United States, as it will provide better opportunities for U.S. industry to comment on, and influence, the development of these standards. In addition, there will reportedly be a machinery sector committee to the EOTC activated sometime in 1991, in which the U.S. industry hopes to have advisory status.

Currently, 14 documents on vertical and horizontal safety standards for various machinery have been drafted by CEN TC 151 WG1 and WG5. Although a U.S. industry official has indicated some language problems in these draft documents, the official remarked that in certain instances, lobbying efforts have resulted in satisfactory results. U.S. industry sources report that they actively support efforts to get standards in place in a timely manner, as U.S. manufacturers strongly desire to be able to perform manufacturer's declaration of conformity for products as soon as the directive becomes effective. It is therefore critical that the standards be completed and recognized by the EC Commission through citation in the *Official Journal* so that manufacturer's declaration of conformity, rather than third-party certification to establish conformity, can be applied.

This proposal (Harmonization of Technical Requirements and Procedures Applicable to Civil Aircraft, COM (90) 442 final, submitted October 12, 1990) directs EC member states to join the Joint Airworthiness Authorities organization (JAA) by January 1, 1992, and adopt JAA's codes (Joint Airworthiness Requirements, or JARs) entirely by January 1, 1993.

The proposal also establishes the concept of EC-wide certification of civil aviation products and services. Hereafter, once a product, service, or individual is certified in one member country, the certification will be sufficient for all member countries who abide by the JAA codes. The proposal sets forth a procedure whereby an individual member state can petition the EC Commission for a review of a particular certification, should that member state feel the product/service/individual is "likely to jeopardize aviation safety."

The directive mandates that member states coordinate research efforts aimed at the improvement of safety for, and operation of, civil aircraft. The EC Commission is empowered to take any useful initiative to promote such coordination of policies and programs of research carried out at the national level. The concept of national variants is addressed in the relevant JAR code, not in this directive.

Recent work on aircraft noise includes EEC directive 80/51 on aircraft noise, amended by 83/206, prohibiting stage 2 aircraft from landing at secondary airports in Europe after December 31, 1989. Belgium did not enforce these directives, allowing primarily charter and cargo airlines to continue operation with stage 2 aircraft beyond December 31, 1989. However, the United States is not affected by this action, as the overwhelming majority of all business conducted with Belgium is done with the Brussels airport. Therefore, the EC Commission's proposed actions to curb Belgium's violation of existing EC directives is not expected to have an effect on the U.S. airline industry.

Paint Spray Guns

This Council directive amends Directive 79/196/EEC, a safety regulation electrical equipment for use in potentially explosive atmospheres. This earlier directive identified products in general categories such as: oil immersion, pressurized apparatus, powder filling, and flameproof enclosure. Such standards were established in March 1977. Harmonized standards for other types of protection and for specific equipment were available, such as for certain electrostatic paint spray guns. An earlier directive, 76/117/EEC, dated December 18, 1975, set out the inspection procedures that this equipment must satisfy in order to be imported, put on the market, and used freely after undergoing certain tests and being provided with the mark and marking prescribed.

These electrostatic paint spray guns are manufactured by such U.S. companies as Nordson, Speed Flo, Wagner, Graco, Binks, and Devilbiss. Several of these firms, including Wagner, have

manufacturing facilities in the European Community. Some U.S. companies export to Europe, but the volume is estimated to amount to less than $1 million annually. The most successful firms selling in the EC are mostly European firms, including Kremlin, Sames, and Interrad (France), Berh (Germany), and Gema (Switzerland).

U.S. firms that export such spray guns to the EC should not be harmed by the inclusion of their products under this safety directive because U.S. standards for spray guns (established by Factory Mutual, a private testing firm located in Boston) are considered to be the most stringent in the world.

Nonautomatic Weighing Instruments

This amendment to the Council directive on the approximation of the laws of the member states relating to nonautomatic weighing instruments (COM (89) 553 final) arose from the concern of the European Parliament that the directive grants excessive freedom to the member states in the area of periodic checks of scale accuracy. Under this amendment, commercial nonautomatic scales must be inspected every 2 years in order to ensure that they satisfy the requirements of this directive. Such scales should be reverified if they are no longer in conformity; after repair, modification, or reassembly; and after relocation to a geographic area with a gravity level that is sufficiently different. As specified by this directive, the required tests must be performed and the maximum permissible error limits followed.

U.S. industry does not believe that this amendment would be a burden to them or put them at a competitive disadvantage. Industry representatives reported that they have been very familiar with the technical requirements of the EC since the inception of these requirements in 1976. The Scale Manufacturers Association favors the more thorough product sample inspection procedures in addition to the requirement that manufacturing plants install various quality assurance procedures. Endorsement of both inspection procedures, as proposed by this amendment, should assist the U.S. industry in obtaining favorable test results.

Telecommunications

Overview

The harmonization of telecommunication standards in the EC, is considered an essential condition for the development of a common market. In previous reports, the U.S. International Trade Commission has looked at EC proposals on the Open Network Provision, terminal equipment, and cellular telephones and paging. During the last 6 months of 1990, the EC Council adopted the final directives concerning Open Network Provision and services and has proposed a new directive on cordless telephones. In addition, amendments were introduced to the Terminal Equipment and Pan-European Radio Paging Directives. This section will provide an update on these developments.

One issue that bears mentioning concerns proposals for a framework directive on data protection. The proposed directive sets conditions under which computerized data may be collected on individuals, giving them the right to access information concerning themselves and to correct any mistakes. An issue of particular concern to U.S. industry is a condition that data on individuals may not be transferred to non-EC countries unless "adequate protection" is guaranteed. This language appears to leave a lot of discretion to the member states to decide what is "adequate protection." A separate directive was also proposed to cover protection of advanced digital networks from unauthorized access. A major U.S. concern regarding this directive is that private network operators would also carry the burden of responsibility for security along with the collector of the data.

Update

Telecommunications Terminal Equipment

The Green Paper on Telecommunications (COM (87) 290) viewed full, mutual type-recognition of terminal equipment as vital for the development of a competitive Communitywide market in telecommunications terminal equipment. A proposed directive, COM (89) 289, would require that telecommunications terminal equipment meet certain essential requirements before it could be placed on the market. However, once a piece of terminal equipment was certified by one member state as being in conformity with these requirements, it could then be marketed throughout the Community without having to be certified in all 12 member states.[257]

The European Parliament described the proposed directive on type approval for telecommunications terminal equipment as "too vague" at its April 1990 plenary session. The Parliament supported the initiative but voted for a number of amendments designed to clarify the wording of the text.[258] In particular, the Parliament called for a clarification of the definition of a "telecommunications terminal" and of the requirement, in "justified cases," for the interworking of the equipment.1[259]

The European Parliament proposed 24 amendments to the directive on mutual recognition of type approval for telecommunication terminal apparatus. The EC Commission incorporated 19 of the amendments into its amended proposal for a Council directive. The amended proposed directive, COM (90) 263, was published in the *Official Journal* in July 1990.[260]

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[257] USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, "Telecommunications Terminal Equipment" pp. 6–107 to 6–109.

[258] *European Report*, No., (Apr. 7, 1990), Internal Market, p. 9.

[259] *EC-Business Report*, May 1, 1990, p. 11.

[260] *OJ* No. C 187, (July 27, 1990), p. 40.

The amended proposed directive would require only terminal equipment destined for interfacing with the public network—such terminals as phones or fax machines—to meet the essential requirements. Mobile telephones and electronic pagers are also covered by the proposed directive. The telecommunications ministers decided that only terminal equipment related to "reserved" services, such as voice and telex, must meet interconnectability requirements.[261] Equipment that is not meant to be connected to the public network will not be subject to the approval procedure.[262] The applicability of the electromagnetic compatibility (EMC) directive to telecommunications terminal equipment was eliminated in the common position adopted by the EC Commission. One of the reasons for this action was the lack of standards related to the EMC directive.[263]

The amended proposed directive is scheduled for consideration at the meeting of the Council of Telecommunications Ministers, which is to be held on April 12, 1991.[264] The proposed directive may be approved at that meeting.

Open Network Provision

On June 28, 1990, the EC Council of Ministers formally adopted the Open Network Provision (ONP) Directive (90/387) with no significant changes from the "common position" adopted in February 1990.[265] The finalized text was published in the *Official Journal* on July 24, 1990.[266] Prior to the adoption of the ONP Directive, the European Parliament had proposed on May 16, 1990, three amendments to the directive that were intended to clarify certain ONP conditions but failed to win approval by either the EC Commission or Council of Ministers.[267] The U.S. industry had no position on any of these amendments.

The language of the adopted directive remains vague. U.S. industry is concerned about language that, despite public statements to the contrary made by EC officials, may imply broad application of the harmonization regulations such as mandatory interoperability to include private network operators in addition to public service providers. By applying ONP conditions broadly, private service operators could be required to comply with additional regulations that may increase operating costs, decrease revenues, and delay the offering of newer telecommunication services or those yet to be developed. Under the final version of the ONP Directive, tariffs are not harmonized. U.S. service providers have urged the inclusion of language providing for the development of cost-based tariffs and propose flat-rate pricing rather than volume-sensitive pricing for leased lines.

Digital European Cordless Telecommunications

Background

The EC member states currently use different radio frequency bands for transmitting telecommunication signals within their borders. The Council has previously introduced directives that will reserve uniform radio spectrum bands for use in cellular digital mobile communications and for Pan-European radio paging in all member states.[268] Whereas these two earlier directives addressed specifications for existing telecommunications products within the Community, the new directive attempts to establish a new line of communications equipment.

Anticipated Changes

On June 19, 1990, the Council of Ministers recommended that member states work toward the coordinated introduction of digital European cordless telecommunications in the Community. On the same date, the Council proposed a directive on the frequency bands to be designated for the coordinated introduction of digital European cordless telecommunications (DECT) in the Community. The EC's Post and Telecommunications Ministers approved these two proposals on December 14, 1990.

The current directive specifically reserves the 1880-1900 MHz radio spectrum band for DECT. ETSI is currently establishing detailed specifications for the DECT system, which is to be integrated with the cellular and radio paging equipment to form a "universal personal communications system" within the Community. According to the directive, the DECT system should utilize cordless, digital technology to provide users with a portable, two-way communications device that will connect with residential and business phone systems throughout the Community for transmitting voice, fax, and other nonvoice, digital data. The system is to extend to all member states and to allow multiple users, or even multiple compatible systems, to operate in the same geographic area without interfering with one another.

Several firms are already experimenting with so-called personal communications networks (PCNs), which are similar to the products outlined in the DECT directive. Motorola, the U.S. leader in cellular phone technology, is developing and testing PCN devices, as is General Electric and several of the Bell Regional operating companies. European trials of PCN devices

[261] BNA, *1992: The External Impact of European Unification*, July 13, 1990, p. 11.

[262] *European Report*, Internal Market, July 4, 1990, p. 4.

[263] "European/U.S. Discussion of Standards, Testing and Certification Issues," Oct. 2, 1990, p. 6.

[264] Representative of the U.S. Council for International Business, telephone conversation with USITC staff, Jan. 23, 1991.

[265] USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, "Open Network Provision," pp. 4-67 to 4-68.

[266] EC Council, Directive 90/387, *OJ* No. L 192 (July 24, 1990).

[267] EC Parliament, "Decision on the Common Position Drawn Up by the Council With a View to the Adoption of a Directive on the Establishment of an Internal Market for Telecommunication Services Through the Implementation of Open Network Provision," *OJ* No. C 149 (June 18, 1990), p. 82.

[268] USITC, *Effects of EC Integration*, USITC publication 2318, September 1990.

will be conducted in the United Kingdom in 1992 by joint ventures involving Motorola, US West, and Pacific Telesis of the United States and large European manufacturers and telecommunications administrations such as Mercury, Telefonica, British Aerospace, Deutsche Bundespost Telekom, LM Ericsson, STC, and Thorn EMI. Ultimately, the DECT will be integrated into the Community's evolving integrated signals digital network (ISDN).

ETSI is to complete and announce final specifications for DECT by October 1991, so that the system may be introduced by the end of 1992. Member states are to enact the laws, regulations, and administrative provisions necessary to comply with this directive by December 31, 1991.

Possible Effects

By announcing the frequencies to be used in the EC-wide system in advance, the Council has eased entry into this market. The directive will therefore benefit the major producers of such telecommunications equipment.

U.S. Exports to the EC

Although U.S. firms are exploring PCN technology and developing products similar to those described in the DECT directive, no products are commercially available at this time. There is also not a unique Harmonized Tariff Classification for this equipment, and thus U.S. exports of these products cannot yet be measured. Motorola, General Electric, and other U.S. firms may be supplying equipment and expertise to the European ventures concentrating on DECT development, but these suppliers generally maintain European facilities for work in this field.

Diversion of Trade to the U.S. Market

This directive addresses specifications for equipment intended for the EC market only. Thus, the subject directive is unlikely to lead to a diversion of trade to the U.S. market. By harmonizing specifications for the Community, this directive will make the EC a more desirable market.

U.S. investment and operating conditions in the EC

Because this system is in the early stages of development, it is difficult to gauge the interest or investment levels of U.S. firms active in the mobile communications industry. Companies such as Motorola and General Electric supply transmission equipment and components for these systems, both by exporting them from the United States and by manufacturing them within the Community. These firms also participate in joint ventures with major European manufacturers and telecommunications administrations. Japanese firms such as Fujitsu, NEC, and OKI are active in the EC market for cellular telephones and may be developing equipment for the DECT as well.

U.S. Industry Response

U.S. producers have stated that they benefit from any information concerning specific technical data or performance characteristics that the EC intends to institute as equipment standards. In this case, U.S. firms also benefit from membership in ETSI, a consortium of over 20 European-based producers and consumers of telecommunications equipment, which is developing standards for DECT devices. There are reports that ETSI is pressuring Motorola and Philips NV of the Netherlands to share with all ETSI members critical cellular technology for which the firms hold patents. Although the EC market for telecommunications equipment is expected to grow significantly in the near future, U.S. firms will be reluctant to enter this market unless these firms' intellectual property rights are protected so that they may earn a reasonable return on their investment.

Pan-European Radio Paging

On June 28, 1990, the EC Council passed a resolution strengthening Europewide cooperation on radio frequencies, in particular with regard to services with a pan-European dimension[269] The resolution highlights certain policy goals to be considered when allocating radio frequencies to particular communication services, stressing timeliness, cooperation, and efficiency. On July 11, 1990, the European Parliament adopted a decision to amend the common position of the EC Council with a view to the adoption of a directive on the frequency bands designated for the coordinated introduction of pan-European land-based radio paging in the Community. The decision directs that member states shall bring into force laws, regulations, and administrative provisions necessary to comply with the directive on frequency bands for a pan-European, land-based radio paging system by January 1, 1991, instead of 12 months after notification of the directive. The effect of the decision is to advance the due date for implementation of these laws by about 6 months.

Neither this resolution nor this decision should have a major impact on U.S. companies.

Construction Products Directive

Overview

The Construction Products Directive (89/106/EEC), issued on December 21, 1988, and scheduled to be implemented June 27, 1991, is intended to ensure that construction products sold in the EC are "fit for their intended use" and meet certain general safety criteria. As mentioned in the previous report, forest products and heating, ventilating, and air conditioning (HVAC) equipment industry sources continue to indicate that it will be difficult to predict the extent to which U.S. industry will be affected by this directive before the health, safety, and

[269] USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, "Pan-European Radio Paging," pp. 4-69 to 4-70.

environmental requirements of this directive are translated into technical requirements for building works themselves. It appears that little progress was made on the measures needed to implement this directive during the second half of 1990.

Update

There is general concern over the delay in setting standards and the lack of progress on the Eurocodes. Eurocodes are regional codes of performance that will establish a common set of requirements for the design and construction of buildings and "civil engineering structures." Hence they are the key to determining what products are covered under this directive and what is required for certification. According to one source, this situation may have become even more confused during the second half of 1990.

Industry sources report that the EC Commission has been vague on which electrical products are covered, and the development of the Eurocodes is expected to clarify U.S. manufacturers' confusion. More specifically, some industry sources find missing linkages between directive and standard, and standard and product. As some electrical products are covered under the Low Voltage Directive (73/23/EEC), concern exists that these two directives will overlap and, if they do, it is unclear which requirements would take precedence. In such cases, problems could arise for U.S. manufacturers if certain products, once merely requiring self-certification under the Low Voltage Directive, are now required to have third-party certification under the Construction Products Directive.

The EC Commission decided to develop and issue "interpretative documents" in an attempt to facilitate the establishment of detailed standards for numerous products' essential requirements. The purpose of these documents is twofold: to explain to manufacturers how the essential requirements can be met and to guide the CEN and CENELEC committees involved in developing product-specific standards. The six draft documents were expected to be approved by the end of 1990 but were not completed at that time. After approval, CEN and CENELEC should review the standards it is now drafting and should make revisions, if necessary, to ensure consistency between the documents and the standards. European Technical Approvals, or ETAs, are to be used as a mechanism for approving products that are not covered by existing standards, until the appropriate standard is in place. ETAs will play an important role, because delays in standards development are expected.

A good deal of work is currently going on in CENELEC, ISO, and IEC, but it is not yet clear which standards the EC will follow, and how the EC will modify the standards it chooses in the event they conflict with those emerging from ISO and IEC.

On testing and certification, the EC is currently working to establish uniform requirements and programs to be applied to products manufactured in the 12 EC countries. Next on the list are developing agreements on the mutual recognition of test results from non-EC countries such as (in order of EC priorities): the six EFTA countries, Eastern European countries, and non-European countries like Canada, the United States, and Japan. As it may be some time before arrangements are finalized for U.S. products to be tested and certified in the United States as to having met EC requirements, U.S. companies wishing to market their products in Europe may develop testing and certification arrangements with their European subsidiaries, distributors, or national testing organizations (i.e., the British Standards Institution). It appears that all electrically operated air-conditioning and refrigeration equipment will be subject to independent third-party testing and certification requirements under CEN 29000 for quality assurance controls and CEN 45000 for testing and certification procedures.

Assessment of production facilities is still a problem for U.S. manufacturers, industry sources indicate. CEN standard EN29000, based on ISO 9000, likely will be used in establishing the requirements for manufacturers' quality assurance programs. Under this standard, the EC will not certify foreign facilities to perform qualitative assessment of production sites. Some U.S. industry sources fear a serious backlog for this type of assessment if they are forced to rely on European firms alone for quality certification.

Miscellaneous

Overview

The first followup report[270] discussed the efforts of the EC to harmonize members' laws on package travel and tours, which currently vary substantially from member state to member state. The principal aim of the original (1988) EC directive on package travel was to ensure adequate consumer protection and to simplify and facilitate the operation of travel/tour operator services throughout the EC. These goals are expected to promote further growth in tourism throughout the EC. The EC directive on tour/travel packages that was amended in July 1989 did not change the principal objectives of the original directive. The principal effect was to impose more stringent consumer protection requirements and to further delineate tour/travel operators' financial and legal obligations if agreed services are not provided.

As discussed in the first followup report, U.S. industry, in general, did not object to either the original or amended versions of the EC directive on package travel. Most U.S. tour operators that operate in Europe have already voluntarily adopted their own consumer protection plans with standards that match or exceed those proposed by the EC directive. Consequently, U.S. companies did not feel that they would lose sales, profits, or competitiveness within the EC as a result of the directive.

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[270] USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, ch. 6.

Update

The EC directive on package travel was reexamined in May 1990, and some revisions in the language were proposed. However, the final directive that was issued on June 13, 1990, did not adopt any of the proposed language revisions except for the insertion of one word that will not change the objectives or impact of the directive on U.S. industry in any way.

CHAPTER 5
FINANCIAL SECTOR

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CHAPTER 5
FINANCIAL SECTOR

The 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 European Community should create potential business opportunities for U.S. financial services firms. Reciprocity provisions have been included in the financial services directives, however. The application of the Community's reciprocity policy may have the effect of restricting the future market access of U.S. firms.

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 freedom to establish financial services firms have restricted the full financial integration of the EC 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) to liberalize the financial services sectors, (2) to benefit the individuals and firms that consume such services, and (3) to 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 rules and to provide for the mutual recognition of home-country control on the basis of those harmonized rules. Under this regulatory regime, financial services firms will be able to operate throughout the EC with a single license.

The approximately 30 financial-sector directives apply to banking, securities, insurance, and free movement of capital. The Capital Movement Directive provides for the full liberalization of all capital movements as of July 1, 1990. The core banking directive is the Second Banking Directive, which introduces the single banking license and which is deemed by the EC to be "essential" to achieving the internal market. The Own Funds and Solvency Ratio Directives deal with the capital adequacy of banks and will be implemented simultaneously with the Second Banking Directive. A bank with a single license, including 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 Investment Services Directive is the core directive for securities firms. It is modeled on and complements the Second Banking Directive. The directive would introduce the 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. Once an investment firm has a single license, it can sell its services throughout the EC.

Two insurance directives deal with the freedom of cross-border services for life and nonlife insurance. The Second Nonlife Insurance Directive provides that firms can sell nonlife insurance on a cross-border basis to industrial and commercial customers with home-country control. The Second Life Insurance Directive would allow firms to sell individual and group life insurance on a cross-border basis. Home-country control applies to group coverage and to individual coverage when the individual policyholder takes the initiative in obtaining the policy. In addition, the EC Commission has proposed a Third Nonlife Insurance Directive. This directive would establish a single license for nonlife insurance.

Possible Effects

The 1992 program for financial services creates opportunities as well as challenges for U.S. firms. Although most of the necessary directives in this area, as outlined in the White Paper, have been proposed and adopted, many uncertainties remain. As additional final directives are adopted and as national Governments begin to implement the directives, 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. In any case, the liberalization of the EC financial sector has prompted further consideration of whether reform of the U.S. regulatory system is necessary or appropriate to maintaining or enhancing the global competitiveness of the U.S. financial sector.

Recent Developments

Economic and Monetary Union

The idea of an economic and monetary union within the Community has been considered since the late 1960s. It is separate from, but complementary to, the 1992 single market integration program. The passage of the Single European Act (SEA) and the progress of the 1992 single-market program have renewed the interest of the member states in the progressive realization of economic and monetary union. The SEA specifically confirmed the goal of an EC economic and monetary union at an unspecified future date. Although the 1992 internal market program does not necessarily require an immediate monetary union, member states agree that the

establishment of a European financial common market and free movement of capital will require a higher degree of monetary cooperation.[1]

In June 1988, the European Council established a committee to study and propose concrete stages leading to economic and monetary union in the Community. The committee was headed by Jacques Delors, President of the European Commission. In April 1989, the Delors Committee Report set out a three-stage process that could progressively lead to economic and monetary union.[2] The Delors Committee Report said that the principal features of economic and monetary union could include integrated financial markets, free movement of capital, irrevocably fixed exchange rates, a single currency, a common Community monetary policy, coordination of national economic policies, and establishment of a European central bank (i.e., the so-called EuroFed). In June 1989, the European Council considered the Delors Report and agreed to start the first stage on July 1, 1990, and to authorize the preparatory work necessary to convening an intergovernmental conference on economic and monetary union. In June 1990, the European Council agreed to convene such a conference in December 1990.

Numerous documents, speeches, and position papers currently bear upon the Community debate on economic and monetary union. In August 1990, the EC Commission issued a communication on economic and monetary union.[3] The communication builds on the Delors Report and proposes that the intergovernmental conference designate the European currency unit (ECU) as the single currency of the union. Also, it calls for a single Community monetary policy that is formulated and implemented by a new Community institution, the EuroFed. The EC Commission proposal also summarizes the likely economic effects of economic and monetary union. A more thorough assessment by the EC Commission staff of the costs and benefits of economic and monetary union was issued in October 1990.[4] As part of the preparatory work for the intergovernmental conference, the Committee of Governors of the Central Banks of the member states of the EC prepared a draft Statute of the European System of Central Banks and of the European Central Bank.[5]

[1] EC Commission, *The European Financial Common Market* (June 1989), p. 43.

[2] Committee for the Study of Economic and Monetary Union, *Report on Economic and Monetary Union in the European Community*, April 1989 (Delors Committee Report).

[3] EC Commission Communication, SEC (90) 1659, *Economic and Monetary Union* (Aug. 21, 1990).

[4] Directorate-General for Economic and Financial Affairs, *One Market, One Money: An Evaluation of the Potential Benefits and Costs of Forming an Economic and Monetary Union*, as published in *European Economy*, No. 44 (October 1990).

[5] Committee of Governors of the Central Banks of the Member States of the European Community, *Draft Statute of the European System of Central Banks and of the European Central Bank*, published by *Europe Documents*, Brussels, No. 1669/1670, Dec. 8, 1990.

In December 1990, EC member states convened two conferences to negotiate amendments to the Treaty of Rome. The Intergovernmental Conference on Economic and Monetary Union will try to set up a framework for the development of EC institutions on economic questions. The Intergovernmental Conference on Political Union seeks to define the respective roles of the EC and its member states on such questions as common citizenship, foreign policy, security/defense questions, and further development of EC-wide political institutions such as the European Parliament. If successful, they will make possible greater European political, economic, and monetary unity.

Banking

Consolidated Supervision

The Second Banking Directive (SBD), and the other 1992 banking measures adopted thus far, would establish a regulatory environment based on the mutual recognition of national supervisory systems. The SBD applies to credit institutions. A 1983 banking directive applies to the supervision of credit institutions on a consolidated basis when banking activities are undertaken by a banking group.[6] In such a case, all of the activities of the banking group are considered in their entirety for regulatory purposes, without regard to the specific activities of the individual subsidiaries within the group. The 1983 directive applies only to banking groups controlled by a credit institution.

In October 1990, the EC Commission proposed a new directive on the consolidated supervision of credit institutions that would replace and expand the 1983 directive.[7] The proposed directive would ensure that the prudential banking rules established under the single-market program apply on a consolidated basis to all banking groups, including groups where the parent undertaking is a financial holding company (i.e., not a credit institution). Also, the proposal would require a mixed-activity holding company and its nonbank subsidiaries to provide information about any subsidiary credit institutions. A mixed-activity holding company is a parent undertaking with diversified activities including at least one subsidiary credit institution. Under the proposal, consolidated supervision would apply to solvency, controls on large exposures, and limits on investments in nonbank companies. The proposal would not apply to financial conglomerates (e.g., banking and insurance groups). The EC Commission intends to facilitate and improve the consolidated supervision of banking groups and the supervision banks that are part of a nonbanking group.

Payment Systems

Since 1987, the EC Commission has issued a series of recommendations intended to facilitate fair and

[6] See *Council Directive 83/350, Official Journal of the European Communities (OJ)* No. L 193 (July 18, 1983), p. 18.

[7] Proposal for a Council Directive, COM(90) 451, *OJ* No. C 315 (Dec. 14, 1990), p. 15.

competitively priced payment systems for individual consumers. Payment systems are used for processing financial transactions (e.g., making payments, clearance, settlement). These recommendations set forth a nonbinding European Code of Conduct relating to electronic payment,[8] set forth conditions that should govern the relationship and mutual obligations of card holders and issuers,[9] and set forth principles that should govern the transparency of cross-border banking transactions.[10] In September 1990, the EC Commission issued a discussion paper on making cross-border payments in the internal market.[11]

The discussion paper focuses on retail cross-border payments, which tend to be prohibitively expensive and inefficient. The EC Commission notes that "the benefits of the internal market will only be fully realized if systems for effecting cross-border payments operate as effectively as those at [the] national level."[12] The development of an efficient and inexpensive cross-border payment system for consumers and small businesses is viewed as a necessary complement to the development of the single market and the economic and monetary union. The discussion paper suggests various alternatives for improving the cross-border payment systems for cash, transfers,[13] checks, and payment cards. The EC Commission expects that its suggestions will prompt comments, proposals, and private initiatives by various interested parties, including consumers, private banks, central banks, and supervisory authorities.[14] The EC Commission will establish a Payment System Coordinating Group to assist in responding to proposals, conducting studies, and to advise on feasibility and implementation.

Money Laundering

The proposed directive on the prevention of money laundering,[15] has been the subject of considerable discussion in the Community. The main issues relate to the appropriate scope of the directive and whether the EC Commission actually has the legal competence to require member states to adopt criminal laws against money laundering. In December 1990, the EC Council reportedly reached an agreement on the money-laundering proposal that does not directly criminalize money laundering in the member states. The EC Council agreement provides that each member state will agree to enact laws against laundering the proceeds of illegal drug trafficking. Member states have the option to extend their national law to cover the proceeds of other serious crimes.

Possible Effects

Most of the 1992 banking directives have been adopted by the EC Council. The U.S. Government and U.S. firms continue to be interested in the evolution of the single banking market and its possible effects on U.S. interests. The U.S. Government has a continuing concern about the Community's reciprocity policy, and its implementation by the member states.[16] In addition, U.S. banks want banks and investment firms to be subject to comparable capital requirements for their respective securities activities.[17] This would ensure fair competition and avoid favoring one institutional structure over another.

Many of the marketplace developments identified in our earlier reports continue to be evident. The removal of certain market access restrictions and the prospect of operating with a single license in the Community have helped to prompt a wave of consolidations, cross-border mergers, and other formal and informal linkups. At the same time, the banking industry is generally suffering from increased competition, a softening world economy, and tougher reserve requirements. U.S. firms in particular have been vulnerable due to relatively poor economic and competitive conditions within the United States. For a variety of reasons U.S. bank activity abroad has declined.[18]

Securities

Despite considerable debate within the Community, agreement on the proposed Investment Services Directive or the proposed Capital Adequacy Directive (CAD) has not been reached. As noted in our earlier reports, the principal challenge is to devise a capital adequacy regime that will enable banks and investment firms to compete fairly in the securities business.[19] U.S. securities firms want the single securities license and single banking license to become operable at the

[8] *Commission Recommendation 87/598, OJ* No. L 365 (Dec. 24, 1987), p. 72. See also, *Europe Could Play and Ace: The New Payment Cards*, COM(86) 754, Jan. 12, 1987.

[9] *Commission Recommendation 88/590, OJ* No. L 317 (Nov. 24, 1988), p. 55.

[10] *Commission Recommendation 90/109, OJ* No. L 67 (Mar. 15, 1990), p. 39.

[11] *Making Payments in the Internal Market*, COM(90) 447, Sept. 26, 1990.

[12] *Making Payments in the Internal Market*, p. 1.

[13] For purposes of the discussion paper, the term transfer is defined as "the transfer of value from one bank account to another that occurs after a payment order has been made at the originator's bank, and the account of the beneficiary (at the same or another bank) has been credited or debited." See *Making Payments in the Internal Market*, p. 10.

[14] *Making Payments in the Internal Market*, para. 81.

[15] COM(90) 106, *OJ* No. C 106 (Apr. 28, 1990), p. 6. See also Amendment to the Proposal, COM(90) 593, *OJ* No. C 319 (Dec. 19, 1990), p. 9.

[16] See, for example, Department of the Treasury, *National Treatment Study 1990*. The study was required by section 3601 of the Omnibus Trade and Competitiveness Act of 1988.

[17] The capital adequacy for investment firms and banks undertaking securities activities is covered in the proposed Capital Adequacy Directive.

[18] See, for example, Congressional Research Service, *U.S. Banks in the Global Economy: Effects of Capital, Tax, and Regulatory Requirements* (1990).

[19] 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, March 1990, p. 5-10, and 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, September 1990, p. 5-4.

same time. Also, they are concerned that the CAD might be modified to unduly raise the capital requirements for investment firms.

Insurance

Life Insurance

In November 1990, the EC Council adopted the Second Life Insurance Directive.[20] It will allow insurance firms to sell life insurance on a cross-border basis. Insurance companies will be subject to home-country control for group coverage and when an individual policyholder in the host member state takes the initiative in seeking the policy. If the company initiates a cross-border sale to an individual, then host-country control would apply. The Second Life Insurance Directive should open the EC insurance market to greater competition. This should create opportunities and challenges for insurance firms, and consumers should have a wider choice of insurance policies at competitive prices.[21]

Motor Insurance

In November 1990, the EC Council adopted the Motor Services Directive.[22] It would extend the coverage of the Second Nonlife Insurance Directive to include compulsory, third-party, motor insurance. The directive will enable insurance companies to sell "large risk" motor insurance across borders on the basis of home-country control. It is noteworthy that the directive is the legislative vehicle by which the Community's reciprocity policy has been extended to the nonlife insurance sector.

Nonlife Insurance

In July 1990, the EC Commission issued the proposed Third Nonlife Insurance Directive, or framework directive.[23] It will establish a regulatory regime that applies to the entire direct nonlife insurance business. The proposal is the most trade-liberalizing of the 1992 insurance directives. The EC Commission considers that the proposal is necessary to ensure that insurance firms are not at a competitive disadvantage in the single financial market relative to banks with a single banking license.

The framework directive would establish a single insurance license for companies selling all insurance other than life insurance. It would authorize insurance firms to establish branches or provide cross-border nonlife insurance services to individual customers (i.e., "mass risks") and commercial and industrial customers (i.e., "large risks") on the basis of the mutual recognition of home-country control. The introduction of the single insurance license is made possible because the framework directive would coordinate rules on technical reserves (i.e., the reserves held to meet present and future claims), and prudential and financial supervision. The proposal would coordinate rules on the valuation and composition of assets sufficient to meet the reserve requirements. The regulatory approach follows the approach taken for banks, securities firms, and mutual funds in the Community.

The home country supervisory authorities would be responsible for the authorization and continuing financial supervision of an insurance firm authorized in the home member state, even when the company sells policies in another member state. This would include verification of solvency, the establishment of technical provisions and covering assets, and ensuring that companies have sound administrative and accounting procedures and adequate internal control mechanisms. The host member state would be precluded from requiring that firms with a single license operating in its territory be authorized by the host member state. Also, the host member state could no longer require that policies be preapproved, that premiums be set at a certain amount, that firms invest in certain instruments, or that firms invest within the host member state. On the other hand, the host member state will retain certain authority, including being able to require that its own contract law applies to mass-risk policies, that it be notified of policies relating to compulsory insurance, and that it may protect "the general good" in the host member state.[24]

[20] *Council Directive 90/619, OJ* No. L 330 (Nov. 29, 1990), p. 50.

[21] In February 1991, the EC Commission issued the Third Life Insurance Directive, which would establish a single license for life insurance.

[22] *Council Directive 90/618, OJ* No. L 330 (Nov. 29, 1990), p. 44.

[23] Proposed Directive, COM(90) 348, *OJ* No. C 244 (Sept. 28, 1990), p. 28.

[24] 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.

CHAPTER 6
PUBLIC PROCUREMENT AND THE INTERNAL ENERGY MARKET

CONTENTS

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At an estimated 15 percent of EC gross domestic product, the EC public sector represents a large and potentially crucial market for a number of U.S. industries. However, several key types of public procurement, including telecommunications equipment, power generators, computers and water-treatment equipment, have been excluded from the scope of EC and international trading rules, and nonnational (including U.S.) suppliers have not been assured of any access to procurement contracts in these "excluded sectors." The excluded sectors account for nearly half the value EC public sector contracts, and represent what until now was a virtually untappable market for U.S. suppliers. As part of the 1992 program, the EC has and is expected to continue to put into place rules intended to introduce greater openness, transparency, and nondiscrimination in all phases of public purchasing, including the excluded sectors where these concepts are being applied for the first time.

Developments Covered in the Previous Reports

Background and Anticipated Changes

Acknowledging the inefficiencies resulting from closed public procurement procedures, in the 1970s the EC adopted two directives intended to open member-state procurement to greater competition. The legislation attempted to increase transparency and reduce opportunities for discrimination in procurement by public entities of 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, competition in EC public procurement was limited. In a 1985 White Paper, the EC Commission proposed a substantial strengthening of member-state commitments on public procurement. The legislation envisioned as part of the 1992 program would:

- Close loopholes in existing directives governing central and local government purchases of goods ("supplies") and public construction work;
- Expand the scope of EC discipline to service contracts and most entities in the "excluded sectors": 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.

The EC Commission had proposed five directives relating to public procurement by December 31, 1988, concerning: (1) "supplies"; (2) "works";[1] (3) "remedies"; (4) "energy, transport, and water"; and (5) "telecommunications." As of year end 1989, the EC had adopted the supplies, works, and remedies directives, and had formally proposed a directive intended to (1) improve the transparency of natural gas and electricity prices,[2] (2) coordinate investment projects in the oil, natural gas, and electricity sectors, and (3) improve guarantees for the right of transit on the major grids for both electricity and natural gas. In 1989, the EC also introduced a system for monitoring compliance with public procurement rules of projects executed with assistance from EC structural funds and financial instruments.

In the first half of 1990, an agreement for a common position was reached between the EC Council and Parliament on the directive covering the four excluded sectors (water, energy, transport, and telecommunications). The EC Commission also adopted a communication outlining procedures to increase the participation of small and medium-size enterprises (SMEs) in public contracts.[3] The EC Commission did not, however, act on proposals for directives covering procurement in the excluded sectors and of services, and on an appeals procedure for contracts covered by the excluded sectors directive.

With respect to the internal energy market, in May 1990, the EC Commission issued its first 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.[4] In June, the EC Council adopted a 5 year Thermie project, which is intended to encourage research and development of new and renewable sources of energy, with particular emphasis on increasing energy efficiency and reducing the harmful effects of certain fuels on the environment.[5] In July, the

[1] A revised Works Directive became effective on July 19, 1990. *Official Journal of the European Communities (OJ)* No. C 171 (July 12, 1990), p. 41.

[2] Amendments to the proposed price transparency directive were published in early July 1990. *OJ* No. C 164 (July 5, 1990), p. 15.

[3] *OJ* No. C 207 (Aug. 20, 1990), p. 26 (Council considering measures to enable SMEs to take advantage of internal market in public procurement); See also, *OJ* No. C 309 (Dec. 10, 1990), p. 16-17 (Commission response to question concerning Commission evaluation of experimental training schemes for SME managers).

[4] *OJ* No. C 164 (July 15, 1990), p. 15 (Amendment to proposal for a Council directive concerning transparency of gas and electricity prices).

[5] *Proposal for Council Directive Adopting a Specific Programme of Research and Development in the Field of Non-nuclear Energies (1990-1994)*, *OJ* No. C 174 (July 16, 1990); *European Report* No. 1600 (July 4, 1990), sec. 4, p. 5 (discussing Parliament review of Thermie project); *OJ* No. C 215 (Aug. 30, 1990), p. 11 (Commission Communication on the Thermie Programme). See also, *Proposal for a Commission Decision Adopting a Specification and Technical Development Programme in the Field of Thermonuclear Fusion (1990 to 1994)*, COM (90) 441 final, *OJ* No. C 261 (Oct. 16, 1990), p. 8.

EC Commission issued a communication proposing a strategy for enhancing the security of energy supplies of the Community as a whole.

Possible Effects

The 1992 program for the excluded sectors is regarded as ambitious since these sectors for many years have been characterized by closed and nationalistic procurement practices. U.S. suppliers and procurement experts generally believe that in the long term the EC's 1992 program will result in a substantial opening of the EC public sector markets. In the short-term, however, resistance to open procurement and favoritism toward "national champions" on the part of procuring entities is expected to blunt the effectiveness of 1992-related legislation.[6]

Another U.S. concern is the added efficiency of EC suppliers that could result from the 1992 program. To the extent the 1992 program is effective and forces rationalization of EC suppliers, the surviving EC suppliers should be more effective competitors both inside and outside the EC.

Developments During July-December 1990

Public Procurement

Background and Anticipated Changes

With respect to public procurement, the most important developments were final adoption of the excluded sectors directive, proposal of the directive governing public procurement of services, and the failure to adopt a Remedies Directive for the excluded sectors.[7]

[6] Member-state implementation of the two directives governing public procurement of supplies and works, both of which were proposed at the end of 1988 and adopted at the end of 1989, has been criticized within the EC. The Supplies Directive, which became effective in January 1990, has yet to be transposed into national law by Italy or the Netherlands, while Spain, Portugal, and Greece have until January 1992 to do so. Similarly the Works Directive, which became effective in July 1990, has been transposed only by France, Belgium, and Ireland. *European Report* No. 1618 (Oct. 3, 1990), sec. 4, p. 9. There have also been reports of multiple infringements of public procurement directives, primarily due to failures to respect publication deadlines and early closures, and a report on compliance with EEC legislation in public procurement markets is due this winter. *European Report* No. 1625, sec. 4, pp. 8-9 (Oct. 27, 1990). See also *Seventh Annual Report to the European Parliament on Commission Monitoring of the Application of Community Law (1989)*, *OJ* No. C 232 (Sept. 17, 1990), p. 15 (public procurement); p. 29 (energy).

[7] A revision to annex I listing "contracting authorities" covered by Works Dir. 89/440/EEC is expected soon. *OJ* No. C 207 (Aug. 20, 1990), p. 46 (Commission response to question concerning the Commission's application of "bodies governed by public law" in Works Directive.)

Excluded Sectors Directive

On September 17, 1990, the EEC Ministers adopted the excluded sectors directive to become effective on January 1, 1993.[8] As adopted, the directive imposes certain procedural, recordkeeping, and reporting requirements on specified "public" entities[9] intended to introduce competition into award of works contracts valued over ECU 5 million; supplies contracts awarded by telecom entities valued over 600,000 ECU; and supplies contracts awarded by other covered entities valued over ECU 400,000 .[10] Consistent with prior drafts, the directive permits exclusion of contract proposals that are not at least 50 percent of EC origin.[11] In the event there are equivalent tenders, the directive requires that preference be given to the tenders of EC origin. From a pricing standpoint, tenders are to be considered equivalent if the price difference does not exceed 3 percent.[12]

Provision is also made for requests by member states for excluding from the coverage of the directive entities exploring for or extracting oil, gas, coal, or other solid fuels, if they do not exercise exclusive rights as defined in terms of certain specified criteria.[13]

Proposed Services Directive

On December 13, 1990, the Commission issued a proposal for a Council directive governing award of public services contracts.[14] Public service contracts are defined in article 1 as "[written] contracts for pecuniary interest"; certain types of contracts that are excluded from this broad definition are then specified. In addition, the proposed directive does not apply to defense service contracts covered by article 223 of the treaty, and service contracts subject to special security procedures.[15]

[8] *OJ* No. L 297 (Oct. 29, 1990), p. 1. Member states are obliged to adopt measures to comply with the directive by July 1, 1992, but those measures need not take effect before Jan. 1, 1993. Art. 37(1), (2).

[9] The directive applies to public authorities, public undertakings, and other entities that perform the public functions described in art. 2(2).

[10] Art. 12. All thresholds are net of VAT. Software services are covered by the directive if they are procured by a public undertaking for use in public telecommunications. Art. 1(3)(a).

[11] EC origin is explained in *Council Regulation (EEC) No. 802/68* (June 27, 1968), *OJ* No. L 148 (June 28, 1968), p. 1, as last amended by *Council Regulation (EEC) No. 3860/87*, *OJ* No. L 363 (Dec. 23, 1987).

[12] Art. 29(2); (3).

[13] Art. 3. Nevertheless, under art. 3(2) member states should informally impose on otherwise exempt entities the principles of nondiscrimination and competitive procurement. Other exceptions are included in the arts. 6-11 of the directive, including, for example, contracts for purchases intended exclusively to permit the purchaser to offer one or more telecommunications services in an area where other entities are free to offer the same services under the same conditions, which may be exempted pursuant to article 8.

[14] *Proposal for a Council Directive Relating to the Coordination of Procedures on the Award of Service Contracts*, COM (90) 372, *OJ* No. C 23 (Jan. 31, 1991), p. 1.

[15] Art. 4.

The proposed directive applies to contracts for various types of services that are divided into categories according to the Central Product Classification. These categories are set forth in annexes I.A and I.B to the proposed directive. Value thresholds and the required award procedures vary with the type of service to be rendered. Common rules are set forth for design and advertising contracts and for expressing technical specifications in all applicable service contracts.

Proposed Remedies Directive for the Excluded Sectors

In July 1990, the EC Commission submitted a proposal for a remedies directive to coordinate application of Community rules on the procurement procedures of entities operating in the water, energy, transport, and telecommunications sectors.[16] As proposed, the directive imposes on member states the duty to implement effective review procedures concerning the decisions of contracting entities in the excluded sectors, including procedures for suspending the award or implementation of contracts, setting aside unlawful decisions by the contracting entities, and awarding damages to persons harmed by infringement. The proposed remedies directive also contains provisions for direct EC Commission intervention in a particular contract award, and provisions under which contracting entities must have their practices and procedures reviewed for conformity to national and Community law and attested by an independent person with certain specified legal qualifications. As of late November 1990, it was reported that resistance from the United Kingdom and others, especially to the proposed system for independent auditing of private sector companies operating in the excluded sectors, would prevent adoption of a remedies directive in 1990.[17]

Possible Effects

The excluded sectors procurement directive has been adopted as it was proposed. Over the long term U.S. suppliers should benefit as the excluded sector market is opened to competition. In the short term, however, the benefit to U.S. suppliers may be reduced by (1) contract value thresholds of article 12, under which the open competition rules do not apply; (2) the rules of origin of article 29 permitting exclusion of bids that are not more than half of EC origin and requiring a mandatory 3-percent price preference in favor of bids of EC origin; (3) the administrative uncertainty due to the fact that the interpretation of these rules, at least in the first instance, is left up to individual procuring entities; and (4) the 3-year delay in implementation of the directive granted to Spain, and the 5-year delay granted to Portugal and Greece under article 37(2). Negotiations currently under way in the General Agreement on Tariffs and Trade (GATT) concerning the Government Procurement Code may ameliorate some of these U.S. concerns.[18]

Introduction of open competition in the award of broad categories of public service contracts should have similar consequences to the introduction of competition into the excluded sectors.

The Internal Energy Market

Background and Anticipated Changes

Although no definitive legislative developments occurred during July-December 1990, this period reflected a continuation of the work toward rationalization of the Community energy market. Along with ongoing work to harmonize standards and address competition, environmental, and security concerns, progress was made toward regulating the use of existing facilities to promote and ease the flow of electricity and natural gas across the member states.

Natural Gas Transmission And Use in Power Stations[19]

In October, the Commission published amendments[20] to the Proposal for a Council Directive on the transit of natural gas through the major systems.[21] The amendments primarily emphasize in the recitals the underlying policies reflected in the proposed directive: environmental protection, minimization of risk, and security of supply.[22] The Parliament approved a regional natural gas transmission network program concerning peripheral areas of the EC (Spain, Portugal, Italy, Greece, Sardinia, Eire) on October 26.[23]

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[16] *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 final (July 25, 1990), *OJ* No. C 216 (Aug. 31, 1990), p. 8.

[17] *European Report*, No. 1631 (Nov. 21, 1990), sec. 4, p. 8. For a discussion of the British opposition, see *European Report*, No. 1629 (Nov. 14, 1990), sec. 4, p. 5 (The United Kingdom objects to appointment of "independent" auditors by public authorities).

[18] Currently the code does not cover State, Provincial, or municipal entities, nor does it cover the excluded sectors. In August 1990, the EC proposed in the GATT negotiations that the single market program be extended to all GATT signatories. For example, Bureau of National Affairs (BNA), "EC Offers Proposal at GATT Talks to Open Markets to Foreign Bidders," *1992: The External Impact of European Unification*, Aug. 10, 1990, p. 1. Subsequent problems in the GATT negotiations bring into question the likelihood of any progress being made in bringing this proposal to fruition.

[19] See generally, E. Mestmacker, *Natural gas on the European Internal Market: A Comparative Analysis of Common Carriage and Price Transparency*, 11 Mich. J. of Int'l law 691, No. 3 (spring 1990) (analyzing EC internal gas market policy objectives, and suggesting changes to the EC regulatory approach to those objectives).

[20] COM (90) 425 final, *OJ* C 268 (Oct. 24, 1990), p. 9.

[21] COM (89) 334 final, *OJ* No. C 247 (Sept. 28, 1989), p. 6.

[22] The gas transit directive is reportedly opposed by Germany, the Netherlands, and Denmark, based on the contention that it is unnecessary in light of the fact that 20 percent of the volume of gas already transits member-state borders. *European Report*, No. 1626 (Nov. 1, 1990), sec. 4, p. 3.

[23] *European Report*, No. 1625 (Oct. 27, 1990), sec. 4, p. 9.

In a related development, in August the Commission proposed a council directive to remove the restriction against the use of natural gas in power stations.[24] The directive prohibiting the use of natural gas in power stations was initially adopted in 1975 based on estimates with respect to the availability of natural gas that turned out to be very conservative. The repeal of this directive has been approved by the EEC Council of Energy Ministers, which is waiting for Parliament's opinion before final adoption. Parliament's opinion was held up by the Socialist Group, which called for a debate on the issue of deleterious effects on the environment of methane emissions from pipelines.[25] If Parliament approves the Energy Council's report, the EC Council is expected to adopt the directive without further debate.[26]

Transmission of Electricity Across Member States

On July 13, 1990, the Commission announced its position on transmission of electricity on grids.[27] On October 10, Parliament approved a common position emphasizing maintenance of environmental and consumer protections as the market opens up.[28] On October 29, 1990, the EEC Energy Council approved a directive allowing transit of electricity through and across member states, to be transposed by July 1, 1991. The directive is intended to provide for the use of national high-tension grids to transport electricity from one EEC country to another at a reasonable price and at no inconvenience to the network operator. Transit operations will be notified to the Commission and refusals by a network to handle power supplies from another member state must be backed up by concrete evidence of inconvenience.[29]

Possible Effects

The easing of restrictions on transmission of natural gas and electricity across member states is in the early stages. If successful, these types of directives might allow the centrally located utilities to adapt to new market forces by developing expanded carrying capacity to meet increasing demand. U.S. suppliers might look for opportunities among utilities positioned to expand their networks to accommodate the anticipated increase in interstate sales.

[24] *Proposal for Council Directive Revoking Council Directive 80/778/EEC (July 15, 1980)*, *OJ* No. C 203 (Aug. 14, 1990), p. 19.

[25] *European Report*, No. 1632 (Nov. 24, 1990), sec. 4, p. 14.

[26] *European Report*, No. 1629 (Nov. 14, 1990), sec. 4, p. 1.

[27] *OJ* No. C 172 (July 13, 1990) p. 1. See *OJ* No. C 190 (July 30, 1990), p. 16 (Q&A re transit of electricity); *OJ* No. C 171 (July 12, 1990), p. 41 (Q&A re private agreement to transport electricity from France through Spain to Portugal).

[28] *European Report*, supplement to No. 1630 (Nov. 17, 1990), p. 15.

[29] *European Report*, No. 1626 (Nov. 1, 1990), sec. 4, p. 3.

CHAPTER 7
CUSTOMS CONTROLS

CONTENTS

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CUSTOMS CONTROLS

Abolishing border controls within the EC—at last enabling persons, goods, services, and capital to move without restraint among all member states—is among the significant goals and potential benefits of the internal market program. Through 1992, transition measures designed to simplify most frontier procedures and to eliminate others will be in effect, although at the same time controls at external boundaries are being strengthened. By January 1, 1993, with new tax collection mechanisms in place, with other barriers to unchecked movement dropped, and with policies for external border controls implemented, all customs formalities at internal borders are to end.

Developments Covered in the Previous Reports

Two groups of directives are covered in this chapter: those aimed at achieving the free movement of goods, and those dealing with the free movement of persons and the mutual recognition of their professional qualifications. A third category, directives aimed at ensuring safe and healthful workplaces, was included here in earlier reports. It is now discussed as a part of the social dimension of integration.

Background and Anticipated Changes

To permit firms in the EC to operate with the greatest flexibility and competitive advantages, and to encourage member-state nationals to think of themselves as "citizens of Europe," the 1985 White Paper said that goods and people must be allowed to cross internal frontiers without regulation and interference. Traditional customs checks at these border crossings, together with the collection of taxes and statistics, are therefore being replaced with new means of collecting the same levels of revenue and information previously available to the member states. Persons and goods from outside the EC are to be subject to customs and immigration procedures only at their first entry into a member state. Once they comply with other provisions of law (including Community immigration and visa rules, which are still under discussion), they would thereafter be able to circulate freely. Much saving in cost and time should be achieved as frontier formalities are abolished.

To simplify customs administration and ensure greater uniformity, the EC Commission has proposed a common Community customs code, setting forth most regulations and directives in a single document. The code, when adopted in the form of a regulation, would take effect in 1993. One important feature would be a mechanism allowing importers to obtain formal rulings, enforceable throughout the EC, on the customs treatment of their goods.

If these directives are implemented, EC residents and nationals will be able to live and work in any member state, and restrictive rules on nonworkers' rights of residence will be prohibited. During a transition to common curricula and standards, vocational and professional qualifications obtained in one member state are to be mutually recognized in the others. Holders of such credentials will eventually be able to work in other member states on the same terms as their own nationals. More comparable training programs and professional requirements, as well as social benefit programs, are being developed and may eventually be standardized throughout the EC.

As firms establish operations in new locations through the EC, they will be able to hire persons from any member state and transfer them as needed. They will likewise find it easier to employ or move (at least for limited periods) non-EC nationals who have met residency criteria in one member state.

Possible Effects

As stated in previous reports, these directives should have a positive impact on U.S. business operating in or exporting to the EC. Such firms should experience lower costs, simpler documentation, and reduced delays in moving goods through the Community. Their ability to hire and transfer workers without regard to nationality should increase considerably, and candidates for employment or transfer should find it easier to bring their dependents with them. Although the vocational qualifications directives benefit only EC nationals, none of the directives covered in this chapter discriminates by country. All appear to operate on a trade-neutral basis. Little or no diversion of exports to the U.S. market is expected. The precise effects on exports to third countries—by both the United States and the EC—remain unclear. Investment by U.S. business in the EC would not seem likely to be affected solely by these measures. However, it should again be noted that other EC directives and trade policies (not commonly considered a part of the integration program) may have a greater impact on U.S. interests and investment than the measures covered by this chapter or the study in general. For example, changes in EC policies relating to anticircumvention of dumping orders, country-of-origin rules, and quantitative restrictions might affect U.S. exporters and suppliers of the specified or related goods.

Developments Since the Second Followup Report

Despite progress in resolving difficult issues relating to taxation directives and revenue collection, work on the two categories of directives covered here has not yet been completed. Several measures relating to border controls remain to be approved by the Council, and considerable effort will be needed to give full effect to the goal of free movement of persons. Agreement on some proposals designed to be transition measures has not been reached, complicating efforts to attain a consensus on post-1992 texts. As the implications of some directives become more apparent

to the member states, some have expressed doubts about or even attempted to block or change other measures. The two groupings of directives will be discussed separately in this chapter.

Free Movement of Goods

Background and Anticipated Changes

Several customs measures were adopted in recent months to complete critical aspects of the removal of internal barriers to free movement. In addition, the EC issued interim measures to deal with German unification and an amended proposal on statistics relating to goods in trade between member states. The Schengen Agreement (discussed in earlier reports in this study) assimilated East Germany, though some issues remain to be decided. It also expanded to include Italy as a party and Spain and Portugal as observers. Italy's accession will bring about the achievement of the long-sought goal of free movement among the original six member states of the Community.[1] Progress on the common customs code and on proposals for customs mechanisms intended to assure tax collections is less apparent, in light of the expressed doubts of several member states on their efficacy in fraud prevention.

Community Transit

On September 17, 1990, the Council adopted its Regulation (EEC) No. 2726/90 on Community transit.[2] The basic measure establishing the transit procedure to cover all movements of goods inside the EC while imposing minimal formalities and administrative actions.[3] Underlying the original policy was the desire to restrict the application of controls on the movement of goods to the points of departure and destination. An external transit procedure applies to third-country goods not in free circulation in the EC, while this internal transit procedure applies to goods originating or in free circulation in the EC.

Two factors were deemed to require further revisions in the procedure. First is the enlargement of the EC to include Spain and Portugal, whose transitional accession measures continue in effect (so that goods do not yet move entirely free of customs duties between them or member states).[4] Second is the coming elimination of internal frontiers as of January 1, 1993. The preamble to the regulation states that it is written independent of the interlinked bonded warehouse scheme being prepared to ensure excise tax collections. A final clause cites the numerous amendments to the 1977 regulation as making the current composite measure expedient.

The procedure is to apply to all movements of goods from one location to another within the customs territory of the EC, in the form of an internal transit procedure and an external transit procedure, with exceptions for goods covered by specified bilateral or EC agreements. A presumption of Community goods status[5] is created for goods not moving under customs carnets or other economic customs procedures, entitling them to full benefits of these transit procedures even if they pass through a European Free Trade Association (EFTA) country on the way to an EC destination. Special provisions on the treatment of goods shipped by rail, air, or sea are included, as well as on postal consignments.

For goods falling under the external procedure, the regulation details applicable procedures and documentation, liability for compliance, means of transport available, customs administrative duties, methods of sealing and identification, and reporting responsibilities. Such goods and their customs form T1 declarations can travel freely under seal within the EC. Guarantees must be provided, unless waiver provisions cover the particular shipment concerned. The regulation further deals with the treatment of irregularities that may be discovered in relation to goods placed under the procedure and the legal effects of the EC provisions and documents in the member states.

To be placed under the internal transit procedure, goods must be declared on and be accompanied by a form T2. Because such goods do not leave the customs territory of the EC (including Spain and Portugal, to simplify the discussion) or EFTA countries, or are covered by an express EC provision allowing the procedure to apply, the dangers of nonpayment of charges or of fraud are negligible. Thus, the procedure is set forth in a single brief article.

A Committee on Community Transit is created to administer the regulation, recommend needed changes in this or other EC customs procedures, promote the simplification of formalities, and manage computerized transit systems. The committee is to submit its proposals to the EC Commission. If the latter does not express its opinion thereon, the proposals would be

[1] Persons and their luggage will be able to move without restraint among the Schengen nations from the first half of 1992. Questions about the agreement, which is often viewed as a first step or model for the EC as a whole, and whether it might in fact interfere with the work of the EC institutions in this area are often raised, as are potential conflicts between it and EC legislation that might arise in the Schengen countries. See Written Question No. 708/90 of Mar. 27, 1990 *Official Journal of the European Communities (OJ)* No. C 233 (Sept. 17, 1990), p. 38) by four members of the European Parliament and answer given by Mr. Bangemann on behalf of the EC Commission on May 14, 1990.

[2] *OJ* No. L 262 (Sept. 26, 1990), p. 1. The EC Commission's proposal appeared at *OJ* No. C 307 (Dec. 6, 1989), p. 5; the European Parliament issued a decision on Sept. 12, 1990 (not yet published in *OJ*); and the Economic and Social Committee's opinion appeared at *OJ* No. C 112 (May 7, 1990), p. 13.

[3] *Council Regulation (EEC) No. 222/77, OJ* No. L 38 (Feb. 9, 1977), p. 1; last amended by *Regulation (EEC) No. 474/90, OJ* No. L 51 (Feb. 27, 1990), p. 1.

[4] It is possible that other countries, such as some EFTA members, may seek full EC membership, so that transition accession measures could continue far beyond 1993.

[5] Goods that are wholly obtained in the EC, or if from third countries that have been released for free circulation in the EC, or obtained wholly from these two classes of inputs.

submitted to the Council. The regulation is to be under EC Commission review, with suggested changes suggested by October 1, 1992. It will be effective as of January 1, 1993.

A related measure was Commission Regulation (EEC) No. 2920/90 of October 10, 1990[6]: Amending Regulation (EEC) No. 1062/87 on Provisions for the Implementation of the Community Transit Procedure and for Certain Simplifications of That Procedure. This regulation deals specifically with goods shipped by combined road-rail transport, a fairly new means of transport that had given rise to questions as to liability for payment of duties. According to this enactment, the railways will be responsible for paying duties and charges where any irregularities arise during rail travel, although suit by a railway against a principal or shipper is not ruled out. Although differing reporting forms can be used for such goods, the directive requires that any form used have specified contents and bear the designation T2 L. It likewise allows use of commercial documents to establish Community status for the goods.[7] No invoice need be presented for shipments of Community goods valued at or below a stated level. This measure will be effective as of March 1, 1991.

Release for Free Circulation

Council Directive 90/504/EEC of October 9, 1990,[8] amends again directive 79/695/EEC on harmonizing the procedures for the release of goods for free circulation within the EC.[9] In general, such procedures include an exemption from written entries and documentary simplification as to certain goods, the use of composite or recapitulative entries, and preentry release of goods. The preamble states that the conditions for use of the procedures and the importers who will be eligible to use them must be laid out as precisely as possible, and that importers and goods should receive the same treatment wherever the release for free circulation occurs in the EC. In addition, simplified procedures are described as being "of considerable economic importance to the customs union and the internal market" and thus necessitating amendments to existing law.

Among other provisions, the regulation adds new articles relating to the immediate release of certain postal consignments and of low-value or noncommercial importations. It creates both a simplified declaration procedure, allowing goods to be covered by periodic or similar entries to be released quickly, and a local clearance procedure, permitting member-state customs authorities to release goods at designated or preapproved facilities to importers of good record. Notification, recordkeeping, and other obligations of the users of such procedures are specified. The directive is to be implemented by the member states by January 1, 1993.

Customs Warehouses and Free Zones

A lengthy EC Commission regulation, Laying Down Provisions for the Implementation of Council Regulation (EEC) No 2503/88 on Customs Warehouses, was adopted on July 30, 1990. It was not published until September 10, 1990.[10] The regulation creates six classes of warehouses for public and private, long-term and temporary uses, subject to varying levels of controls by customs authorities. The measure makes it clear that goods already placed under certain other customs procedures, notably release for free circulation, cannot be entered into warehouses at the same time, although goods under other nontariff procedures can be so placed.

Requirements for the entry of goods into warehouse (by presentation to customs and the lodging of form IM or, in the case of EFTA-origin goods, the single document) are set forth, as are the basic procedures for establishing and operating such warehouses. All aspects of the handling of goods in warehouse are provided for, including transport among warehouses, the verification of importer-supplied information, the handling of goods in warehouse,[11] common storage,[12] recordkeeping,[13] and destruction of goods. Special provisions for goods being released from warehouse into free circulation or exported are provided, and other articles cover agricultural products. The regulation entered into force January 1, 1991, and applies as of January 1, 1992.

The related regulation, Laying Down Provisions for the Implementation of Council Regulation (EEC) No. 2504/88 on Free Zones and Free Warehouses, was adopted on the same day.[14] It allows any person to apply to customs authorities for designation of any part of the EC customs territory to be designated as a free zone or warehouse after a showing of proper controls

[6] *OJ* No. L 279 (Oct. 11, 1990), p. 20.

[7] For cases concerning proof of Community status, see *Openbaar Ministerie and Anor* v. *Houben* (Case C-83-89, not yet reported, of Mar. 22, 1990) [holding that lodgement of an internal transit document T2 or T2L is sufficient, and dealing with related issues on release for free circulation] and *Trend-Moden Textilhandels GmbH* v. *Hauptzollamt Emmerich* (Case 117/88, not yet reported, of Mar. 7, 1990).

[8] *OJ* No. L 281 (Oct. 12, 1990), p. 12. The EC Commission's proposal appeared in *OJ* No. C 235 (Sept. 13, 1990), p. 16; the opinion of the European Parliament was published in *OJ* No. C 38 (Feb. 19, 1990), p. 49 and No. C 260 (Oct. 15, 1990); and that of the Economic and Social Committee was printed in *OJ* No. C 62 (Mar. 12, 1990), p. 5.

[9] The 1979 measure was published in *OJ* No. L 205 (Aug. 13, 1979), p. 19.

[10] *OJ* No. L 246, p. 1. The 1988 Council measure appeared in *OJ* No. L 225 (Aug. 15, 1988), p. 1. Prior law included Commission Regulation (EEC) No. 3787/86 (*OJ* No. L 350 (Dec. 12, 1986), p. 14) and Regulation (EEC) No. 1325/89 (*OJ* No. L 133 (May 17, 1989), p. 6).

[11] Under art. 34, if in-warehouse handling would result in an import duty advantage (reduction), prior application and approval from customs authorities is required.

[12] Common storage is allowed only when the goods are equivalent—that is, classifiable in the same subheading of the common customs tariff, and having the same commercial qualities and technical characteristics.

[13] Operators of class A, C, D, and E warehouses are made responsible for keeping stock and discharge records, while control offices and customs officials handle class B and F warehouses, respectively.

[14] *Commission Regulation (EEC) No. 2562/90, OJ* No. L 246 (Sept. 10, 1990), p. 33.

and supervision. Advance notification and approval of all types of activity must be obtained by users from customs officials, with records kept by the operators. As with the warehouse regulation, specimen forms are provided for collecting necessary information, but customs officers are given some latitude in the time of submission and extent of documentation to be required at particular stages of administration. An annex enumerates the 23 free zones approved as of July 30, 1990. Again, the measure entered into force on January 1, 1991, and applies in the member states as of January 1, 1992.

Weapons Control

The EC Commission submitted an amended proposal for a Council directive "on control of the acquisition and possession of weapons" on September 27, 1990.[15] Among the EC Commission's prominent goals was to abolish internal controls but at the same time ensure that articles crossing borders between member states would be safe, necessitating the approximation (partial harmonization) of national legislation. It was axiomatic that the removal of intra-EC formalities required external controls in which all concerned could have confidence. The preamble to the proposal therefore states that member states can still maintain their own restrictions on external trade in firearms. At the same time, however, the right of hunters and other sportsmen to transport their weapons across frontiers was not intended to be restricted any more than is necessary. The key principle to carry out this policy is prior notification of other member-state Governments by those entitled to and wishing to carry their firearms and ammunition across boundaries, supported by a European firearms pass valid for 5-year periods.

Article 2 clarifies that member-state laws on hunting, target-shooting, and the carrying of weapons would not be affected by the directive, which likewise would not apply to armed forces, police, or other public authorities or to recognized bodies concerned with firearms history or collection. Article 3 would also entitle the member states to adopt provisions more stringent than certain articles of this directive. New EC-wide criteria for being a firearms dealer and for establishment of a firearms register would be included. Firearms are classed into categories, each with its own restrictions and standards. Information-sharing among the member states would help ensure that the measure is carried out successfully.

Several articles set forth permitted and required formalities for the movement of firearms within the EC, including information to be provided interested Governments and including procedures applicable to dealers transacting cross-border business. Sportsmen holding valid firearms passes would not be subject to full advance notice requirements for each trip or event as to specified weapons categories. In addition, nonresidents (and presumably nonnationals) would be required to communicate with all member states concerned before moving firearms through the EC. Initial entry into the EC with firearms would be strictly regulated and complete information shared with all member states. Intensified external controls and criminal and administrative sanctions—even on violating member states—are also provided. Losses of firearms must be reported and may result as well in the invalidation of pertinent firearms passes. All sales would be subject to member-state legal requirements. The member states would be required to conform their laws to this directive, if adopted, by December 31, 1991.

Other Measures

Four other regulations merit a brief discussion. The first, Council Regulation (EEC) No. 2684/90 of September 17, 1990, is On Interim Measures Applicable After the Unification of Germany. It anticipates the adoption of transitional measures by the Council either in cooperation with, or after consultation by, the European Parliament.[16] It was made necessary by the rapid progression of events that resulted in the reunification of the two Germanys, well before the usual legislative processes of the EC could analyze the circumstances fully and take appropriate actions to absorb the former German Democratic Republic. Basic proposals for needed actions were submitted by the EC Commission in a communication on August 21, 1990. The Council states that none of the interim measures was intended to preclude modifications to the Commission's proposals.

Article 1 states simply that a temporary derogation from the acts of EC law covered by these proposals is granted subject to stated conditions and limits. First, East German legislation that conflicts with the EC Commission proposals could be maintained to the extent of the conflict until the earlier of a final Council action or December 31, 1990. Thereafter (presumably, although no subsequent documents confirm it, since January 1, 1991), EC law would apply in full without Council action to implement transitional measures. Second, consultations between the Federal Republic of Germany and the EC Commission are required in order to bring about eventual compliance with EC law. Third, separately adopted regulations on transitional measures for agricultural and fisheries products continue in effect as provided therein. Additional EC Commission reports to the Council and the European Parliament are also required. The regulation entered into effect on its date of publication.

[15] COM (90) 453 final, *OJ* No. C 265 (Oct. 20, 1990), p. 6. Earlier proposals appeared in *OJ* Nos. C 235 (Sept. 1, 1987), p. 8, and C 299 (Nov. 28, 1989), p. 6. The opinion of the European Parliament was issued on July 11, 1990, but has not yet been published in the *OJ*. The opinion of the Economic and Social Committee was printed in *OJ* No. C 35 (Feb. 8, 1988), p. 5, relating to the first proposal.

[16] *OJ* No. L 263 (Sept. 26, 1990), p. 1. Proposal of the EC Commission of Aug. 22, 1990, for a Council directive appeared as COM (90) 400 final at *OJ* No. C 230 (Sept. 15, 1990), p. 7, and for a Commission regulation at p. 9 of the same issue under the same designation. They included lists of areas to be dealt with but did not set forth language for adopting relevant changes.

Second, Commission Regulation (EEC) No. 3185/90 of October 31, 1990,[17] amends prior EC law[18] on outward processing relief arrangements and the standard exchange system. It implements a document checking system in advance of any customs authorizations to show that the final goods (known as compensating products) were made from the temporarily exported EC goods. It also allows officials to ascertain if goods leaving the EC for repairs can in fact be repaired and permits inspection of contracts, sale and lease agreements, and similar documents before exportation of related goods.

The third measure, comprising a 1-page text and a 49-page annex, is Commission Regulation (EEC) No. 2839/90 of September 27, 1990, amending Regulation (EEC) No. 3579/85 on air transport costs to be included in customs value.[19] It replaced lists in the annex to the 1985 regulation that specified, for purposes of the regulation implementing for the EC the GATT customs valuation code,[20] the percentages of air transport costs to be counted toward the appraised value of goods. Such transport costs are assessed "in proportion to the distance covered outside and inside the customs territory of the Community," according to the preamble, based on the place where the transporting planes cross land frontiers of the EC. The regulation entered into force upon publication and applies as of the same date.

Last, an amended proposal for a Council regulation on statistics on goods traded between member states was presented by the EC Commission on September 24, 1990.[21] It takes into account the continuing need for many categories of information, often of a regional or industry nature rather than a macroeconomic one, despite the abolition of internal boundary controls. Some provisions of the measure would go into effect on a transition basis, but the majority are intended for the post-1992 period. Some depend on the implementation of a unified tax system in each member state. The measure would apply to any goods crossing an internal frontier, even in the absence of a commercial transaction, but would impose no obligations on private individuals. It would create a statistical collection system (Intrastat) covering goods in free movement, transit, or storage procedures or otherwise in trade between member states. The information would be collected from consignees (intra-Community operators) in the interim period unless exempted as governmental or other approved institutions. Such statistics would be collected and issued in conjunction with VAT collection responsibilities. They would be made available to all member states. Reporting responsibility would rest on the last member state of arrival, and the categories of data and media to be used are described.

Possible Effects

As observed above and in previous reports in this study, the border controls measures should have a positive impact on trade in goods in and with the EC and should benefit both EC and foreign firms. The large number of changes resulting from the interim and post-1992 measures will necessitate adjustment by the trading community, because of both new rules and new documentary requirements. New importers or small and medium-size entities may face greater difficulty than existing or large ones in dealing with the revised and still complex legal framework. But the gains resulting from greater uniformity and reduced delays will be substantial for all of them.

Free Movement of Persons

Background and Anticipated Changes

As more of the legal regime for the internal market has been finalized, additional attention has been given to the effects of integration on individuals, and to changes in law and policy that could improve human lives and society. The goal of free movement for people in the EC—considered by the founders to be of high importance—has yet to be attained. But increased efforts during the 1992 program may yet be successful.

This general heading comprises many dimensions—the recognition of professional and vocational qualifications, the development of harmonized criteria and training curricula, the provision of more comparable social benefits, the training and retraining of EC workers, the employment of youth, the expansion of cooperative and exchange programs, the growth of research, and numerous others. As a result, very large expenditures of time and money are proving necessary even to approach the ambitious schemes of the EC Commission and the European Parliament. The latter body, as a popularly elected institution, has devoted much effort in these areas and has tried to oversee and inspire EC Commission officials' work and plans.[22] However, this subject area is in reality even broader than the above-mentioned topics for directives, as the EC institutions and member

[17] *OJ* No. L 304 (Nov. 1, 1990), p. 83.

[18] In particular see *Council Regulation (EEC) No. 2473/86*, published in *OJ* No. L 212 (Aug. 2, 1986), p. 1.

[19] *OJ* No L 273 (Oct. 3, 1990), p. 1. The 1985 measure appeared in *OJ* No. L 347 (Dec. 12, 1985), p. 2.

[20] *Council Regulation (EEC) No. 1224/80* of May 28, 1980, *OJ* No. L 134 (May 31, 1980), p. 1; last amended by *Regulation (EEC) No. 4046/89*, *OJ* No. L 388 (Dec. 30, 1989), p. 24.

[21] *OJ* No. C 254 (Oct. 9, 1990), p. 7.

[22] Many written questions from members of the European Parliament have been submitted to officials of the EC Commission. See the following questions and answers: No. 970/90 (*OJ* No. C 259 (Oct. 15, 1990), p. 39, on European driving licenses; No. 715/90 (same issue of *OJ*), p. 36, on harmonizing family benefits; No. 721/90 (same issue), p. 37, on gender participation in ERASMUS; No. 583/90 (same issue), p. 34, on financial aid in primary and secondary education; No. 622/90 (same issue), p. 34, on infringement of the driving hours legislation and Netherlands' prosecution of persons who committed act elsewhere in EC; No. 336/90 (same issue), p. 26, on the COMETT program, a cooperative university-business effort; No. and 821/89 (same issue), p. 2, on open universities and participation in EC cooperation programs. Many of these subjects have been discussed in previous reports in this study.

states grapple with issues of security, immigration, and sovereignty. Concerns over terrorism, crime, narcotics trafficking,[23] illegal trading in stolen art and antiques, and gun control have not been resolved, and have slowed work on directives to abolish internal controls on individual movement. Considerable debate over the threshold legal issue—whether article 100A of the EEC Treaty and qualified majority voting can be used as a basis for these measures rather than unanimous agreement—has complicated efforts to move forward.[24]

Professional Practice

The prospects of open competition among and easy migration of professional skilled workers have led to efforts to restrict entry by non-EC nationals and, more favorably, to modernize many professions. It may be noted that entry of Americans and other foreign persons into EC professions has always been limited by language differences, cost of training, residence rules, and disciplinary considerations. Some member states appear to be trying to make qualification even more difficult, although others—sometimes following pressure from non-EC professionals and firms—have relaxed restrictions.

For example, in October 1990 Belgium lifted its quantitative restriction on the number of U.S. legal consultants allowed to work there, following efforts of the growing number of U.S. law firms operating there.[25] The Government is reviewing its restraints on the activities of such consultants. On the other hand, a draft law may go into effect in France in September, 1991, to restructure the legal profession and change qualification criteria for foreign lawyers. The existing two-category system, with avocats practicing in the law courts (Tribunals de Grande Instance) and conseils juridiques in the commercial courts (Tribunals de Commerce), would be revised so that only one professional title, avocats conseils, would exist—a more modern approach to meet increased EC competition. Individual attorneys who had qualified to work in France prior to 1971 would be "grandfathered" and absorbed as avocats conseils. But persons who came thereafter and registered as consultants on U.S. and international law (following imposition of restrictions in 1971) would be required to qualify again by passing the Certificat de l'Aptitude à la Profession d'Avocat. U.S. law firms could no longer operate as companies, and each attorney would be required to qualify on his own. The statute would impose similar standards as to title insurers, notaries, accountants, and engineers.[26]

Recognition and Harmonization of Qualifications

At the EC level, the EC Commission submitted an amended proposal for a Council Directive on a second general system for the recognition of professional education and training that complements Directive 89/48/EEC.[27] This directive, along with related measures covering vocational qualifications (discussed in previous reports in this study), would help attain the first step toward the creation of EC-wide professions by imposing an obligation on each member state to recognize qualifications obtained in other member states. The revised proposal would extend the terms of the directive to short higher education courses and to professional programs linked with vocational training or experience. By doing so, more craftsmen and skilled workers would be able to qualify for positions in member states other than their own. Other new language would clarify prior language and make it clear that work activity covered by collective or other occupational agreements is covered. Conforming changes in provisions for concomitant work experience would also be included. Other provisions from the original proposal would be largely unchanged.

Recognition and harmonization activities continue in a broad range of economic activity—from medical positions of all types to technical occupations. However, many other occupations that may benefit from the mutual recognition directives will probably not be the subject of EC-wide legislation to harmonize training programs and standards.[28] These principles were discussed in earlier reports in this study.

Social Benefits

Because of differing existing benefit programs and the potentially high cost of changing them, harmonization of such payments and structures would appear to be considerably in the future. Present efforts are directed more toward establishing clearer legal regimes for proving eligibility, improved communications among Governments and employers (aiding in gathering information about each applicant's work history), and attempting to provide assistance to workers' families and survivors as to available benefits. Thus, while certain member-state obligations are created, measures at the Community level have focused on program structure and application instead of payment levels.

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[23] See Council Decision of Oct. 22, 1990, concerning the conclusion, on behalf of the European Economic Community, of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (approving that treaty on behalf of the EC), *OJ* No. L 326 (Nov. 24, 1990), p. 56. Internal ratification processes in the member states are expected to be completed by mid-1991.

[24] See, for example, *European Report*, No. 1638 (Dec. 15, 1990) for summary of EC Council decision to use art. 100A as the basis for the proposed EC directive on the free movement of guns and ammunition, discussed above, following adoption of common position on Dec. 13.

[25] U.S. Department of State Telegram, November 1990, Brussels, message reference No. 16626.

[26] Bureau of National Affairs (BNA) newsletter "1992: The External Impact of European Unification," vol. 2, No. 13 (Oct. 5, 1990), pp. 8-9.

[27] COM (90) 389 final, Aug. 8, 1990, *OJ* No. C. 217 (Sept. 1, 1990), p. 4.

[28] For example, the EC Commission does not plan to work toward harmonized rules for holiday center entertainments staff. Written Question No. 78/90 and Answer on behalf of the EC Commission given by Mrs. Papandreou, *OJ* No. C 259 (Oct. 15, 1990), p. 13.

Proposed Regulation

Among its recent efforts to resolve some of these problems, the EC Commission submitted a proposed regulation, Amending Regulation (EEC) No. 1408/71 on the Application of Social Security Schemes to Employed Persons, to Self-employed Persons and to Members of Their Families Moving Within the Community, and Regulation (EEC) No. 574/72, Laying Down the Procedure for Implementing Regulation (EEC) No 1408/71."[29] The Commission took into account information from the Administrative Commission on Social Security for Migrant Workers and the opinions of the European Parliament and the Economic and Social Committee.

As with some earlier proposals, the proposed measure was necessitated not only by integration-related objectives but also by changes in member-state social security legislation and experience in implementing existing measures. In addition, rulings by the European Court of Justice had resulted in piecemeal amendments to the 1971 regulation, complicating efforts to apply it. These rulings related to EC nationals who either worked in or have retired to other member states. These rulings had made some amendments necessary in EC law. Other problems had likewise become apparent—unemployed persons residing in the same member states as their families, persons who were entitled to more favorable benefits (due to bilateral agreements) than the EC would require, currency conversion problems, restrictions imposed by Irish and British laws, abolition of mandatory retirement and contribution age limits, and many others. Political and governmental restructuring (from the transfer of responsibility for Gibraltar within the U.K. Government and the reorganization of Danish agencies) and changes in workmen's compensation programs further prompted a complete revision.

Many technical amendments in the 1971 measure are proposed along with substantive changes relating to social security benefits. Some such changes dealt with eligibility criteria throughout the EC, such as periods of insurance prior to eligibility and coverage for the unemployed who remain in their member state of nationality or family residence. Other changes related to specific member-state legislation and agencies and to the relationship between one member's domestic legislation and the laws of all the others. Specific instances are matters such as whether spouses of workers and registered as coinsured persons are deemed to remain family members for particular purposes after becoming 65 years old. (In the Netherlands the law is stated to hold that they are.) Multiple effective dates, some linked to the effective dates of member-state statutes, are provided for the proposed regulation.

[29] COM (90) 335 final, Aug. 3, 1990, *OJ* No. C 221 (Sept. 5, 1990), p. 3. The 1971 regulation appeared at *OJ* No. L 149 (July 5, 1971), p. 2, and the 1972 amending measure at *OJ* No. L 74 (Mar. 27, 1972), p. 1. Other amending measures were *Regulation (EEC) No. 2001/83, OJ* No. L 230 (Aug. 22, 1983), p. 6, and *Regulation (EEC) No. 3427/89, OJ* No. L 331 (Nov. 16, 1989), p. 1.

Judicial Decisions

Many decisions of the European Court of Justice are devoted to sorting out applicable law pertaining to pension, sickness, maternity, and disability benefits for EC nationals. Some resolve questions of interpretation that may apply only to the parties, while many set forth general principles of EC law. For example, in *Bettray v. Staatssecretaris van Justitie* (Case 344/87, [1990] 2 CEC 701) the Court held that a person in a retraining or reintegration scheme is not a "worker" for purposes of the EEC Treaty's guarantees of rights because he is not performing "genuine economic activity." In another, *Belgian State* v. *Humbel and Anor* (Case 263/86, [1990] 2 CEC 493), it was found that Regulation (EEC) No. 1612/68 implementing the right of free movement for persons does not preclude a member state from charging for children of migrant workers an enrollment fee not assessed as to children of their nationals.

In *Echternach and Moritz* v. *Netherlands Minister for Education and Science* (Joined Cases 389 and 390/87, [1990] 2 CEC 511), the Court held that employees of international organizations are required to be afforded the right of free movement, that there can be no discrimination in hiring for government jobs that are open to nonnationals, and that a child in a host state can stay or return there for educational purposes even if his working parent returns to their state of residence. The ruling also stated that no person's right to enter a member state to live or seek work can be deemed to be abridged by the person's failure to obtain a residence permit, that equal education and vocational training must be provided to all children without regard to nationality, and that no discrimination can be permitted in public maintenance and educational aid to children of migrants.

Two final examples of the many decisions in this area are *Bronzino* v. *Kindergeldkasse* (Case 228/88, not yet reported) and *Gatto* v. *Bundesanstalt für Arbeit* (Case C-12/89, not yet reported), dealing with Italians living and working in the Federal Republic of Germany who sought successfully to obtain family benefits for children living in Italy. The children were found to have been properly registered with Italian authorities and to be at the disposal of the Italian employment officials for purposes of locating eventual employment.

In the area of recognition of qualifications, the recent case of *Procureur de la République & Ors v. Bouchoucha* involved a French national certified as an osteopath in another member state who sought to practice in France. It was held that, in the absence of Community-level harmonization of curricula and training programs for such persons, a member state is entitled to reserve the practice of osteopathy exclusively to doctors of medicine. There had been as yet no EC recognition of the particular diploma involved, and the member state accordingly had a proper interest in protecting its nationals.[30]

[30] Case C-61/89 of Oct. 3, 1990 (not yet reported), *Common Market Reporter*, par. 95653.

Last, on the freedom of establishment guarantee, it was held that treaty provisions do not apply in a purely national context, and persons attempting to use these provisions as a basis for legal action or defense must cross borders for training or practice. The issue arose in the joined cases *Re Nino & Ors*, an action against Italian nationals in Italy for unauthorized practice of medicine.[31]

Training Programs

The development, expansion, and renewal of the various training and cooperation programs—ESPRIT, COMETT I & II, ERASMUS, DELTA, and others—continue to claim attention and funding.[32] Related matters were discussed in this chapter in previous reports in this study, as well as in the discussion of EC research and development. Considerable public funds continue to be invested in the broad effort to make EC industry as competitive as possible and to train and retrain workers to optimum levels.

[31] Cases 54/88 and 91/88, C-14/89 of Oct. 3, 1990 (not yet reported), *Common Market Reporter* par. 95654.

[32] See Proposal for a Council Regulation (EEC) Amending Regulation (EEC) No. 337/75 Establishing a European Centre for the Development of Vocational Training , COM (90) 535, Dec. 17, 1990, *OJ* No. C 23 (Jan. 31, 1991), p. 26. Also of interest is a proposed Council decision relating to the training of customs officials (The Matthaeus Programme), COM (90) 605, Dec. 21, 1990, *OJ* No. C 13 (Jan. 19, 1991), p. 12. The apparent goal of the effort is to permit customs officials to be exchanged among member state administrations, promoting the "Community dimension" of such work and free movement of these workers while providing for the legal status of exchanged officers. Common training curricula would be set up and language instruction offered, and uniformity of customs administration is intended to be advanced. A last proposed decision would fund training aimed at promoting innovation, under Eurotecnet and Force, COM (90) 486, Dec. 21, 1990, *OJ* No. C 24 (Jan. 31, 1991), p. 6.

Possible Effects

As described in prior reports in this study, these measures seem minimally to affect the United States and U.S. business, although U.S. firms' subsidiaries operating in the EC will receive some benefit. The legislation will apply directly to EC nationals and their families and dependents, not to outside individuals. Thus, although firms in the EC may obtain additional flexibility in hiring or transferring workers, and although some foreign providers of services may find they can operate across internal borders, it does not seem likely that these directives will have a significant impact.

In addition, in the area of professional and vocational qualifications, the directives potentially apply to the small number of third-country nationals who were trained in the EC or have for some time been allowed to work or practice (often with significant limitations) in the EC and might be "grandfathered." Internal laws in the member states—which would not appear to be precluded by legal obligations at the Community level—may contain restrictions on foreign professionals and workers in accordance with member-state constitutions. Accordingly, it is possible that, with added competition from new arrivals from other member states, any member state may choose or need to impose limitations on third-country nationals. Moreover, the legal treatment of outside corporate entities such as law or accounting firms may also change, with these firms facing added constraints on their activities and licensing criteria for their partners and associates. This developing situation is of growing concern to U.S. and other non-EC professionals wishing to provide or continue to provide services in the EC.

CHAPTER 8
TRANSPORT

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TRANSPORT

EC initiatives pertaining to the 1992 program concerning transportation services have two major objectives. The first is the creation of a unified transport market among the EC member states. This encompasses simplifying transportation between member states through such measures as eliminating border controls and streamlining customs documentation requirements. It also entails harmonizing technical and safety standards pertaining to transport services.

The second major objective is economic deregulation. This entails removing barriers to market entry affecting new carriers, permitting existing carriers greater flexibility in making routing decisions, and limiting governmental involvement in establishing fares and charges. It also encompasses decreasing the ability of individual member states to prohibit out-of-state carriers from engaging in cabotage—transportation between two points within the same state.

EC initiatives seldom address transportation services generically. Instead, they generally focus on a particular transportation sector—*air transport* (including both passenger and freight), *surface transport* (including trucks, passenger buses, and to a limited extent rail and combined motor-rail and motor-barge freight services), or *ocean transport* (carriage of goods by ocean vessels).

Developments Covered in the Previous Reports

In its 1985 White Paper, the EC Commission identifies its major goal pertaining to the air-transport sector as that of increasing competition. The White Paper states that this is to be achieved by measures such as changing the system for the establishment and approval of tariffs and limiting the rights of governmental bodies to restrict capacity and access to the market.[1] The EC took initial steps to implement economic deregulation in 1987 by restricting the scope of capacity-sharing arrangements between airlines then in effect on most passenger routes between points in different EC member states. A second deregulation package was proposed in 1989, which sought to limit the power of individual member states to veto intra-EC passenger air fares, to further restrict the scope of capacity-sharing arrangements, and to relax, to a limited extent, member states' ability to regulate cabotage. In 1990, the EC Commission proposed a deregulation package for air cargo services, which called for adoption of EC-wide rules for granting operating licenses to EC-based air cargo carriers, lifting of restrictions against cabotage, and advance publication of cargo rates.

In surface transport the White Paper describes two priorities: eliminating frontier checks in carriage by road, and easing capacity and entry restrictions pertaining to motor transport.[2] To help achieve the former 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 latter objective, the EC Commission has proposed measures relaxing capacity and entry restrictions governing truck transport, and the EC Council has increased the maximum number of authorizations each member state may grant to its trucking companies for Community transport. The current system of capacity restrictions is scheduled to be eliminated effective January 1, 1993.

The principal objectives of the White Paper in the ocean-transport sector are to give freedom to provide ocean-transport services between member states and to establish 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.

Recent Developments

Overview

The EC issued numerous initiatives during the period covered by this report directly promoting White Paper objectives in the air-transport sector. Chief among these were a series of final regulations implementing the so-called "second package" of liberalization for air passenger services. These regulations increase air carriers' ability to offer discounted air fares, restrict member states' authority to limit new competition on many airline routes, and limit the scope of capacity-sharing agreements. The regulations also require EC member states to adopt common licensing rules for airlines. The EC Council additionally adopted final regulations relaxing economic regulation of air-cargo services. Other significant activity in the air-transport sector included issuance of proposals for directives concerning slot-allocation practices at EC airports and aircraft-safety standards.

The most significant initiative in the surface-transport sector was an increase by 40 percent per year, for both 1991 and 1992, in the quotas that each member state may grant to its trucking companies.

[1] Commission of the European Communities, *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.

[3] Ibid., p. 30.

A number of White Paper objectives pertaining to surface transport remain unaddressed, however. The EC still has not proposed a definitive cabotage regime for trucking for the post-1992 period.[4] Moreover, no significant activity occurred during the period in the area of passenger motor transport. The EC Commission has criticized the EC Council's failure to adopt its 1987 deregulatory proposals concerning intercity bus transport.[5]

Finally, there was no initiative activity at all during the period directly addressing ocean transportation. Proposals to permit cabotage in ocean transport, which have been pending since 1986, and to create a "European"-flag ship register have provoked continued disagreement within both the EC Council and member states and have not been adopted in final form.[6] The proposals currently being considered by the EC Council would not result in any liberalization of restrictions on maritime cabotage occurring until late 1993.[7]

The Air-Transport Sector

Significant Developments

Initiatives affecting air transport that were issued during the period may be divided into three categories: the first pertaining to economic regulation, the second pertaining to harmonization of standards, and the third pertaining to border controls.

Economic Regulation

Second Liberalization Package for Air Passenger Services

The EC Council issued two final regulations during the summer of 1990 implementing the second liberalization package for air passenger services. As previously mentioned, these regulations relate directly to the White Paper objective of increasing competition in the air-transport market by liberalizing the conditions under which new carriers can enter the market, existing carriers can increase capacity, and all carriers can introduce lower fares.

Fares

The first of the two regulations, Council Regulation 2342/90, concerns fares for scheduled air passenger services.[8] Under this regulation, which became effective on November 1, 1990, certain new airline fares for transportation between member states will become effective unless the civil aviation authorities of both member states disapprove the fare. This "double disapproval" scheme will be applicable to: (1) unrestricted economy fares that are 95 percent or more of the "reference fare," defined as the average of the normal economy fares charged by EC-based airlines on the route in question; (2) fares between 80 and 94 percent of the "reference fare" that are for round-trip travel and subject to advance purchase and penalty requirements; and (3) fares between 30 and 79 percent of the reference fare that are for round-trip travel and subject to a combination of minimum stay, cancellation penalty, advance purchase, off-peak travel, or age requirements. Other fares remain subject to approval by both member states involved; disagreements between member states concerning such fares are to be resolved through arbitration. By contrast, the version of this regulation originally proposed in 1989 would have permitted all new fares to be subject to double disapproval, and a 1990 amendment to the proposal would have permitted more extensive utilization of double disapproval than does the final regulation.[9] The EC Council nevertheless states in the final regulation that it is committed to the objective of making all fares subject to double disapproval by January 1, 1993.

Regulation 2342/90 directs member states to approve all fares, whether or not subject to the double-disapproval process, that are reasonably related to the applicant airline's long-term fully allocated costs, including those pertaining to safety, and provide a satisfactory return on capital. The final regulation retains a provision of the initial proposal giving EC-based carriers the exclusive right to introduce lower fares on routes between cities in different EC member states.

Market Access

The second regulation, Council Regulation 2343/90, concerns market access, licensing standards, and capacity-sharing agreements.[10] Regulation 2343/90, like the regulation on fares, became effective November 1, 1990, and governs only traffic between EC member states.

With respect to market access, Regulation 2343/90 requires member states to permit an airline registered in another member state to engage in traffic to and from the state of registration except with respect to certain low-density "regional" routes. On high-density routes between cities in two member states with a

[4] EC Commission, *Fifth Report of the Commission of the European Communities to the Council and Commission of the European Communities, European Parliament* ("Fifth Report"), March 28, 1990, p. 22.

[5] Fifth Report, p. 23.

[6] Elizabeth Canna, "An Alternative to EC Highway Congestion," *American Shipper*, Dec. 1990, pp. 84-85; "London Rejects EC Shipping Proposal," *Financial Times*, Nov. 30, 1990, p. 8; "EC's Proposed Shipping Register Has Yet to Get Its Sea Legs," *Journal of Commerce*, Oct. 4, 1990, p. 8B.

[7] "Maritime Transport: Italians Present Ministers with Compromise Paper on Cabotage," *European Report*, No. 1639 (Dec. 19, 1990), sec. 4, p. 13.

[8] *Council Regulation (EEC) No. 2342/90 on Fares for Scheduled Air Services, Official Journal of the European Communities (OJ)* No. L 217/1 (Aug. 11, 1990).

[9] A detailed discussion of the earlier proposals is provided in U.S. International Trade Commission, *The Effect of Greater Economic Integration Within the European Community on the United States: Second Follow-up Report* (investigation No. 332-267), USITC publication 2318, September 1990, pp. 8-8 to 8-9.

[10] *Council Regulation (EEC) No. 2343/90 on Access For Air Carriers to Scheduled Intra-Community Air Service Routes and on the Sharing of Passenger Capacity Between Air Carriers Scheduled Air Services Between Member States, OJ* No. L 217/8 (Aug. 11, 1990).

specified annual number of flights or passengers, each member state must permit the other member state to designate more than one of its carriers to serve the route. Additionally, EC carriers are permitted "fifth-freedom" traffic rights (that is, to carry traffic between two member states, neither of which is the state of registration) with respect to flights that serve the state of registration if the fifth-freedom traffic constitutes no more than 50 percent of the seasonal seat capacity on the service.

The regulation additionally limits the scope of capacity-sharing restrictions between member states. It requires that capacity shares be increased immediately by 7.5 percentage points and that each member state's carriers cannot be restricted from carrying up to 60 percent of the capacity on a route. By contrast, the regulation initially proposed by the EC Commission in 1989 would have prohibited member states from restricting carriers from carrying up to 67.5 percent of total capacity.[11]

The regulation further requires the EC Council to adopt no later than July 1, 1992, uniform rules governing the licensing of air carriers and routes within the EC.

Structural Issues

The EC also issued a number of initiatives addressing structural problems in air transport that could inhibit the type of expanded competition contemplated under the second liberalization program for air passenger services. As explained below, these initiatives are intended to promote competition by diminishing barriers to entry and prohibiting certain types of anticompetitive activity.

Slot allocation

Congestion is common at major EC airports. The Association of European Airlines reported that over 20 percent of scheduled departures on European services during July and August 1990 incurred delays exceeding 15 minutes.[12] A recent report indicates that eight major airports within the EC are currently operating at capacity; seven additional airports are forecast to be at capacity by 1995; and seven additional airports are forecast to be at capacity by 2000.[13] One commentator suggests that, because of this congestion, takeoff and landing slots have become more important for some airlines than route licenses.[14] Newly established "regional" airlines, in particular, have experienced problems obtaining access to some EC airports.[15] EC Commission personnel have repeatedly expressed to the press the concern that these access problems and the concomitant domination of major EC airports by established carriers could undercut the EC's efforts to deregulate the airline industry by removing or relaxing fare and route restrictions.[16]

In response to these concerns, the EC Commission has proposed a regulation establishing a system for allocating takeoff and landing slots at EC airports for flights between member states.[17] Under the proposal, governments are to designate an official "slot" coordinator to allocate slots. At each airport, at least half of all slots that are unused or available are to be pooled and made available for "new entrants" that are defined as EC-based carriers that operate no more than three daily flights from the airport or control more than 30 percent of its existing slots. Moreover, if the new entrants' demand for slots exceeds the supply available in the pool, the slots of airlines that use aircraft with fewer than 200 seats and already control six slots a day will be added to the pool and made available to the new entrants. New entrants can use slots only to provide service to or from their state of registration on routes serviced by at most two other carriers. Additionally, EC-based carriers are to be guaranteed sufficient slots to be able to compete on new routes or to match increased service frequency on existing routes introduced by other EC-based carriers.

Anticompetitive activity

The EC additionally issued a number of initiatives pertaining to anticompetitive practices in air transport. The EC's authority in this area arises from Articles 85(1) and 85(3) of the Treaty of Rome. Article 85(1) prohibits agreements, decisions, or concerted practices affecting member states that have as their object the prevention, restriction, or distortion of competition within the EC. Article 85(3) states that agreements or categories of agreements that contribute to technical or economic progress may be made exempt from the restrictions in article 85(1).

Pursuant to its authority under article 85(3), the EC Council has promulgated Regulation 3976/87, which authorizes the EC Commission to exempt from the article 85(1) restrictions agreements on scheduled air-service-capacity restrictions, consultation for

[11] A description of the original proposal is provided in U.S. International Trade Commission, *The Effects of Greater Economic Integration within the European Community—First Follow-up Report* (investigation No. 332-267), USITC publication 2268, March 1990, p. 8-9. The original proposal also would have permitted EC carriers limited cabotage rights within all EC member states. Subsequently, the EC Commission severed the cabotage provision from the remainder of the proposal and proposed delaying the provision's effective date until January 1993. *See* USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, p. 8-9.

[12] "Airlines Fly More People, Profit Little," Financial Times, Oct. 4, 1990, p. 2.

[13] "Dogfight for EC Airport Space," *Financial Times*, Oct. 5, 1989, p. 25. The EC Commission has indicated that major changes in the air-traffic control systems currently operating within the EC will be needed fully to resolve these congestion problems. EC Commission, *Towards Trans-Europe Networks: Progress Report*, COM 90(310) final (July 19, 1990).

[14] Paul Abrahams, "Congestion Threatens Profits," *Financial Times*, Aug. 29, 1990, Aerospace survey, p. 9.

[15] Shawn Tully, "Europe Hits the Brakes on 1992," *Fortune*, Dec. 17, 1990, pp. 133-140.

[16] "EC Drafting Plans for Airport Slots," *Journal of Commerce*, Oct. 1, 1990, p. 5B; "Brussels Heads for Clash With Airlines," *Financial Times*, Sept. 25, 1990, p. 18.

[17] The text of the EC Commission's action had not yet been published in the *Official Journal* when this report was prepared. The discussion below is based on a fact sheet describing the proposed regulation prepared by the EC Commission.

common preparation of proposals on tariffs and fares, consultations on cargo rates, airport slot allocation, purchase and operation of computer reservation systems, and airport security and handling of passengers, mail, freight, and baggage, subject to restrictions on the binding effect on such agreements.[18]

In December 1990, the EC Commission adopted regulations indicating that the following types of agreements will qualify for automatic, or "block," exemptions from the Treaty of Rome's provisions on anticompetitive practices accorded by article 85(3) and Regulation 3976/87:[19]

- Agreements concerning scheduling of international air services between EC airports. The block exemption is accorded only to nonbinding agreements to effect rescheduling of flights with the objective of facilitating connections or reducing congestion; exempt agreements cannot be for the purpose of limiting capacity.[20]

- Consultations on passenger tariffs and cargo rates on scheduled international air services between EC airports. The block exemption is principally directed to discussions concerning interlining and is available only for discussions and agreements that are voluntary, nonbinding, and nondiscriminatory.[21]

- Undertakings pertaining to the purchase, development, or operation of a computer reservation system (CRS) insofar as the undertaking grants exclusive rights to market or to distribute the CRS within a defined geographic area within the EC or obliges its participants to agree not to develop, market, or operate another CRS. An EC-based carrier participating in such an undertaking must be accorded the right to terminate its participation without penalty with no more than 6 months advance notice, must receive equal display rights in the CRS with the system sponsor, and must be charged fees that are nondiscriminatory and costbased. Additionally, the system sponsor must permit any EC-based carrier the right to participate in the CRS on a non-discriminatory basis and may not preclude participating carriers from subscribing to other CRSs.[22]

- Agreements between an airline and an undertaking that provides ground services, baggage services, and/or in-flight meal services at an EC airport. Agreements that qualify for the block exemption cannot require the airline to obtain all ground services offered by an undertaking from that undertaking, cannot require the airline to accept other types of services and/or ground services at multiple airports from the undertaking, must impose cost-based, nondiscriminatory fees, and must permit the airline to withdraw from the agreement on 3 months' notice.[23]

Liberalization of Air Cargo

The EC Council adopted final regulations concerning air cargo services.[24] The final regulations generally parallel the regulations proposed by the EC Commission in April 1990 except that they do not accord EC-based carriers the right to engage in cabotage.[25]

Harmonization Of Standards

A number of initiatives issued during the period seek to establish uniform standards for EC air service operations. Although these initiatives do not relate to a specific White Paper objective, the EC Commission perceives that such measures will help create a uniform single market.[26]

Harmonization of Technical Requirements

The EC Commission issued a proposal for a directive harmonizing technical requirements for civil aircraft.[27] Currently, the existence of divergent aircraft

[18] During the period covered by this report, the EC Council amended Regulation 3976/87 to add consultations on cargo rates to the list of exempted activities and to extend the EC Commission's authority to grant exemptions through Jan. 31, 1992. *See Council Regulation (EEC) No. 2344/90, OJ* No. L 217/15 (Aug. 11, 1990).

[19] The EC Commission had previously published draft regulations on this matter in August 1990.

[20] *Commission Regulation (EEC) No. 84/91on the Application of Article 85(3) of the Treaty to Certain Categories of Agreements, Decisions and Concerted Practices Concerning Joint Planning and Coordination of Capacity, Consultation on Passenger Tariffs and Cargo Rates on Scheduled Air Services and Slot Allocation at Airports*, art. 2, *OJ* No. L 10/14 (Jan. 15, 1991).

[21] Ibid., art. 3.

[22] See *Commission Regulation (EEC) No. 83/91 on the Application of Article 85(3) of the Treaty to Certain Categories of Agreements Between Undertakings Relating to Computer Reservation Systems for Air Transport Services, OJ* No. L 10/9 (Jan. 15, 1991). The regulation is not a code of conduct for operation of CRSs; the code of conduct that the EC Council has already issued is described in USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, p. 8-8.

[23] *Commission Regulation (EEC) No. 82/91 on the Application of Article 85(3) of the Treaty to Certain Categories of Agreements, Decisions and Concerted Practices Concerning Ground Handling Services, OJ* No. L 10/7 (Jan. 15, 1991).

[24] *Council Regulation (EEC) No. 294/91 on the Operation of Air Cargo Services Between Member States, OJ* No. L 36/1 (Feb. 8, 1991).

[25] "Air Transport: Council Approves Air Freight Liberalisation Regulation," *European Report*, No. 1639 (Dec. 19, 1990), sec. 4, p. 17. By contrast, the proposed regulation would have granted EC-based carriers the right to carry cargo between two points within any member state as long as the carrier met that state's operational requirements. *See* USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, p. 8-7.

[26] Fifth Report, p. 22.

[27] *Proposal for a Council Directive on the Harmonization of Technical Requirements and Procedures Applicable to Civil Aircraft*, COM (90) 442 final, *OJ* No. C 270/3 (Oct. 26, 1990).

safety standards among the various EC member states prevents significant trade in aircraft between member states.[28] The proposed directive seeks to rectify this problem by requiring that each member state meet the conditions for membership in the Joint Aviation Authorities (JAA) organization by January 1, 1992, and adopt the JAA's safety and maintenance codes by January 1, 1993.[29] The JAA, which consists of representative of national aviation supervision authorities within Europe, currently operates as a voluntary organization.[30]

The proposal further requires each member state to accept as meeting its own safety codes aircraft and aircraft parts that another member state has certified as satisfying the pertinent JAA requirements. If a member state nonetheless believes that such aircraft or parts are "likely to jeopardize aviation safety," it may take unilateral action to bar their use, but would be required to notify the EC Commission of the nature of and reasons for its action.

Deferred boarding compensation

The EC Council approved regulations proposed by the EC Commission to establish uniform rules for bumping and denied boarding compensation for scheduled airline passengers.[31] The proposed regulations were discussed in detail in the second followup report.[32]

Border Controls

The EC Commission proposed the issuance of a regulation concerning the elimination of certain border controls applicable to transportation between EC member states by air or ocean transportation.[33] Under the proposed regulation, cabin and checked baggages of passengers traveling on airplane flights or ocean voyages between points within the EC would be exempt from border controls. The exemption would not be applicable to security checks, to voyages on privately owned recreational vessels, or to the baggage of through passengers who originated from or are destined to a point outside the EC.

Possible Effects

Transportation industry officials and analysts dispute the potential effects of the EC's second liberalization package for air passenger services. Karel van Miert, the EC transport minister, has stated that the second liberalization package and the EC Commission's slot allocation proposal should help to ensure internal competition in European air transportation and that the EC will propose further deregulatory measures in the future.[34] By contrast, the chairman of British Airways criticized the second liberalization package for insufficiently limiting governmental regulation over airline fares, routes, and capacity and warned that EC airline deregulatory efforts are mired "in a sea of bureaucracy."[35]

A study conducted by the London Business School of the effects of prior airline deregulation efforts in the EC showed mixed results. Fares during 1989 on routes on which liberalized fare restrictions were in effect dropped by 20 percent from the previous year's level on routes with new carriers, but rose by 4 to 5 percent when no new competition was established on the route.[36] Additionally, some member states are resistant to carrier attempts to reduce fares. France, Germany, Italy, and Spain all disapproved significant fare reductions proposed in 1989 by British Airways on routes from the United Kingdom to these countries.[37] Single-country disapproval of fare reductions remains possible under the second liberalization package for the numerous fares not subject to its double-disapproval provisions.[38]

Additionally, some of the EC's harmonization initiatives have been criticized by recently established "regional" airlines within the EC on the grounds that harmonization could raise the regional airlines' operational costs to the levels of the larger national-flag carriers. The regional airlines are also unenthusiastic about the EC Commission's slot allocation initiative.[39]

EC Commission officials also perceive that the EC's efforts to create a unified internal market in air transport services will ultimately have a direct effect on U.S. airlines. Published reports have stated that the EC Commission is considering limiting individual member states' ability to grant new authorizations for service between two member states by non-EC-based airlines, including those based in the United States.[40]

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[28] "Move to Harmonize Aircraft Standards," *Financial Times*, Oct. 9, 1990, p. 2.

[29] Member states would be required to apply the JAA codes prospectively only, so existing aircraft would not need to be retrofitted to meet code standards.

[30] "Aircraft: Commission Proposal to Coordinate Safety Standards," *European Report*, No. 1620, Oct. 10, 1990, sec. 4, pp. 12-13.

[31] *Council Regulation (EEC) No. 295/91 Establishing Common Rules for a Denied-Boarding Compensation System in Scheduled Air Transport*, *OJ*, No. L 36/5 (Feb. 8, 1991).

[32] USITC, *Effects of EC Integration*, USITC publication 2318, Sept. 1990, p. 8-8.

[33] *Proposal for a Council Regulation (EEC) Concerning the Elimination of Controls and Formalities Applicable to the Cabin and Checked Baggage of Passengers Taking an Intra-Community Flight and the Baggage of Passengers Making an Intra-Community Sea Crossing*, COM (90) 370 final, *OJ* No. C 212/8 (Aug. 25, 1990).

[34] "EC Considers Third Stage to Open up Air Transport," *Financial Times*, Aug. 29, 1990, p. 5.

[35] "Air Transport Policies Face Red Tape Risks, Warns King," *Financial Times*, Aug. 13, 1990, p. 8.

[36] Michael Mechem, "European Airline Pacts Grow, but Big Mergers Are Unlikely," *Aviation Week and Space Technology*, Nov. 26, 1990, p. 77.

[37] Shawn Tully, "Europe Hits the Brakes on 1992," *Fortune*, Dec. 17, 1990, pp. 133-140.

[38] See text above in this chapter discussing *Regulation 2342/90*.

[39] Carole A. Shifrin, "Europe's Regional Airlines Fear Proposed Fee Increases and New Rules," *Aviation Week & Space Technology*, Nov. 5, 1990, pp. 43-45.

[40] "EC Will Review Any Grant of New Rights at Heathrow Airport," *Aviation Daily*, Jan. 9, 1991, p. 49; "EC to Talk Tough with US Today on Air Transport," *Journal of Commerce*, Jan. 7, 1991, p. 1A.

Moreover, EC officials, including EC transport minister Karel Van Miert, have repeatedly stated that authority of United States-based airlines to offer services between EC member states will eventually be made contingent on EC-based carriers being granted rights to carry passengers within the United States.[41] A number of United States carriers have been authorized to provide service between points in different EC member states for years.[42] Under the Federal Aviation Act, airlines based outside the United States may not carry passengers and cargo between two points in the United States.[43] The State Department's deputy assistant secretary for transportation affairs has said, however, that he is not concerned that EC unification will result in decreasing the operating rights within the EC of U.S. airlines.[44]

Response of U.S. Industry

The current set of directives and regulations do not address third-country issues.[45] An official of a U.S. airline association does not perceive the regulations implementing the second liberalization package for air transport services to have any direct effect on U.S. concerns. The official indicated that the liberalization package could ultimately prove beneficial to U.S. airlines because they would be granted somewhat greater flexibility than they currently possess in establishing passenger fares.[46]

Jeffrey N. Shane, Assistant Secretary for Policy and International Affairs of the U.S. Department of Transportation, has stated that certain aspects of the second liberalization package take "what appears to us an overly regulatory approach." Mr. Shane specifically criticized the provision of Regulation 2342/90 giving EC-based carriers the exclusive right to introduce lower fares on routes between cities in different EC member states, and expressed concern that the EC Commission is being overly restrictive in regulating "fifth-freedom" traffic rights. He also stated that, whatever action the EC should ultimately take concerning slot allocation, "our expectation [is] that . . . access by U.S. carriers to operating rights negotiated by bilateral agreements will not be disturbed."[47]

[41] "US to Work With EC on Maritime Cargo Pact," *Journal of Commerce*, Jan. 9, 1991, p. 2A; "Air Transport: Commissioner Van Miert Reconfirms Commitment to Liberalization," *European Report*, No. 1632 (Nov. 24, 1990), sec. 4, pp. 15-16; "Common Mart Sets Sights on US Aviation Accords," *Journal of Commerce*, Oct. 11, 1990, p. 5B.

[42] "EC Aims to Erect Traffic-Rights Maze," *Interavia Aerospace*, Nov. 1990, p. 951.

[43] 49 U.S.C. secs. 1301(3), (16), (22), 1371, 1372.

[44] "U.S. Officials Searching for Aviation Strategy," *Journal of Commerce*, Aug. 1, 1990, p. 5B.

[45] The general impact that creation of a single European market for transport services may have on the U.S. market was discussed fully in USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, p. 8-17.

[46] USITC staff conversation with Air Transport Association, January 1991.

[47] Jeffrey N. Shane, Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation, remarks to SH&E/*Airline Business* conference on Europe 1992: A Single Aeropolitical Market, Nov. 15, 1990.

The Surface-Transport Sector

Significant Developments

The most significant action in the surface-transport sector during the period covered by this report was a measure modifying the system of quotas under which individual member states grant authorizations to trucking companies. The EC Council increased these quotas by 40 percent for the year 1991 and by a further 40 percent for the year 1992. The objective of the increase is to make the number of authorizations available greatly exceed demand by the end of 1992, thereby facilitating the abolition of the quota system scheduled for 1993.[48] At the same time that it relaxed these capacity restrictions, the EC Council also issued final regulations granting the EC Commission broad authority to intervene in the trucking market when excess capacity exists.[49] Other initiatives affecting road transport issued during the period include a proposed directive addressing border control procedures, and amendments to previous initiatives concerning vehicles hired without drivers, operator licensing, and intermodal transport.

Additionally, the EC Council authorized funding from the EC budget for a number of surface transportation projects. The funding, which will amount to 80 million ECU[50] in 1991 and 100 million ECU in 1992, is for assistance to the following projects: high-speed train links in Northern Europe and Southern Europe, the Brenner Pass tunnel in the Alps, road access to Ireland, railway improvements between Dublin and Belfast, a Scandinavian rail link, and road and railway improvements in Greece. The EC aid is expected to fund about one quarter of the cost of these projects.[51]

Border Controls

The EC Commission proposed the issuance of a directive concerning inspection procedures for goods crossing frontiers of member states within the EC.[52] The proposed directive would amend Directive 83/643/EEC,[53] which established various measures

[48] *Council Regulation (EEC) No. 3914/90 Amending Regulation (EEC) No. 3164/76 Concerning Access to the Market in the International Carriage of Goods by Road*, *OJ* No. L 375/7 (Dec. 31, 1990). Also see "Road Haulage: Crisis Measures Adopted for Liberalised Market; EEC License Quota Increase," *European Report*, No. 1639 (Dec. 19, 1990), sec. 4, p. 10.

[49] *Council Regulation (EEC) No. 3916/90 on Measures to be Taken in the Event of a Crisis in the Market in the Carriage of Goods by Road*, *OJ*, No. L 375/10 (Dec. 31, 1990). A discussion of the proposed regulations on this matter appears in USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, pp. 8-10 to 8-11.

[50] During January 1991, the European Currency Unit (ECU) had a value of approximately $1.33.

[51] "Transport Infrastructure: Ministers Agree on Financial Support," *European Report*, No. 1626 (Nov. 1, 1990), sec. 4, p. 11.

[52] *Proposal for a Council Directive amending Directive 83/643/EEC of 1 December 1983 on the facilitation of physical inspections and administrative formalities in respect of the carriage of goods between Member States*, COM (90) 356 final, *OJ* No. C 204/15 (Aug. 15, 1990).

[53] *OJ* No. L 259 (Dec. 22, 1983).

designed to reduce waiting time for carriers of goods crossing internal EC frontiers, mainly by limiting the circumstances under which inspections could be conducted and by establishing minimum operating hours for customs offices located at border posts.

The changes to Directive 83/643 proposed by the EC Commission would state that inspections should be carried out at the point either of departure or of destination (instead of merely "in one place"), would require that the justification for spot checks of shipments be based on the total number of shipments passing through the border posts rather than on the volume of goods in each shipment, and would establish minimum operating hours for inland, as well as border, customs offices.

Other Initiatives

Vehicles Hired Without Drivers

Directive 84/647 liberalized the conditions under which EC shippers could use vehicles hired without drivers, but it permitted member states to make the liberalized provisions inapplicable to owner-operated vehicles. The EC Council has issued a directive amending Directive 84/647 so that its liberalized provisions will also be applicable to owner-operated vehicles with total permissible laden weight of six tons or less.[54] The directive directs member states to take implementation action no later than December 31, 1990.

Operator Qualifications

The EC Commission has proposed that two 1974 directives, each of which has undergone multiple amendments, and a 1989 directive setting forth minimum standards for those who operate trucks and buses within the EC be reorganized and recodified into a new directive.[55] The standards pertain to three areas: personal qualifications, professional qualifications, and financial and capital requirements.

[54] *Council Directive Amending Directive 84/647/EEC on the Use of Vehicles Hired Without Drivers for the Carriage of Goods by Road, OJ* No. L 202/46 (July 31, 1990). In a separate measure that is currently awaiting action by the EC Council, the EC Commission has proposed that it submit proposals by Jan. 1, 1993, for the removal of all restrictive conditions on the use of vehicles hired without drivers. *See* USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, p. 8-11.

[55] *Proposal for a Council Directive to the Admission to the Occupation of Road Haulage and Road Passenger Transport Operator in National and International Transport Operations*, SEC (90) 1864 final, *OJ* No. C 286/4 (Nov. 14, 1990).

Intermodal Transport

The EC Council has issued in final form a directive proposed by the EC Commission in February 1990 exempting combined motor-inland waterway transport from quota and authorization requirements.[56] The proposed directive was discussed in detail in the Second Followup Report.[57]

Possible Effects

One U.S. transport analyst has stated that the EC's attempts to create a unified market in the trucking industry by taking steps to eliminate border controls and reduce member state economic regulation of trucking companies is likely to result in significant attrition among EC motor carriers, which the analyst perceives to lack the resources and management skills needed to survive in a deregulated environment. Another analyst believes that these likely market changes provide opportunities for U.S. motor transportation concerns, which do have experience in competing in a deregulated market, to form partnerships with EC-based enterprises.[58]

Efforts by the EC Council and member states to promote rail transportation are perceived as likely to make rail transportation more competitive against other modes. A U.S. transportation analyst has predicted that EC railroads are likely to take significant freight business away from motor carriers in light of the significant capital investments and promotional activities underway in rail transportation.[59] Furthermore, a European airline group has stated that the development of high-speed rail transportation that is being endorsed and partially funded by the EC could serve to make railway passenger transportation more competitive against air transportation for journeys of 300 miles or less.[60]

[56] "Combined Transport: Ministers Agree on Common Rules for Certain Systems of Combined Transport," *European Report*, No. 1639 (Dec. 19, 1990), sec. 4, p. 14. The text of the Council action had not yet been published in the *Official Journal* when this report was prepared.

[57] USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, p. 8-11.

[58] "Unified EC Could Be Bonanza for U.S. Transport," *Journal of Commerce*, Oct. 10, 1990, p. 1A.

[59] Richard Knee, "EC to Force Change in Transport," *American Shipper*, December 1990, p. 62.

[60] "Rail May Become New Partner," *Journal of Commerce*, Sept. 24, 1990, Air Commerce sec., p. 16.

CHAPTER 9
COMPETITION POLICY AND COMPANY LAW

CONTENTS

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COMPETITION AND COMPANY LAW

Competition policy and company law continue to be an important component of the European Community's move toward a unified market in the European Community. The Commission of the European Communities (EC Commission) has assumed the authority to vet mergers between companies in more than a single member state, giving the EC Commission the capacity to oversee the consolidation of companies in the Community. Negotiations on the European Company Statute are proceeding slowly, and there appears to be no change or progress on the proposed Tenth or Fifth Company Law Directives. The proposed Thirteen Directive similarly remains under discussion in the EC Commission and Council.

Developments Covered in the Previous Reports

Competition Policy

In December 1989, the Council of the European Communities (Council) granted the EC Commission the authority to regulate Communitywide mergers beginning in December 1990. In September 1990, the EC Commission adopted implementing regulations setting forth the procedure for notifying the EC Commission of an impending merger. Appended to the implementing regulations is the Notification Form CO that must be completed by the companies notifying the EC Commission of the merger. The form requires information on the notifying parties, the nature of the merger, the ownership of the merging parties, and the markets affected by the merger. The implementing regulations provide, and EC Commission merger officials have confirmed, that the notifying parties may omit from the notification form information the merger officials and notifying parties agree is unnecessary. The EC Commission also published a Notice on Ancillary Restrictions. This notice sets forth guidelines for determining what types of restrictions are "directly related" for the purposes of evaluation under the regulation on the control of concentrations rather than under articles 85 and 86 of the Treaty of Rome. Lastly, the EC Commission published a Notice on Joint Ventures, which defines "concentrative joint ventures" (reviewed under the Merger Regulation) and "cooperative joint ventures" (reviewed under arts. 85 and 86 of the Treaty of Rome).

Company Law

In the field of company law, the Council has adopted numerous directives that, among other things, standardize accounting practices and establish disclosure requirements for companies and branches. Directives currently under negotiation at the EC Commission generally concern such issues as cross-border mergers and the creation of "European" companies. The proposed Tenth Company Law Directive, establishing guidelines for the merger of companies from different member states, remains unchanged. The EC Commission has redrafted the proposed Thirteenth Company Law Directive, which harmonizes laws on takeovers and tender offers in the EC. The most recent amendments to the Thirteenth Directive further limit the defenses available to a company to oppose an attempted takeover. The proposed European Company Statute remains under discussion in Brussels. Central issues in this discussion are the taxation of such a company and the employee participation provisions. In addition, the Economic and Social Committee provided the EC Commission with extensive addressed comments on both procedural and substantive aspects of the statute. The proposed Fifth Company Law Directive on the formation of public limited companies remains unchanged. The proposed Fifth and Tenth Company Law Directives are considered likely to remain in the proposal stage until an agreement is reached on the European Company Statute.

Developments Since the Second Followup Report

Competition Policy

In September 1990, the EC Council approved the Merger Regulation,[1] granting the EC Commission the authority to vet Communitywide mergers between large companies.[2] Since that time, between 15 and 20 mergers have been notified to the EC Commission.[3] Of those mergers, the EC Commission has determined that all but one are compatible with the common market under art. 2(2) of the Merger Regulation.[4] In January 1991, the EC Commission decided to open

[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] The particular office responsible for gathering the information on the merger is the Merger Task Force of Directorate General IV (Competition). The Task Force accumulates the information submitted by the parties to the merger and then makes a recommendation to the Commissioner responsible for Competition (currently Sir Leon Brittan). The entire Commission then votes on whether the merger is compatible with the common market under art. 2(2) of the Merger Regulation.

[3] In discussions concerning other mergers, Task Force officials and company representatives have concluded that those mergers did not in fact reach the thresholds necessary to be considered "Community-wide," and hence were not officially notified to the Commission. U.S. attorney in Brussels, telephone conversation with USITC staff, Feb. 7, 1991; See also Matthew Bender, "Business Law in Europe," (Jan. 14, 1991), p. 6. For instance, the merger between Arjomeri-Prioux SA and Wiggins Teape Appleton did not reach the required threshold of 5 billion ECU in worldwide sales necessary to fall within the jurisdiction of the merger regulation.

[4] Initiation of proceedings under art. 6(1)(c) of the Merger Regulation does not necessarily portend an interdiction by the Commission; it simply means that the proposed merger needs further investigation by the Merger Task Force.

proceedings to examine the proposed merger between Alcatel (a French electronics firm) and Telettra (a telecommunications subsidiary of the Italian car company, Fiat).[5] As stated in the announcement of the opening of the proceedings, the decision to conduct the further investigation does not prevent the EC Commission from approving the agreement.

The other major development in competition stems from a speech by Sir Leon Brittan, EC Commissioner for Competition, in February 1990, in which he addressed the potential problems of overlapping jurisdiction between the EC and the United States. He proposed the negotiation of a treaty between the EC and the United States providing for consultation and cooperation on antitrust matters and a division of jurisdiction in those cases of overlapping jurisdiction. Sir Leon has suggested that if the two Governments cannot agree on the division of jurisdiction, "arbitration is a possibility," but recognized that a relinquishment of control over market structure would be difficult for either Government.[6] Since Sir Leon Brittan made his proposal, officials of the EC Commission, the U.S. Department of Justice, and the U.S. Federal Trade Commission have met and will continue to meet in an effort to work out an EC-U.S. antitrust agreement.[7]

Company Law

Small and Medium-Size Enterprises

On November 8, 1990, the EC Council adopted two directives amending the Fourth[8] and Seventh[9] Company Law Directives on annual accounts and consolidated accounts, respectively.[10] The first directive exempts small and medium-size companies from the requirements set forth in the Fourth and Seventh Company Law Directives and allows any company to publish its accounts in European Currency Units (ECU). The second directive expands the scope of the Fourth and Seventh Directives to include partnerships, both limited and unlimited.[11] Both directives must be implemented by the member states by January 1, 1993, but both allow member states to delay compliance until January 1, 1995.[12]

Thirteenth Company Law Directive

In September 1990, the European Parliament submitted to the EC Council an amended proposal for a Thirteenth Company Law Directive on Takeovers (13th Directive).[13] As mentioned in the second followup report,[14] the first significant change to the 13th Directive suggests broadening the application of the directive to all securities traded on markets that are "regulated and supervised by authorities recognized by public bodies."[15] To fall within the jurisdiction of this proposed directive, the securities must be issued by a company located in the EC. Hence, non-EC foreign depository receipts, used by U.S. companies to raise capital in Europe, fall outside the scope of the proposed directive.[16] It has been suggested that "potentially troublesome ambiguities" remain in this provision, such as how over-the-counter shares and privately owned shares will be treated.[17] Furthermore, it appears that member states, through their tender offer legislation implementing the 13th Directive, may vary the scope of the 13th Directive, thereby failing to eliminate existing distortions.[18] Article 1(2) provides that 5 years after implementation, the EC Commission is to submit a report to the EC Council concerning the extension of the scope of the directive to shares not currently traded.

Another important change to the proposal is the amendment to article 4 creating an "objective test" as to when a bid must be made. In the original language, the obligation to extend the bid to all holders of the target company's shares[19] was triggered when a person "aimed" to acquire more than a certain percentage of a company's shares.[20] The amended proposal, however

[5] BNA, *Antitrust & Trade Regulation Report*, vol. 60, No. 2501 (Jan. 31, 1991), p. 168.

[6] The Right Honorable Sir Leon Brittan, "Jurisdictional Issues in E.E.C. Competition Law," Hersch Lauterpacht Memorial Lecture, Feb. 8, 1990, Cambridge, England.

[7] Department of Justice official, telephone conversation with USITC staff, Feb. 8, 1990.

[8] *Fourth Council Directive 78/660, OJ* No. L 222 (Aug. 14, 1978), p. 111 (coordination of company accounting requirements).

[9] *Seventh Council Directive, 83/349, OJ* No. L 193 (July 18, 1983), p. 1 (coordination of consolidation of accounts of some limited-liability companies).

[10] *Council Directive Amending Directive 78/660 on Annual Accounts and Directive 83/349 on Consolidated Accounts as Concerns the Exemption for Small and Medium-Sized Companies and the Publication of Accounts in ECUs, OJ* No. L 317 (Nov. 16, 1990), p. 57; *Council Directive Amending Directive 78/660 on Annual Accounts and Directive 83/349 on Consolidated Accounts as Regards the Scope of Those Directives, OJ* No. L 317 (Nov. 16, 1990), p. 60.

[11] This directive denotes a loss for Germany, which had fought hard to exempt limited partnerships from the accounting and disclosure requirements of the EC. Limited partnerships were treated as small and medium-size enterprises although some of the largest German companies were limited partnerships. *European Report*, No. 1628 (Nov. 10, 1990), pp. 9 10.

[12] *European Report*, No. 1628 (Nov. 10, 1990), p. 10.

[13] *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).

[14] 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 (September 1990) 9-9 to 9-10.

[15] *13th Directive*, art. 1. The new definition does not distinguish large companies publicly traded and those privately traded, and the exemption for small and medium-size enterprises previously contained in art. 5 was deleted by the Parliament.

[16] It is unclear whether a bid for shares of a company that does not have a registered office in the EC would fall within the jurisdiction of the proposed directive. "EC Takeover Proposal Aims to Harmonize Rules of Member States, Facilitate Change in Ownership," BNA, *Corporate Counsel Weekly, vol. 6, No. 8* (Feb. 20, 1991) (hereinafter EC Takeover Proposal), p.8.

[17] Loeff Claeys Verbeke, "Report on the Amended Proposal for a Thirteenth Council Directive on Company Law, Concerning Takeover and Other General Bids," Nov. 12, 1990 (hereinafter LCV Report), p. 4.

[18] Ibid.

[19] The requirement that a bid be made for all the target company's shares not only differs from U.S. law (which has no such requirement) but has engendered resistance in the United Kingdom, where it is considered less flexible than the City Code. EC Takeover Proposal, p. 7.

[20] The percentage at which a mandatory bid must be made will be set by the national authorities but may not be fixed at more than 33.3 percent. Art. 4(1). Different thresholds in different countries may raise difficulties in determining exactly when the

focuses on when the individual actually acquires more than one-third of a company's shares.[21] Although this test may be easier to apply, it creates a loophole through which a person could acquire a controlling majority holding in a single purchase and then offer a lower price in the required tender offer for the remaining shares.[22] Subarticle 4(2) and (2a) further define which shares are counted in determining when the "objective test" has been met. Most importantly, article 9(2)(b) has been amended to include with the calculation of the number of shares of an acquiror those held by a controlled subsidiary of the acquiror. Subparagraph (2c), however, permits member states to exempt shares from inclusion under specific circumstances.[23]

Under the terms of the proposed directive, each member state must establish a supervisory authority to supervise the content and publication of the offer document. Article 6(3) specifies that the competent supervisory authority is the supervisory authority in the member state in which the offeree company has its registered office if the offeree's securities are traded on the market in that state. If the shares are not traded on that country's exchange, the competent supervisory authority shall be that of the member state on whose market the offeree's shares were first admitted for trading.[24] Parliament has attempted to avoid time delays by the supervisory authority by providing that the supervisory authority has 3 business days in which to take action on the offer document. If the authority does not take action within this period, the document is deemed approved.[25] Article 6(3) provides that when the supervisory authority has approved the offer document, it shall be accepted in other member states.[26] In article 6a, the Parliament has assembled five guiding principles that the supervisory authorities are to apply.[27]

The amended proposal adds additional restrictions on the ability of the offeree company's board to block a takeover bid. Article 8 of the original proposal prohibits certain actions of the board of an offeree company to frustrate a takeover attempt without shareholder approval. Subparagraph (c), added by the Legal Committee, would specifically preclude a company from purchasing its own shares.[28] The board of the offeree company may, however, call a general shareholders' meeting before the date of expiration of the bid to gain approval for defensive action.[29]

Article 10 sets forth what information must be included in the offer document. The Parliament has added a few more specific requirements to the offer document—among other things, the names of the persons responsible for the offer document (art. 10(ca)), the maximum and minimum shares the offeror wants to acquire (art. 10(da)), the future indebtedness of the offeree and offeror as a result of the bid (art. 10(ga)), and the employment policy in the offeree company including participation rights of the employees (art. 10(l)). In addition, the European Parliament added the general requirement that the offer document must include "information necessary to enable the addressees to reach a properly informed decision on the bid." The supervisory authority thus has the authority to require additional information, as well as to exempt parties from having to provide information in the offer document.[30]

The Parliament amended article 13 so that a bid that has been declared void is treated in the same way as a bid that has been withdrawn. Article 14 was amended, absolving the offeree board from having to provide a "detailed report" and instead requiring a "document" containing the board's view of the bid, whether or not the board agrees with the offer and whether or not those members of the offeree board who own shares in the offeree company intend to accept the bid.

European Company Statute

In December 1990, the Legal Affairs Committee of the European Parliament (Legal Committee) submitted its report on the European Company (or Societas Europea (SE)) Statute suggesting numerous amendments to the regulation[31] and directive[32]

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obligation to extend a tender offer accrues, especially when the shares are not traded on the market (but are owned by citizens) of the country with the lower threshold. See LCV Report, pp. 5-6.

[21] *13th Directive*, art. 4(1).

[22] LCV Report, pp. 5-6. By substantially lowering the price offered to the minority shareholders, the offeror may discourage the minority from selling, thereby decreasing the expense of the takeover. Ibid.

[23] *13th Directive*, art. 4(2c).

[24] *13th Directive*, art. 6(3).

[25] *13th Directive*, art. 6(2a); *see also*, EC Takeover Proposal, p. 8. The amendment to article 7(1) of the 13th Directive, by requiring that the offeror notify the supervisory authority before the bid is made public, bestows additional authority on the supervisory authority.

[26] Ibid.

[27] The principles articulated in art. 6a are similar to policies underlying U.S. law such as the protection of minority shareholders of the target company. It has been suggested however that the larger policy underlying the 13th Directive lies less in the takeovers themselves than in the use of takeovers to "reshap[e] and energiz[e] European companies." EC Takeover Proposal, p. 7. Some of the principles were transferred from elsewhere in the original proposal, e.g., requirement that all shareholders be treated equally was formerly art. 3; whereas others reflect general principles, e.g., the board of an offeree company acts in the interests of all shareholders.

[28] The EC Commission has proposed an amendment to the *Second Company Law Directive* that would allow a subsidiary to purchase shares in the parent company only to the extent the parent would be allowed to purchase its own shares. *Proposal for a Council Directive Amending Directive 77/91/EEC on the Formation of Public Limited Liability Companies and the Maintenance and Alteration of their Capital, OJ* No. C 8 (Jan. 12, 1991), p. 5. This amendment would close a loophole used by companies to frustrate takeover bids.

[29] *13th Directive*, art. 8(2).

[30] *13th Directive*, art. 10(5).

[31] *Proposal for a Council Regulation on the Statute for the European Company, OJ* No. C 263 (Oct. 16, 1989), p. 41 (hereinafter SE Regulation).

[32] *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 (hereinafter SE Directive).

creating the SE.[33] The proposal allows an SE to take the form of a public limited company, a cooperative society, a mutual society, or an association,[34] and expands the types of companies that can form SEs from only public limited companies to include private limited companies.[35] Parliament's proposed amendments also remove the requirement that the companies be from different member states[36] and permit a national company to transform into an SE without merging with another company or forming a holding company.[37] In addition, the Legal Committee's amendments would remove the restriction against multiple layers of SEs.[38]

With respect to the law governing the SE, the Legal Committee proposed that the incorporating instrument is the first source of law, provided it does not conflict with the SE Regulation or with Community or national law.[39] Because of the applicability of national law, the choice of location for the registered office is important.[40] In addition, the Legal Committee suggests that the SE be permitted to denominate its capital in the currency of the member state as well as in ECU.[41]

Proposed amendments by the Legal Committee throughout the SE Regulation have placed increased importance on the provisions governing employee participation. Amendment 19 adds article 8(3), which requires, among other things, that an SE not be registered until the model for employee participation is chosen.[42] Furthermore, before establishing an SE, legal, economic, financial, and social information must be provided to the representatives of the employees and the board(s) of the company(ies) creating the SE must consider how creating an SE will affect those employees.[43] If the SE is being formed by a merger, amendments to article 17(3) require that the rights of the employees and their representatives be protected.[44] Article 15, providing for the supervision of the SE Regulation, was expanded to require enforcement also of the provisions of the SE Directive, which contains the employee participation provisions.[45] Articles 35a and 37a were added by the Legal Committee, providing that when a part of a business is transferred to a subsidiary, the rights of employees, are protected in accordance with article 17(3).[46] In addition, evidence of the increased importance of employee rights is found in the addition to article 101(4), which requires that the SE include in its annual report a discussion on employee participation.[47]

Article 21(1), which provided for a written assessment of the merger by an independent expert for the shareholders, has been amended to require that the report be provided to those shareholders along with the terms of the merger itself.[48]

The Legal Committee has provided that the SE becomes a legal entity on the day after it registers. The Legal Committee has suggested that this matter be one of EC law rather than of member-state law, as was previously the case.[49]

The SE Regulation prohibits the SE from acquiring its own shares. The Legal Committee added an exception to that rule in article 49(12), which provides that an SE may purchase its own shares "to prevent serious and imminent harm to the company . . . ."[50] Whereas article 50 of the SE Regulation required the disclosure of holdings of an SE, the Legal Committee has proposed requiring disclosure of holdings in an SE.[51] Also concerning shares, the Legal Committee suggested limiting access to the register of share to shareholders, rather than granting access to the general public.[52]

Regarding management and supervisory boards, the Legal Committee suggested limiting the grounds on

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[33] European Parliament, *Report Drawn Up on Behalf of the Committee on Legal Affairs and Citizens' Rights on the Proposal for a Regulation on the Statute for a European Company* (COM (89) 268 final), Dec. 20, 1990)(hereinafter Committee Report).

[34] *Committee Report*, amendment No. 6, amending art. 1(1).

[35] Ibid., amendment No. 7, amending art. 2(1).

[36] Ibid., amendment No. 8, amending art. 2(2).

[37] Ibid., amendment No. 9, adding art. 2(3).

[38] Ibid., amendments Nos. 10 and 11, amending arts. 3(1) and (3). Art. 6(3). These amendments, would effectively unravel the layers of control in which an SE is a subsidiary of another SE, which in turn is also a subsidiary of an SE. The parent SE will be deemed controlling of the subsidiary and the subsidiary of the subsidiary. *Committee Report*, amendment 17, adding art. 6(3).

[39] *Committee Report*, amendment 18, amending art. 7.

[40] Ibid. See also *Committee Report*, amendment No. 20, amending art. 11(c).

[41] *Committee Report*, amendment No. 48, amending art. 38(1).

[42] Likewise, in the relocation of the registered offices of an SE necessitating a new employee participation scheme, the new locale may not be registered until the old model has been replaced. Ibid.

[43] Ibid., amendment 2, adding art. 12(2). New art. 12(3) provides the representatives of the employees with the right to challenge the establishment of the SE if they feel it would adversely affect them. The new provision requires that the document setting forth the employees' views be presented at the general meeting. Although such action could delay or encumber the creation of an SE, it does not appear to give the employees the power to prevent its creation altogether.

[44] Ibid., amendment No. 28, amending art. 17(3). Amendment No. 29 provides that the applicable law shall be that of the member state in which the affected businesses are located. In the case of mergers of companies with businesses in numerous member states, this provision could become confusing, even cumbersome.

[45] Ibid., amendment No. 23, amending art. 15. This provision is required as a result of having divided the proposal into a regulation and directive.

[46] Ibid., amendment No. 45, creating art. 35a; amendment 47, creating art. 37a.

[47] Ibid., amendment No. 115, adding art. 101(4); amendment No. 116, adding art. 102(3) (additional requirements for information concerning employees for inclusion in the annual report.)

[48] Ibid., amendment No. 21, amending art. 21(1).

[49] Ibid., amendment No. 36, amending art. 25.

[50] Ibid., amendment No. 62, adding art. 49(12). A recently proposed amendment to the *13th Company Law Directive* would prohibit a company from purchasing its own shares, and a proposed amendment to the *Second Company Law Directive* would similarly prohibit the subsidiary of a company from purchasing shares of the parent company. Neither of these two provisions contains any exception for prevention of "serious and imminent harm." It therefore remains to be seen to what extent this provision is used by companies and permitted by the courts.

[51] Ibid., amendment No. 64, amending art. 50.

[52] Ibid., amendment No. 65, amending art. 53(2).

which members of the board can be dismissed. The original draft provided for removal "at any time," and the amendment permits removal only "on proper grounds."[53] Under these amendments, proceedings to remove a supervisory board member could be brought by shareholders with 10 percent of the voting rights, changed from 10 percent of the capital.[54] The Legal Committee has attempted to better define the different roles of the supervisory and management boards by providing that the supervisory board supervise the "conduct of the company's affairs by the management board... [but not] participate in the management of the company...."[55] This provision establishes somewhat more clearly that the supervisory board oversees the management board to a degree. The management board's requirements for reporting to the supervisory board have been diminished by limiting the issues to be reported to only the *"fundamental* management issues on the progress of the company's affairs," (emphasis added) and those reported to the chairman of the supervisory board to the events of *"particular importance"* (emphasis added).[56] A new provision, reflecting the practice in some member states, provides that when half of the supervisory board is appointed by the employees, the chairman of the supervisory board must be appointed by the shareholders.[57] The Legal Committee further defined certain acts that the management committee (or executive committee) cannot do without prior approval of the supervisory committee (or nonexecutive committee), while also providing that the instrument of incorporation may extend the list of prohibited actions.[58] To ensure the integrity of the members of the governing board of an SE, article 80(a) has been added to hold the members of the boards personally liable to the shareholders of the SE for any damage due to a breach of the SE Regulation or SE Directive, violation of a company by-law, or breach of duty. [59]

Provisions concerning general meetings have been amended, limiting information available to shareholders to information that is "necessary for the proper discussion of an item on the agenda,"[60] changing the allocation of voting rights, and making it easier to produce a quorum on the second notice of a general meeting.[61] An amendment to article 100(2) further defines the necessary "legitimate interest" needed to bring an appeal against a resolution of the general meeting, thus limiting who may bring an action and the time in which such an objection may be brought.[62]

One of the most significant amendments proposed by the Legal Committee was the complete deletion of article 123, granting special tax benefits to SEs.[63] It has been reported that the tax provisions were dropped to ensure tax neutrality between national companies and SEs.[64] Such issues as taxation on a Communitywide basis are expected to be addressed in a future tax package.[65] Some Members of the European Parliament believe that the deletion of the tax provisions has eliminated the primary incentive for creating an SE.[66]

Commissioner Martin Bangemann, EC Commissioner in charge of the Internal Market, has not accepted all the amendments by Parliament but continues to believe that there is sufficient support to reach a compromise agreement. The whole EC Commission will consider the amendments made by the Parliament and add those that it approves. The proposal then goes to the Council of Ministers for a common position. Both the SE Regulation and SE Directive, with those additional amendments accepted by the EC Commission and EC Council, must then be approved in final form by the EC Parliament and Council before the measures become law.[67]

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[53] Ibid., amendment No. 67, amending art. 62(2).

[54] Ibid., amendment No. 85, amending art. 75(2).

[55] Ibid., amendment No. 70, amending art. 63(1). A similar provision provides that the nonexecutive members of administrative boards in a single-tier system supervise the executive members. Ibid, amendment No. 77, adding art. 66(3). The Parliament also added art. 67(5), which requires the executive board to provide the nonexecutive board with information upon request, to ensure parallelism between the double- and single-tiered system. Compare art. 64(3) and amendment No. 79, adding art. 67(5).

[56] Ibid., amendments Nos. 71 and 72, amending arts. 64 and 64(2).

[57] Ibid., amendment No. 73, adding to art. 65(1). A similar provision applies to the chairman of the administrative board if the company has a single-tier system.

[58] Ibid., amendment No. 81, amending art. 72.

[59] Ibid., amendment No. 90, adding art. 80(a).

[60] Ibid., amendment No. 105, amending art. 90(1).

[61] Ibid., amendment Nos. 105, 106 and 110, amending arts. 90(1), 92(1), and 97(2), respectively.

[62] Ibid., amendment No. 112, amending art. 100(2).

[63] Ibid., amendment No. 125, deleting art. 133.

[64] Bureau of National Affairs, *1992: The External Impact of European Unification*, Jan. 25, 1991, p. 10.

[65] Ibid.

[66] Ibid.

[67] As noted in USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, the SE Regulation requires unanimous approval by the Council for adoption whereas the SE Directive requires only a weighted majority. Ibid., p. 9-11, footnote 120.

CHAPTER 10
TAXATION

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CHAPTER 10
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 slow and difficult. 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.

Efforts have focused on four areas: (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 between member states. The White Paper called for the adoption and implementation of three intracompany transfer directives dating back to 1969 and 1976, although neither the Treaty of Rome nor the White Paper calls for the harmonization of direct taxes, such as personal and corporate income taxes, per se. The White Paper also called for the liberalization of capital movements for the purpose of, among other things, "promoting the optimum allocation of European savings."[2]

The principal focus has been on harmonization of VAT and excise taxes. The goal of the White Paper is "approximation" of rates: to bring rates and systems sufficiently close so that trade is not distorted or diverted and competition is not affected.[3] Complete harmonization, the White Paper said, "is not essential."[4] At present, for the most part commercial traffic moving from one member state to another is treated in the same way as imports and exports: 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 and considerable paperwork and add an estimated 1.5 percent to the cost of goods. In addition, to minimize revenue loss due to what can be significant differences in VAT and excise tax rates between EC member states, EC citizens are subject to limitations (travelers' allowances) on the amount of personal goods that they may enter tax free from another member state.

Approximation of VAT and excise taxes in particular has proven to be difficult. Although VAT is levied throughout the EC on the basis of a common system, no two member states apply the same rates or follow the same rate structure. Many of the differences in VAT rates and rate structures are significant. For example, some member states apply one rate to all products, but others apply different rates to as many as five different product categories. Some zero-rate (impose no VAT on) food and other necessities, but most do not. In addition, rate differences between adjoining states on a given product are often substantial and can exceed 20 percentage points. Similar differences in rates and product coverage also exist in the case of excise taxes. Revenue from indirect taxes, particularly VAT, accounts for a substantial but varying share of overall tax revenues in all member states. Thus, any movement towards an EC-wide norm that requires changes in either overall rates or rates for specific products can have important revenue, political, and social implications for individual member states.

Developments Covered in the Previous Reports

In August 1987, the EC Commission 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.[5] The package called for each member state to establish two VAT rates—a "reduced" rate for food and certain other necessity items 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.

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,

[1] *Completing the Internal Market: White Paper From the Commission to the European Council*, June 1985, par. 14.

[2] Ibid., par. 127.

[3] 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.

[4] Ibid., par. 184.

[5] 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 *Completion of the Internal Market: Approximation of Indirect Tax Rates and Harmonization of Indirect Tax Structure*, Global Communication from the Commission, COM (87) 320 final, Aug. 5, 1987.

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 for the purpose of shopping. 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.

In May 1989, the EC Commission issued a communication outlining a "new approach" that sought to address many of the concerns raised by member states.[6] The new approach provided for (1) a transitional phase lasting until the end of 1992, (2) limited zero rating, (3) elimination of the rate cap, (4) simplification of the clearing mechanism, and (5) improved flexibility in excise rates.

In December 1989, the Economic and Financial Council of Ministers (ECOFIN), after taking into account the EC Commission's 1987 and May 1989 proposals, reached agreement on five points regarding VAT: (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) in 1992 the new VAT system will follow, at least for an interim period, the simplified destination principle (advocated by ECOFIN, as opposed to the simplified country-of-origin system advocated by the EC Commission[7]), with the details of this interim system to be worked out later.

In May 1990, the EC Commission presented a detailed proposal for an interim system, to take effect January 1, 1993, that generally conformed to point 5.[8] It proposed an audit-based system advocated by the United Kingdom, Denmark, and the Netherlands under which firms would be required to state in their VAT returns the total value of transactions with firms in other member states. Member-state tax authorities would make spot checks to discourage fraud. The proposal rejected the verification system advocated by France and several other member states that would have required that firms provide their tax authorities with a transaction-by-transaction listing of transactions with firms in other member states (rather than the total value of transactions with such firms). The French proposal was viewed as being very burdensome, particularly for small and medium-sized firms. However, France viewed its proposal as being more effective in discouraging fraud. The EC Commission proposed that this interim system be replaced no later than 1997 by a country-of-origin system similar to that advocated in its August 1987 working paper. In June 1990, the EC Council set as a goal the adoption of an interim system by the end of 1990.

In November 1989, the EC Commission submitted amended proposals to the Council for directives on the approximation of excise taxes. The EC Commission proposed the adoption of minimum rates and rate bands to take effect January 1, 1993, and higher "target" rates to take effect at some later unspecified date. However, differences of perspective between northern and southern countries, particularly with respect to rates on wine and certain tobacco products, made progress difficult.

In July 1989, the EC Commission proposed a three-stage liberalization of travelers' allowances over the period 1990-92 that would have quadrupled the duty-free VAT allowance and tripled the duty-free tobacco and alcohol allowance.[9] However, several member states declined to agree to the proposal in large part because of concern about revenue losses from cross-border shopping. In April 1990, the Netherlands proposed a compromise on the VAT allowance that would have provided derogations for Denmark, Greece, and Ireland, but this proposal was opposed by Belgium, Denmark, Ireland, Greece, and Portugal at a Finance Ministers meeting later that month.

In anticipation of the liberalization of capital movements and the opening of borders for capital flows required by Directive 88/361 to take place by July 1, 1990, 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

[6] *Completion of the Internal Market and Approximation of Indirect Taxes: Communication from the Commission to the Council and to the European Parliament*, COM (89) 260 final, June 14, 1989.

[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] *Proposal for an Amendment to the Proposal for a Council Directive Supplementing the Common System of Value Added Tax and Amending Directive 77/388/EEC*, COM (90) 182 final-SYN 274, *OJ* No. C 176 (July 17, 1990), p. 8.

[9] *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 final, *OJ* No. C 245 (Sept. 26, 1989), p. 5.

transferring funds from their home state to another state for the purpose of evading taxes.[10] 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. Measures providing for the liberalization of capital movements were largely in place before the July 1 deadline; the large, tax-related speculative capital movements that some feared would occur did not happen.

With regard to company taxation, the three intracompany transfer measures 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.[11] Member states are required to implement the three directives by January 1, 1992. Earlier, in April 1990, the EC Commission issued a long-delayed communication on company taxation that recommended that the Community concentrate on the measures essential for completing the internal market, including the three intracompany transfer directives identified in the 1985 White Paper, and that it "hold back on the harmonization of company tax systems."[12] The communication also stated that the EC Commission would soon propose two new directives relating to foreign losses of companies engaging in transnational activities and abolition of withholding taxes on interest and royalty payments within groups of companies.

Recent Developments

Introduction

At the December 17, 1990, ECOFIN meeting, agreement was reached with respect to an interim regime for VAT and a definitive regime for excise taxes, with such regimes to become effective when frontier controls are removed after 1992. Also at the December 17 meeting, a compromise was reached with Denmark and Ireland on an increase in traveler's allowances, with the increase to take effect June 30, 1991, provided that a reservation on the part of Belgium can be eliminated by March 31. In late November, the EC Commission proposed the two new company tax directives promised in April relating to foreign losses and withholding taxes on interest and royalty payments of transnational companies and set up a committee of tax experts to comment on the further need to harmonize member-state company tax systems.

Value-Added Tax

The agreement reached on a transitional VAT system at the December 17 ECOFIN meeting removed one of the last major remaining VAT hurdles for the elimination of frontier controls on January 1, 1993. As provided for in the EC Commission's May 1990 proposal,[13] under the transitional system VAT will continue to be paid in the country of destination, as at present, 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 6th VAT Directive[14] to provide a new definition of "chargeable event" and issue a regulation providing for the sharing of information among tax authorities.

Left unresolved at the December 17 meeting was the duration of the transitional system. The EC Commission favors 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).[15] The United Kingdom, however, favors making the transitional system the permanent system.

In its program for 1991, the EC Commission identified adoption of the final details of the transitional VAT system and establishment of a definitive VAT system as priority items for ECOFIN action in 1991.[16] In its program for the first half of 1991, the Luxembourg Presidency set as goals agreement on special VAT regimes for cross-border

[10] COM (89) 60 final.

[11] The three measures, (1) Council directive 90/434/EEC of 23 July 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 23 July 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.

[12] *Commission Communication to Parliament and the Council: Guidelines on Company Taxation*, SEC (90) 601 final, Apr. 20, 1990. The three directives related to double taxation of parent company/subsidiary distributions, mergers, and arbitration procedures.

[13] COM (90) 182 final-SYN 274, *OJ* No. C 176 (July 17, 1990), p. 8.

[14] *OJ* No. L 145 (June 13, 1977), p. 1.

[15] Explanatory memorandum to COM (90) 182 final-SYN 274, pp. 5-6.

[16] *Program of the Commission for 1991*, January 1991, p. 3.

trade in new cars, mail order goods, institutional non-taxable persons (i.e., exempted by law) and exempt taxable persons (such as banks and insurance companies) by the end of February 1991; agreement on the legal text of a directive on a transitional system by the end of March 1991; and agreement on the duration of a transitional system by the end of June 1991.[17] As noted above, it was agreed at the December 1989 ECOFIN meeting that agreement is to be reached on VAT rates, including the products to be subject to reduced rates, by the end of December 1991.

Excise Duties

At the December 17 meeting ECOFIN approved in principle the definitive system for the collection of excise taxes proposed by the EC Commission in September 1990. In its 1991 work program, the EC Commission identified the establishment of a definitive system as a priority item for ECOFIN action in 1991.[18] The Luxembourg Presidency announced that it would seek agreement on a legal text establishing a system during its term.[19] Also before the Council, in addition to a proposed directive providing for establishment of a definitive system, are three directives proposed by the EC Commission in September 1990 providing for definitions of the products subject to such taxes—mineral oils, alcoholic beverages, and manufactured tobacco—when frontier controls are removed after 1992.[20]

Under the definitive system for the collection of excise taxes, 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.[21] Excise taxes will be paid in the destination country and will become chargeable when the goods are released from a bonded warehouse for consumption.[22] The new system would take effect January 1, 1993.[23] Special documents would be required to accompany the goods, the content and form of which would be harmonized, and warehouse operators would be required to notify tax authorities of all shipments received and sent.[24] Provision would be made for national tax authorities to exchange information.

Travelers' Allowances

The compromise reached at the December 17 ECOFIN meeting with Denmark and Ireland on travelers' allowances had unanimous support but is contingent on elimination of a reservation by Belgium that there be evidence by March 31 that adequate progress is being made on harmonizing excise tax rates.[25] If adequate progress can be made by March 31, the new travelers' allowances would take effect June 30, 1991, but with 1 year derogations for Denmark and Ireland. All travelers' allowances limitations are scheduled to be removed effective January 1, 1993, when frontier controls are to be eliminated.

The compromise, which was proposed by the Netherlands, provides for an increase of slightly over 50 percent in the value of goods that a traveler can enter tax free (from ECU 390 to 600) and increases of about one-third for the limits for tobacco products, alcoholic spirits and drinks, wine, perfume and toilet water, and coffee and tea extracts. The compromise increase is 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.[26]

Corporate Taxation

In late November 1990, the EC Commission issued two proposed directives relating to taxation of companies operating in two or more member states.[27] The two would supplement the legislative framework of the three company tax proposals adopted by the Council in July 1990. The first would provide for the abolition of withholding tax for transfers of interest and royalty payments between parent firms and their subsidiaries and would parallel the directive abolishing the withholding tax on parent-subsidiary dividends adopted in July 1990. The second would permit parent

[17] *European Report*, No. 1648 (Jan. 30, 1991), sec. 2, p. 1.
[18] Ibid.
[19] Ibid., pp. 1-2.
[20] EC Council press release No. 231-G (Dec. 17, 1990), p. 4; see also *European Report*, No. 1639 (Dec. 19, 1990), sec. 2, p. 4. The excise tax package submitted by the EC Commission on Sept. 27, 1990, consisted of a proposal for a general arrangement for the holding and movement of products subject to excise tax and proposals for the harmonization of excise duty structures related to alcoholic beverages, manufactured tobacco, and mineral oils. See *The General Regime and Structure of Excises Within the Internal Market*, COM (90) 430 final (September 1990); *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 (90) 431 final, *OJ* No. C 322 (Dec. 21, 1990), p. 1; *Proposal for a Council Directive on the Harmonization of the Structures of Excise Duties on Alcoholic Beverages and on the Alcohol Contained in Other Products*, COM (90) 432 final, *OJ* No. C 322 (Dec. 21, 1990), p. 11; *Proposal for a Council Directive Amending Council Directives 72/464/EEC and 79/32/EEC on Taxes Other Than Turnover Taxes Which Are Levied on the Consumption of Manufactured Tobacco*, COM (90) 433 final, *OJ* No. C 322 (Dec. 21, 1990), p. 16; and *Proposal for a Council Directive on the Harmonization of the Structures of Excise Duties on Mineral Oils*, COM (90) 434 final, *OJ* No. C 322 (Dec. 21, 1990), p. 18.
[21] COM (90) 431, art. 6-7; see also *European Report*, No. 1615 (Sept. 22, 1990), sec. 2, p. 7.
[22] COM (90) 431 final, art. 4.
[23] Ibid., art. 21.
[24] Ibid., arts. 12-13.
[25] EC Council of Ministers press release, No. 231 G, of Dec. 17, 1990, p. 7; see also *European Report*, No. 1639 (Dec. 19, 1990), sec. 2, p. 5.
[26] *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 final, *OJ* No. C 245 (Sept. 26, 1989), p. 5.
[27] *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 final, *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*

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 located outside the EC.[28]

The committee of tax experts is being asked to focus on four issues: (1) whether current disparities in levels of company taxation between member states give rise to distortions in the pattern of investment in the single market; (2) if so, whether EC action is necessary to remove such distortions or whether market forces will be sufficient to persuade member states with higher taxes to lower them; (3) if EC action is necessary, whether it should try to approximate company tax systems, differences in company taxes according to the legal form of the company, the tax base, and tax rates; and (4) whether EC action should consist of harmonization, approximation, or simply the creation of an EC framework, and what the effects of such action are likely to be on EC cohesion, the protection of the environment, and fair treatment of small and medium-sized enterprises.[29] The committee, which is to be chaired by former Dutch Minister of Finance Onno Ruding, held its first meeting January 1991 and is to report back to the EC Commission by the end of 1991.[30]

Taxation of Savings Interest

No significant developments occurred with respect to the EC Commission's February 1989 proposals for a minimum withholding tax on savings interest and for strengthening cooperation between tax administrations or with respect to the political agreement reached in December 1989 by 11 members of ECOFIN with respect to cooperation between tax authorities of member states. In late July 1990, Christiane Scrivener, the EC Commissioner with special responsibility for taxation, stated that the EC Commission did not intend to amend its initial proposals "as long as the Council has not come up with a solution that is satisfactory and acceptable to all Member States."[31] In a speech in November, Mrs. Scrivener stated that she remained personally convinced that the most appropriate solution was the introduction of a small withholding tax of up to 10 percent in full discharge of liability. Such a tax, she said, would provide a means of putting an end to a bidding-down process that could lead to a zero rate.[32]

[28] 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."

[29] EC press release of Dec. 19, 1990, concerning press conference of Christiane Scrivener, EC Commissioner with special responsibility for taxation.

[30] Ibid. See also *European Report*, No. 1640 (Dec. 22, 1990), sec. 2, p. 4; and *European Report*, No. 1646 (Jan. 23, 1991), sec. 2, p. 1.

[31] Answer given by Mrs. Scrivener on behalf of the EC Commission, July 30, 1990, in response to Written Question No. 1135/90 of European Parliament members Francois-Xavier de Donnea and Willy De Clercq, *OJ* No. C 303 (Dec. 3, 1990), p. 40.

[32] EC Commission press release IP(90)945, Nov. 23, 1990, "Mrs Scrivener at the French Banking Association's Institute of Banking and Financial Studies in Paris," p. 3.

CHAPTER 11
RESIDUAL QUANTITATIVE RESTRICTIONS

CONTENTS

CHAPTER 11
RESIDUAL QUANTITATIVE RESTRICTIONS

The elimination of intraborder controls in the EC's effort to create a single internal market will pressure the EC to transform existing or residual national quantitative restrictions (QRs) into EC-wide quotas or other protective measures, particularly in sensitive areas. Although new EC-wide quotas are likely to be directed at Asian exporters rather than U.S. exports, 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. In addition, there is some concern that automobiles produced in the United States by Japanese transplants[1] could face barriers in being exported to the EC.

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 prior to the time they joined the EC and were grandfathered in. Others are linked to agreements concluded by the EC Commission, such as the Multifiber Arrangement and the Generalized System of Preferences. 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 between the member states by 1992, national QRs will not be enforceable in the integrated single market. Therefore, the EC has indicated that it plans to eliminate all member-state QRs and article 115 by 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, the EC Commission has not yet identified those sectors that would be subject to an EC-wide quota. Efforts to identify sensitive sectors and the impact of the elimination of article 115 are still under way. An EC Commission document issued in October 1988 listed two sectors, in addition to automobiles, that could be covered by EC-wide measures—shoes and consumer electronics. The document also identified 12 sectors that have trade problems that are not EC-wide in dimension and that accordingly would warrant more defined solutions, such as subsidization. EC Commission officials have acknowledged that certain struggling industries will need some form of protection from imports after national restrictions are lifted. However, they claim that a transitional EC-wide import restraint in the automobile sector would not be extended to other industries.

Certain QRs are being addressed by the EC Commission. For example, the EC is negotiating 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 are consulting regularly over the removal of national QRs directed at Japan. The EC agreed to persuade individual member states to abandon certain QRs aimed at Japan after Japanese officials threatened to request dispute settlement procedures at the GATT. Finally, the developing countries that are signatories to the Lome Convention were concerned that they would lose their preferential access to certain member-state markets for bananas and rum as a result of the EC 1992 program. However, EC officials have noted that the Commission has an obligation to take into account the Treaty of Rome, the Lome Convention, and the GATT in formulating a plan for a common market for bananas.[2] The recently renegotiated Lome Convention includes provisions that should safeguard the privileged access of the banana producing countries.

Possible Effects

The first report identified three sensitive sectors—automobiles, footwear, and textiles and apparel—that would most likely 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 controlled 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.

Both U.S. auto exporters and U.S. auto makers 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. Although U.S. firms are well-positioned to meet competition from

[1] Japanese-owned assembly or production facilities in the United States.

[2] "Bananas: Debate on Post 1992 Market Regime Continues," *European Report*, No. 308, (June 15, 1990), sec. 5, p. 25.

European automakers, if Japanese producers continue to shift more production facilities to the EC and to increase their sales, the U.S.-owned automakers may face serious challenges to their market position in the EC market. 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. U.S. transplant operations obtain from Japan over 20 percent of the parts used in their products. Some product lines of U.S.-owned automakers, such as the Ford Probe, Geo Prizm, Plymouth Laser, and Eagle Talon, are produced in Japanese transplants in the United States. In addition, Mazda purchases Navajos from Ford.[3] U.S.-owned firms have shown some interest in exporting these models to the EC, even though they have not formally announced plans to do so. An EC quota on Japanese sales would thus reduce the global marketing options for these U.S. producers.

There has been pressure from EC producers to include products from Japanese auto assembly facilities in the Community under any voluntary restraint proposal.[4] However, by the end of 1990, a firm agreement had not been reached among EC countries on the length of the transitional period, the import ceiling for Japanese automobiles and on whether local content requirements would be included in any restrictions.

If QRs on imports of automobiles from Japan are imposed, it is unlikely that trade diversion to the United States would occur since auto-producing countries already have the capacity to export to the United States. However, there is likely to be a continued increase in investment by U.S. and Japanese auto firms in the EC.[5]

Developments During July-December 1990

During July through December 1990, the U.S. Government continued to monitor EC efforts to replace member-state quotas with EC-wide voluntary restraint arrangements.[6] On July 18 and 19, the EC and Japan held exploratory talks towards a voluntary restraint agreement on Japanese imports to the EC. The informal talks continued on September 11 and September 13. The EC proposed that a 5-year phaseout of quotas on Japanese auto imports begin after 1992. An EC Commission report predicted that, when Japanese transplants and imports were combined, Japanese manufacturers' share of the EC auto market would rise from a Communitywide average of 9.4 percent to 18.7 percent by the end of 1997 under the EC proposal. Vehicles produced by Japanese transplants would account for 10 percent of the ceiling, and imports would amount to 8.7 percent. EC members who do not currently limit Japanese car imports would not be required to adhere to these limits in their national markets under the proposal.[7] Whereas Japanese auto companies reportedly supported the proposal, Italy and France strongly opposed it.[8] Total European car sales fell in 1990, and domestic manufacturers in these two countries have experienced declines in market shares in the EC market. Under the compromise, Japanese imports would be limited to a 5.7-percent share of the French, Italian, and Spanish markets. Vehicles produced by Japanese transplants would be limited to a 5.4-percent share of the Italian and French markets and a 13.3-percent share of the Spanish market.[9]

During the final 6 months of 1990, there were no significant developments with respect to national QRs in other sensitive sectors.[10] However, Caribbean nations continued to seek assurances that the preferential access to certain member-state markets for bananas will continue after 1992. The EC has not adopted a final position on reform of the banana market.

[3] For more information, 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, 2318, September 1990, ch. 11.

[4] "Car Quotas Cause Friction," *Financial Times*, Dec. 20, 1990.

[5] For further information on the likelihood of trade diversion to the United States and investment trends in the EC, 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 2318, September 1990, p. 11-7 and USITC publication 2204, July 1989, p. 11-11.

[6] For more information, 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, September 1990, pp. 20-5 to 20-14.

[7] Jon Choy, "Japan-EC Relations: More Ups and Downs," *Japan Economic Journal*, Oct. 26, 1990, pp. 5 and 6.

[8] Bruce Barnard, "EC-Japan Trade Tensions Simmer as Farm Reform Holds Spotlight," *Journal of Commerce*, Nov. 21., 1990.

[9] "Cars: Mrs. Cresson Rebukes Commission and Appeals to Manufacturers," *European Report*, No. 1615, (Sept. 22, 1990), sec. 4, p. 7. In November, all of Europe's auto producers, except for Peugeot had agreed to support the Commission's plan. In a written submission to the Commission, the leading three leading producers—Volkswagen, Fiat, and Renault—stated that European policy for creating a single market for autos must be based on "reciprocity in opening Japanese and European markets, the right of Europeans to benefit first from gains in the market, and the introduction of support measures for the industry. . ." "European Carmakers Lobby EC for Protection From Japanese," *Financial Times*, Dec. 3, 1990.

[10] For more background, see USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, ch. 11; and USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, ch. 11.

CHAPTER 12
INTELLECTUAL PROPERTY

CONTENTS

CHAPTER 12
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 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 EEC Treaty for the failure to implement the mask works directive in a timely manner.

The EC Commission proposed 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.

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 one area, computer software, a directive was proposed ((88) 816). It would require member states to conform or to enact laws to treat computer programs as literary works under their national copyright laws and sets certain minimum standards and rights. The European Parliament gave its approval to the proposed directive but called for several amendments.

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.

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

Assuming that directives result from the Green Paper, 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. The extent of protection in the proposed computer software directive is controversial, and its possible effects depend on how that controversy is resolved.

Patents

Proposed Directive (88) 496 will probably liberalize trade by creating 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 regulation would thus encourage research and development and innovation. These benefits would apply to U.S. firms operating in the EC.

Developments Since the Last Followup Report

Since the last followup report, the EC Commission, on September 6, 1990, proposed a Council regulation on the creation of a Community regime for plant variety rights ((90) 347)[1], which is discussed below.

In addition, on October 18, 1990, the EC Commission proposed an amended computer software directive ((90) 509).[2] On December 13, 1990, the EC Council arrived at a common position[3] with respect to that amended proposed directive, further amending it before sending it on to the European Parliament for a second reading.

Among other changes, article 1 of the amended directive resolves any question about the originality standard by providing, among other things, that a computer program will be protected if it is original in the sense that it is the author's own intellectual creation.

Article 5 provides that a person who lawfully acquires a copy of a program may reproduce and adapt the program as necessary for the use of the program, subject to contractual provisions to the contrary. In all cases, the making of a backup copy by any lawful user will be permitted. Article 5 is one of two articles that address the question of reverse engineering. Article 5 provides that a lawful user of a program may observe, study, or test the functioning of the program to determine the ideas and principles that underlie any element of the program if he does so while lawfully loading, displaying, running, transmitting, or storing the program. The major provision relating to reverse engineering is article 6.

Article 6 provides that it is permissible to reproduce and translate the code if doing so is indispensable to achieve the interoperability of an independently created program with other programs. However, three conditions must be met to take advantage of this provision. First, the acts must be performed by a licensee or someone having a right to use the program (or their agent). Second, the information necessary to achieve interoperability must not have previously been readily available to those persons. Third, the acts must be confined to the parts of the original program that are necessary to achieve interoperability. Article 6 specifically provides that the information obtained may not be used for purposes other than achieving interoperability and may not be passed on to others except when necessary to achieve that purpose. It also provides that the information may not be used for the development, production, or marketing of a program substantially similar in expression or for any other act that infringes copyright in respect of the original program. A final provision in article 6 refers to the Berne Convention and provides that article 6 "may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the rightholder's legitimate interests or conflicts with a normal exploitation of the computer program."

Article 8 provides that the Berne Convention standard for the term of protection for literary works (generally, life of the author plus 50 years) will apply to computer programs.

Also in the copyright area, on December 13, 1990, the EC Commission proposed a Council directive on harmonizing rental and lending rights ((90) 586).[4] This proposed directive would require EC member

[1] *Official Journal of the European Communities* (*OJ*), No. C-244/1 (Sept. 28, 1990).
[2] *OJ* No. C 320/22 (Dec. 20, 1990).
[3] See notice at *OJ* No. C 71/1 (Jan. 25, 1991).
[4] *OJ* No. C 53/35 (Feb. 28, 1991).

states to provide a right to authorize or prohibit the rental and lending of originals and copies of copyright works. This right would pertain to authors, performing artists, phonogram producers, and to producers of the first fixations of cinematographic works. The proposed directive would also provide for protection in the field of rights related to copyright. A more detailed discussion will appear in the next report in the context of several other anticipated proposed directives in the copyright area.

On December 11, 1990, the EC Commission also proposed a Council decision ((90) 582)[5] 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. According to the 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.

Finally, the Council issued two decisions (90/510/EEC and 90/511/EEC, both dated October 9, 1990)[6] adopting the EC Commission's proposals, noted above, for continuing the extension of protection under the already-adopted mask works directive to nationals of third countries. The EC Commission supplemented these with a decision of its own on October 26, 1990 (90/541/EEC).[7]

Plant Variety Protection

Background

Member states of the EC provide patentlike protection for new plant varieties under their various national laws. These laws differ from one another, sometimes in quite significant ways. The EC Commission has proposed a regulation that would create a Communitywide system for obtaining protection for plant varieties that would be exclusive of national regimes.

Anticipated Changes

Proposed Regulation (90) 347 would create a self-contained Community regime for the protection of plant varieties. For plant varieties as a result of breeding or discovery, the regime would be the sole and exclusive source of plant variety protection rights in the Community. 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. Whereas parts of plants may qualify for protection, individual cells and cell lines are excluded from coverage.

The rights granted entitle the holder to exclude others from reproducing or propagating the variety. Individuals, other parts of plants, harvested material of the variety, or products obtained directly therefrom may not be offered, sold, used, or imported without authorization of the rightsholder. These rights may not be exercised in such a way which is contrary to the public interest. Among the public interest factors that must be considered is agricultural production, for which a special provision has been made. Under this provision, growers of propagating material for which a Community plant variety has been granted may, in certain cases, be authorized to plant on their own property any products harvested from that material. Further, the rights granted to the holder do not apply to noncommercial or experimental uses by others, and, with respect to acts involving individuals of a variety, are exhausted on the first lawful sale of that individual.

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.

The grant would be subject to revocation or cancellation under certain conditions. It would also be subject to compulsory licensing, providing the CPVO finds that such licensing is economically acceptable to the holder of the right and that such license is required by the public interest, especially to supply the market.

The grant of protection is exclusive. Varieties that are the subject matter of Community plant variety rights may not be patented nor be the subject matter of national plant variety rights.

Infringement actions would be brought in the national courts of the member states. Those courts could issue injunctions, award damages, and award certain supplemental relief. In such actions, the Community plant variety right must be treated as valid, though proceedings may be stayed during the pendency of revocation or cancellation proceedings before the CPVO.

Possible Effects

This proposed regulation 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 against infringement within EC member states of U.S. seed rights 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.

[5] *OJ* No. C 24/5 (Jan. 31, 1991).
[6] *OJ* No. L 285/29 and L 285/31 (Oct. 17, 1990).
[7] *OJ* No. L 307/21 (Nov. 7, 1990).

[8] Greece, Portugal, and Luxembourg are not members of UPOV.

The proposed regulation would create a single agency to grant plant-protection for all EC member states, unlike the current situation where protection must be obtained in the individual member states. In addition, the regulation grants plant variety rights for 30 years for all plants except vine and tree species, which are given a 50-year term of protection. The nine EC countries that are members of the UPOV Convention are currently obligated to grant protection for no less than 15 years. Under U.S. law, plant protection extends either for a 17- or an 18-year term, depending on whether protection is obtained under the patent law or under the plant variety protection law, as explained below.

U.S. exports to the EC

U.S. domestic sales of seed exceeded an estimated $2.5 billion in 1989, and total U.S. exports of seed exceeded an estimated $460 million in that year. Hybrid corn seed makes up about one-quarter of world seed sales, and hybrid varieties are used extensively for sugarbeet, sorghum, sunflower seed, and many commercial vegetables such as broccoli, onion, and squash, according to the U.S. Department of Agriculture. U.S. seed companies both conduct extensive research and development for new seed varieties and produce the varieties once developed ("grow out operations").

U.S. seed companies have become multinational enterprises over the past two decades and have been integrated into biotechnology and chemical companies that produce and market worldwide. There has also been a noticeable increase in consolidations in the U.S. seed industry as numerous seed firms have been acquired by larger agricultural input suppliers, including EC-based companies.[9] Other than the United States and the EC, Japan and Australia are the other leading exporters involved in seed and plant development and trade.

U.S. law provides for plant protection largely via the plant patent law and the Plant Variety Protection Act. The holder of the patent or plant variety protection certificate generally has the exclusive right to reproduce, sell, or use the plant. The Plant Variety Protection Act provides protection for most sexually reproducing seed varieties (e.g., corn, soybeans, and most field crops) for 18 years, subject to certain exemptions. Asexually (grafted or budded) varieties (e.g., flowering shrubs and plants and fruits) receive plant patent protection for 17 years. In some instances, utility patent protection for 17 years may be available.

U.S. exports of seed to the EC (which would be affected by this proposed regulation) are believed to have been nearly $140 million in 1989. U.S. exports to the EC of other floriculture products, such as live plants and bulbs, could be affected as well, but such exports are believed to be small (less than $14 million in 1989).

Sales of U.S. seed are generally already protected in most EC member states, as are operations of U.S. subsidiaries. There is strong bilateral trade and investment between EC and U.S. seed companies, with products and investment occurring in both directions. EC countries have traditionally provided strong plant protection.

Diversion of trade to the U.S. market

No diversion of trade from third countries to the United States is likely to result from this proposed regulation. It will harmonize and simplify obtaining plant protection within the EC and thus will make the EC a more attractive import market for world exports of protected plants and seed varieties. U.S. imports of seed have amounted to about $130 million annually in recent years, with about 40 percent coming from Canada, the EC, and Japan.

U.S. Investment and operating conditions in the EC

U.S. seed companies have extensive subsidiaries or commercial operations in the EC. EC companies likewise own a number of U.S. seed companies. At present, seed companies desiring to obtain plant protection are required to do so in each of the EC member states.

U.S. industry response

There is likely to be no effect on the U.S. industry in a practical trade manner. The regulation will simplify the process of obtaining plant protection within the EC and will extend the plant protection to 30 years for most plants (above the current minimum period of protection in the nine EC member states that are signatory to the UPOV Convention).

[9] "The Biotech Big Shots Snapping Up Small Seed Companies," *Business Week*, June 11, 1984, pp. 69-70.

PART III

IMPLICATIONS OF EC MARKET INTEGRATION FOR GATT, THE URUGUAY ROUND, AND OTHER INTERNATIONAL COMMITMENTS

CHAPTER 13
EC INTEGRATION, THE GATT, AND THE URUGUAY ROUND

CONTENTS

CHAPTER 13
EC INTEGRATION, THE GATT, AND THE URUGUAY ROUND

Developments Covered in the Previous Reports

Background

The Uruguay Round of Multilateral Trade Negotiations, initiated in 1986, is the eighth GATT-sponsored effort to liberalize world trade. The United States and other signatories to the GATT (now numbering over 100 countries) launched the negotiations in Punta del Este, Uruguay, in order to continue and further the reductions in tariff and nontariff barriers to trade resulting from seven earlier rounds. Scheduled to end in December 1990, a major aim of the Round is to bring certain new areas within the scope of the GATT—namely, services, trade-related investment measures (TRIMs), and trade-related aspects of intellectual property rights (TRIPs). Other negotiating objectives included strengthening GATT rules (on safeguards, subsidies, antidumping, standards, dispute settlement, licensing, and balance of payments measures) and adopting reforms applicable to agricultural trade.

Some subjects taken up in the Geneva negotiations are likewise involved in or related to EC directives aimed at achieving the single market. Three areas, services, TRIMs, and TRIPs, are included both in the Uruguay Round and in the 1992 program. Other negotiating topics in the Uruguay Round—safeguards, nontariff measures, and agriculture—are under review in the EC principally because of the GATT negotiations, not because of the move toward the internal market. Until the Round is officially concluded and its outcome determined, no changes in EC policies that might be needed to meet obligations assumed under any GATT agreements achieved can be specified.

Anticipated Changes and Possible Effects

Most directives recommended in the EC Commission's White Paper have already been approved to carry out the single market program, and appear to have been formulated to achieve goals largely unrelated to the multilateral GATT process. In view of the timing of the Round, however, this level of progress has prompted outside concerns as to the EC's freedom to negotiate. Because of recently achieved internal consensus on difficult issues and the volume and implementation of new directives, it has been suggested that the EC may be less able or willing to negotiate related issues in the Round or to change internal law to carry out GATT agreements (including directives outside the 1992 program). On the other hand, EC internal pressures and budgetary constraints may lead to changes in some EC Uruguay Round positions.

Some EC positions in Geneva have seemed to suggest that a degree of concern is justifiable. The United States and the EC take a different approach to a number of subjects common to the 1992 program and the Uruguay Round. First, with respect to trade in such services as banking, the United States has supported a special or separate arrangement within a multilaterally approved framework services agreement. The EC, by contrast, has advocated liberalization of the financial industry based on the model in its 1992 program banking directive. Second, the United States has again sought strong multilateral standards to protect intellectual property rights. The EC proposals are generally less comprehensive and offer fewer protections because differences remain in its internal policy.

In the negotiations on nontariff measures, the United States has focused its efforts on obtaining generally applicable principles and procedures to govern rules of origin; recent EC regulations and rulings have caused uncertainty relating to the EC's standards for conferring origin. In the review of subsidies issues, the United States has sought to expand the list of prohibited subsidies, while the EC has maintained that its regional and structural adjustment subsidies are necessary and should not be prohibited. The United States has also supported the tariffication of nontariff barriers, including quotas, in agriculture. Although the EC has agreed to this proposal in principle, it has nonetheless sought to maintain such restrictions under certain circumstances. In all these areas, the extent to which the EC can and will alter internal legislation to accommodate any new international pacts must be ascertained after such pacts are adopted.

Developments Since the Second Followup Report

Background

Following a ministerial meeting in Brussels, the Uruguay Round was suspended on December 7, 1990, because of an impasse with respect to agricultural issues. While progress in attaining agreements in many areas under negotiation was evident and while several draft texts or agreed bases for negotiation were presented to the ministers, no agreement seemed near on what is probably the most fundamental element of the Round, agriculture. Without such an agreement, developing countries' support for other results of the Round diminished, and the United States and others seeking substantial changes in EC agricultural policy are unwilling to go forward in other areas. Even with an agricultural pact, considerable work reportedly remains to be done in several negotiating groups before final consensus can be reached. A report on the status of discussions issued on January 15, 1991, reaffirmed that the talks were as yet inconclusive. Discussions resumed in late February but will continue beyond the U.S. statutory deadline of June 1, 1991, for the

submission of draft agreements to Congress under the so-called "fast track" procedure.

Further clarification of the status of the Round should be of benefit both at the international level and at the Community level regarding the conclusion of the internal market program. However, until the EC institutions bring about appropriate changes in internal law that may be necessitated by new obligations, the effects of any resulting proposals cannot be assessed.

Anticipated Changes

Given the ongoing talks within the EC, as well as in the GATT, and the political and legislative implications for other negotiating countries, it would be premature to state that a package of new agreed obligations will likely emerge. Some negotiating groups other than that on agriculture were also unable to gain consensus on the basis for negotiations (the key matters to be included in any agreement) in critical areas, much less to adopt provisions to cover those areas. In some groups, individual countries—the United States, the EC, Japan, India, and other participants—are said to have blocked portions or all of various draft texts. Nor is it clear that all countries will be able to act expeditiously to adapt domestic legislation and give effect to such obligations. The form and substance of such national legislative changes are as yet unknown. At best, a brief summary on several key issues that are involved in both GATT and the 1992 process can be provided herein, with the possibility that rapidly moving events may occur after the time frame covered in the present report.

Trade-Related Intellectual Property Rights

Background

Progress was made during the fall in attaining agreement on TRIPs, and an ad referendum agreement was on the table by December 3. Several issues remained, including whether protection should be given to pharmaceutical patents and the level of protection accorded to computer software.[1] When the Round is reconvened, it is expected that the tabled agreement will form the basis for new discussions despite these outstanding issues.[2] The technical complexity of such issues and the disagreements among developed countries and among developed and developing countries, have delayed work on the text.

Issues Involved

Seven areas are at issue in the negotiations: copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and trade secrets and commercially valuable undisclosed information. The EC and the United States have differed on several points, including a proposal on industrial design, patent grants based on the first-to-invent principle (rather than first-to-file), protection of geographic appellations, and the harmonization of laws. The problems result primarily from the dissimilar preexisting systems in the EC member states and the United States.

The EC, Norway, Finland, and Sweden tabled a joint proposal calling for protection of industrial or novel designs. A coalition of U.S. consumers and business objected, claiming that the wording would unacceptably broaden the definition of industrial design and limit competition in the U.S. "crash parts" market. They reportedly prefer a previous U.S. proposal that protects designs on terms consistent with present U.S. patent laws but which was tabled in May.

Other unresolved patent and copyright issues include the existing U.S. practice of protecting the inventor, contrasting with EC protection of the first person to file for a patent.[3] Also, the EC maintains 17 geographic appellations (primarily for wine) that preclude use by others of place names for products similar to those originating in the named EC region.[4] At issue is whether these names are protectable by copyright. Last, another obstacle is presented by EC efforts to get the United States to adopt legislation that mirrors the EC's intellectual property regimes, which are being harmonized in the internal market program.[5]

Continuing Negotiations

Several issues must still be resolved, including the structure and international implementation of any agreement obtained, its relationship to GATT, dispute settlement, standards issues regarding patents, the protection of undisclosed information, and transitional or special arrangements to apply to developing countries. Other questions include "moral rights" under copyright; the protection of computer programs, performers and broadcasters under copyright; the term of protection for sound recordings and for patents; and potential patent protection for plant and animal varieties.[6] A full discussion may be found in the chapters on intellectual property in the reports in this investigation.

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[1] Louis J. Murphy, "Brussels Ministerial Inconclusive: GATT Talks Suspended to Allow Countries to Reflect on Positions," *Business America*, Jan. 14, 1991, p. 14; "Sudden Halt to Final Session of Uruguay Round," *European Report*, No. 1636 (Dec. 8, 1990), sec. 5, p. 13.

[2] "Katz Says Agriculture Is Not the Only Problem in Stalled Uruguay Round," *Inside U.S. Trade*, vol. 8, No. 51 (Dec. 21, 1990), p. 13.

[3] "Glimmer of Hope Over Intellectual Property Deadlock," *European Report*, No. 1615 (Sept. 22, 1990), sec. 5, p. 6. The United States is the only country to award patents on the basis of "first -to-invent." All other countries, including the 12 EC member states, follow a "first-to-file" system.

[4] "No Major Breakthrough Over Quadrilaterals at Uruguay Round Stumbling Blocks," *European Report*, No. 1622 (Oct. 17, 1990), sec. 5, p. 2; Murphy, "Brussels Ministerial Inconclusive"; "TNC Opens 'Make-or-Break' Session," p. 1143.

[5] 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. 12-5; "Progress in GATT Intellectual Property Talks Seen Linked to Other Talks," *Inside U.S. Trade*, vol. 8, No. 44 (Nov. 2, 1990), p. 7.

[6] "Dunkel Comments on Uruguay Round," *Inside U.S. Trade*, vol. 8, No. 46 (Nov. 16, 1990), p. 22; "Success of Uruguay Round in Jeopardy, Says GATT Director General," *European Report*, No. 1629 (Nov. 14, 1990), sec. 5, p. 9.

Contrary to the United States' approach on moral rights, the EC gives an author absolute rights to his creation. In December, the EC Commission issued a proposed directive on audio-visual rental rights, which would grant authors, performers, and producers the right to authorize or ban rentals and loans of protected works.

Finally, the EC has opposed a U.S. proposal to grant patent eligibility to plant and animal varieties normally not accorded protection.[7] In this area, the EC's internal policy differs from its negotiating stance. The EC Commission's proposed regulation, designed to give breeders protection for new plant varieties, would enable a single application and decision to apply throughout the EC.[8] A proposed directive would provide that the subject matter of an invention is not to be considered unpatentable simply because it comprises living matter.[9]

With respect to the overall agreement, a major area of U.S.-EC accord is that counterfeit and pirated goods should be included within it, despite developing country opposition.[10] While no directives on this topic have yet been proposed in the 1992 program, a Green Paper on copyright protection contains detailed suggested courses of action to combat piracy.[11]

Health and Phytosanitary Measures

Background

One goal of the agriculture negotiating group was an agreement on sanitary and phytosanitary standards relating to trade, so that artificial barriers to trade cannot be erected on the grounds of protecting health.[12] Progress in the talks continued through the fall, although the potential inclusion of animal welfare, environmental protection, and consumer interest measures has not been decided.[13]

The agreement would cover the harmonization of such health measures; linkages with competent international organizations; transparency; the principles of equivalency, national treatment, and nondiscrimination; disease-free or disease-infected areas; inspection procedures; mutual recognition of test results, inspection, processing, and production methods; and consultations and dispute settlement.[14]

Issues

An apparently major problem is the EC's effort to include the so-called fourth criterion, factoring socioeconomic concerns into the standardization process. The United States has opposed this concept, which could result in more situations similar to the prohibition on growth hormones.[15]

Another unresolved issue is whether current international food safety standards for pesticides, food additives, and contaminants can serve as interim standards until equivalent standards or long-term agreements are established. The last question is whether to allow higher standards than those mandated internationally. The United States has sought to authorize stricter state and federal criteria, compared to international sanitary and phytosanitary standards, whereas the EC is attempting to establish harmonized internal standards.

Standards Code

Background

The Agreement on Technical Barriers to Trade (known as the Standards Code) would be extensively revised under a provisionally agreed text achieved in late October, pending completion of the Round. The terms of the Standards Code, which is intended to ensure that technical standards and regulations do not unnecessarily burden trade, would be clarified and its scope expanded. It now covers requirements for processes and production methods, sets forth principles with which local government and nongovernment bodies, as well as regional bodies engaged in standardizing activities, are to comply, develops the means by which conformity assessment procedures carried out in other member countries are recognized, and improves transparency at all levels.

The revised text would clarify the meaning of various terms and impose limitations and conditions on the imposition and use of technical regulations. Further consideration is needed as to the obligations of central governments regarding local governmental bodies and the relationship of the agreement to the outcome of negotiations on sanitary and phytosanitary measures. Also to be resolved is the legal form and status of the agreement. Many U.S. proposals on various subjects were incorporated into the draft agreement; analysis of these matters is not within the scope of this study.[16]

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[7] "GATT Uruguay Round Ministerial Conference, Brussels, December 3-7, 1990," Supplement to *European Report*, No. 1634 (Nov. 30, 1990), p. 11; "U.S. 'TRIPs' Plan Would Allow Monopoly of Genetic Resources, Greenpeace Says," *International Trade Reporter*, vol. 7, No. 47 (Nov. 28, 1990), p. 1806.

[8] See discussion in ch. 12 of this report.

[9] *Proposed Directive 88/496* was discussed in USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, p. 12-10.

[10] "GATT Ministerial Conference," p. 12; "Progress in GATT Intellectual Property Talks," p. 6.

[11] See USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, pp. 12-8 to 12-9.

[12] See the second followup report in this study, USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, p. 13-8, for background information.

[13] "USTR Hills Says GATT Talks 'Hang in Balance' as EC Wrangles Over Farm Subsidies Proposal," *International Trade Reporter*, vol. 7, No. 44 (Nov. 7, 1990), p. 1695; "Special Report: Dunkel Assessment of the Uruguay Round," *Inside U.S. Trade*, Nov. 5, 1990, p. S-5.

[14] "GATT Ministerial Conference," p. 5; "Uruguay Round: First Market-Access Offers Assessed," *GATT Focus*, newsletter No. 72 July 1990, p. 4.

[15] "GATT Ministerial Conference." See ch. 4 in this study, "Standards, Testing, and Certification," for discussion of EC restriction on growth hormones.

[16] See Murphy, "Brussels Mininsterial Inconclusive,"p. 13; "Agreement on Revision of Three Tokyo Round Agreements," *News of the Uruguay Round of Multilateral Trade Negotiations*, *NUR* 042 (Oct. 24, 1990), pp. 1-2; "Dunkel Assessment," pp. S-5 to S-6.

EC Proposals

Recent EC efforts in this area seem to be in accord with internal policies developing in the internal market program.[17] The EC has sought to strengthen obligations on central governments over local government bodies to ensure adherence to Code requirements.[18] It offered two separate texts on the preparation, adoption, and application of standards by local government bodies and nongovernmental bodies. Under the first, parties would be obliged to ensure that these bodies comply. The alternative, simpler text would require all available, reasonable measures to ensure compliance, except as to the notification of proposed standards. Contacts as to such criteria would be among parties rather than directly with subordinate bodies.[19]

A voluntary code of good practice proposed by the EC would try to ensure that central government standardizing bodies comply with the code and that parties take reasonably available measures to attain compliance by local government, regional, and nongovernmental standardizing bodies. Complying standardizing bodies would adhere to many of the same requirements and procedures followed by the central governments. They would publish, at least semi-annually, work programs listing standards adopted in the preceding period and those currently under preparation.[20]

Safeguards

Background

Article XIX of the GATT permits governments to take certain "safeguard" actions to protect an industry from sudden increases in fairly traded imports. However, in many instances countries have instead resorted to bilateral arrangements to restrict imports, giving rise to concerns that such measures are designed to gain an advantage rather than permit adjustment. Among the users of such pacts is the EC, especially with respect to its trade with Japan.

The GATT negotiating group on safeguards has been examining quantitative restrictions taking the form of voluntary restraint agreements (VRAs). Similarly, in the EC's 1992 program, these "gray area" measures are under review in the effort to eliminate member-state quantitative restrictions. At present, the EC has identified only the automobile sector as the subject of future Communitywide quotas.[21]

During the GATT negotiations, more concrete proposals to deal with VRAs were offered, such as a suggestion that any contracting party considering itself to be affected, directly or indirectly, by a gray area measure should be able to invoke dispute settlement procedures to establish the measure's conformity with GATT. An agreed basis for negotiations was attained earlier in the year, including provisions for the prohibition and elimination of these measures.[22] By December, no approved text was before the negotiators.

EC Proposal

The EC has proposed the progressive renunciation of all existing gray area measures, with certain limitations, arguing that governments are using gray area measures to take more international trade outside of GATT and avoid action against all suppliers in every case,[23] in view of the nondiscrimination principle underlying the GATT. However, the EC's proposal for progressive renunciation of gray measures contrasts with its recent actions, including a negotiated but still unimplemented voluntary restraint agreement with Japan on auto exports to the EC.[24]

Customs-Related Topics

Three subjects in the general area of customs controls would be covered by Uruguay Round agreements as well as by internal EC measures resulting from the 1992 program, including rules of origin, preshipment inspection, and import licensing. The latter draft text, which would if adopted make revisions to the existing Agreement on Import Licensing Procedures, awaits the final position of one of the participating countries. New notification requirements and other tighter criteria would apply to signatories, and procedures would likewise be improved and strengthened.

Tentative agreements were reached on both of the other two subjects. The text on preshipment inspection has not been approved by the Trade Negotiations Committee, and its final form and status are unresolved.[25] The proposed EC common customs code[26] would not afford legal status to documents prepared by preshipment companies unless authenticated by the customs authorities of other countries, under article 256.

The text on country of origin rules would provide principles and procedures governing nonpreferential

[17] See first followup report in this study, USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, pp. 16-11 to 16-13.

[18] See Murphy, "Brussels Ministerial Inconclusive";"Uruguay Round Negotiators Score Victory in Reforming Code on Technical Barriers," *International Trade Reporter*, vol. 7, No. 43, Oct. 31, 1990, p. 1646.

[19] Art. 3.1 of proposal, reprinted in "MTN Agreements and Arrangements," p. S-3.

[20] Art. 4.1 and annex 3 of proposal, reprinted in "MTN Agreements and Arrangements," pp. S-3, S-7.

[21] See USITC, *Effects of EC Integration*, USITC Publication 2204, July 1989, pp. 11-7 to 11-8, and ch. 11 in this study, "Residual Quantitative Restrictions."

[22] "GATT Talks 'Hang in Balance,'" p. 1695, and "Dunkel Assessment," p. S-4.

[23] "Tokyo Round Agreements Revised," *GATT Focus*, newsletter No. 75, October 1990, p. 6; Murphy, "Brussels Ministerial Inconclusive,"p. 12; "Uruguay Round Agreement Questionable as Numerous Key Disputes Remain," *Inside U.S. Trade*, vol. 8, No. 42, Oct. 19, 1990, p. S-4.

[24] See "Talks With Japan Grind to a Halt," *European Report*, No. 1637 (Dec. 11, 1990), sec. 4, p. 6.

[25] Mainly utilized by developing countries, preshipment inspections are carried out in countries of export, usually by private companies. This process may cause delays, the exposure of confidential information, and reviews of prices of the shipped goods.

[26] See USITC, *Effects of EC Integration*, USITC publication 2318, September 1990, p. 7-4.

origin determinations, which would be covered by new discipline on their adoption and administration. Like the rules employed by the United States, the EC, and by many other countries, the agreement would provide that origin should be determined in light of the concept of "last substantial transformation," which might be determined based upon changes in the tariff classification of inputs or certain other yet-to-be-specified means. Both the current and proposed future EC law on this subject, as discussed in chapter 17 of this report, impose additional subjective criteria and may require revision.

EC Waiver as to German Unification

The EC requested a temporary waiver of its obligations under article I:1 of the GATT. In December 1990, the contracting parties granted the waiver for the period October 3, 1990, through December 31, 1992. Under the terms of the grant, the EC may grant duty-free treatment for particular imports from Eastern Europe (Bulgaria, Czechoslovakia, Hungary, Poland, Romania, and Yugoslavia) and the Soviet Union for the quantities and values stipulated in trade agreement obligations of the former German Democratic Republic. The waiver is intended to maintain existing trade flows and facilities among the parties to those trade agreements.

Other Areas Under Negotiation

Several other negotiating groups dealt with topics for which the EC's legislation and policies are independent of and largely unrelated to the 1992 process. Some such subject areas presented difficult and novel questions and attracted numerous conflicting views and proposals, and some remain at an impasse (apart from that of agriculture). However, these areas are of considerable significance to the U.S. Government and to private interests, including producers, exporters, importers, and consumers. Future monitoring of developments in these areas is of great importance, but beyond the present scope of this investigation. Among the negotiating topics falling in this category are textiles, subsidies, antidumping, dispute settlement, services, the functioning of the GATT system, and tariff reductions. In addition, talks on government procurement, another aspect of the internal market program, have to date been reportedly unsuccessful.

Possible Effects

It is impossible to begin to ascertain at this point the potential specific effects of any individual agreement that might result from the Round. Moreover, because the participants have not formally approved any agreements, no accurate assessments are possible of the changes that might eventually be necessary in national laws and business operations. In light of the objectives of the negotiating countries, liberalization of existing barriers to trade could be anticipated. However, the form and substance of implementing measures are unknown and could affect trade patterns and the activities of individual firms in an unpredictable fashion. Future followup reports in this investigation will attempt to provide available information.

CHAPTER 14
EC INTEGRATION AND OTHER EC COMMITMENTS

CONTENTS

CHAPTER 14
EC INTEGRATION AND OTHER EC COMMITMENTS

Developments Covered in the Previous Reports

In the initial report and first two followup reports, the chapter on EC integration and other EC commitments considered agreements other than the General Agreement on Tariffs and Trade (GATT) that might impose on member states obligations that conflict with some aspects of the 1992 program. These reports considered three specific areas in which possible conflicts might arise: (1) international human rights treaties and the Broadcast Directive, (2) codes of the Organization for Economic Cooperation and Development (OECD Codes) and reciprocity, and (3) bilateral memoranda of understanding (MOUs) and the EC global approach to certification and testing.

The first followup report began its analysis by discussing generally the web of bilateral and multilateral agreements to which the United States and EC member states are signatories. It then briefly discussed the allocation of responsibilities for external relations between the European Community and the nonmember states. These are set forth by the Treaty of Rome and relevant Treaty provisions and principles of customary international law relating to conflicts between treaties. It then turned to a discussion of the possible conflicts noted above.

During the period covered by the first followup report, the U.S. Government raised the possibility that the EC's "Television without Frontiers" Directive might conflict with principles embodied in several international agreements designed to safeguard the free flow of information. The issue of such a possible conflict was raised by a local-content restriction in the directive that stated that when practicable, broadcasters should reserve a majority of broadcasting time for programming with EC content. Such a provision, it was believed, presented a potential conflict with both the specific provisions and the spirit of certain international human rights treaties. These treaties included the Universal Declaration of Human Rights, as well as the Helsinki Final Act and related documents of the Conference on Security and Cooperation in Europe (CSCE) designed to prevent signatories from placing restrictions on freedom of speech.

The first followup report also discussed the reciprocity provision of the EC's Second Banking Directive. It pointed out that despite an earlier amendment designed to alleviate similar concerns, the reciprocity provision might be inconsistent with principles embodied in the OECD's Capital Movements Code. The OECD Capital Movements Code sets forth the goal of dismantling barriers to capital movements among its contracting parties, which include the United States and all 12 member states of the EC. To help achieve this goal, the code requires that its signatories adhere to the twin principles of nondiscrimination and standstill/rollback of restrictive practices. To an extent, the revised Second Banking Directive embodied the concept that the EC will restrict foreign-owned banks to the same scope of operations to which EC banks operating in the foreign country are limited, rather than granting national treatment. Thus, it appeared to contravene the principle of nondiscrimination embodied in the code. By mandating that EC member states that currently do not have reciprocity requirements in their financial sectors adopt such requirements, the directive further appeared to run afoul of the principles of standstill and rollback of restrictive measures by code signatories.

The final possible conflict discussed in the first followup report was related to the EC's program for harmonizing standards and its related regime for certification and testing of goods to ensure that the goods comply with the harmonized standards. Specifically the report discussed the relationship between the EC's "Global Approach to Certification and Testing" and certain bilateral agreements in the form of MOUs between the United States and EC member states. In 1989, both the EC Commission and Council indicated that the EC's proposed "Global Approach to Certification and Testing" would affect certain bilateral agreements between testing and certification bodies in the EC member states and corresponding entities in the United States. The EC had stated that any existing bilateral agreements between EC member-state testing and certification bodies and third-country bodies would have to be renegotiated as EC-wide bilateral agreements when EC directives covering those products were implemented. Because the EC's approach was not fully developed, its likely effect on existing as well as future agreements between the United States and EC member states was difficult to assess at that time.

In the Commission's second followup report, it was reported that there had been few significant developments in relevant areas during the period covered by that report.

Developments Since the Second Followup Report

A group of "other commitments" between the U.S. and EC member states that may be affected at some point in the future as a consequence of the 1992 program is the network of bilateral agreements between the U.S. and member states concerning air transport. As of March 2, 1990, there were 60 bilateral air-services agreements in force between the member states and third countries.[1] These agreements, which are based on the Chicago Convention of 1944, regulate

[1] 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, September 1990, pp. 8-13.

air services between the member states and establish procedures to fix, among other things, the level of tariffs and capacity.[2] Rights of cabotage, the right to pick up and transport passengers to destinations within a single country, and landing rights for air service also typically are negotiated bilaterally.[3] A number of U.S. carriers have been authorized under these bilateral treaties to provide service between points in different EC member states for years.[4] Under the Federal Aviation Act, however, airlines based outside the United States may not carry passengers and cargo between two points in the United States.[5]

In earlier reports, the USITC noted that the second liberalizing package of air-transport directives gives the EC Commission the power, among other things, to establish the right to carry passengers from one foreign country to another, known as "fifth-freedom rights." It also noted that the EC Commission had instructed the member states of its intention to take over the responsibility for negotiating future international air-traffic agreements.[6] EC Transport Minister Karel van Miert had indicated at that time that fifth-freedom rights are a Community asset that should be used in negotiations to secure improved market access for EC carriers in the United States, Japan, and other third-country markets.[7]

On March 2, 1990, in a speech before the Federal Aviation Administration's Aviation Forecast Conference, Mr. van Miert elaborated upon the process by which the bilateral agreements would gradually be transferred to the Community. He stated that it was the EC Commission's opinion that close cooperation among the member states in the field of external relations would develop as a logical consequence of the gradual development of the internal market.[8] Mr. van Miert stated that the Commission's air-transport proposals set up a framework for consultations between member states and that as the Community becomes responsible for external aviation relations, the existing bilateral framework will be replaced by air-services agreements concluded between the Community as a whole on the one hand and a third country or third countries on the other.

On November 22, 1990, Mr. Van Miert, speaking to major airline representatives at the Association of European Airlines meeting in Budapest confirmed that the EC's goal was to develop a true internal market in air transport within the EC and to completely abolish bilateral civil aviation agreements.[9] He also confirmed that third country airlines' access to the Single Market would be dependent on reciprocal access for Community airlines to third country markets.[10] Mr. Ludolph van Hasselt of the EC staff in Brussels, speaking to delegates to the 15th International Air Cargo Forum in New Delhi on air transport issues, emphasized, however, that the EC recognizes all existing air agreements and accepts that change will have to come through negotiation of new agreements.[11] He also suggested that cabotage in the United States would become a subject of negotiation after the single European market comes into being.[12]

The U.S. Government view on the EC policy was expressed by Jeffrey N. Shane, Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation, who stated, "Eventually, the EC will build a common external policy and a coordinated negotiating approach to outside countries. The precise shape and timing of the external policy, however, are far from settled and the Commission's proposal for unified aviation negotiations is still highly controversial within the Community."[13] Thus, as European integration progresses, the Community and U.S. officials foresee the web of bilateral air transport agreements being transformed into a multilateral framework. In negotiating this multilateral framework, it is unclear to what extent 1992 measures relating to cabotage and fifth-freedom rights will affect the negotiation positions of the parties.

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[2] Ibid.

[3] 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. 8-6. Cabotage has been prohibited in the United States since the beginning of air travel. Most other countries have adopted laws and regulations prohibiting cabotage. Ibid., pp. 8-11.

[4] Ibid.

[5] Ibid.

[6] U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States—First Follow-Up Report* (investigation 332 267), USITC publication 2268, March 1990, pp. 8-6.

[7] Ibid.

[8] Ibid.

[9] *European Report*, No. 1632 (Nov. 24, 1990), sec. 4, pp. 15-16.

[10] Ibid.

[11] "Common Mart Sets Sights on U.S. Aviation Accords," *Journal of Commerce*, Oct. 11, 1990.

[12] Ibid.

[13] Remarks of Jeffrey N. Shane, Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation, SH&E/Airline Business Conference on Europe 1992: A Single Aeropolitical Market?, Nov. 15, 1990. The State Department's deputy assistant secretary for transportation affairs has said, however, that he is not concerned that EC unification will result in decreasing the operating rights within the EC of U.S. airlines. "U.S. Officials Searching for Aviation Strategy," *Journal of Commerce*, Aug. 1, 1990, p. 5B.

PART IV
OTHER POLICIES AND SPECIAL TOPICS

CHAPTER 15
THE SOCIAL DIMENSION

CONTENTS

CHAPTER 15
THE SOCIAL DIMENSION

The "social dimension" of EC 92 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 its work program for 1990, the EC Commission promised to take steps to implement the most urgent aspects of the action program, namely the reorganization of working time; atypical work; and consultation, information, and participation procedures for workers. The EC Commission also stated its intention to continue efforts regarding education, vocational training, and worker safety and health. The 1990 work program set out 17 specific proposals to implement the Social Charter with regard to job transparency and creation, worker safety and health, equal treatment, and improvement of living and working conditions.

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 three more individual worker safety and health directives, addressing the handling of heavy loads, requirements for visual display units (VDUs), and protection from exposure to carcinogens.

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 presented a proposed directive on the organization of working time, which directive sets requirements for night and shift work.

Since 1985, there has been an ongoing social dialog 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. In the first part of 1990, the management-labor committee adopted a joint option concerning vocational training and progressed on the finalization of a joint option addressing the mobility within the European job market and its improved functioning.

Developments During September-December 1990

Measures Adopted

In the latter half of 1990, the EC Council adopted two directives concerning worker safety and health—one addressing worker exposure to biological agents and the other addressing exposure of temporary workers to radiation. In addition, the Council of Ministers for Social Affairs agreed to an amendment of the EC's directive on worker exposure to asbestos.

The seventh individual directive within the Framework directive for worker safety and health addresses employee exposure to biological agents.[1] The directive will enter into force at the end of 1993. The directive provides that, by that date, a committee of experts will draw up a list classifying biological agents according to the nature and extent of risk associated with exposure to the particular agent. The directive requires companies to draw up a list of workers exposed to those agents classified as presenting a serious hazard and to provide appropriate medical surveillance. As with the other worker safety and health directives adopted by the Council, this directive provides for worker training and information, as well as for consultation and participation by workers or their representatives.

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[1] *Council Directive of November 26, 1990 on the Protection of Workers From the Risks Related to Exposure to Biological Agents at Work, Official Journal of the European Communities, (OJ)* No. L 374 (Dec. 26, 1990), p. 1. *European Report*, No. 1633 (Nov. 27, 1990), Internal Market, p. 9.

In December 1990, the Council adopted a directive intended to protect nonregular workers employed at sites where they may be exposed to radiation.[2] This directive also will go into effect in 1993. The directive applies to temporary or subcontracting employees who are exposed to radiation through occasional work, including: work at nuclear installations (whether civil or military); transportation of radioactive material; work with medical equipment; and work in the food industry. Under the directive, these employees will be afforded the same protection as that afforded full-time employees.

The newly amended asbestos directive sets 8-hour worker exposure limits at 0.6 airborne fibers for workers using personal protective equipment and at 0.2 airborne fibers for workers who do not have this type of protection.[3] The directive will go into effect on January 1, 1993, and will be reexamined in 1996 to take technological progress into account. This directive is unlikely to have any significant impact on U.S. firms in the EC or on U.S. exports, given the stricter exposure standards imposed by the U.S. Occupational Safety and Health Administration and the declining use of asbestos in new construction.

In another area related to the social dimension, the EC Council issued a decision allowing the European Commission to undertake a Communitywide informational campaign in support of the elderly.[4] The decision recognizes that the power to take legal action on this subject lies with the member states, rather than the European Community. With this background, the decision allows for Communitywide funding of research and projects aimed at increasing public awareness and promoting exchange of knowledge and experiences on common problems related to older workers and other elderly people.

New Initiatives

Worker Information and Consultation

On December 12, 1990, the EC Commission presented a proposal for a directive on worker information and consultation.[5] The proposed directive calls for the establishment of a European Works Council (EWC) in every "Community-scale undertaking or group of undertakings." A "Community-scale undertaking" is defined as a company with at least 1,000 employees within the European Community and with establishments employing at least 100 employees in two or more different member states. It would apply to companies headquartered both inside and outside the European Community.[6] For non-EC firms, the responsibility of organizing and meeting with the EWC will lie with the firm's EC agent or, in the absence of an agent, with the individual enterprise employing the largest number of people. The directive would not extend to company actions affecting only operations outside EC boundaries, unless the employer is agreeable.[7]

Under the proposal, the employees' representatives will meet to decide whether to open negotiations with central management aimed at setting up a works council. Any EWC will consist of from 3 to 30 employee representatives representing each establishment employing more than 100 employees.

The proposed directive provides that, at the minimum, the EWC would have the right to meet with central management at least once a year, with the costs of the meeting borne by the company. At this meeting, management will be obliged 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. The directive does, however, permit each member state to include in its implementing legislation provisions allowing companies to withhold information, which, if disclosed, would substantially damage the company's interest. The proposed directive also requires member states to include legislative provisions forbidding members of the EWC from revealing to any third party information provided to them in confidence.

As noted in the previous reports, earlier drafts on this subject mentioned worker participation as well as information and consultation.[8] Although this proposed directive does not explicitly address "participation," it does mention that the EWC should be "informed in good time" of any pending decisions significantly affecting the employees' interest and should be invited to give its opinion.

Because the proposal is in the form of a directive rather than a regulation, its adoption would require implementing legislation by each member state.[9] Each

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[2] *Council Directive on Operational Protection of Outside Workers Exposed to Ionizing Radiation During their Activities in Controlled Areas, OJ* No. L 349 (Dec. 13, 1990), p. 21. *European Report*, No. 1636, Internal Market (Dec. 5, 1990), p. 5; No. 1621, Internal Market (Oct. 11, 1990), p. 9.

[3] *Council Directive on the Protection of Workers from the Risks Related to Exposure to Asbestos at Work.* See *European Report*, No. 1621, Internal Market (Oct. 12, 1990), p. 11; No. 1631, Internal Market (Nov. 20, 1990), p. 8; No. 1633, Internal Market (Nov. 27, 1990), p. 8.

[4] *Council Decision of November 26, 1990 on Community Action for the Elderly, OJ* No. L 28 (Feb. 2, 1991), p. 29. *European Report*, No. 1633, Internal Market (Nov. 27, 1990), p. 7; No. 1631, Internal Market (Nov. 19, 1990), p. 3.

[5] *Proposal for a Council Directive on the Establishment of a European Works Council in Community-Scale Undertakings or Groups of Undertakings for the Purposes of Informing and Consulting Employees*, COM (90) 581, *OJ* No. C 39 (Feb. 15, 1991), p. 10. See Bureau of National Affairs (BNA), *1992—The External Impact of European Unification*, Dec. 14, 1990, p. 6. *European Report*, No. 1636, Internal Market (Dec. 5, 1990), p. 3; No. 1637, Internal Market (Dec. 11, 1990), p. 14.

[6] *European Report*, No. 1637, Internal Market (Dec. 11, 1990), p. 14.

[7] U.S. Department of Labor, discussion with representative of Bureau of Labor Affairs, Feb. 6, Feb. 13, 1991.

[8] U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: First Follow-Up Report*, USITC publication 2268, March 1990, ch. 18 (First Follow-up Report); *The Effects of Greater Economic Integration Within the European Community on the United States: Second Followup Report*, USITC publication 2318, September 1990, ch. 15 (Second Followup Report).

[9] USITC, *The Effects of Greater Economic Integration Within the European Community on the United States*, USITC publication 2204, July 1989, p. 1-18 (Initial Report).

member state is required to ensure compliance by management and employees of establishments located within its territory, irrespective of whether the central or controlling management of the company is located in that country. The proposed directive specifies that it sets only minimum requirements for member states; the directive expressly allows member states to pass or apply laws more favorable to employees.

Finally, the legal authority for the proposed directive lies in article 100 of the EEC Treaty. Under this article, unanimous approval by the Council of Ministers is required.[10] It has been reported that the United Kingdom, which has consistently voiced opposition to legislation in this field, may veto this directive.[11]

The U.S. industry groups that have been following this subject are studying the proposal further to determine the extent, if any, to which the directive would have extraterritorial effects.[12] In addition, the U.S. groups are working in conjunction with EC industry groups to evaluate other aspects of the directive. Preliminarily, industry has voiced some concern that the directive is too weak on the protection of confidential information.

As a general matter, the proposed directive reportedly formalizes a practice already institutionalized at a number of European companies, including Volkswagen, BSN, Elf-Aquataine, and Thomson.[13] However, for the majority of both EC-based and non-EC-based firms, the directive would require substantial structural changes. It has been reported that some industry sources believe the directive creates a system that is inefficient, remote from workers, and contrary to the trend towards decentralization.[14] There is also concern among industry sources that this directive will open the door for compulsory Communitywide collective bargaining. In addition, for U.S.-based firms with operations in the European Community, the directive could impose substantial organizational changes to the extent it requires the creation of a single EC management structure for reporting and negotiating purposes.[15]

Proof of Work Contracts

In late 1990, the EC Commission proposed a directive requiring written work contracts or the equivalent.[16] The proposed directive requires some written proof of a working relationship for all employees working more than 8 hours a week. The document could be in the form of an actual contract as prescribed by national or local laws, or could reference to a particular collective bargaining agreement that will be applied.[17] In other cases, the proposal recommends that, within 1 month of the onset of employment, the employer provide the employee with a written document providing 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.

For some member states, such as Spain, adoption of the directive would require little, if any, change from current laws.[18] For other member states, particularly the United Kingdom and Ireland, the directive proposes major changes in that local traditions in these countries often favor oral, rather than written, commitments.[19] As with the worker consultation proposal, the proof of contract directive is based on the authority of EEC Treaty Article 100, and is subject to unanimous approval.[20]

Worker Safety and Health

Since the last followup report, the EC Commission has proposed several new directives governing worker safety and health. These directives address the protection of pregnant women in the workplace,[21] protection of workers at temporary or mobile worksites,[22] and medical assistance for workers at sea.[23] All of these directives were proposed under the authority of the worker safety and health provision of EEC Treaty article 118A and therefore can be adopted by a qualified majority of Council members.[24]

The proposal concerning pregnant workers would entitle women to 14 weeks of paid maternity leave and would exempt them from night work for 16 weeks during the period before and after childbirth. In addition, they would be entitled to full maternity leave and job protection during their pregnancy. Finally, pregnant and nursing women would be protected from exposure to dangerous processes, activities, and chemical, physical, and biological agents.

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[10] See Initial Report, p. 1-13; First Follow-Up Report, p. 18-4.

[11] BNA, *1992—The External Impact of European Unification*, Dec. 14, 1990, p. 6.

[12] U.S. Department of Labor, Representative of Bureau of Labor Affairs, conversation with USITC staff, Feb. 6; Feb. 13, 1991.

[13] *European Report*, No. 1636, Internal Market (Dec. 5, 1990), p. 3

[14] *BNA, 1992—The External Impact of European Unification*, Dec. 14, 1990, p. 6.

[15] U.S. Department of Labor, discussion with representative of Bureau of Labor Affairs, Feb. 6, Feb. 13, 1991.

[16] *Proposal for a Council Directive on a Form of Proof of an Employment Relationship, OJ* No. C 24 (Feb. 21, 1991), p. 3. See *European Report*, No. 1634, Internal Market (Dec. 29, 1990), p. 2.

[17] Ibid.

[18] See Second Followup Report, p. 15-6.

[19] *European Report*, No. 1634, Internal Market (Dec. 29, 1990), p. 3.

[20] Ibid.

[21] *Proposal for a Council Directive Concerning the Protection at Work of Pregnant Women or Women who have Recently Given Birth*, Com (90) 406, *OJ* No. C 281 (Sept. 11, 1990), p. 3 and *Amendment*, COM (90) 692, *OJ* No. C 25 (Feb. 1, 1991) p. 9. See Europe Information Service, *European Social Policy*, No. 1 (Oct. 1990).

[22] *Proposal for a Council Directive on the Implementation of Minimum Safety and Health Requirements at Temporary or Mobile Work Sites*, COM (90) 275, *OJ* No. C 213 (Aug. 28, 1990), p. 2.

[23] *Proposal for a Council Directive on the Minimum Health and Safety Requirements for Improved Medical Treatment on Board Vessels*, COM (90) 272 final, *OJ* No. C 183 (July 24, 1990), p. 6. See *European Report*, No. 1622 (Oct. 16, 1990), Internal Market, p. 13; *European Report*, No. 1628 (Nov. 9, 1990), Internal Market, p. 10.

[24] See USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, p. 18-4.

The EC Commission's original proposal has undergone some changes as it has worked its way through the European Parliament and Economic and Social Committee of the European Communities (ESC).[25] For example, the European Parliament recommended extension of the period of paid maternity leave and of the period in which night work is forbidden.[26] However, several member states reportedly will seek to cut back the obligations imposed by the proposed directive. Specifically, France, Germany, and Luxembourg apparently will oppose provisions that will require changes in their social security systems.[27] The British Government has indicated its intent to oppose the directive and has further expressed anger that the directive was proposed as a health and safety measure under the qualified-majority provisions of EEC Treaty article 118A, rather than under the unanimity provision of article 100.[28]

The proposed temporary or mobile worksite directive would extend to workers at these sites the same protections afforded workers at fixed worksites. A nonexhaustive list of the type of work covered by the directive includes excavation, earthworks, construction, installation and removal of prefabricated elements, landscaping and fitting out, alterations, renovation, repairs, dismantling, demolition, upkeep, and maintenance. Before commencement of any covered work posing a serious safety or health risk, or lasting more than 30 days, the person for whom the work is being performed would be required to forward to the appropriate local authority a notice containing certain information about the nature of the project. Like many of the other proposed and adopted safety and health directives, this directive contains provisions for worker information, consultation, and participation.

The proposed directive on medical assistance at sea would apply to workers on board any publicly or privately owned vessel carrying the flag of a member state, except for warships and pleasure boats used for noncommercial purposes. Under the directive, member states would be required to take measures to ensure that all vessels under their jurisdiction always have certain medical supplies which are specified in an annex to the directive. Member states would also be required to designate medical centers where information necessary for emergency treatment could be obtained. This directive is not likely to create any significant obligations for U.S. firms, given its limitation in coverage to seagoing vessels of the EC member states. Nor does it appear to create competitive impediments for U.S.-owned vessels, because it does not place any restrictions on non-EC vessels that do not meet equivalent standards.[29]

[25] See *European Report*, No. 1628 (Nov. 7, 1990), Internal Market, p. 7; *European Report*, No. 1632 (Nov. 21, 1990), Internal Market, p. 5.

[26] *European Report*, No. 1628 (Nov. 7, 1990), Internal Market, p. 7.

[27] *European Report*, No. 1634 (Nov. 30, 1990), Internal Market, p. 9.

[28] See Lucy Kellaway, "UK Opposes Maternity Leave Changes," *Financial Times*, Sept. 13, 1990, p. 6.

[29] A protocol of the International Labor Organization does, however, call for similar types of measures for vessels of all countries (including the United States) that belong to that organization. ILO Convention No. 164. *See European Report*, No. 1622 (Oct. 16, 1990), Internal Market, p. 13.

CHAPTER 16
RESEARCH AND DEVELOPMENT

CONTENTS

CHAPTER 16
RESEARCH AND DEVELOPMENT

Developments Covered in the Previous Report

Research programs sponsored and funded by the EC tend to be either target-oriented basic research or precompetitive technological research and development (R&D). In either case, the projects are neither totally commercial nor totally academic in nature. They fall between these two extremes. Target-oriented research, unlike pure basic research, focuses on possible applications. Precompetitive research is a stage in the technological process prior to that of commercial development. The three major R&D areas listed below are targeted under the Third Framework Programme (1990-94), the EC's master plan for R&D. They exemplify research topics that can be classified as either precompetitive R&D or target-oriented basic research:

- Diffusion of technologies in the field of information, communication, and industrial and material management;
- Management of natural resources, such as environment, life sciences, and energy;
- Management of intellectual resources, such as human capital and mobility.

The EC's R&D policy discourages individual members from directing their resources to create national advantages in international competition, especially in high-technology areas where significant manpower and economic resources are needed. National programs are financed principally by the respective Governments and account for just over 95 percent of total Government R&D spending in the EC. These programs include basic, precompetitive, and competitive research. The EC supports member-state aid that is intended to further certain industrial policy goals, such as promoting R&D in general and assisting the R&D efforts of small and medium-size enterprises (SMEs).

The 1980s saw the emergence of a series of highly integrated, second-generation European R&D programs in major technological areas. The First Framework Program, an umbrella program implemented in 1984, set forth the Community's R&D policy, established research objectives, and listed research activities for 1984-87. The Second Framework Program, implemented in 1987, had a budget of ECU 5.4 billion . Although the Second Framework was scheduled to continue through 1991, the EC felt that the speed with which technology was changing and the need to buttress international competitiveness warranted immediate increased spending and a reorganization of R&D priorities.[1] As a result, the Third Framework Program, (1990-94) was approved in April 1990, with total funding of ECU 5.7 billion.

No institutional framework for U.S. participation in EC R&D projects exists currently, although there are agreements between the United States and the EC as well as between the United States and individual EC member states. There are 10 agreements between the EC and the United States outlining bilateral cooperation in specific R&D areas. In addition, there were 126 bilateral science and technology agreements between the individual EC states and the United States in 1988. One hundred and ten of these agreements were with France, Italy, Spain, the United Kingdom and West Germany.[2] All the agreements with individual countries include subjects as diverse as the environment, material sciences, and agricultural sciences. A number of U.S. companies do participate in the various EC programs. For example, U.S. organizations with EC research facilities that participated in ESPRIT I include Analog Devices; AT&T, through its joint venture with Philips; the Battelle Institute; Digital Equipment Corp.; IBM; and Foxboro.[3] Some participation by organizations outside the EC has been permitted in the form of contracts, but this participation has been a small portion of the overall ESPRIT program.[4]

EC officials have stressed the openness of their research system, stating that "conditions for participating in EC research programmes are completely transparent and nondiscriminatory with respect to Community-based organizations with foreign parentage."[5] As cooperative research grows within the EC, some people believe that one of the outcomes of EC 1992 will be a greater inward focus of EC R&D. There is concern in the United States that research relationships established with the individual countries of the EC will decline and that new opportunities for cooperative R&D will be more difficult to develop.

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[1] EC Commission, *Proposal for a Council Decision Concerning the Framework Programme of Community Activities in the Field of Research and Technological Development (1990-1994)*, COM (89) 397, Aug. 2, 1989.

[2] American Chemical Society, "The Effect of the European 1992 Plan on U.S. Science Policy and the Chemical Industry," by Anthony Boccanfuso, American Chemical Society Fellow. According to the report, there were 126 agreements with the individual EC countries and another 13 multilateral with ESA and the EC.

[3] Kenneth Flamm, "Semiconductors," in *Europe 1992: An American Perspective*, Gary Clyde Hufbauer, (Washington, DC 1990) p. 282.

[4] "All of the EC teams participating in ESPRIT projects are connected to each other by means of a data network, and are intended to have full access to university and industry research in a variety of fields." Congressional Research Service, Europe 1992, p. 100.

[5] EC Commission, *EC Research Funding*, January 1990, p. 4.

Participation in Framework Programs

EC-sponsored collaborative R&D programs carried out under the Framework programs were designed to encourage cooperation between corporations, universities, and private and public research institutes. The EC has stated that "every natural or legal person under public or private law who is resident or established in an EC member state" is eligible to participate.[6] The only other official requirement for participation is that the potential collaborator have at least one other partner from another EC member state.[7] The framework programs require non-EC companies to have what is called an "integrated presence" in Europe, which has been interpreted to mean that the company wishing to participate must engage in production, marketing, and research operations in the EC.[8] The EC has made a special effort to encourage SMEs to participate. In order to make access easier for such enterprises, the EC Commission has set up Euro-Info-Centres in all EC member states that can provide information on questions related to support of research and technology.

Entities established or resident in the European Free Trade Association (EFTA) countries are also generally eligible to participate in most programs under agreements signed by EFTA Governments with the EC. There are two types of participation for EFTA entities. Certain EFTA countries are directly associated with specific programs as a result of signing an agreement with the EC. In this case entities from that particular EFTA country can participate in the program under the same conditions as those from the EC. If the EFTA country has not signed such an agreement, but has entered into a framework agreement with the EC, covering scientific and technological cooperation, an entity from that EFTA country may participate. However, if the EC makes a specific decision to permit entities from EFTA countries to participate in the particular project, the EFTA country must contribute ECU 5,000 to the general cost of the project. In this situation, the EC does not contribute financially to the research costs of the EFTA participants. In both cases, the participation of at least two partners from different EC countries is required.

One of the criteria for eligibility in EC R&D projects is that the potential participant be resident or established in the EC. As a result, U.S. firms that merely export to the EC are not eligible to participate. However, article 58 of the Treaty of Rome, entitles all firms organized under the law of an EC member state to be treated as a European firm. Therefore, European subsidiaries of U.S. firms should be treated as European firms. As mentioned earlier, however, foreign-owned European subsidiaries have generally been allowed to participate in EC programs only if those firms carry out certain activities within the EC. In addition, the EC may require that the country of the parent company allow access to collaborative R&D ventures in that country before the foreign-owned subsidiary will be allowed to engage in EC-sponsored R&D. Although certain U.S. firms have participated in EC R&D programs, according to one commentator, until very recently, major Japanese firms in Europe operated no significant research facilities. Japanese participation in EC R&D was minimal.[9] In response to complaints from the United States about the lack of equal access to EC R&D programs, EC officials have pointed out that foreign-company access to U.S. Federally-funded programs is limited. SEMATECH, for example, excludes all foreign-owned companies. In addition, foreign participation in U.S. defense research projects is severely limited. Finally, EC officials have expressed concerns regarding the constraints on research cooperation imposed by U.S. export control policies.[10]

Proposal Contents

The *Official Journal of the European Communities* gives notice of the proposals of the Commission on new research programs and calls for proposals. Although the contents of a proposal may vary in length due to the technical nature of the programme, the Directorate-General has introduced a standard form for all programs that consists of three basic parts. Part 1 contains the project title and a short description of the project and the participants, together with a financial overview. If confidentiality has been agreed, the external referees are not informed of the names of the participants. Part 2 contains a detailed scientific and technical description of the project covering aims, work schedule, method of proceeding, status of the research, and scientific and technical utility. It also requires a justification of the necessity of conducting the research on a European level and a description of any links with other EC research program or projects. This part is evaluated by external referees. If confidentiality must be maintained, no information is given that could lead to the participants' being identified. Part 3 describes the individual participants in the project and their role in the project's execution, states the costs that will be borne by the individual participants, and gives information on utilization of the results.[11]

Selection Procedures

The selection of proposals is a product of a complex evaluation procedure. There are certain criteria that form the basis of the decision that is made

[6] *EC Research Funding*, p. 13.

[7] Ibid.

[8] U.S. House of Representatives Hearing, 101 Cong., 1st. sess., Statement of Dr. John H. Moore, Deputy Director, National Science Foundation, and Dr. Richard E. Bradshaw, international analyst, National Science Foundation, *Europe 1992 and Its Effects on U.S. Science, Technology and Competitiveness*, before the Committee on Science, Space and Technology, May 16 and 17, 1989, p. 173.

[9] Kenneth Flamm, "Semiconductors," in Hufbauer.

[10] National Association of Manufacturers, Update on EC-92, (draft) p. 38. From Washington conference at which Flippo M. Pandolfi, vice president of the EC Commission, spoke.

[11] *EC Research Funding*, p. 34.

by independent scientific and technical experts as well as by representatives of the member states. The following 10 selection criteria are judged by the EC to be the most important aspects of a proposal:[12]

- Compliance with the aims of the program;
- Cross-border character;
- Scientific and technical quality and originality;
- Innovative potential;
- Industrial relevance and influence on competitiveness;
- Feasibility of implementation;
- Scientific qualifications of the applicant;
- Precompetitive character;
- Amount of EC funding;
- Composition of the partnership.

Among the proposals submitted, the EC Commission decides which proposals will be selected by employing a three-stage procedure. First, with advice from scientists acting as independent referees, the Commission draws up a list of the proposals that it believes to be the most worthy of support.[13] At this stage, only the technical and scientific aspects of the project are evaluated. Neither the applicant nor the country from which the proposal emanates are known to the proposal reviewers. Only afterwards do the referees learn details regarding the individual project participants. Secondly, the list of selected projects is passed on the appropriate program committee for appraisal. The program committee contains experts from all the member states, who may consider additional factors, such as national balance and any specific criteria for the individual program's objectives, in the selection procedure. Finally, the appropriate Directorate-General of the Commission makes the final decision.

Structure of Projects

Each group of applicants requesting to be candidates for an EC-sponsored research project must designate a project coordinator, contractors, associated contractors, or subcontractors for its proposed project. The project coordinator is the contractor designated to represent all the partners in dealings with the Commission, and is responsible for the handling of the contract. The coordinator also is responsible for collecting all EC contributions and distributing them to the other project participants and for presenting reports.

Contractors are project participants who sign a contract with the EC that they will undertake to carry part of the costs of the project, and do so within reasonable limits, and will be jointly and severally liable for the project. Agreements between the contractors concerning organizational affairs, e.g., consortium agreements, do not have to be approved by the Commission. But they must not contain conditions contradictory to the contract with the Commission. A contractor undertakes to sign and perform the contract, to carry part of the costs and, within reasonable limits, to be jointly and severally liable. The contractors are entitled to exploit fully the results of the project.[14]

Associated contractors participate in the execution and financing of the project, but they are not cosignatories to the contract and are not jointly and severally liable. The rights of associated contractors, therefore, to exploit the project results may be limited. However, appropriate rights concerning the results must be agreed in recognition of the contribution of the associated contractor to the project. Associated contracts must be submitted to the EC for approval.

Finally, the subcontractors role is restricted to providing technical services for the contractors, in return for payment. Subcontractors have no direct rights and obligations resulting from the contract with the EC Commission. Subcontracts must be approved by the EC Commission if the payment exceeds ECU 100,000 or 20 percent of the total costs of the contractors. Similarly, the participation of subcontractors from third countries always requires the approval of the EC Commission.

U.S. Industry Responses

Small to Medium-Size Companies

Informal interviews[15] were conducted with 12 leading small and medium-size companies[16] to solicit their opinions concerning EC 1992 as well as any feedback on participation in the various R&D programs. The firms ranged in company size from approximately 50 to 6,500 employees. These companies produce advanced computer-aided design and simulation programs, advanced integrated circuits for leading company products, and production equipment used to make integrated circuits.[17] Although the explanations varied slightly by each firm, the general consensus was that the majority of smaller firms did not receive information about EC 1992 issues directly. In most cases, the smaller firms relied on information that can be obtained from trade publications, news reports, local seminars, and trade shows. However, all of the smaller firms export products to Europe with notable success.

One of smallest companies that was interviewed (under 100 employees) does not do any of its own R&D. This employee-owned firm, which develops

[12] Ibid, p. 40.
[13] Ibid, pp. 41, 40.
[14] The law of the project coordinator's country of origin applies to the execution of the contract with the EC in so far as the contractors do not agree otherwise. EC Commission, EC Research Funding, p. 36.
[15] Field notes, informal interviews conducted by USITC staff with small to medium-size companies, May 1990, unpublished.
[16] Principally U.S. firms but including European firms also.
[17] Field notes, informal interviews conducted by USITC staff with small to medium-size companies, May 1990, unpublished.

and publishes applications programs for complex electronic circuits, employs experts in computer-aided software R&D. Consequently, this small company has made no attempt to participate in a European consortium.

The response from a larger company that produces integrated circuits and maintains a workforce of approximately 2,000 employees has direct access to information about EC 1992 that is prepared by a European company. While the firm is not participating in any of the EC R&D efforts, the company spokesman felt that strategic alliances would serve as an avenue to penetrate the EC market. The feedback from these two companies was representative of the information gained from each of the small to medium-size firms. The general conclusions from the insights shared by these companies were (1) that the small and medium-size U.S. firms have little understanding or interest in the R&D consortiums in Europe; (2) that the firms prefer to avoid joint R&D efforts and to build strategic alliances with European companies; (3) that joint ventures for small companies are not usually successful; (4) and that the firms generally felt that EC 1992 would eventually create a Fortress Europe.

U.S. Multinational Companies

In addition to the small to medium-size companies, a number of U.S. multinational companies also responded to informal interviews concerning Europe's consortium programs. Each firm was asked to share its insight and experiences associated with the formal proposal procedures for acceptance into an EC consortium. Furthermore, of the firms that participated in the interviews, each multinational firm was asked to share information as to why it felt it had been successful or unsuccessful in any phase of the proposal process. Lastly, all of the firms were asked to give recommendations for increased U.S. participation. Common characteristics of firms that are potential candidates for an EC consortium program have a total workforce on average of 157,000 employees and an average of $27 million in annual sales. The U.S. multinational firms as shown in table 16-1 are currently involved or have been involved in an EC R&D Framework Programme.

Proposal Procedures and Results

A number of U.S. firms responded that the formal proposal for acceptance into an R&D Framework Program requires that too much sensitive information must be shared on the innovative character of a project in the open tender procedure. One firm in particular said that its participation in a Framework program has been hampered by the requirement for providing other participants with worldwide access to their intellectual property rights. In addition to sensitive information that is required during the proposal phase, several firms explained that there was considerable bureaucracy inherent in the system. One U.S. firm highlighted the time-consuming efforts for proposal contents such as permanent providing reports on company achievements and cooperation with EC civil servants. Although the bureaucracy in the system was mentioned by several of the respondents, no one simply ruled out submitting a proposal solely on this basis. However, one firm indicated that it was a factor that prompted them to review their strategy for application to an EC consortium.

Of the U.S. firms that submitted a formal proposal, each had been rejected at least once during this stage of the procedure. According to one multinational computer firm, the EC Commission said their submissions to various ESPRIT projects were too restrictive in the area of application. It also is supposed to have said that the membership of the consortia could

Table 16-1
European Research Consortium Participation by European Affiliates of U.S. Companies

ESPRIT	*RACE*	*BRITE*
Analog Devices	ITT	ITT
Battelle Institute	IBM	Donnelly
ITT	AT&T	Ford Motor Co.
IBM	HP	Rockwell
AT&T	TI	Lee Cooper
DEC	GTE	
HP	DHL	
SYBASE	Dupont	
SWIFT SC	Ford Motor Co.	
Moog Controls		
3M		
Dupont		
Dow Chemical		
Foxboro		
Honeywell		
Artificial Intelligence		
Babcock & Wilcox		
Cambridge Consultants		
Intersys Graphic		
Peat Marwick McLintock		

Source: USITC Staff and Committee to Preserve American Color Television.

be broadened to include greater academic participation and possibly members of the southern member states: Greece, Italy, Portugal, and Spain. In other instances, respondents said that no reason was supplied by the EC for the rejection of the proposed R&D project. In addition, other U.S. multinationals stated that they had elected not to submit a proposal because their R&D was based in the United States or because they are waiting for a dedicated "champion" within their firm to be earmarked as the lead division to seek partnership in an EC Framework Programme. Several firms that were interviewed are currently involved in R&D projects through joint ventures and mergers. In addition, several firms have longstanding relationships with a number of EC universities. While the majority of the firms interviewed were interested in participating in an EC consortium, there was a general consensus that joint ventures and mergers may provide easier access to European markets and R&D.

Barriers to U.S. Participation

U.S. firms expressed a general consensus that U.S. participation would be improved if they could have a greater role in the administration of programs. This would include serving on work groups and panels of experts that are formed by the European Commission with industry representation to define the substance of the programs, establish guidelines for applications, and evaluate proposals. One U.S. firm responded by stating that they have been accepted into RACE and ESPRIT programs at one tier of participation. Although the firm has contacts with EC officials at all levels of government, the meetings on new initiatives and general direction are attended by those who belong to the inner circle of the EC.

CHAPTER 17
RULES OF ORIGIN AND LOCAL-CONTENT REQUIREMENTS

CONTENTS

CHAPTER 17
RULES OF ORIGIN AND LOCAL-CONTENT REQUIREMENTS

Customs rules on the origin of goods and criteria for value content often used by the EC to apply origin rules did not appear in the directives designed to complete the single market. However, because the wording and interpretation of origin standards affect the implementation of both trade-related measures and customs duties, these rules have frequently been discussed in the broader effort to ascertain post-1992 prospects for U.S. business in and exports to the EC.

Developments Covered in the Previous Reports

Rules of origin determine the source of goods that are not wholly grown, produced, or manufactured in one country (from components or materials of that country). Such findings are needed for several purposes: the assessment of correct duty rates, the administration of country-specific measures, the enforcement of "buy national" restrictions, and the accumulation of accurate statistics. The second such activity can present difficulties for U.S. and other third-country exporters, some of whom have alleged EC discrimination against foreign goods achieved by means of origin policies. In addition, foreign exporters have asserted that EC measures are designed to compel investment or sourcing within the EC, to the disadvantage of foreign producers, their suppliers, and even their EC-based affiliates.

Background

Published in a 1968 regulation, the EC's nonpreferential origin rule assigns origin to the country of last substantial, economically justified processing. To implement preferential agreements, or to apply antidumping duties, quantitative restrictions, or other measures, separate regulations have been adopted to cover individual countries or products. Product-specific regulations, while drafted with a view toward carrying out a single objective, become the customs rule of origin for the pertinent classes of merchandise for all purposes. Supplementary measures, relying on specific content criteria or the change-of-tariff-heading principle, have been adopted to ensure uniform origin treatment when the basic origin rule is deemed insufficient to achieve desired objectives.

Anticipated Changes

No substantive changes in the EC's origin rules or content standards have yet appeared during the move toward the single market. The draft Common Customs Code retains criteria now applied under the 1968 regulation. Existing anticircumvention procedures continue to be used, despite a recent GATT panel decision in a case brought by Japan in 1988 (discussed in the second followup report in this study).[1]

Possible Effects

Origin rules can be arcane and are often complex, and are included in or used to give effect to many trade policy measures. Thus, it can be difficult to identify their separate impact on trade and investment. Predictability has been complicated by some EC decisions that seemed to indicate that the principle of "most substantial processing" could replace "last substantial processing" as a basis for some origin findings. The lack of transparency in the development of the rules and the use of supplemental standards such as "negative rules," exceptions lists, and content minimums or maximums add to difficulties in assessing the effects of the rules.

Moreover, product-specific regulations or other measures dictating particular origin treatment can be adopted at any time, thus complicating preimportation business planning. Implicit or formal origin criteria may be contained in anticircumvention actions relating to antidumping cases or in unpublished undertakings between the EC and target countries or firms. If an EC anticircumvention action results in a regulation on the origin of the class of merchandise covered by a dumping finding, that standard becomes the basic customs rule of origin for such merchandise and controls in all other areas where origin is relevant (such as government procurement). Firms and governments outside the EC have frequently asserted that such rules are intended and structured to compel investment in EC productive capacity or sourcing from EC producers, thereby displacing foreign production of components or finished goods. Many foreign firms (especially Japanese companies) have been relocating to or establishing operations in the EC to ensure that their output is deemed to have "EC origin."

Other existing factors make analysis of post-1992 origin rulings difficult. Concerns have been raised by other governments about the EC's procedures for adopting and administering origin rules. Last, it is not generally possible to discern whether a particular origin standard is drafted to meet a policy objective.

Developments Since the Second Followup Report

There were no significant changes in the EC's origin rules or findings during the last few months. During the temporary halt in the Uruguay Round talks, existing policies continued unchanged. It is reported that with regard to rules of origin, the GATT negotiators did come very close to formally agreeing to

[1] 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, September 1990, p. 18-4.

specify applicable disciplines and procedures and eventually to achieve a more or less harmonized origin scheme in each signatory country.

Background

Recent Directives

Several actions by the EC, not related to the 1992 process but occurring during the period covered by this followup report, are representative of the types of documents on origin appearing over the last two decades. The first, Commission Regulation (EEC) No. 2883/90 of October 5, 1990,[2] was entitled "On Determining the Origin of Grape Juice." Briefly stated, the measure provides that the processing of grape must into grape juice, both falling within heading 2009 of the EC tariff, is insufficient to confer origin on the country of processing. Effective as of October 9, 1990, the regulation repealed prior law on the particular product, a 1973 regulation.

A second regulation, Commission Regulation (EEC) No. 2884/90 of October 5, 1990,[3] dealt with the origin of "certain goods produced from eggs." The regulation allows origin to be conferred on a country where imported birds' eggs not in shell (tariff heading 0408) or in shell (heading 0407) or egg yolks (heading 0408) or whites (heading 3502) are processed into dried birds' eggs, dried yolk, or dried ovalbumin. Also effective as of October 9, 1990, this measure rescinded a 1969 regulation as to the origin of such products.

Similarly, Commission Regulation (EEC) No. 3620/90 of December 14, 1990,[4] established rules "on determining the origin of the meat and offals, fresh, chilled or frozen, of certain domestic animals." It provides that the slaughter of domestic animals, covered by headings 0101 through 0104 of the tariff nomenclature, confers origin with respect to edible meat and offals on the country of slaughter only if the animals were fattened therein for 2 or 3 months (depending on the animal species). Repealing Regulation (EEC) No. 964/71,[5] the new measure was effective 3 days after publication.

Yet another such regulation was Commission Regulation (EEC) No. 3672/90 of December 18, 1990, "on determining the origin of ball, roller or needle roller bearings."[6] This regulation provides that origin is conferred by "assembly preceded by heat treatment, grinding and polishing of the inner and outer rings" from partially assembled components but not from unassembled parts.

Last, a Council decision[7] "on the procedure concerning derogations from the rules of origin set out in Protocol No. 1 to the Fourth ACP-EEC Convention" was adopted. The decision establishes a mechanism to ensure that Community-origin rulings are available to the various member countries within 60 working days of issuance. It also seeks input from the Committee on Origin and the Parliament of the European Communities to find the most efficient means of achieving this goal.

Recent Judicial Ruling

A recent case elaborates on two criteria set forth in the original 1968 origin regulation.[8] In the facts of the ruling, it was stated that the subject typewriter components made in Japan were shipped to Taiwan for assembly and ultimate shipment to Germany. The European Court of Justice held that assembly can confer origin on the situs country if it is a "decisive production stage at which the product gets its specific qualities." However, that result would be possible only if the manufacturer shows to the Court's satisfaction that such a transfer of goods to be assembled was justifiable on some legitimate grounds, not for reasons such as the avoidance of an antidumping duty or the effort to obtain a lower duty rate.[9]

Undertakings to Resolve Antidumping Investigations

Earlier reports in this study discussed the EC's use of agreements with target countries or even individual firms to resolve antidumping cases or to exclude such firms' imports into the EC from the scope of antidumping duties.[10] Although general discussions of the petitioners' allegations in such cases and the circumstances surrounding the subject imports are published in the *Official Journal*, the precise terms of these arrangements are not set forth.[11] As a result, any implications for interested firms cannot be determined.

Anticipated Changes

As stated above, no significant changes in existing EC policy are expected in the immediate future. Any agreement ultimately concluded as a result of the Uruguay Round would not have tangible results for some time, because of the probable involvement of the Customs Cooperation Council and the need for further negotiations under GATT auspices. Thus, the internal law of the EC would likely not be amended until that work is completed.

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[2] *Offical Journal of the European Communities (OJ)*, No. L 276 (Oct. 6, 1990), p. 13.

[3] Ibid.

[4] *OJ* No. L 351 (Dec. 15, 1990), p. 25.

[5] *OJ* No. L 104 (May 11, 1971), p. 12.

[6] *OJ* No. L 356 (Dec. 19, 1990), p. 30; effective 3 days after publication.

[7] 90/523/EEC of Oct. 8, 1990, *OJ* No. L 290 (Oct. 23, 1990), p. 33.

[8] USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, ch. 14, pp. 4-5.

[9] *Brother International* v. *Hauptzollamt Gießen*, Case 26/88 (1990), Court of the European Communities, vol. 2, p. 737.

[10] See USITC, *Effects of EC Integration*, USITC publication 2268, March 1990, ch. 14 and USITC, Effects of EC Integration, USITC publication 2318, September 1990, ch. 18.

[11] See, for example, *Commission Regulation (EEC) No. 3617/90* of Dec. 11, 1990, *OJ* No. L 351 (Dec. 15, 1990), p. 17, concerning the provisional antidumping duty on welded tubes of iron or steel from Turkey or Venezuela (undertaking to exempt several firms from scope of duty); *Council Regulation (EEC) No. 3200/90* of Nov. 5, 1990 OJ No. L 306 (Nov. 6, 1990), p. 21, on silk typewriter-ribbon fabrics from the People's Republic of China.

Possible Effects

Until and unless an internationally agreed framework of rules for determining origin is implemented, it does not seem likely that broad effects on U.S. exports to or business operating conditions in the EC can be identified. Rather, the EC's ongoing process of handling and reviewing antidumping cases and making everyday origin rulings on individual shipments will go on, with most of these being relevant to only the manufacturers or exporters of the goods concerned. When these firms experience adverse rulings, the USTR is frequently contacted and requested to discuss the matter directly with the EC and pertinent member states. As noted in the first followup report, some such discussions lead to informal or formal resolutions of the complaints or to undertakings with various entities involved in and outside the EC.

CHAPTER 18
THE VALUE-ADDED TELECOMMUNICATION AND INFORMATION SERVICES INDUSTRY IN THE UNITED STATES

CONTENTS

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THE VALUE-ADDED TELECOMMUNICATION AND INFORMATION SERVICES INDUSTRY IN THE UNITED STATES

Industry Profile

Value-Added Telecommunication Service[1]

During 1989, U.S. providers of telecommunication services generated revenues of approximately $170 billion, with nonvoice telecommunication services accounting for about 20 percent ($35 billion) of total revenues. These firms employed approximately 875,000 workers and invested about $25 billion in network facilities. Local telephone service is provided by about 1,500 firms, the largest of which are the regional holding companies, (RHCs) whereas long-distance telephone services are provided by AT&T, MCI, US Sprint, and about 600 smaller carriers. Despite the large number of carriers, however, the U.S. industry remains highly concentrated; the top 15 firms account for nearly 90 percent of domestic revenues.

In the aftermath of various Federal Communication Commission (FCC) decisions including the 1982 consent decree, the U.S. telecommunication services market became the most open market in the world as the decree opened up competition for the provision of telecommunication services to an unprecedented degree. The market for value-added telecommunication services became an especially dynamic one. In this market, U.S. companies developed a clear competitive advantage over foreign service providers.[2] Indicative of this advantage is that total U.S. exports of value-added telecommunication services appear to be 15 times greater than total U.S. imports.[3]

Increasingly important participants in the U.S. value-added telecommunication services market are large corporations with private networks. Companies like Sears Communications Co., J.C. Penney Systems Services, and Litton Data Networks sell value-added telecommunication services over the unused portion of their private networks' capacity.[4] Such networks typically comprise leased lines, which are telephone lines leased from local and long-distance telephone companies.

Information Services

The U.S. information services industry comprises at least 40,000 firms and employs about 1.2 million workers.[5] It is estimated that U.S. firms providing services such as data processing, electronic information, and computer professional services earned revenues of nearly $50 billion during 1989.[6] The data processing sector earns 20 percent of its revenues in foreign markets, whereas the electronic information service sector earns about 25 percent of its revenues from foreign clients.

Data processing and other information services can be provided at one location for domestic and foreign corporations located throughout the world by transmitting data through advanced telecommunication systems. Recent liberalization of telecommunication regulations, which allowed new services to be offered, and the relative underdevelopment of information services in European and Pacific Rim countries currently offer U.S. firms significant opportunities for growth outside of the more mature U.S. information services market. Moreover, U.S. firms, which utilize superior software, offer diverse services, and have well-established relationships with many foreign clients, reportedly enjoy competitive advantages over foreign rivals.[7] Indicative of this advantage is that total U.S. exports of information services are 10 times greater than total U.S. imports.[8]

Trade in Value-Added Telecommunication and Information Services

U.S. exports of telecommunication and information services occur in the form of direct exports and in foreign direct investment. Direct exports are services provided to foreign clients using facilities and personnel located in the United States. Foreign direct investment are services provided to foreign clients using facilities and personnel located in the client's home country. Reflecting the United States' competitive advantage, U.S. direct exports of value-added telecommunication and information services to the EC are estimated to have totaled approximately $130 million during 1986, whereas U.S. imports of such services from the EC are estimated to have totaled approximately $25 million.[9] Foreign direct investment, however, appears to be 10 to 15

[1] Value-added telecommunication services include E-mail, electronic data interchange (EDI), news services, online data bases, and other services that are provided over telecommunication networks and that add value or function to the transportation of information.

[2] U.S. Department of Commerce, "Telecommunication Services," ch. in *U.S. Industrial Outlook 1990*, p. 31-1.

[3] U.S. Department of Commerce, Bureau of Economic Analysis, "International Services: New Information on U.S. Transactions With Unaffiliated Foreigners," *Survey of Current Business*, October 1988, p. 28.

[4] U.S. Department of Commerce, *U.S. Industrial Outlook 1990*, chapter on telecommunication services, p. 31-4.

[5] Ibid., p. 29-1.

[6] Input, Inc., *Worldwide Market Forecast for Information Services, 1989-1994*, 1990.

[7] U.S. Department of Commerce, *U.S. Industrial Outlook 1990*, chapter on information services, pp. 29-1 to 29-6.

[8] U.S. Dept. of Commerce, Bureau of Economic Analysis, p. 28.

[9] Ibid., pp. 27-34.

times greater than direct exports;[10] it is estimated that U.S. firms located in the EC accounted for sales of $2 billion during 1986. In contrast, EC firms have established a more modest presence in the United States. Dialcom, Cable and Wireless, and Tymnet (United Kingdom), for instance, appear to be the only major foreign-owned providers of data communications in the United States.[11]

Possible Impact of the EC 92 Program

The EC Value-Added Telecommunication and Information Services Market

Historical Perspective

The White Paper, "Completing the Internal Market," issued by the Commission of the European Communities in 1985, set forth a program and timetable for unifying the European Community market by the end of 1992. The EC Commission identified the removal of technical barriers related to telecommunication services as one of the steps necessary for completion of the internal market. In 1987, the EC Commission issued a Green Paper[12] which launched an ambitious plan to harmonize regulations and liberalize individual member state telecommunication markets with the goal of creating a more dynamic, EC-wide communications market.

In recent years, liberalization has occurred in several EC member states, most notably the United Kingdom, but many telecommunication administrations (TAs) in the European Community still retain extensive service monopolies. These TAs, which according to industry sources are slow to respond to continuously evolving user demands, have developed vastly different service ranges and have restricted the provision of services designed to improve telecommunication functions, such as the conversion of protocol, code, format, and speed, which govern the internal operations of telecommunication networks. Moreover, the TAs have restricted the provision of value-added telecommunication and information services such as data base access, remote data processing, message store and forward, and transaction services.[13]

In practice, the provision of these services by TAs has been hindered to a significant degree by restrictive leased-line practices. In general, European TAs are likely to prohibit both the connection of leased lines to the public-switched network by means of concentrators, multiplexers, and other efficiency-maximizing equipment and the provision of services to third parties over private networks.[14] In addition, TAs may apply volume-sensitive tariffs[15] on the use of leased lines. Such tariffs also diminish the cost-effectiveness of private networks and may prevent potential competitors to the TAs in value-added services from having equitable access to the public-switched network.[16]

Recent Liberalization

Liberalization of telecommunication regulations in countries such as the United Kingdom is principally user driven. Providers of insurance, banking, and other financial services use telecommunication and information services extensively and actively lobby for liberalization. The efforts of the private sector are supported by the EC Commission, which reportedly favors liberalization, asserting that access to a wide range of telecommunication and information services enhances the competitive position of EC resident firms.[17] In addition, industry experts see liberalization as necessary if the EC is to fully enjoy the benefits of a harmonized European telecommunications network. The competitive provision of telecommunication services will effectively induce the Community's least advanced TAs to develop services that are comparable in terms of cost and usefulness with those offered by private and other public service providers within the Community. According to industry observers, the EC Commission would like to see the same range of services available and affordable in each member state.

The EC Market

Largely because of the restrictive nature of the European Community's telecommunication systems, the EC market for value-added telecommunication and information services is less developed than the U.S. market. During 1989, the EC market for value-added telecommunication and information services was about

[10] With regard to international trade in value-added telecommunication and information services, foreign direct investment predominates because foreign based U.S. firms can communicate more easily with, and respond more quickly to, foreign clients. In addition, international value-added networks, over which value-added telecommunication and information services are performed, have been difficult to construct because of regulatory constraints.

[11] U.S. Department of Commerce, *U.S. Industrial Outlook 1990*, chapter on telecommunication services, p. 31-4.

[12] The primary document outlining the liberalization of telecommunication services and equipment is entitled *Towards a Dynamic European Economy: Green Paper on the Development of the Common Market for Telecommunication Services and Equipment*, COM (87) 290, June 30, 1987.

[13] *Official Journal of the European Communities*, No. L 192, vol. 33 (July 24, 1990).

[14] Ibid.

[15] Ibid.

[16] Volume-sensitive tariffs increase as usage increases. Private network operators prefer flat-rate pricing, in which tariffs do not fluctuate regardless of the number of users and the frequency of use.

[17] Paul Taylor, "The Age of Electronic Trading," *Financial Times Survey*, Apr. 19, 1990, p. 3. In addition, the confluence of telecommunication and computer technologies has provided impetus to liberalize the telecommunication services market. The disappearing distinction between telecommunication services, traditionally provided by highly regulated monopolies, and information services, traditionally provided in competitive markets by unregulated firms, is creating a regulatory dilemma. Liberalizing the telecommunication services market resolves this dilemma.

$26 billion.[18] In contrast, U.S. providers generated revenues of $50 billion.[19]

Largely as a result of liberalization and harmonization, however, the EC market for both value-added telecommunication and information services is projected to grow at an estimated annual rate of 19 percent, to approximately $60 billion, through 1993.[20] In comparison, the EC's $70 billion market for basic voice services is expected to grow by 5 percent per year, to $85 billion;[21] and the EC's $19 billion market for telecommunications equipment is projected to grow by 3 percent per year, to approximately $22 billion, in 1993.[22]

The Position of U.S. Firms in the EC Market

Many U.S. service providers appear to be well positioned to benefit from the liberalization of the EC's telecommunication services market. American Telephone and Telegraph (AT&T), Electronic Data Systems (EDS), General Electric Information Systems Co. (GEISCO), International Business Machines (IBM), Sprint International, and the RHCs are among the largest U.S. providers of value-added telecommunication and information services in the EC.

Most of these firms have longstanding operations in the EC. IBM has pan-European operations; it provides electronic data interchange services in Denmark, data processing and network services in Italy, and professional services in France and the United Kingdom. GEISCO similarly provides managed network services throughout the EC.[23]

Other firms, such as the RHCs, are more recent market participants that have established operations in the EC in anticipation of a unified European market. Pacific Telesis, the most active RHC with operations in the EC, belongs to a consortium that is licensed to construct West Germany's second private cellular phone system, expected to be the world's largest. Pacific Telesis is also reported to be in a consortium with Microtel Communications to construct a personal communications network in the United Kingdom. Personal communications is an innovative technology that uses radio waves to provide wireless, digital telephone, and information services.[24] In addition, Pacific Telesis also has partnerships with franchises to build cable television systems in the United Kingdom, as British cable television operators are allowed to offer basic phone services.[25]

Other RHCs have established operations in the EC as well. U.S. West, for example, holds cable television franchises in the United Kingdom and France and a 30-percent interest in Unitel's consortium to build a personal telecommunications network in the United Kingdom. Southwestern Bell has purchased an equity stake in a British company, Oyston Cable Communications Group, which is building a system that will initially offer data transmission services. It is reported that the network will eventually offer banking, shopping, information, and video services as well.[26] In addition, Bell Atlantic acquired the European divisions of Sorbus, a computer maintenance and data communications company, from Bell Canada International in 1987. Sorbus has operations in the United Kingdom, France, West Germany, Italy, Switzerland, and Austria.[27]

The Nature of Changes as a Result of EC 92

The principal purpose of the EC directives regarding telecommunication and information services is to harmonize the networks of all 12 member states. Two recent directives are intended to facilitate the development of a more harmonized, yet dynamic, European telecommunication services market. The Open Network Provision (ONP)[28] Council Directive of June 28, 1990, (COM (90) 387) is concerned with "the harmonization of conditions for open and efficient access to and use of the public telecommunication network and services."[29] The ONP Directive is intended to establish a framework under which EC member states can develop more specific directives that harmonize the Community's regulations concerning telecommunication services. The second EC Commission directive of June 28, 1990, (COM (90) 388) provides for the liberalization of TA regulations and the introduction of greater competition into the EC telecommunication services market.[30] The Liberalization Directive was issued by the EC Commission under article 90(3) of the Treaty of

[18] This figure and the corresponding figure for the United States include value-added telecommunication services and other closely related information services, such as data processing services, professional services, customized software services, and the customized software components of turnkey systems and systems-integration services. The market for packaged software is excluded, as are several markets regularly included as components of the information services market by the U.S. Department of Commerce.

[19] Input, Inc., *Worldwide Market Forecast for Information Services, 1989-1994*, 1990.

[20] Ibid.

[21] Estimate provided on the basis of information presented in Herbert Ungerer and Nicholas Costello, *Telecommunications in Europe*, (1988), p. 29.

[22] Estimate provided on the basis of information presented in Paolo Cecchini, *The European Challenge 1992: The Benefits of a Single Market* (1988), p. 51.

[23] Representatives from U.S. information service industry, interview by USITC staff, Washington, DC, January-March 1990.

[24] Ibid.

[25] William C. Symonds, "Baby Bells Take Their Show on the Road," *Business Week*, June 25, 1990, p. 104.

[26] Ibid.

[27] Ibid.

[28] For previous coverage of the ONP directive, please see *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, March 1990, p. 6-106.

[29] *OJ* No. L 192 (July 24, 1990), p. 1.

[30] This directive, COM (90) 388—often called the Services Directive—will be referred to as the Liberalization Directive for the purposes of this report.

Rome[31] and presently requires neither parliamentary opinion nor ministerial approval, whereas the ONP Directive requires both.[32]

The ONP Directive

As mentioned, the ONP Directive is a framework directive, designed to be followed by more specific directives that will phase in harmonized telecommunication regulations among EC member states. The ONP Directive is intended to establish an efficient and accessible internal network, where telecommunication and information service providers will be able to provide services throughout the Community once they are legally established in any member state. In addition, the ONP Directive should maximize the openness of the EC telecommunication services market while simultaneously safeguarding the "essential requirements" of telecommunication networks.[33] Within the text of the ONP Directive, essential requirements are defined as the security of network operations, maintenance of network integrity, interoperability of services, and protection of data.

Toward this end, the ONP Directive will reportedly establish objective, transparent, and equitable guidelines for member states to follow as regulations regarding technical interfaces, access and usage conditions, and tariff principles are developed or altered. Annex III of the directive stipulates that ONP follow-on directives will first be developed for leased lines and voice telephony. Afterward, directives regarding packet-switched data services and integrated services digital networks (ISDN) will be developed. The ONP Directive is also important to large corporate users, because it provides for the definition of appropriate conditions for the resale and shared use of leased lines and the conditions for interconnection between private and public networks.[34] The directive stated that member states must implement the laws, regulations, and administrative provisions necessary for compliance with the directive before January 1, 1991. A 3-year timeframe for developing the initial follow-on directives is currently foreseen.

The Liberalization Directive

The Liberalization Directive imposes an obligation on member states to limit the public network operator's monopoly to voice and telex services. Subject to the declaration and licensing procedures individually employed by each member state, private operators will essentially be able to provide other services in competition with the public network beginning January 1, 1993, with certain exceptions regarding data transmission services.

Member states that are able to demonstrate that their public network's packet-switching[35] capabilities are not sufficiently developed may prohibit private operators' simple resale[36] of packet-switched data transmission capacity until January 1, 1996. The derogation is intended for use by countries with less developed data transmission capabilities, such as Spain, Portugal, and Greece. In addition, article 3 of the Liberalization Directive says that member states may impose special licensing procedures on private operators offering circuit- or packet-switched data services in order to ensure compliance with "essential requirements," trade regulations, and "measures to safeguard the task of general economic interest."[37] In practice, the latter will mean that private operators will be prohibited from competing in those switched data services markets that make the public operator's data network economically viable.

The Liberalization Directive stipulates that member states' licensing procedures, both those of a general nature as well as those specific to circuit- or packet-switched services, must be objective, nondiscriminatory, and transparent. Furthermore, in the event of refusal, explanations and appeal procedures must be supplied by member states. In general, member states must apprise the EC Commission of existing and newly developed licensing procedures as well as plans to revise such procedures by December 31, 1990. Licensing procedures regarding circuit- and packet-switched data services are the only exceptions; the EC Commission must be apprised of these by June 30, 1992. In 1992, the EC Commission is obligated to render an assessment of member states' compliance with the Liberalization Directive, and in 1994, the EC Commission shall assess the effects of measures regarding circuit- and packet-switching.

A number of countries have indicated that they oppose the use of article 90 to liberalize the market for telecommunication services. These same countries maintain that the EC Commission exceeded its authority by using article 90 to liberalize the telecommunication equipment market, and they have presented their position to the European Court of Justice. An initial opinion delivered by the EC Commission's Advocate General in February 1990 indicated that the EC Commission exceeded its authority by issuing an earlier equipment Directive.[38]

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[31] The Liberalization Directive is based on art. 90.3 of the Treaty of Rome. Art. 90 permits the EC Commission to intervene directly to prevent monopolies from acting against the Community's interests. The application of article 90 permits the EC Commission to act without parliamentary opinion or ministerial approval.

[32] Bureau of National Affairs, *International Trade Reporter*, Nov. 15, 1989, pp. 1482-1483.

[33] *OJ* No. L 192 (July 24, 1990).

[34] *OJ* No. L 192 (July 24, 1990).

[35] Circuit- and packet-switched data services manipulate circuits and data messages so as to provide rapid data transmission, which significantly reduces the costs of data transmitters subject to time-sensitive charges.

[36] "Pure" or "simple" resale is the sale of capacity on a leased line by the lessee without the provision of value-added services. Pure resale is one of the simplest forms of bypassing the public network.

[37] COM (90) 388, art. 3.

[38] "Telecoms Liberalization—Commission Under Pressure," *Eurobrief*, Feb. 23, 1990, pp. 143-144.

Anticipated Industry Response

Strategic Alliances and Acquisitions

In preparation for EC 92, U.S. firms are seeking to enhance their competitive position in the EC by relocating, building strategic alliances with European partners, and acquiring European firms. In December 1990, for instance, IBM indicated that it will move the headquarters of the corporation's $5 billion communications business to London. IBM indicated that the move was motivated by the company's increasingly global perspective and by the significant growth opportunities available in Europe.[39]

Computer Sciences Corporation (CSC), on the other hand, has indicated that as much as half of its $500 million acquisition budget for the next 5 years could be spent in Europe. In early 1988, CSC acquired Belgium's largest computer services firm, CIG-Intersys, and a computer services firm in the United Kingdom, Inforem Ltd. CSC has indicated that it expects the European Community's EC 92 program to create significant opportunities for U.S. firms, particularly in providing information services and consulting services to the financial services, transportation, and retailing sectors. CSC is currently one of the 10 largest systems integrators in Europe, with annual European revenues of $150 million.[40]

In addition, it is reported that the RHCs' participation in the European market is likely to increase. The RHCs' participation in the EC telecommunication services market is driven not only by the EC 92 program, but by prohibitions placed on their activities in the United States. According to industry sources, although foreign operations account for relatively little of their present revenues (5 percent for Pacific Telesis, one of the more active RHCs with operations in Europe), executives at most of the RHCs indicate that their European revenues will experience significant growth in the future. These companies are investing heavily in the United Kingdom, France, and West Germany, which allow U.S. firms to compete for licenses to provide cellular telephony, paging, and cable television services—areas in which the RHCs have a reputation for technical expertise.[41]

U.S. Concerns

U.S. service providers are generally supportive of the ONP and Liberalization Directives. The industry's support, however, is qualified. Discussions with the U.S. industry indicate concern regarding the relatively vague language found in both directives, particularly the one regarding ONP. The U.S. industry has urged the EC to clarify, for example, whether private operators will be obliged to comply with ONP provisions. The 1987 Green Paper indicated that ONP provisions would apply only to the public operator's reserved services, but language found in the ONP Directive may imply wider application.[42]

There is concern among both public and private operators in the Community that conservative member states may use a broad harmonization effort to delay or deter competition.[43] Competition may be delayed as the program to develop EC-wide standards for a broad range of services will require several years. Competition may be deterred if private network operators find prohibitive the costs entailed in retrofitting equipment and altering business practices to comply with ONP regulations.[44]

Particularly worrisome to the U.S. industry would be mandatory compliance by private operators with ONP provisions regarding interoperability. The term "interoperability" refers to the ability of network operators to transmit undistorted services through all the various layers of public and private telecommunication networks, so that these services may be provided universally. Private network operators worry that the proprietary practices and software developed at great cost to address the particular needs expressed by their clientele would have to be discarded if mandatory interoperability was extended to private operators. Mandatory interoperability would thereby strip private service providers of their ability to provide unique services for the niche markets they have cultivated during the past several years. Private network operators indicate that mandatory interoperability provisions would ultimately result in lower revenue as their presently broad range of unique services would be reduced to a narrower range of more homogeneous services.[45]

In addition, the U.S. industry is unsure of the EC's direction regarding tariffs. Although member states will ultimately be required to follow tariff principles developed by the EC, the member states will individually implement their own tariff rates. Industry analysts observe that these rates will vary among countries as they will be intended to preserve the "essential requirements" of national networks, which member states may define differently.[46]

Moreover, with respect to prices, U.S. service providers have urged that tariffs be cost based insofar

[39] Paul B. Carroll, "IBM Said to Move Communications Base to Europe," *Wall Street Journal*, Dec. 5, 1990.

[40] "Computer Sciences Intends to Acquire Concerns in Europe," *Wall Street Journal*, Dec. 8, 1989; and "Computer Sciences Corp.: Firm to Buy CIG-Intersys, Computer Services Company," *Wall Street Journal*, May 1, 1989.

[41] Calvin Simms, "Baby Bells Scramble for Europe," *New York Times*, Dec. 10, 1989, sec. 3, p. 1.

[42] Representatives of the telecommunication and information services industry and industry analysts, telephone interview by USITC staff, Washington, DC, December 1990.

[43] Hugo Dixon, "Untangling Europe's Telecommunications Networks," *Financial Times*, Dec. 11, 1989, p. 5.

[44] Representatives of the telecommunication and information services industry, telephone interview by USITC staff, Washington, DC, Jan. 9, 1991.

[45] Representatives of the telecommunication and information services industry and industry analysts, telephone interview by USITC staff, Washington, DC, December 1990.

[46] Representatives of the U.S. telecommunication and information services industry, telephone interview by USITC staff, Washington, DC, Jan. 9, 1991.

as possible and propose that leased lines be subject to flat-rate pricing rather than volume-sensitive pricing. Volume-sensitive pricing diminishes the competitiveness of firms using leased lines; volume-sensitive rental rates for such lines increase when usage increases. In addition, U.S. firms desire that operators of private networks that are interconnected with the public network should not be subject to access charges.[47]

U.S. service providers also desire more explicit language providing for competitive safeguards, ensuring that monopolies do not abuse their dominant position in the telecommunication services market. In particular, U.S. firms desire that all competitive service providers have access to basic services on terms equivalent to those of public operators. Moreover, U.S. firms seek assurances that public operators that compete in providing nonreserved services will not be allowed to cross-subsidize their competitive operations with revenue generated by the monopoly provision of voice telephony.[48]

[47] Ibid.

[48] Representatives from U.S. telecommunication and information services industry, interview by USITC staff, Washington, DC, January-March 1990.

Last, the U.S. service industry notes that the special licensing procedures regarding packet-switched services essentially bar private sector participation in lucrative markets. For example, it is reported that licensing agreements between private service operators and the DRG, France's telecommunication administration, presently entail promises "not to undercut France Telecom on its most profitable routes."[49] Representatives of the U.S. industry state, however, that competitive pressures on heavy users of packet-switched services will ultimately lead member-state TAs to permit greater competition for the provision of these services.[50]

[49] William Dawkins, "France Opens Door to Greater Competition in Telecom Sector," *Financial Times*, Sept. 19, 1990, p. 1.

[50] Representatives of the U.S. telecommunication and information services industry, telephone interview by USITC staff, Washington, DC, Jan. 9, 1991.

APPENDIXES

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. 90-7608 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 information 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 February 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 28, 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 26, 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]

Rock 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. Poteat,

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 section 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

APPENDIX C
LIST OF EC 92 INITIATIVES ADDRESSED IN THIS INVESTIGATION

Key to Abbreviations and Symbols Used in Appendix C

EC initiative:

Dir = Directive (binding on member states as to the result to be achieved and requires national implementing measures)

Rec = Recommendation (a nonbinding request to member states or individuals)

Dec = Decision (binding on and applicable to member states or persons addressed and generally requires no national implementing measures)

Reg = Regulation (binding and directly applicable throughout the EC without any national implementing measures)

* = Initiative listed in *Fifth Progress 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.* 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 = Initiative implemented by member state into national law.

N = Initiative not implemented by member state.

F = EC Commission infringement proceeding under way for failure to implement.

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 *Fifth Report of the Commission to the Council and Parliament Concerning the Implementation of the White Paper on the Completion of the Internal Market,* COM (90) 90, Mar. 28, 1990, and the "Seventh Annual Report to the European Parliament on Commission Monitoring of the Application of Community Law, 1989," COM (90) 288, *Official Journal of the European Communities,* No. C 232, Sept. 17, 1990. 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 shown in the comment column of table C-1 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	Relevant U.S. Sector/Industry	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Public Procurement													
Enacted:															
88/295-Dir*	Award of public-supply contracts	Potentially all	I	I	I	D	I	D	F	I	I	F	D	I	Implementation 1/1/89.
89/364-Dec	Improve efficiency of electricity use	Potentially all													Applicable 3/4/90.
89/440-Dir*	Award of public-works contracts, updated by 90/380	Potentially all				D		D					D		Implementation 7/19/90.
89/665-Dir*	Award of public-supply and public-works contracts	Potentially all													Implementation 12/1/91.
90/377-Dir	Transparency of gas and electricity prices	Energy													Implementation 7/1/91.
90/531-Dir*	Procurement procedures of entities in water, energy, transport, and telecommunications.	Energy, water, transport, telecom													Implementation 7/1/92. Derogation for S/GR/P.
Proposed:															
(89)400	Public procurement--regional and social aspects	Potentially all													
(90)207-Dir	Transit of electricity through transmission grids	Electricity													
(90)220-Reg	Investment in petroleum, natural gas, and electricity.	Energy													
(90)297-Dir	Procurement procedures of entities in water, energy, transport, and telecommunications.	Energy, water, transport, telecom													
(90)306-Dir	Restriction on use of natural gas in power stations	Natural gas													
(90)425-Dir	Transit of natural gas through the major systems	Natural gas													
(90)365-Dec	Promotion of energy efficiency in the EC	Energy													
(90)372-Dir*	Award of public service contracts	Public services													
		Financial Sector													
Enacted:															
85/583-Dir*	Collective investment undertakings	Mutual funds	I	I	I	I	I	I	I	I	I	I	D	I	Implementation 10/1/89.
85/611-Dir*	Undertakings for collective investments	Mutual funds	N	N	I	I	I	I	N	I	I	N	I	I	Implementation 10/1/89.
86/566-Dir*	Liberalization of certain capital movements	Potentially all	I	I	I	D	I	D	I	I	I	I	D	I	Implementation 2/28/87.
86/635-Dir*	Accounting practices for financial institutions	Banking													Implementation 12/31/90.
87/62-Rec*	Monitoring large exposures of credit institutions	Banking	N	N	N	N	I	N	N	N	N	N	N	N	Implementation not required
87/63-Rec*	Deposit-guarantee schemes for financial institutions	Banking	N	N	N	N	N	N	N	N	N	N	N	I	Implementation not required
87/343-Dir*	Credit and suretyship insurance	Insurance													Implementation 7/1/90.
87/344-Dir*	Legal-expenses insurance	Insurance					I								Implementation 7/1/90.
87/345-Dir	Requirements for official stock exchange listing	Securities													Implementation 1/1/90.
87/598-Rec*	European code of conduct for electronic payment	Banking	-	-	-	-	-	-	-	-	-	-	-	-	Addressed to enterprises.
88/220-Dir*	Undertakings for collective investments	Mutual funds	N	N	I	I	I	I	N	I	I	N	I	I	Implementation 10/1/89.
88/357-Dir*	Direct non-life insurance services	Insurance	N	N	N	N	N	N	N	N	N	N	N	N	Implementation 6/29/90.
88/361-Dir*	Liberalization of all capital movements	Potentially all	I	I	I	D	I	D		D	I	I	D	I	Implementation 7/1/90.
88/590-Rec	Payment systems - card holders and issuers	Banking	-	-	-	-	-	-	-	-	-	-	-	-	
88/627-Dir*	Disclosure for changes in major stock holdings	Securities													Implementation 1/1/91.
88/1969-Reg	Single facility for medium-term financial assistance	Banking													
89/117-Dir*	Annual reporting by credit and financial branches	Banking													Implementation 1/1/91.
89/298-Dir*	Requirements for public offer prospectus	Securities													Implementation 4/17/89.
89/299-Dir*	Harmonizes the concept of own funds	Banking													Implementation 1/1/93.
89/592-Dir*	Coordinates regulations on insider trading	Securities													Implementation 6/1/92.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Relevant U.S. Sector/Industry	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Financial Sector--Continued													
Enacted--Continued:															
89/646-Dir*	Second banking directive	Banking													Implementation 1/1/93.
89/647-Dir*	Solvency ratio for credit institutions	Banking													Implementation 1/1/91.
90/88-Dir	Consumer credit	Banking													Implementation 12/31/92.
90/109-Rec	Transparency of cross-border financial transactions	Banking	-	-	-	-	-	-	-	-	-	-	-	-	
90/211-Dir*	Mutual recognition of public offer prospectuses	Securities													Implementation 4/17/91.
90/232-Dir*	Third directive on motor vehicle liability insurance	Insurance				D		D		D			D		Implementation 12/31/92.
90/618-Dir*	Motor vehicle liability insurance; non-life insurance	Insurance													Implementation 5/20/92.
90/619-Dir*	Direct life insurance	Insurance													Implementation 11/20/92.
Proposed:															
(80)854-Dir*	Insurance contracts	Insurance													
(87)255-Dir*	Mortgage credit	Banking													
(88)4-Dir*	Reorganization and winding-up of credit institutions	Banking													
(88)805-Reg	Guarantees of credit institutions or insurance firms	Banking													
(89)394-Dir*	Bankruptcy regulations for insurance firms	Insurance													
(89)474-Dir*	Accounting requirements for insurance firms	Insurance													
(89)629-Dir*	Investment services	Securities													
(90)141-Dir	Capital adequacy of investment and credit firms	Securities													
(90)344-Dir	Setting up an Insurance Committee	Insurance													
(90)348-Dir*	Third non-life insurance directive	Insurance													
(90)451-Dir	Consolidated supervision of credit institutions	Banking													
(90)593-Dir	Money laundering	Banking													
(90)650-Reg	Application of article 85(3) to insurance	Insurance													
		Customs													
Free movement of goods															
Enacted:															
85/347-Dir*	Duty-free allowance for fuel in bus tanks	Travel, tourism	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	Potentially all											D		Applicable 1/1/88.
85/1901-Reg*	Single Administrative Document	Potentially all											D		Applicable 1/1/88.
86/1797-Reg*	Abolishes certain postal fees	Mail order											D		Applicable 1/1/88.
86/3690-Reg*	Eliminates customs formalities under TIR Convention	Potentially all													Applicable 7/1/87.
88/2503-Reg	Customs warehouses	Potentially all													Applicable 1/1/92.
88/4283-Reg*	Introduction of common border posts	Potentially all													Applicable 7/1/89.
89/526-Dec	International Convention on the Harmonization of Frontier Controls of Goods.	Potentially all													Treaty entered into force 9/12/87.
89/604-Dir*	Exemption for permanent imports of personal property	Potentially all													Implementation 7/1/90.
89/617-Dir	Units of measurement	Potentially all													
89/1292-Reg	Movement of goods for temporary use in another state	Potentially all													Applicable 5/15/89.
89/4046-Reg	Security to ensure payment of a customs debt	Potentially all													Applicable 1/1/91.
90/474-Reg*	Abolishes lodgement of the transit advice note	Potentially all													Applicable 7/1/90.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Relevant U.S. Sector/Industry	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:															
90/504-Dir.....	Release of goods for free circulation.....	Potentially all													Implementation 1/1/93.
90/1715-Reg....	Information from customs on classification of goods...	Potentially all													Enters into force 6/29/90.
90/1716-Reg....	Persons liable for payment of a customs debt.....	Potentially all													Applicable 6/29/90.
90/2561-Reg....	Customs warehouses.....	Potentially all													Applicable 1/1/92.
90/2684-Reg....	German unification.....	Potentially all													Enters into force 9/26/90.
90/2726-Reg*...	Community transit.....	Potentially all													Applies from 1/1/93.
90/2920-Reg....	Implements and simplifies EC transit procedure.....	Potentially all													Enters into force 3/1/91.
90/3185-Reg....	Outward processing.....	Potentially all													Applicable 11/1/90.
Proposed:															
(85)224-Dir*...	Easing of border controls on intra-EC borders.....	Potentially all													
(85)467-Reg....	Correct application of customs and agricultural laws..	Agriculture													
(86)383-Dir*...	Duty-free admission of fuel in commercial vehicles....	Potentially all													
(88)297-Dir*...	Temporary importation of motor vehicles.....	Motor vehicles													
(89)384.....	Autonomous suspension of customs duties.....	Potentially all													
(90)71-Reg.....	EC customs code and temporary import arrangements.....	Potentially all													
(90)xx-Reg.....	Statistical classification of economic activities.....	Potentially all													
(90)203-Reg....	EC use of TIR and ATA carnets.....	Potentially all													
(90)354-Reg....	Goods sent for temporary use in other member states...	Potentially all													
(90)356-Dir....	Physical inspections regarding carriage of goods.....	Potentially all													
(90)363-Reg....	Single administrative document.....	Potentially all													
(90)423-Reg*...	Statistics on intra-EC trade in goods.....	Potentially all													
(90)453-Dir*...	Control of the acquisition and possession of weapons..	Weapons													
Free movement of persons															
Enacted:															
85/348-Dir*....	Exemption from turnover taxes, as amended by 88/664...	Potentially all	I	I	I	I	I	I	F	I	I	I	I	I	Implementation, as
85/368-Dec*....	Comparability of vocational training qualifications...	Potentially all	-	-	-	-	-	-	-	-	-	-	-	-	
85/432-Dir*....	Coordinates provisions in the field of pharmacy.....	Healthcare	I	I	I	N	I	I	F	I	N	I	I	I	Implementation 10/1/87.
85/433-Dir*....	Mutual recognition of diplomas in pharmacy.....	Healthcare	F	I	I	N	I	I	F	N	F	I	I	I	Implementation 10/1/87.
85/434-Dec*....	Advisory committee on pharmaceutical training.....	Healthcare	-	-	-	-	-	-	-	-	-	-	-	-	
86/365-Dec*....	Cooperation in training in technology (COMETT).....	Potentially all	-	-	-	-	-	-	-	-	-	-	-	-	
86/457-Dir*....	Training in general medical practice.....	Healthcare	I	F	I	I	I	I	F	I	I	I	I	I	Impl. 1/1/88-1/1/90.
86/653-Dir*....	Self-employed commercial agents.....	Potentially all	N	I	N	N	N	N	N	D	N	I	N	D	Implementation 1/1/90.
89/48-Dir*.....	Mutual recognition of higher education diplomas.....	Potentially all													Implementation 1/3/91.
89/438-Dir.....	Diplomas for goods haulage/road passenger operators...	Transport													Implementation 1/1/90.
89/594-Dir.....	Mutual recognition of diplomas in medicine.....	Potentially all													Implementation by 5/8/91.
89/595-Dir.....	Mutual recognition of diplomas for nurses.....	Potentially all													Implementation by 10/13/91.
89/601-Rec.....	Training of health personnel in the matter of cancer..	Potentially all													Action program launched.
89/657-Dec.....	Vocational training/technological change (Eurotecnet).	Potentially all													Applicable 1/1/91.
89/663-Dec.....	Mobility of university students (Erasmus).....	Education													Applicable 1/1/91.
89/684-Dir.....	Vocational training for drivers with dangerous goods..	Transport													Multiple effective dates.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Relevant U.S. Sector/Industry	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Customs--Continued													
Free movement of persons--Continued															
Enacted--Continued:															
89/2332-Reg....	Social security benefits (for persons moving in EC)...	Potentially all													Multiple effective dates.
89/3427-Reg....	Social security benefits (residence of families).....	Potentially all													Applicable 1/15/86.
90/233-Dec.....	Trans-European mobility for university studies.....	Education													Applicable 7/1/90.
90/267-Dec.....	Continuing vocational training (FORCE).....	Potentially all													Applies 1/1/91-12/31/94.
90/364-Dir*....	Right of residence.....	Potentially all													Implementation 6/30/92.
90/365-Dir*....	Right of residence for employees and retired persons..	Potentially all													Implementation 6/30/92.
90/366-Dir*....	Right of residence for students.....	Potentially all													Implementation 6/30/92.
90/1360-Reg....	European Training Foundation.....	Potentially all													Applicable 1 day after site chosen for Foundation.
Proposed:															
(89)612-Dec....	Vocational training (Eurotecnet II).....	Potentially all													
(89)640-Dir....	Blood alcohol concentration for vehicle drivers.....	Potentially all													
(90)76-Dir*....	Increase in tax paid allowances for intra-EC travel...	Potentially all													
(90)108-Reg*...	Freedom of movement for workers within the EC.....	Potentially all													
(90)132-Dec....	Vocational training in audiovisual sector.....	Potentially all													
(90)335-Reg....	Social security benefits.....	Potentially all													
(90)389-Dir*...	Recognition of professional education and training....	Potentially all													
(90)535-Reg....	European Center for Development of Vocational Training	Potentially all													
(90)605-Dec....	Training of customs officials (Matthaeus Program).....	Customs													
(90)648-Dec....	Advisory committee for continuing education.....	Potentially all													
		Social Dimension													
Enacted:															
88/364-Dir.....	Protection from certain chemicals and work activity...	Potentially all													Implementation 1/1/90.
88/383-Dec.....	Information on safety, hygiene, and health at work....	Potentially all													Adopted 2/24/88.
89/391-Dir.....	Improvements in safety and health of workers at work..	Potentially all													Implementation 12/31/92.
89/654-Dir.....	Safety and health requirements at work.....	Potentially all					D								Implementation 12/31/92.
89/655-Dir.....	Use of work equipment at work.....	Potentially all													Implementation 12/31/92.
89/656-Dir.....	Use of personal protective equipment at work.....	Potentially all													Implementation 12/31/92.
90/238-Dec.....	"Europe against cancer" program for 1990-94.....	Potentially all													
90/269-Dir.....	Handling heavy loads and risk of back injury.....	Potentially all													Implementation 12/31/92.
90/270-Dir.....	Work with visual display units.....	Potentially all													Implementation 12/31/92.
90/326-Rec.....	European schedule of occupational diseases.....	Potentially all													
90/394-Dir.....	Exposure to carcinogens at work.....	Potentially all													Implementation 12/31/92.
90/641-Dir.....	Protection of workers from ionizing radiation.....	Potentially all													Implementation 12/31/93.
90/679-Dir.....	Exposure to biological agents at work.....	Potentially all												D	Implementation 11/28/93.
91/49-Dec.....	Community actions for the elderly.....	Potentially all													For 1/1/91-12/31/93 period.
91/xxx-Dir.....	Exposure to asbestos at work.....	Potentially all													Implementation 1/1/93.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Relevant U.S. Sector/Industry	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Social Dimension--Continued													
Proposed:															
(89)471.....	EC charter of fundamental social rights.....	Potentially all													
(89)568.....	EC charter of basic social rights for workers.....	Potentially all													
(90)228-Dir....	Atypical work (3 separate proposals).....	Potentially all													
(90)272-Dir....	Improved medical treatment on board vessels.....	Maritime													
(90)275-Dir....	Safety/health rules at temporary or mobile work site..	Construction													
(90)317-Dir....	Organization of working time.....	Potentially all													
(90)450-Dec....	Year of Safety, Hygiene, and Health Protection.....	Potentially all													
(90)534-Reg....	European Foundation for the Improvement of Living and Working Conditions.	Potentially all													
(90)581-Dir....	Establishes a European Works Council.....	Potentially all													
(90)663-Dir....	Protection of workers in extractive industries.....														
(90)692-Dir....	Protection of pregnant women in the workforce.....	Potentially all													
(90)563-Dir....	Proof of work contracts.....	Potentially all													
		Transport													
Enacted:															
86/4055-Reg*...	Maritime transport.....	Shipping													Applicable 1/1/87.
86/4056-Reg*...	Maritime transport.....	Shipping	N	N	I	N	N	N	N	N	N	I	N	I	Applicable 7/1/87.
86/4057-Reg*...	Maritime transport.....	Shipping													Applicable 7/1/87.
86/4058-Reg*...	Maritime transport.....	Shipping													Applicable 7/1/87.
87/601-Dir*....	Air fares between member states.....	Airlines	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.....	Airlines	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....	Trucking													Applicable 7/1/88.
87/3975-Reg*...	Rules on competition in air transport.....	Airlines	N	N	I	N	N	N	N	N	N	N	N	I	Applicable 1/1/88.
87/3976-Reg....	Air transport, as amended by 90/2344-Reg.....	Airlines													Applicable 1/1/88.
88/1841-Reg*...	Market access for carriage of goods by road.....	Trucking													Applicable 7/1/88.
89/463-Dir.....	Air service for passengers, mail, and cargo.....	Airlines	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.....	Airlines													Implementation 9/30/90.
89/684-Dir.....	Vocational training for certain drivers of vehicles...	Transport											D		Implementation 1/1/95.
89/2299-Reg....	Code of conduct for computerized reservation systems..	Airlines													Applicable 8/1/89.
89/4058-Reg....	Rates for intra-EC carriage of goods by road.....	Trucking													Applicable 1/1/90.
89/4059-Reg*...	Non-resident carrier in haulage, as amended by 91/296.	Transport													Applicable 7/1/90.
89/4060-Reg*...	Controls in road and inland waterway transport.....	Transport													Applicable 7/1/90.
90/398-Dir.....	Vehicles hired without drivers for carriage of goods..	Transport													Implementation 12/31/90.
90/449-Dec.....	Joint Committee on Civil Aviation.....	Aviation													Applicable 8/1/90.
90/1053-Reg....	Market access in international carriage of goods.....	Trucking													Applicable 5/1/90.
90/2342-Reg*...	Fares for scheduled air services.....	Airlines													Applicable 11/1/90.
90/2343-Reg*...	Market access and passenger capacity.....	Airlines													Applicable 11/1/90.
90/3914-Reg....	Market access in international carriage of goods.....	Trucking													Applicable 1/1/91.
90/3915-Reg....	Market access in international carriage of goods.....	Trucking													Applicable 1/1/91.
90/3916-Reg....	Measures to be taken in crisis in carriage of goods...	Trucking													Applicable 1/1/91.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Relevant U.S. Sector/Industry	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Transport--Continued													
Enacted--Continued:															
91/11-Dec.....	Research and development in transport (EURET).....	Transport													
91/82-Reg.....	Ground handling services.....	Airlines													Applicable 2/1/91.
91/83-Reg.....	Computer reservation system for air transport service.	Airlines													Applicable 2/1/91.
91/84-Reg.....	Passenger and cargo tariffs, airport slot allocation..	Airlines													Applicable 2/1/91.
91/294-Reg.....	Operation of air cargo services.....	Air freight													Applicable 2/11/91.
91/295-Reg.....	Denied-boarding compensation system in air transport..	Airlines													Applicable 4/8/91.
Proposed:															
(85)90-Reg*....	Rules applicable to maritime transport.....	Shipping													
(85)610-Reg*...	Nonresident carrier transporting goods or passengers..	Shipping													
(88)596-Reg*...	Nonresident carrier in road passenger-transport.....	Passenger carriage													
(88)770-Reg*...	International carriage of passengers by coach and bus.	Passenger carriage													
(89)238-Reg....	Transport infrastructure and transport market in 1992.	Transport													
(89)266-Reg....	Definition of EC shipowner.....	Maritime													
(89)417-Reg....	Amends 87/3975-Reg on competition in air transport....	Airlines													
(89)417-Reg....	Application of article 85(3) to air transport.....	Airlines													
(89)472-Dir*...	Personnel licenses for functions in civil aviation....	Aviation													
(89)564-Dir....	Development of EC railways.....	Railroads													
(89)564-Reg....	Public service obligation in rail, road, and waterway.	Transport													
(89)564-Dec....	Network of high speed trains.....	Railroad													
(89)564-Dir....	Combined carriage of goods between states.....	Transport													
(90)17-Dec.....	Commercial aviation agreements with third countries...	Aviation													
(90)100-Reg....	Consultation between airports and airport users.....	Airlines													
(90)167-Reg....	Amends 87/3975-Reg on competition in air transport....	Airlines													
(90)219-Reg....	Transfer of ships from one register to another.....	Maritime													
(90)260-Reg....	Application of article 85(3) to shipping companies....	Maritime													
(90)532-Reg....	Organization of market for carriage of goods by road..	Transport													
(90)1864-Dir...	Admission to road haulage/passenger transport field...	Transport													
		Competition Policy													
Enacted:															
85/2137-Reg*...	Regulation of European Economic Interest Groups.....	Potentially all	I	I	I	N	I	N	N	I	N	I	N	I	Applicable 7/1/89.
88/301-Dir.....	Competition in telecommunications terminal equipment..	Telecom.	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.	Potentially all													Implementation 1/1/92.
89/667-Dir.....	Company law for single-member private limited firms...	Potentially all													Implementation 1/1/92.
89/4064-Reg....	Controls concentration between undertakings.....	Potentially all													Applicable 9/21/90.
90/388-Dir.....	Competition in markets for telecommunication services.	Telecom.													Adopted 6/28/90.
Proposed:															
(84)727-Dir*...	Cross-border mergers of public limited companies.....	Potentially all													
(86)238-Dir*...	Annual and consolidated accounts.....	Potentially all													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Relevant U.S. Sector/Industry	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Competition Policy--Continued													
Proposed--Continued:															
(89)268-Reg*...	Statute for a European company.....	Potentially all													
(89)561-Dir....	Annual/consolidated accounts - exemptions.....	Potentially all													
(90)58-Rec.....	Administrative simplification -- small/medium firms...	Potentially all													
(90)416-Dir*...	Company law on takeover and other general bids.....	Potentially all													
(90)528-Dec....	Improvement of business environment.....	Potentially all													
(90)629-Dir*...	Structure of public limited companies (Fifth Dir).....	Potentially all													
(90)631-Dir....	Formation of public limited liability companies.....	Potentially all													
		Tax Systems													
Enacted:															
85/349-Dir*....	Tax relief on small consignment, as amended by 88/663.	Potentially all	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, as amended by 90/237-Dir.	Potentially all	I	I	I	F	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.....	Potentially all	I	I	I	I	I	I	F	I	I	I	I	I	Implementation 1/1/8C.
88/245-Dec*....	Authorizes France to reduce duty on traditional rum...	Rum	-	-	-	-	-	-	-	-	-	-	-	-	Impl. not required.
88/331-Dir*....	VAT exemption on final importation of certain goods...	Potentially all	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..	Potentially all	N	N	I	N	N	N	N	N	N	N	N	N	Implementation 1/1/90.
89/683-Dec.....	Derogation for France regarding turnover taxes.....	Potentially all													
90/434-Dir*....	Taxation applicable to mergers, divisions, transfers..	Potentially all													Implementation 1/1/92.
90/435-Dir*....	Taxation applicable to parent firms and subsidiaries..	Potentially all													Implementation 1/1/92.
90/463*.....	Convention on elimination of double taxation.....	Potentially all													Adopted 7/23/90.
Proposed:															
(72)225*.....	Excise duties on alcoholic drinks.....	Beverages													
(79)737-Dir*...	Income tax provisions regarding movement of workers...	Potentially all													
(79)794-Dir*...	VAT and excise duty on the stores of vessels, aircraft, and international trains.	Potentially all													
(84)84-Dir*....	Common VAT scheme - deduction eligibility.....	Potentially all													
(85)150-Dir*...	Indirect taxes and excise duties on alcoholic drinks..	Beverages													
(85)151-Dir*...	Excise duties on fortified wine and similar products..	Beverages													
(85)319-Dir*...	Tax arrangements for carryover of undertakings.....	Potentially all													
(86)742-Reg*...	Regulates fees payable to the EC trademark office.....	Potentially all													
(87)139-Dir*...	Abolishes indirect taxes on securities transactions...	Securities													
(87)315-Dir*...	Common VAT scheme - abolition of certain derogations..	Potentially all													
(87)321-Dir*...	Approximates common VAT rates.....	Potentially all													
(87)324-Dir*...	Process for converging VAT and excise duty rates.....	Potentially all													
(87)524-Dir*...	Common VAT scheme for small and medium-size business..	Potentially all													
(88)846-Dir*...	Completion of common VAT system.....	Potentially all													
(89)60-Dir.....	Mutual assistance on direct taxation and VAT.....	Potentially all													
(89)526-Dir*...	Rates of excise taxes on mineral oils.....	Mineral oil													
(90)94-Dir.....	Indirect taxes on the raising of capital.....	Financial													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Relevant U.S. Sector/Industry	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Tax Systems--Continued													
Proposed--Continued:															
(90)182-Dir*	Abolishes fiscal frontiers	Potentially all													
(90)183-Reg	Administrative cooperation in indirect taxation	Potentially all													
(90)431-Dir	Holding/movement of products subject to excise duties	Potentially all													
(90)432-Dir*	Taxes on alcoholic beverages and alcohol in products	Beverages													
(90)433-Dir*	Taxes on manufactured tobacco	Tobacco													
(90)434-Dir*	Excise duties on mineral oils	Mineral oil													
(90)2249-Dir	VAT exemption on final importation of certain goods	Potentially all													
		Residual Quantitative Restrictions													
Enacted:															
89/3365-Reg	Liberalization of certain products subject to national quantitative restrictions.														
Proposed:															
(89)xxx-xxx	A single EC motor-vehicle market	Motor vehicles													
		Intellectual Property													
Enacted:															
87/54-Dir*	Legal protection of semiconductor products (90/510 90/511 extends protection to third nations).	Semiconductors	F	I	I	I	I	F	I	I	I	I	I	I	Implementation 11/7/87. Extensions 11/8/90.
89/104-Dir*	Harmonizes laws relating to trademarks	Potentially all													Implementation 12/28/91. Derogation to 12/31/92.
Proposed:															
(84)470-Reg*	Regulates EC trademarks	Potentially all													
(85)844-Reg*	Implements trademark regulations	Potentially all													
(86)731-Reg*	Procedural rules for Boards of Appeal on EC trademark	Potentially all													
(88)172-Dir	Green Paper on copyright and challenge of technology	Potentially all													
(88)496-Dir*	Legal protection of biotechnological inventions	Biotechnology													
(90)101-Reg	Supplementary protection certificate for medicines	Pharmaceuticals													
(90)347-Reg*	Plant variety rights	Agriculture													
(90)509-Dir*	Legal protection of computer programs	Software													
(90)582-Dec	Berne Convention--literary/artistic work protection														

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Relevant U.S. Sector/Industry	Member state implementation												Comment
			B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	
		Standards													
Agriculture - farm based															
Enacted:															
85/320-Dir*....	Classical swine fever and African swine fever.....	Swine	I	I	I	I	I	I	I	I	I	I	N	I	Implementation 1/1/86.
85/321-Dir*....	African swine fever.....	Pork products	I	I	I	N	I	I	I	I	I	I	N	I	Implementation 1/1/86.
85/322-Dir*....	Classical swine fever and African swine fever.....	Fresh pork	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.....	Meat	I	N	I	I	N	N	N	I	N	N	N	N	Impl. date not yet fixed.
85/324-Dir*....	Health inspection of poultry-production plants.....	Poultry	N	N	N		N	N	I	N	N	N	N	N	Impl. date not yet fixed.
85/325-Dir*....	Medical certification of people handling fresh meat...	Meat	I	I	I	I	I	I	F	I	I	I	N	I	Implementation 1/1/86.
85/326-Dir*....	Medical certification of people handling poultry meat.	Poultry meat	I	I	I	I	I	I	I	I	I	I	N	I	Implementation 1/1/86.
85/327-Dir*....	Medical certification of people handling fresh meat...	Meat	I	I	I	I	I	I	I	I	I	I	N	I	Implementation 1/1/86.
85/358-Dir*....	Testing for prohibited hormone growth promoters.....	Meat	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.....	Dairy	F	I	I	I	I	F	I	F	I	I	N	I	Implementation 1/1/89.
85/511-Dir*....	Control of foot-and-mouth disease.....	Livestock	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/87.
85/574-Dir*....	Organisms harmful to plants or plant products.....	Agriculture	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..	Agriculture	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/87.
86/362-Dir*....	Pesticide residues on cereals.....	Cereals	I	I	I	I	I	I	F	I	F	I	N	I	Implementation 6/30/88.
86/363-Dir*....	Pesticide residues on edible animal products.....	Food 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....	Meat	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)...	Swine	-	-	-	-	-	-	-	-	-	-	I	-	Applicable 12/16/86.
86/650-Dec*....	African swine fever in Spain.....	Swine	-	-	-	I	-	-	-	-	-	-	-	-	Applicable 12/16/86.
87/58-Dec*.....	Eradicating brucellosis, tuberculosis, and leukosis...	Cattle	I	I	-	I	I	-	-	-	-	-	I	-	Compulsory for S and P.
87/64-Dir*.....	Health inspection on EC imports of bovine/swine/meat..	Livestock, 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....	Livestock	I	I	I	I	N	I	I	I	I	F	I	I	Implementation 12/31/87.
87/230-Dec*....	Eradicating classical swine fever.....	Swine													Applicable 1/1/87.
87/231-Dec*....	Measures relating to swine fever.....	Swine													Applicable 12/31/87.
87/328-Dir*....	Purebred animals of bovine species for breeding.....	Cattle	I	F	I	I	I	F	I	F	F	F	I	I	Implementation 1/1/89.
87/486-Dir*....	Measures to control classical swine fever.....	Swine	F	I	I	I	I	I	F	N	I	I	I	I	Implementation 12/31/87.
87/487-Dir*....	Render and keep EC free from classical swine fever....	Swine	-	-	-	-	-	-	-	-	-	-	-	-	Implementation 9/22/87.
87/488-Dec*....	Financial means for eradicating classical swine fever.	Swine													
87/489-Dir*....	Certain measures relating to swine fever.....	Swine	F	I	I	N	I	I	F	I	I	I	N	I	Implementation 12/31/88.
87/491-Dir*....	Animal health problems in trade in meat products.....	Meat	I	I	I	I	I	I	F	I	I	I	N	I	Implementation 1/1/88.
87/519-Dir*....	Pesticide residues on animal feedingstuffs.....	Feedingstuffs													Implementation 12/31/90.
88/146-Dir*....	Prohibits hormone growth promoters in livestock.....	Livestock	F	I	I	I	I	F	I	I	I	I	I	I	Implementation 1/1/88.
88/288-Dir*....	Health problems in trade in fresh meat.....	Meat	F	I	I	N	N	F	F	I	I	F	N	F	Implementation 1/1/89.
88/289-Dir*....	Imports of bovine animals, swine, and fresh meat.....	Livestock, meat	F	I	I	N	N	F	F	I	I	F	N	I	Implementation 1/1/89.
88/298-Dir.....	Pesticide residues on fruit, vegetables, and cereals..	Agriculture	I	F	I	I	I	I	F	I	N	I	N	I	Implementation 7/1/88.
88/380-Dir*....	Marketing of seeds and catalog of plant species.....	Agriculture	N	I	N	N	N	I	N	N	N	N	N	I	Implementation 7/1/90.
88/407-Dir*....	Frozen bovine semen (as amended by 90/120-Dir).....	Bovine semen	N	I	N	N	N	N	N	N	N	I	N	N	Implementation 1/1/90.
88/572-Dir*....	Organisms harmful to plants or plant products (wood)..	Agriculture	I	I	F	I	F	F	N	I	I	I	N	I	Implementation 1/1/89.
88/657-Dir*....	Health rules for minced meat and similar preparation..	Meat													Implementation 1/1/92.
88/658-Dir*....	Health rules for intra-EC trade in meat products.....	Meat						D							Implementation 7/1/90.
88/661-Dir*....	Zootechnical standards for porcine breeding animals...	Swine				D							D		Implementation 1/1/91.
89/145-Dec*....	Contagious bovine pleuropneumonia in Portugal.....	Livestock													
89/214-Rec.....	Inspecting fresh meat establishments.....	Meat	-	-	-	-	-	-	-	-	-	-	-	-	

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Relevant U.S. Sector/Industry	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued													
Agriculture - farm based--Continued															
Enacted--Continued:															
89/227-Dir*	Health rules for imports of meat products	Meat													Implementation 6/30/90.
89/361-Dir*	Purebred breeding sheep and goats	Sheep and goats													Implementation 1/1/91.
89/366-Dir*	Marketing of seed potatoes	Agriculture	-	-	-	-	-	-	-	-	-	-	-	-	Implementation 3/31/89.
89/437-Dir*	Hygiene and health problems regarding egg products	Poultry and eggs													
89/439-Dir*	Organisms harmful to plants or plant products	Agriculture	N	I	I	N	N	N	N	N	N	N	N	N	Implementation 1/1/90.
89/455-Dec*	Pilot projects for the control of rabies	Wildlife													
89/556-Dir*	Trade in embryos of domestic bovine animals	Agriculture													
89/575-Dec	Inspections in third countries on seed-producing crops (amends 85/355, as do 88/322 and 89/532).	Agriculture													
89/608-Dir*	Application of legislation on veterinary matters	Agriculture													
89/610-Dec	Reference methods and list of national reference labs.	Agriculture													
89/662-Dir*	Veterinary checks in intra-EC trade	Agriculture						D							Implementation 12/31/91.
90/113-Dir	Organisms harmful to plants and plant products	Agriculture													
90/168-Dir*	Organisms harmful to plants and plant products	Agriculture													Implementation 1/1/91.
90/208-Dec	Contagious bovine pleuropneumonia in Spain	Livestock													
90/217-Dec*	Eradication of African swine fever in Sardinia	Swine													Applies only to IT.
90/218-Dec	Administration of Bovine Somatotropin (BST)														
90/242-Dec*	Eradication of brucellosis in sheep and goats	Livestock													Required of FR/GR/IT/S/P.
90/422-Dir	Enzootic bovine leukosis	Livestock													Impl. 7/1/90 and 10/1/90.
90/423-Dir*	Control of foot-and-mouth disease	Livestock													Implementation 1/1/92.
90/424-Dec*	Expenditure in the veterinary field	Agriculture													Applicable 6/26/90.
90/425-Dir*	Veterinary and zootechnical checks in intra-EC trade	Agriculture													Adopted 6/26/90.
90/426-Dir*	Animal health - third-country imports of horses	Horses													Implementation 1/1/92.
90/427-Dir*	Zootechnical/genealogical rules for trade in horses	Horses													Implementation 1/1/91.
90/428-Dir*	Trade in horses intended for competition	Horses													Implementation 7/1/91.
90/429-Dir*	Semen of porcine species animals	Semen													Implementation 12/31/91.
90/495-Dec*	Eradication of infectious hemopoietic necrosis (IHN)	Fish													Adopted 9/24/90.
90/539-Dir*	Trade in poultry and hatching eggs	Poultry, eggs													Implementation 1/1/92.
90/642-Dir*	Pesticide residues for fruit and vegetables	Agriculture													Implementation 12/31/92.
90/675-Dir	Principles governing veterinary checks on EC imports	Agriculture													Implementation 12/31/91.
91/27-Dir	Organisms harmful to plants/plant products (10th Dir).	Agriculture													Implementation 4/1/91.
91/52-Dec	Contagious bovine pleuropneumonia in Portugal	Livestock													
91/67-Dir*	Health conditions regarding aquaculture animals	Seafood													Implementation 1/1/93.
91/68-Dir*	Intra-EC trade in ovine and caprine animals	Livestock													Implementation 12/31/92.
91/69-Dir*	Amends 72/462 regarding ovine and caprine animals	Livestock													Implementation 12/31/92.
Proposed:															
(81)504-Dir*	Personnel responsible for inspecting meat products	Meat													
(82)529-Dir*	Intra-EC trade in cattle and pigs	Livestock													
(82)883-Dir*	Pesticide residues (ethoxyquin and diphenylamine)	Fruit/vegetables													
(83)655-Dir*	Fixes the weight of uncastrated male pigs	Swine													
(88)598-Dir*	Zootechnical and pedigree rules for purebred animals	Agriculture													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Relevant U.S. Sector/Industry	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued													
Agriculture - farm based--Continued															
Proposed--Continued:															
(88)836-Reg*...	Trade in dogs and cats (rabies) (see 89/455-Dec).....	Animals													
(89)34-Dir*....	Standards for plant protection products.....	Agriculture													
(89)428-Reg*...	Fresh fish and fish products (nematodes).....	Fish													
(89)490-Reg*...	Melted animal fat, greaves, and rendering byproducts..	Animal fat													
(89)492-Reg*...	Products of animal origin not covered by existing law.	Agriculture													
(89)500-Reg*...	Animal health conditions for marketing of rodents.....	Agriculture													
(89)507-Reg*...	Fresh poultry meat and fresh meat of reared game bird.	Meat													
(89)509-Reg*...	Pathogens in feedstuffs.....	Agriculture													
(89)552-Reg*...	Organic agricultural products and foodstuffs.....	Agriculture													
(89)645-Reg*...	Health conditions regarding fishery products.....	Seafood													
(89)646-Dir*...	Organisms harmful to plants or plant products.....	Agriculture													
(89)647-Dir*...	Organisms harmful to plants or plant products.....	Agriculture													
(89)648-Reg*...	Health conditions regarding mollusks.....	Seafood													
(89)649-Reg*...	Marketing of young plants.....	Agriculture													
(89)650-Reg*...	Ornamental plant propagating material and plants.....	Agriculture													
(89)651-Dir*...	Marketing of fruit plants.....	Agriculture													
(89)658-Reg*...	Products of animal origin (other species).....	Agriculture													
(89)667-Reg*...	Health conditions for milk products.....	Dairy													
(89)668-Reg*...	Health rules for fresh poultry meat.....	Poultry													
(89)669-Reg*...	Health rules for meat products.....	Meat													
(89)670-Dec*...	Derogation regarding application of health standards..	Agriculture													
(89)671-Reg*...	Health rules for minced meat and meat preparations....	Meat													
(89)672-Reg*...	Health rules for heat-treated milk.....	Dairy													
(89)673-Reg*...	Health rules for fresh meat.....	Meat													
(90)134-Dir....	Marketing of seed potatoes (micro-propagated).....	Vegetables													
(90)175-Dir....	Inspection of imports of bovine, swine, and meats.....	Meat, livestock													
(90)238-Dir*...	Protection of animals during transport.....	Animals													
(90)396-Dir....	Amends 88/146-Dir*, substances with hormonal action...	Animals													
(90)479-Dec*...	Safeguard measures in the veterinary field.....	Agriculture													
(90)492-Dir....	Bovine brucellosis and enzootic bovine leukosis.....	Agriculture													
(90)555-Reg*...	Game meat and rabbit meat.....	Agriculture													
Agriculture - processed foods and kindred products															
Enacted:															
85/572-Dir*....	Plastic materials in contact with foodstuffs.....	Food products	N	N	N	N	N	N	N	N	N	N	N	N	Implementation 1/1/93.
85/573-Dir*....	Coffee and chicory extracts.....	Coffee	I	I	I	I	F	I	I	I	I	I	I	I	Implementation 1/1/87.
85/585-Dir*....	Preservatives.....	Food products	I	F	I	N	I	I	I	F	I	I	N	I	Implementation 12/31/86.
85/591-Dir*....	Sampling and analysis of foodstuffs.....	Food products	I	N	N	I	I	N	N	N	I	I	N	I	Implementation 12/22/87.
86/102-Dir*....	Emulsifiers for use in foodstuffs.....	Food products	I	N	I	I	N	I	N	N	N	I	N	I	Implementation 3/26/88.
86/197-Dir*....	Labeling alcoholic content of beverages (proposal of 12/20/89 would merge such directives on labeling).	Alcoholic beverages	I	F	I	I	F	I	I	I	I	I	N	I	Impl. 5/1/88 and 5/1/89.
88/315-Dir*....	Labeling of prices for food products.....	Food products													Implementation 6/7/90.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Relevant U.S. Sector/Industry	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	Food products													Implementation 6/12/91.
88/388-Dir*	Flavorings for foodstuffs	Food products	N	N	N	N	N	N	N	N	N	N	N	N	Implementation 12/21/89.
88/389-Dec	Inventory of source materials for flavorings	Flavorings	-	-	-	-	-	-	-	-	-	-	-	-	Applicable 6/21/90.
88/593-Dir*	Jams, jellies, marmalades, and chestnut puree	Food products	N	N	N	N	N	N	N	N	N	N	N	N	Impl. 12/31/89 and 1/1/91.
89/107-Dir*	Food additives	Food products													Implementation 6/28/90.
89/108-Dir*	Frozen foodstuffs	Frozen food													Implementation 7/10/90.
89/109-Dir*	Materials in contact with foodstuffs	Food products													Implementation 7/10/90.
89/393-Dir	Emulsifiers for use in foodstuffs	Food products													Implementation 1/1/89.
89/394-Dir*	Fruit juices and similar products	Food products													Implementation 6/14/90.
89/395-Dir*	Labeling of foodstuffs	Food products													Implementation 12/20/90.
89/396-Dir	Identifying the lot to which a foodstuff belongs	Food products													Implementation 6/20/90.
89/397-Dir*	Official control of foodstuffs	Food products													Implementation 6/19/91.
89/398-Dir*	Food for particular nutritional uses	Food products													Implementation 5/16/90.
89/622-Dir	Labeling of tobacco products	Tobacco products													Implementation 12/31/91.
89/676-Dir	Volume of prepackaged liquids	Liquid goods													Implementation 7/1/90.
89/1576-Reg*	Definition and description of spirit drinks	Beverages													Applicable 12/15/89.
89/3773-Reg	Transitional measures for spirituous beverages	Beverages													Applicable 12/15/89.
90/44-Dir*	Marketing of compound feedingstuffs	Agriculture													Implementation 1/22/92.
90/128-Dir	Plastic materials in contact with foodstuffs	Foodstuffs													
90/167-Dir*	Production and trade in medicated feedingstuffs	Feedingstuffs													Implementation 10/1/91.
90/214-Dir	Additives in feedingstuff (amends 70/524, as do 88/483, 88/616, 89/23, 89/583, 90/110, and 90/206).	Feedingstuffs													
90/219-Dir	Contained use of genetically modified micro-organism	Biogenetics													Implementation 10/23/91.
90/220-Dir	Deliberate release of genetically modified organisms	Biogenetics													Implementation 10/23/91.
90/239-Dir	Maximum tar yield of cigarettes	Cigarettes													Implementation 11/17/91.
90/496-Dir*	Nutrition labeling for foodstuffs	Food products													Implementation 4/1/92.
91/71-Dir*	Completes 88/388-Dir* on flavorings for foodstuffs	Food products													
Proposed:															
(81)712-Dir*	Authorized preservatives in foodstuffs	Food products													
(82)626-Dir*	Labeling of beer (partially adopted; see 86/197-Dir)	Beer													
(88)489-Dir*	Compulsory nutrition labeling	Food products													
(89)217-Dir	Coloring matters authorized for use in foodstuffs	Food													
(89)576-Dir*	Foods and ingredients treated with ionizing radiation	Food products													
(90)147-Dir	Advertising of tobacco products	Tobacco													
(90)321-Dir	Undesirable substances and products in feedingstuffs	Feedingstuffs													
(90)381-Dir	Sweeteners for use in foodstuffs	Food products													
(90)2414-Reg	Certificates of specific character for foodstuffs	Food products													
(90)2415-Reg	Geographical indication of agricultural products	Agriculture/foods													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Relevant U.S. Sector/Industry	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued													
Chemicals															
Enacted:															
85/467-Dir*	Labeling of materials containing PCBs and PCTs	Agriculture	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	Detergents	-	-	-	-	-	-	-	-	-	-	-	-	Decision of 12/12/85.
85/610-Dir*	Asbestos	Potentially all	I	I	I	N	I	I	I	I	I	I	I	I	Implementation 12/31/87.
86/94-Dir*	Minimum biodegradability of detergents	Detergents	I	I	I	N	N	I	N	I	I	N	I	I	Implementation 12/31/89.
88/183-Dir*	Definition of fertilizer	Fertilizer	N	I	I	I	N	N	N	I	N	N	N	N	Implementation 3/25/89.
88/320-Dir*	Good laboratory practices; amended by 90/18-Dir	Potentially all	I	N	I	N	N	N	N	N	I	I	N	I	Implementation 1/1/89.
88/379-Dir*	Dangerous preparations; amended by 89/178 and 90/492	Potentially all													Implementation 6/26/89.
88/667-Dir*	Cosmetic products (amends Dir 76/768 for fourth time)	Cosmetics	N	N	N	N	N	N	N	N	I	N	N	I	Implementation 12/31/89.
89/284-Dir*	Calcium, magnesium, sodium and sulphur content	Fertilizers													Implementation 4/16/90.
89/428-Dir	Titanium dioxide waste	Titanium dioxide	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)	Fertilizer													
89/542-Rec	Labeling of detergents and cleaning products	Chemicals													Implementation 10/15/89.
89/677-Dir	Dangerous substances and preparations	Potentially all													Implementation 6/20/91.
89/678-Dir	Dangerous substances and preparations	Potentially all													Adopted 12/21/89.
89/679-Dir	Cosmetic products (amends Dir 76/768 for fifth time)	Cosmetics													
90/121-Dir	Cosmetic products (adapts to technical progress annexes to Dir 76/768, as does Dir 89/174).	Cosmetics													Implementation 12/31/90.
90/207-Dir	Checking the composition of cosmetic products	Cosmetics													Implementation 12/31/90.
90/517-Dir	Classification and packaging of dichloromethane	Chemicals													Apply from 12/7/91.
Proposed:															
(88)190-Dir	Restrictions on use of pentachlorophenol	Chemicals													
(89)606-Dir	Dangerous substances and preparations	Chemicals													
(89)665-Dir	Restrictions on use of tetrachlorobitoluene	Chemicals													
(90)545-Dir	Restrictions on use of cadmium	Chemicals													
(90)566-Dir	Classification and packaging of dangerous substances	Chemicals													
(90)1985-Dir	Consolidates Dir 76/768 and amendments on cosmetics	Cosmetics													
(90)591-Reg	Export and import of certain dangerous chemicals	Chemicals													
(91)7-Dir	Restrictions on polybromobiphenyl ethers	Chemicals													
Pharmaceuticals and medical devices															
Enacted:															
87/19-Dir*	Approximates laws on the testing of medicine	Pharmaceuticals	I	N	I	N	I	I	I	I	I	I	D	I	Implementation 7/1/87.
87/20-Dir*	Testing of veterinary medicines	Veterinary	I	I	I	I	I	I	F	I	I	I	I	I	Implementation 7/1/87.
87/21-Dir*	Proprietary medicines	Pharmaceuticals	I	I	I	D	I	D	I	I	I	I	D	I	Implementation 7/1/87.
87/22-Dir*	High-technology medicines	Pharmaceuticals	I	I	I	N	I	I	I	I	I	I	N	I	Implementation 7/1/87.
87/xxx*	Membership of the European Pharmacopeia	Pharmaceuticals	-	-	-	-	-	-	-	-	-	-	-	-	Adopted 5/26/87.
87/176-Rec*	Guidelines for marketing of proprietary medicines	Pharmaceuticals	-	-	-	-	-	-	-	-	-	-	-	-	
89/105-Dir*	Price transparency of medicines	Pharmaceuticals	N	N	N	N	N	N	N	N	N	N	N	N	Implementation 12/31/89.
89/341-Dir*	Approximates provisions for proprietary medicines	Pharmaceuticals													Implementation 1/1/92.
89/342-Dir*	Immunological medicine of vaccines, toxins or serums	Pharmaceuticals													Implementation 1/1/92.
89/343-Dir*	Radio-pharmaceuticals	Pharmaceuticals													Implementation 1/1/92.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Relevant U.S. Sector/Industry	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued													
Pharmaceuticals and medical devices--Continued															
Enacted--Continued:															
89/381-Dir*	Proprietary medicine and medicine of human plasma	Pharmaceuticals													Implementation 1/1/92.
90/385-Dir*	Active implantable medical equipment	Medical supplies													Implementation 1/1/93.
90/676-Dir*	Veterinary medicines	Veterinary													Implementation 1/1/92.
90/677-Dir*	Immunological veterinary medicines	Veterinary													Implementation 1/1/92.
90/2377-Reg*	Tolerances for residues of veterinary medicines	Pharmaceuticals													Enters into force 1/1/92.
Proposed:															
(89)302-Dec	European Convention for protection of vertebrates														
(89)607-Dir*	Distribution, legal status, and labeling of medicine	Pharmaceuticals													
(90)101-Dir	Supplementary protection certificate for medicines	Pharmaceuticals													
(90)72-Dir	Medicines and homeopathic medicines	Pharmaceuticals													
(90)72-Dir	Veterinary medicines and homeopathic medicines	Veterinary													
(90)212-Dir	Advertising of medicines	Pharmaceuticals													
(90)283-Reg	European Agency for Evaluation of Medicinal Products	Pharmaceuticals													
(90)283-Dir	Repeals 87/22* on high-technology medicines	Pharmaceuticals													
(90)283-Dir	Medicines	Pharmaceuticals													
(90)283-Dir	Veterinary medicines	Veterinary													
(90)597-Dir	Substances for illicit manufacture of narcotic drugs	Chemicals													
Motor vehicles															
Enacted:															
87/358-Dir*	Certification procedures for vehicles and trailers	Motor vehicles	I	I	I	I	I	F	I	I	I	I	I	I	Implementation 10/1/88.
88/76-Dir*	Air pollution by gases from engines of vehicles	Motor vehicles	I	I	I	I	I	N	I	I	I	I	I	I	Implementation 7/1/88.
88/77-Dir*	Gaseous pollutants from diesel engines	Motor vehicles	I	I	I	I	I	N	I	I	I	I	I	I	Implementation 7/1/88.
88/194-Dir	Braking devices of vehicles and their trailers	Motor vehicles	I	I	I	I	I	F	F	I	I	I	I	I	Implementation 10/1/88.
88/195-Dir	Engine power of motor vehicles	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	Motor vehicles													Implementation 1/1/89.
88/321-Dir	Rear view mirrors of motor vehicles	Motor vehicles													Implementation 1/1/89.
88/366-Dir	Driver field of vision	Motor vehicles	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	Diesel engines	N	I	I	I	I	F	I	I	I	I	I	I	Implementation 10/1/88.
88/449-Dir	Road worthiness tests (see (89)6-Dir below)	Motor vehicles													Implementation 7/27/90.
89/235-Dir*	Sound level and exhaust systems of motorcycles	Motorcycles	N	I	I	N	I	N	N	N	N	I	I	I	Implementation 10/1/89.
89/277-Dir	Direction indicator lamps	Motor vehicles	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	Motor vehicles	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	Motor vehicles	I	I	I	N	I	N	I	I	I	I	I	I	Implementation 10/30/89.
89/458-Dir*	Gaseous emissions from motor vehicles below 1,400 cc	Motor vehicles	N	I	I	N	I	N	N	I	N	N	I	I	Implementation 1/1/90.
89/459-Dir	Tread depth of tires of vehicles and their trailers	Tires													Implementation 1/1/92.
89/460-Dir	Derogation for IR and UK regarding vehicle size	Motor vehicles	-	-	-	-	-	-	-		-	-	-		Derogation to 12/31/98.
89/461-Dir	Authorized dimensions for articulated vehicles	Motor vehicles													Implementation 1/1/91.
89/491-Dir	Vehicles' use of leaded or unleaded gasoline	Motor vehicles													Implementation 1/1/90.
89/516-Dir	End-outline marker lamps and front, rear, stop lamps	Motor vehicles	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	Motor vehicles	N	I	I	N	I	N	N	I	N	N	N	I	Implementation 12/31/89.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Relevant U.S. Sector/Industry	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued													
Motor vehicles--Continued															
Enacted--Continued:															
89/518-Dir.....	Rear fog lamps.....	Motor vehicles	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.....	Motor vehicles													Implementation 10/1/91.
Proposed:															
(89)6-Dir.....	Amends 88/449-Dir regarding road worthiness tests.....	Motor vehicles													
(89)653-Dir*...	Masses and dimensions of vehicles of category M1.....	Motor vehicles													
(89)653-Dir*...	Pneumatic tires for vehicles.....	Tires													
(89)653-Dir*...	Safety glazing and glazing materials on vehicles.....	Motor vehicles													
(89)-xxx.....	A single EC motor-vehicle market.....	Motor vehicles													
(90)174-Dir*...	Amends 88/77-Dir* on emissions of diesel engines.....	Motor vehicles													
(90)293-Dir....	Spray-suppression devices for vehicles and trailers...	Motor vehicles													
(90)493-Dir....	Air pollution by emissions from vehicles.....	Motor vehicles													
(90)524-Dir....	Safety belts in vehicles of less than 3.5 tons.....	Motor vehicles													
Other machinery															
Enacted:															
86/217-Dir*....	Requirements for tire-pressure gauges.....	Pressure gauges	I	I	I	I	I	I	I	I	N	I	N	I	Implementation 11/30/87.
86/594-Dir*....	Labeling household appliances for noise emissions.....	Appliances	N	N	N	N	N	N	N	N	N	N	N	N	Implementation 12/3/89.
86/662-Dir*....	Noise from hydraulic diggers.....	Diggers	F	I	I	I	I	N	N	I	F	I	N	I	Implementation 12/29/88.
87/402-Dir*....	Rollover protection structures, as amended by 89/681..	Tractors	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.....	Pressure vessels					I								Implementation 7/1/90.
87/405-Dir*....	Permissible sound-power level of tower cranes.....	Tower cranes	N	N	N	I	I	I	N	I	N	I	N	N	Implementation 6/25/89.
88/180-Dir*....	Permissible sound-power level of lawnmowers.....	Lawnmowers													Implementation 7/1/91.
88/181-Dir*....	Permissible sound-power level of lawnmowers.....	Lawnmowers													Implementation 7/1/91.
88/297-Dir*....	Type-approval of wheeled tractors.....	Tractors	I	I	I	I	I	I	N	I	I	I	N	I	Implementation 12/31/88.
88/465-Dir.....	Driver's seat on wheeled tractors.....	Tractors	I	I	I	I	I	F	N	I	I	I	N	I	Implementation 9/10/88.
89/173-Dir*....	Certain standards for tractors.....	Tractors	N	I	I	N	I	N	N	N	N	N	N	I	Implementation 12/31/89.
89/240-Dir.....	Self-propelled industrial trucks.....	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.....	Machinery													
89/680-Dir.....	Roll-over protection structures.....	Tractors													Implementation 1/2/91.
89/682-Dir.....	Rear-mounted roll-over protection.....	Tractors													Implementation 1/2/91.
89/686-Dir*....	Personal protective equipment.....	Potentially all													Implementation 7/1/92.
90/384-Dir*....	Non-automatic weighing instruments.....														Implementation 1/1/93.
90/396-Dir*....	Gas appliances.....	Appliances													Implementation 1/1/92.
90/486-Dir.....	Electrically operated lifts.....	Machinery													Implementation 3/24/91.
90/487-Dir.....	Electrical equipment used in explosive atmospheres....	Machinery													Implementation 7/1/92.
Proposed:															
(89)454-Dir....	Batteries and accumulators with dangerous substances..	Potentially all													
(90)368-Dir....	Efficiency requirements for new hot-water boilers.....	Boilers													
(90)442-Dir....	Civil aircraft.....	Aircraft													
(90)462-Dir*...	Amends 89/392-Dir on machinery.....	Machinery													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Relevant U.S. Sector/Industry	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued													
Telecommunications															
Enacted:															
86/361-Dir.....	Telecommunications terminal equipment.....	Telecommunications	F	I	F	N	F	F	I	F	F	F	N	F	Implementation 7/26/87.
86/659-Rec.....	Integrated Services Digital Network (ISDN).....	Telecommunications	-	-	-	-	-	-	-	-	-	-	-	-	
87/95-Dec.....	Information technology and telecommunications.....	Telecommunications													Applicable 2/7/88.
87/371-Rec*....	Cellular digital land-based mobile communications.....	Mobile phones													
87/372-Dir*....	Frequency bands for pan-European mobile telephones....	Mobile phones	F	I	F	N	I	F	F	F	F	F	N	F	Implementation 12/25/88.
88/524-Dec*....	Development of information services market.....	Telecommunications	-	-	-	-	-	-	-	-	-	-	-	-	Applicable 7/26/88.
89/336-Dir*....	Electromagnetic compatibility (radio interferences)...	Broadcasting													Implementation 1/1/92.
89/552-Dir*....	Pursuit of television broadcasting activities.....	Broadcasting													
90/387-Dir*....	Open network provisions (ONP).....	Telecommunications													Implementation 1/1/91.
90/450-Dec.....	Joint Committee on Telecommunications Services.....	Telecommunications													Applicable 8/1/90.
90/685-Dec.....	Promotes European audiovisual industry (Media).....	Communications													Applicable 1/1/91.
Proposed:															
(88)588-Dec....	Advanced informatics in medicine (AIM).....	Potentially all													
(90)32-Rec.....	Pan-European land-based public radio paging.....	Communications													
(90)32-Dir.....	Frequency bands for land-based public radio paging....	Communications													
(90)139-Dir....	Frequency bands for the DECT.....	Communications													
(90)263-Dir*...	Terminal equipment; mutual recognition of conformity..	Telecommunications													
(90)314-Dir....	Protection relating to processing of personal data....	Data processing													
(90)314-Dec....	Information security.....	Information security													
(90)314-Dir....	Data protection in telecommunications networks.....	Data security													
(90)426-Dec....	Standard Europe-wide emergency call number.....	Potentially all													
(90)677-Rec....	Digital European cordless telecommunications (DECT)...	Communications													
Environment															
Enacted:															
86/279-Dir.....	Transfrontier shipment of hazardous waste.....	Potentially all	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.	Waste													Implementation 12/1/90.
89/427-Dir.....	Air quality limits for sulphur dioxide/particulates...	Potentially all													Implementation 1/10/91.
90/313-Dir.....	Access to information on the environment.....	Potentially all													Implementation 12/31/92.
90/335-Dir.....	Plant protection products of active substances.....	Chemicals													Implementation 1/1/91.
90/415-Dir.....	Limits on discharges of dangerous substances.....	Metal degreasing													Implementation 1/31/92.
90/1210-Reg....	Establishes the European Environment Agency.....	Potentially all													Effective day after site of agency decided.
Proposed:															
(89)282-Dir....	Civil liability for damage caused by waste.....	Potentially all													
(89)478-Dir....	Drinking, bathing, and surface water.....	Potentially all													
(89)544-Dir....	Water pollution by nitrates from diffuse sources.....														
(89)559-Dir*...	Shipment of radioactive waste.....	Potentially all													
(89)560-Dir....	Amended proposals on waste and hazardous waste.....	Waste													
(90)9-Dir.....	Pollution from dangerous substances--aquatic.....														
(90)85-Dir.....	Sewage sludge in agriculture - limits for chromium....	Agriculture													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Relevant U.S. Sector/Industry	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued													
Environment--Continued															
Proposed--Continued:															
(90)227-Reg....	Control of environmental risks of existing substances.	Chemicals													
(90)287-Dir....	Reports on implementation of environmental directives.														
(90)319-Dec....	Regular official statistics of the environment.....	Pollution control													
(90)415-Reg....	Supervision and control of shipments of waste.....	Waste													
(90)452-Dir....	Vessels carrying dangerous or polluting goods.....	Maritime													
(90)522-Dir....	Municipal waste water treatment.....	Waste													
(90)589-Dec....	Montreal Protocol on substances depleting ozone layer.														
(90)689-Reg....	Substances that deplete the ozone layer.....														
(91)28-Reg.....	Financial instrument for the environment (LIFE).....														
Miscellaneous:															
Enacted:															
86/665-Rec.....	Standardized information in existing hotels.....	Hotels	-	-	-	-	-	-	-	-	-	-	-	-	Impl. urged by 12/21/88.
86/666-Rec*....	Protection of hotels against fire.....	Hotels	N	I	I	I	I	N	N	I	N	I	I	I	Implementation not needed.
88/378-Dir*....	Safety of toys.....	Toys	N	I	N	N	I	N	N	I	N	N	N	I	Implementation 1/1/90.
89/106-Dir*....	Construction products.....	Construction													Implementation 6/27/91.
90/314-Dir.....	Package travel, package holidays, and tours.....	Tourism													Implementation 12/31/92.
Proposed:															
(90)35-Dir.....	Child-resistant fastenings.....	Potentially all													
Generic															
Enacted:															
85/374-Dir.....	Liability for defective products.....	Potentially all	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...	Potentially all	N	I	N	N	I	I	N	N	N	I	N	I	Implementation 6/26/89.
88/182-Dir*....	Information on technical standards and regulations....	Potentially all	I	I	I	I	I	I	N	I	N	N	N	I	Implementation 1/1/89.
88/314-Dir*....	Labeling of prices for nonfood products.....	Potentially all													Implementation 6/7/90.
90/352-Dec.....	Exchange of information on dangers of consumer goods..	Potentially all													
90/683-Dec*....	Modules for conformity assessment procedures.....	Potentially all													Adopted 12/13/90.
Proposed:															
(90)55-Dec.....	Consumers' Consultative Council.....	Potentially all													
(90)259-Dir....	General product safety.....	Potentially all													
(90)322-Dir....	Unfair terms in consumer contracts.....	Potentially all													
(90)456.....	Development of European standardization.....	Potentially all													
(90)482-Dir....	Liability of suppliers of services.....	Services													

APPENDIX D
INDEX OF INDUSTRY/COMMODITY ANALYSES CONTAINED IN PART II

Note.—The industries listed in this index are those industries found to be potentially the most significantly affected by each of the various categories of EC 1992 directives. This listing is not a comprehensive listing of all U.S. industries.

INDEX OF INDUSTRY/COMMODITY ANALYSES