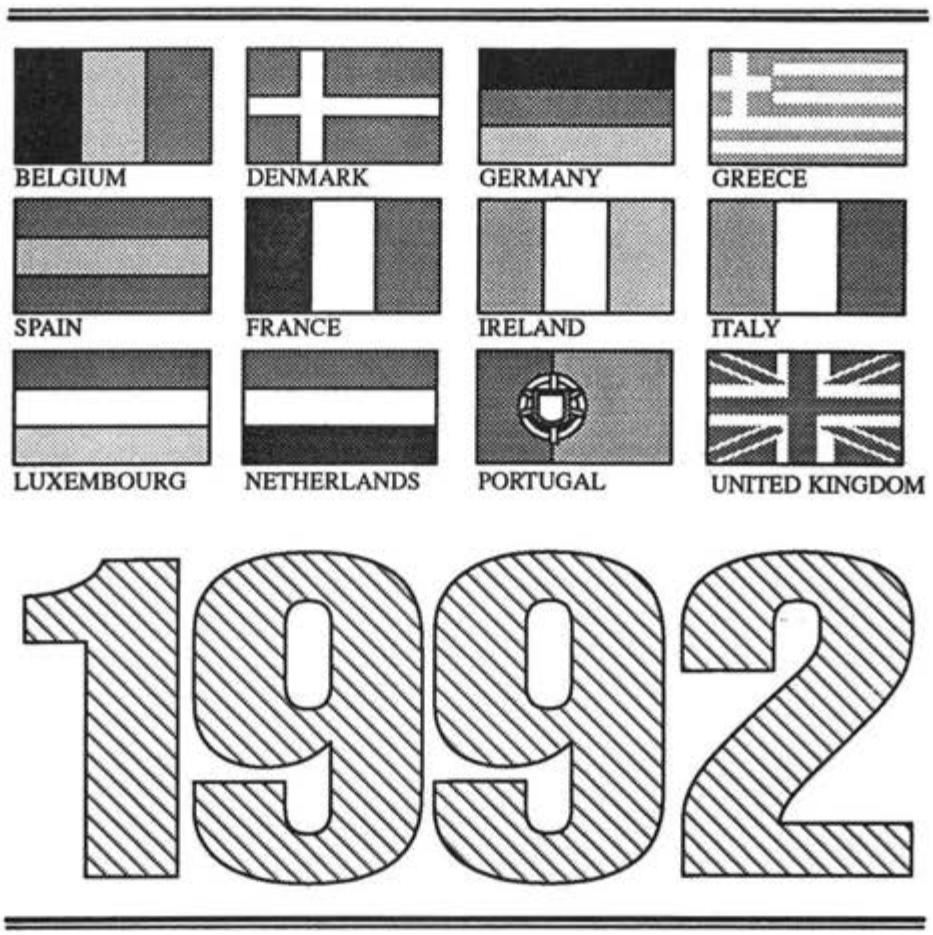

THE EFFECTS OF GREATER ECONOMIC INTEGRATION WITHIN THE EUROPEAN COMMUNITY ON THE UNITED STATES:

FIFTH FOLLOWUP REPORT

Investigation No. 332–267

USITC Publication 2628

April 1993

UNITED STATES INTERNATIONAL TRADE COMMISSION

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

UNITED STATES INTERNATIONAL TRADE COMMISSION

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FIFTH FOLLOWUP REPORT

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PREFACE

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

The committees requested that the USITC 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 General Agreement on Tariffs and Trade 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 USITC should provide the requested information and analysis to the extent feasible in an initial report by July 15, 1989, with followup reports as necessary to complete the investigation as soon as possible thereafter." In response to the request, the USITC instituted investigation No. 332-267 on December 15, 1988. The report was issued in July 1989, and the first, second, third, and fourth followup reports were issued in March 1990, September 1990, March 1991, and April 1992, respectively.

Followup reports have essentially followed the format of the initial report and discussed developments during the period under review. In addition, the first followup report contained expanded coverage of the social dimension of integration, local-content requirements, rules of origin, and directive implementation by member states Subsequent reports have continued to address both the social dimension and member-state implementation. The second followup report contained special chapters on research and development and three industry sectors—automobiles, chemicals and pharmaceuticals, and telecommunications. The third followup report included a special discussion of the effects of the EC 1992 program on the U.S. value-added telecommunication and information services industry. The fourth followup report contained a special chapter on the implications for the United States of economic and monetary union in the EC.

This report is the fifth followup report. It covers developments during 1992 and assesses EC progress in completing its internal market by the self-imposed deadline of December 31, 1992. A sixth followup report will provide more complete information on the status of efforts by the member states with respect to implementation. This sixth and final report is expected to be completed in the fall of 1993.

Copies of the notice of the fifth 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* (57 F.R. 46195) and is included in appendix B of this report, along with the original *Federal Register* notice and previous followup report notices.

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EXECUTIVE SUMMARY

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

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

This report, which covers developments during 1992, is the fifth update and sixth in a series of USITC reports that has monitored the issuance of these directives and assessed their impact on U.S. trade and investment. Each report addresses three major areas: (1) a background on, and description of, the operation of the 1992 program and a review of U.S. trade patterns with the EC; (2) information on, and an analysis of, the possible effect on the United States of directives proposed or adopted since the last report; and (3) an analysis of the implications of the 1992 program for the Uruguay Round and other member-state obligations and commitments to which both the EC and the United States are parties. In addition, this report assesses for each of the categories of directives (e.g., standards, public procurement) the progress the EC made in meeting its goal to complete its internal market by December 31, 1992.

The highlights of the report are summarized below.

Introduction and Background

Introduction to the EC 1992 Program

Although a new Europe did not emerge on January 1, 1993 with the establishment of the single internal market, the EC market has evolved significantly since the EC 1992 program was first launched by the White Paper in 1985. As of December 31, 1992, the EC Council had adopted 261 of the 282 White Paper measures. About 233 of these measures were in force at the end of 1992.

As shown in table A, the EC has largely completed the EC 1992 program by adopting the majority of the EC 1992 measures in the following areas: industrial standards, public procurement, the banking and insurance sectors, movement of goods, transport, competition policy, indirect and company taxation, and quantitative restrictions. The internal energy market, the social dimension, and environmental standards—which were not part of the White Paper—are not yet complete. Veterinary and plant health standards, the securities sector, movement of people, company law, savings taxation, and intellectual property rights also lag behind schedule.

The EC is now focusing its attention on ensuring the successful functioning of the internal market. A report requested by the EC Commission (the Sutherland Report) recommends ways to ensure effective and consistent application of EC laws. The report also includes guidelines for taking the concept of subsidiarity into account when issuing legislation. The report acknowledges that subsidiarity—which permits the EC to have authority only when lower levels of government would be ineffective—is important for preserving diversity and avoiding "heavy-handed" EC legislation, but also warns that the "principle of the internal market itself may be put in doubt."

Table A
Summary of progress on the EC 1992 program

(A = Substantially Completed; B = Partially Completed; C = Limited Completion)

Subject area	EC action	Comments
Standards:		
Industrial products	A	The EC has made good progress in harmonizing member–state technical requirements for industrial products. Processed foods and construction products lag behind.
Veterinary and plant health	B	Several controversial directives have yet to be proposed. However, notable progress was made in 1992 in passing proposed legislation and introducing other key measures needed to enforce new animal and plant health rules.
Environment	C	Environmental measures were not part of the White Paper. Environmental objectives were specified in the 1987 Single European Act and the Fourth Environmental Programme. Although much of the key legislation has been proposed, only moderate progress has been made in formally adopting EC–wide environmental rules. Agreement was reached to establish a European Environmental Agency with limited regulatory powers and to implement international environmental agreements.
Public procurement	A	[1]
Internal energy market	C	The internal energy market was not part of the White Paper. The EC Council has adopted the first of a three–stage program.
Financial sector:		
Banking	A	[1]
Insurance	A	[1]
Securities	C	The core securities directives have not been adopted.
Customs controls:		
Movement of goods	A	[1]
Movement of people	B	EC policies on immigration, residence, asylum, firearms, and illegal trafficking still required.
Transport	A	[1]
Competition policy	A	Only broad goals are listed in the White Paper. The Merger Regulation is generally considered to be the major piece of legislation.
Company law	B	Worker participation provisions have delayed adoption of the European Company Statute and other company law directives.
Taxation:		
Indirect	A	[1]
Company	A	[1]
Savings	C	No measures have been adopted.

Table A—*Continued*
Summary of progress on the EC 1992 program

(A = Substantially Completed; B = Partially Completed; C = Limited Completion)

Subject area	EC action	Comments
Quantitative restrictions	A	Most of the over 1,000 national QRs in force in 1985 have been eliminated, either through unilateral action, agreements with third countries, or replacement with a common EC regime. A 1991 EC–Japan agreement permits some national "ceilings" on imports of Japanese autos to remain in force through 2000.
Intellectual property rights	C	Community Trade Mark and Community Patent not enacted; goals of Copyright Green Paper and Followup partially complete.
Social dimension	B	The social dimension was not part of the White Paper, but in 1989–90, the EC Commission listed 47 initiatives. All but one have been proposed. Nearly all worker safety and health directives have been adopted. Measures addressing worker consultation and participation remain controversial.

[1] EC Council adoption of measures in this subject area is largely complete.

Source: EC Commission, *Seventh 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 (92) 383, Brussels, Sept. 2, 1992, and compiled by USITC staff.

EC efforts to forge new ties with other countries, such as those of the European Free Trade Association under the European Economic Area agreement and of Central and Eastern Europe, are spreading the reach of the EC's single-market program. Similarly, the Maastricht Treaty, which deepens EC integration economically and politically, is expected to create a more influential EC in the world arena if it is implemented. The treaty was scheduled to enter into effect on January 1, 1993, but was delayed because ratification by member states is not yet complete.

Initially, the U.S. Government registered concern that the EC 1992 program would increase competition among the 12 member states and cause EC industry to seek more protection against imports from non-member countries. Although U.S. fears over the development of such a "Fortress Europe" have now largely dissipated, certain issues remain a source of U.S. concern, such as standards, broadcasting, public procurement, and intellectual property rights.

The EC is an important market for U.S. firms. Taken as a single entity, the 12 member states of the EC accounted for just under 20 percent of total U.S. trade in 1992, making the EC the largest U.S. trading partner. Nearly $100 billion of U.S. exports headed to the EC in 1992, making the Community the largest destination for U.S. exports. The United States registered a trade surplus of $5.5 billion with the EC in 1992, compared with a surplus of $12.5 billion in 1991. The decline in the bilateral U.S. trade surplus in 1992 is largely due to recessionary conditions in the EC countries; U.S. exports to the EC remained flat, whereas U.S. imports from the EC climbed by almost 8 percent compared with 1991.

The EC was not immune to the overall slowdown in U.S. foreign direct investment in 1991. Cumulative U.S. direct investment in the 12 member states, which accounted for roughly 42 percent of total U.S. investment overseas, increased by only $11.1 billion, to $188.7 billion, in 1991 compared to 1990. Although sizable in absolute terms, this $11.1 billion increase represented only a 6.2-percent growth rate for U.S. direct investment in the EC—roughly on par with the growth of U.S. direct investment in all countries. This was the first time since 1988 that the growth in U.S. direct investment in the EC did not exceed the growth rate of U.S. investment worldwide, although at least part of the slowdown is traceable to exchange-rate variations.

Review of Recent Research on the 1992 Program

Recent research on the EC 1992 program suggests that the potential benefits for U.S. exporters are based on the higher economic growth in the EC, which is expected to result from market integration and the reduction of trade barriers within the Community. If EC growth does increase, the demand for both European and U.S. goods should increase. It is also asserted that EC 1992 should provide expanded investment opportunities for U.S. firms already established in Europe. In fact, U.S. multinationals with longstanding ties in Europe may even have advantages over EC firms, because the U.S. firms tend to be more diversified and less dependent on a single national market. To the extent U.S. firms are already operating across the EC, these firms may be better poised to capture scale economies in production and distribution than many national EC firms. In addition, it is noted that U.S. firms exporting to the EC will benefit from the harmonizing of national standards and streamlining of distribution channels.

Recent research on the EC 1992 program also finds that although the EC's external trade policy is not explicitly featured in the EC 1992 program, completion of the internal market will have far-reaching effects on the ultimate shape of the Community's trade policy. It is argued that there are two broad possible scenarios for the EC: a more protectionist (fortress Europe) or a more liberal (free Europe) outcome. The potential instruments that could lead to a more protectionist Europe include EC-wide restraints, discriminatory use of standards, aggressive reciprocity provisions, and more vigorous emphasis on rules-of-origin and local-content requirements. However, it is argued that the probability of a more protectionist EC will depend in part on the speed with which benefits are realized and the distribution of those benefits, the speed at which adjustment occurs and the distribution of adjustment costs, the strength of the protectionist lobbies, the trade policies of other governments, and the outcome of the Uruguay Round of multilateral trade negotiations.

Implementation

Most of the measures that constitute the 1992 integration program are directives that require implementation by member states to become fully effective. Member states implement a directive by transposing it into national legislation and administering their laws in accordance with the directive's requirements. In the past, the EC Commission has expressed concern at the slow pace of implementation, suggesting that failure to quickly implement could limit the effectiveness of integration. More recently, the pace of implementation has accelerated, so that by the end of 1992, according to the EC Commission, the EC had achieved an implementation rate of 75 percent.

According to the EC Commission, the member states are implementing at an acceptable pace measures such as those on the internal energy market and motor vehicles. The EC Commission has warned of problems in the implementation of such measures as those on new approach standards, public procurement, securities, the right of establishment, and the supply of audiovisual services. The failure of member states to transpose is in general not due to a lack of political will, but rather due to a lack of administrative resources and complex legislative processes in many member states.

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

Standards, Testing, and Certification

The EC has made considerable headway in its efforts to transform divergent national standards, and product inspection and approval (conformity-assessment procedures) into a single set of requirements. The new rules will affect EC trade in a wide variety of agricultural and industrial goods. In 1992, the EC continued to put in place the standards and conformity-assessment procedures that support the regulatory harmonization effort. The EC also put the final touches on measures affecting the pharmaceutical and automobile sectors, made considerable headway in the telecommunications and agriculture fields, and continued progress on directives affecting medical devices and machinery. Progress in certain areas, notably veterinary and plant health, processed foods, and construction products, has lagged considerably.

Several EC policies were a source of U.S. concern in 1992, including a proposed policy on intellectual property embodied in standards. U.S. firms fear that the quasi-compulsory nature of the licensing scheme could result in a loss of remuneration for leading edge technologies. EC restrictions on imported meat and blood products continued to be a source of contention, given the loss of U.S. exports such measures are expected to cause. The link between standards-related measures and EC industrial policy was also increasingly evident in areas such as information technology and television broadcasting, where U.S. suppliers have a recognized lead.

EC activity in the environmental area accelerated in 1992. Restrictive member-state actions prompted Community-level proposals on matters such as packaging waste and eco-labeling. International environmental agreements and commitments made during the 1992 "Earth Summit" also prompted new measures. The environment area will continue to be a major aspect of the EC's technical work in the years ahead.

The benefits of a unified market will likely take some time to materialize, however. Many of the supporting standards associated with industrial products are still being drafted. Testing and inspection infrastructures are not yet in place. Delays in implementation and difficulties in the functioning of new procedures are widely anticipated. These problems are not seen as likely to result in major setbacks on the road to a single Europe. Instead, they will defer expected gains.

U.S. firms look forward to the cost and time savings movement towards a single set of standards and conformity-assessment procedures could potentially offer. Their biggest concern has been ensuring that standards and conformity-assessment requirements not put them at a time or cost disadvantage vis-a-vis EC companies. The EC's insistence that testing be done in the EC for some products has been the major source of concern in this regard since local testing is often more

convenient and less expensive. The EC and its regional standards institutes have taken a number of measures to ease these worries, and most U.S. suppliers now hope to realize the full benefits of an integrated market—if not in 1993, fairly soon thereafter.

Public Procurement and the Internal Energy Market

Almost all public contracts in the EC are now subject to procurement rules designed to remove national barriers by increasing transparency and introducing nondiscrimination in all phases of public purchasing. All of the seven directives comprising the EC's single-market procurement program have been adopted by the EC Council, with the exception of the Utilities Services Directive, which extends the provisions of the Utilities Directive to cover services. Five of the directives had entered into effect by January 1, 1993, for most member states: supplies, works, utilities, and two remedies measures. The Public Services Directive is scheduled to enter into effect in July 1993, and the Utilities Services Directive, which awaits a second reading by the European Parliament, is scheduled to be effective as of July 1994.

U.S. suppliers generally believe that the EC's procurement markets will eventually open, but that in the short run, public authorities will continue to favor local suppliers. The key concern of U.S. producers remains the 50-percent EC content rule in the Utilities Directive. This rule would result in an unpredictable bidding situation and could require U.S. firms to invest in the EC to win public contracts for equipment. Because of the discriminatory provisions in the Utilities Directive, the U.S. Government threatened to impose sanctions on the EC. However, on April 21, 1993, the United States announced an agreement with the EC that would remove the discrimination against U.S. suppliers of heavy electrical equipment. Consequently, the United States announced it would proceed with sanctions commensurate with the remaining discrimination.

During 1992, the EC Commission proposed the second stage of a three-stage plan to create an internal energy market. The first stage, which was implemented by January 1, 1993, improved the transparency of gas and electricity prices and created the right of transit of gas and electricity through networks across member-state borders. The second stage liberalizes the electricity and gas sectors further, primarily through the introduction of third party access (TPA) to large energy consumers. TPA gives such entities as large industrial customers and energy distributors the right to use energy networks currently controlled by the EC's large gas and electricity producers at reasonable rates. Because of opposition to TPA, the second stage directives covering electricity and gas were not adopted by the EC Council in 1992 as originally planned. The third and final stage is scheduled to begin in January 1996 and will extend TPA to small consumers.

The creation of an internal energy market is likely to increase competition among energy suppliers and cause restructuring of the EC energy sector. U.S. suppliers of coal as well as energy-related equipment and technology are expected to benefit from the liberalization measures. In addition, all firms established in the EC, including U.S. subsidiaries, are likely to benefit from increased purchasing flexibility and lower operating expenses.

Financial Sector

During 1992 the EC put the finishing touches on the formation of a unified banking market; the Council adopted a directive on consolidated banking supervision and refined a number of other directives intended to promote efficiency and protect depositors. The EC's wholesale banking market has effectively been harmonized for a number of years, and as of January 1, 1993, the retail banking market was harmonized as well. The EC also made progress on a single market for securities services by reaching significant compromises on key brokerage and investment directives. Harmonization of the Community's securities market is likely to occur in 1996.

Both the Third Nonlife and Third Life Insurance Directives were adopted in 1992, completing the EC framework program for a single market in insurance. These core insurance directives will take effect July 1, 1994. As in banking, a common passport and home-country regulation will form the basis of the future EC single market in insurance. The lack of harmonization of member-state tax laws, however, may constitute a serious obstacle to the effective implementation of the core directives, perhaps especially in life insurance.

The EC 1992 program continues to be a factor in the rise of merger and acquisitions activity throughout the EC. Financial institutions in the EC are increasing in size and entering new markets. 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, particularly banks and insurance companies. With respect to brokerage and investment services, the outlook is less positive. The core securities-related directives are not expected to be adopted and implemented at the national level until at least the mid-1990s—perhaps as late as 1995 or 1996.

Customs Controls

With the adoption of the Community Customs Code and related measures in 1992, the EC Commission has put into place the legal framework for the barrier-free movement of goods among the member states. However, the implementation and interpretation of these measures at the member-state level is still unclear. For third-country goods that enter into the EC customs territory under specific customs procedures, free circulation within the EC without border checks should soon be a reality. The various measures relating to such issues as taxation and standards that customs officials previously enforced at member-state borders have been restructured. Depending on whether the movement of goods is between the EC and non-member countries or between member states, the measures will apply at external frontiers or at commercial facilities throughout the Community, respectively, thereby obviating the need for internal border formalities. Of particular benefit to third-country firms will be the availability of binding customs rulings, supported by EC-wide databases to permit the sharing of information and statistics and to help ensure consistent application.

However, free movement of persons within the EC has yet to be achieved in all respects. Progress was made in the area of mutual recognition of professional and vocational credentials by the member states, and the basic elements of the legal framework have been adopted at the Community level. Work continues on the harmonization of training curricula and areas of specialization in many vocational fields, and the member states must gain experience in regulating new practitioners who enter their borders and compete with their own nationals. Moreover, disputes continue in areas generally considered to require a Community policy, such as immigration, residence, asylum, and illegal trafficking; some of these matters are the subject of draft conventions, which eventually might be open to accession by nonmember states as well. Some member states have expressed concerns over national security or the transfer of control in critical areas to Community institutions (despite underlying agreement on the legal doctrine of subsidiarity.) In view of the uncertainty regarding the eventual implementation and interpretation of the Maastricht Treaty, the ministers of the member states continue to address several aspects of these politically important issues relating to free movement of persons.

Transport

During 1992, the EC took a number of actions to implement the single-market program concerning transportation services. In the air-transport sector, the EC Council substantially completed the single-market program by adopting the "third liberalization package" of regulations. These regulations restrict member states' ability to regulate fares for passenger transportation, provide uniform standards for the licensing of air carriers within the EC, and address EC airlines' right to engage in cabotage. Other significant activity during 1992 included the publication of proposed regulations by the EC Commission specifying revisions to the code of conduct for computerized reservations systems (CRSs) and indicating the types of joint activities between carriers that will be granted categorical, or "block," exemptions from the anticompetition provisions of the Treaty of Rome, the EC's founding treaty.

In the surface-transport sector, the EC Council adopted regulations concerning carriage of passengers by coach or bus. The regulations address licensing of carriers and cabotage operations. The EC Council also adopted a regulation providing a permanent means for controlling access to

the market of international carriage of goods by road. The sole single-market objective pertaining to surface transport on which final action had not been taken by the end of 1992 concerns cabotage rights for trucking companies.

The EC Council addressed a major single-market objective in the ocean-transport area by adopting a regulation on cabotage rights. The EC has not taken any final action, however, on creation of an EC-flag ship register.

Most of the EC's initiatives concerning economic regulation of transportation issues do not address third countries and have no direct impact on U.S. firms. EC initiatives concerning the rules of competition and joint activities in air transport do, however, affect U.S. airlines that operate in the EC, and the U.S. Government has informally expressed concerns to the EC about the impact initiatives on slot allocation and CRSs may have on U.S. airlines. There are also outstanding proposals that the EC Commission be given authority to conduct air-transport relations with third countries that, if adopted, could have a significant long-term impact for U.S. airlines operating in the EC.

Competition Policy and Company Law

During 1992, in the area of competition policy, the EC Commission continued to maintain the quick time limits established for reviewing deals under the Merger Regulation. In addition, in January 1993 the EC Commission published guidelines with respect to cooperative joint ventures to accelerate the EC Commission's review of those joint ventures falling outside the scope of the Merger Regulation. Further, in 1992 the EC Council adopted amendments expanding the block exemption regulations for specialization agreements, research and development agreements, patent licensing agreements, and know-how licensing agreements.

Overall, the goals for competition policy that were set forth in the White Paper have been rigorously pursued by the EC Commission. The EC Commission has used Articles 85 and 86 of the Treaty of Rome and the Merger Regulation as vehicles for combatting anticompetitive behavior such as the granting of state aids to noncompetitive industries, excessive state-regulation, cartels, price fixing, and monopolistic activities. In general, both U.S. and EC firms report that they are pleased with EC competition policy, because it fosters a more level playing field for all.

During the last year, very little progress was made in the area of EC company law. The EC Council adopted amendments to the Second Company Law Directive regarding the rules on company takeovers. The amendments extend the application of certain takeover provisions to subsidiaries. In addition, in 1992 the EC Commission proposed three new regulations establishing European statutes for associations, cooperatives, and mutual societies.

Nonetheless, company law has not accomplished one of the major goals set forth for the internal market—the promulgation of the European Company Statute. Lack of progress on adopting the European Company Statute, which creates an organizational structure for companies on the basis of EC laws, is attributable to the controversy over the worker participation provisions. This gridlock, in turn, has delayed progress on the Fifth and Tenth Directives, which also have worker participation provisions.

Taxation

EC tax initiatives under the 1992 program have focused on harmonization of the areas of member-state taxation regarded as most likely to give rise to economic distortions after frontier controls were abolished at the end of 1992. The principal focus has been on the "approximation" of indirect tax rates (value-added tax (VAT) and excise taxes), which differed widely in terms of structure and rate level at the time of the drafting of the 1985 White Paper. Because VAT is paid in the member state where the good is produced but is owed to the member state where the good is consumed, under the pre-1993 system taxes were adjusted at the border. This involved considerable paperwork and delay and added to the cost of trade among the member states. A second focus has been on the elimination of double taxation of certain intracompany transfers of companies with multistate operations, and measures to minimize tax evasion as a result of the liberalization of capital movements.

Achieving agreement on tax issues has proven difficult for at least two reasons. First, as recognized in the White Paper, changes in rates can pose "severe problems" for member states, since changes in rates, particularly in the case of the VAT, can have an important revenue effect and because the rate levels themselves often reflect important local social and industry policies. Second, reflecting these national sensitivities, the Single European Act requires that actions involving taxation continue to receive unanimous approval. This has permitted individual member states to block actions even when there was broad agreement.

In October 1992 the EC Council adopted the VAT and excise duty directives regarded as necessary for the removal of frontier controls. As of January 1, 1993, the new transitional VAT system was in place. Member states are now required to maintain a minimum standard VAT of 15 percent and are permitted, in addition, to maintain one or two reduced rates of 5 percent or more on certain specified necessity items such as food and drugs. In addition, exceptions were carved out for several member states. For example, member states that had been zero-rating certain goods are permitted to continue to do so. The transitional system for the administration of VAT, including the rate structure, will expire at the end of 1996, but will be replaced in 1997 with a definitive system.

The agreement reached on excise rates among other things permits southern member states to continue to exempt wine from excise duties. A directive providing for a "definitive" system for the collection of excise duties was adopted by the Council in early 1992 and implemented as of January 1, 1993. It provides for the establishment of a system of authorized warehouses, regulated by the member states, to allow the duty-free trading among member states of goods subject to excise duties.

With regard to company taxation, the three intracompany transfer measures identified in the White Paper were adopted by the EC Council in 1990 and were still in the process of being implemented by member states at the end of 1992; two new proposed directives relating to company taxation were introduced in late 1990 and are still under review. Also, the long-awaited Ruding Committee report reexamining company taxation issues was released in early 1992 and its recommendations are under review. By yearend 1992, agreement had not been reached on a directive that would impose a minimum withholding tax on savings interest.

The new taxation measures are expected to have minimal impact on U.S. firms exporting to, or operating within, the EC. It is expected that the removal of frontier controls will, on an overall basis, benefit U.S. firms operating in the EC on a multistate basis by facilitating and reducing the cost of shipping goods across member-state borders.

Residual Quantitative Restrictions

Pressed by the December 31, 1992, deadline for the single market, the EC Commission significantly reduced the number of residual national quantitative restrictions (QRs) during 1992 to achieve uniformity of its trade regime. The EC also curtailed recourse to article 115 restrictions in intra-Community trade. A few QRs and article 115 measures were not lifted in time for the single-market deadline or were extended past the deadline. EC Commission officials have stated that they are unsure how these post-single-market QRs will be applied in the absence of internal border controls.

Effective January 1, 1993, the EC Commission abolished national QRs on imports of textiles and apparel under the Community's Multifibre Arrangement (MFA) regime. The EC Commission continued to remove QRs on products of Central and Eastern European countries under so-called association agreements. The EC Commission began this process in 1990 and plans to phase out remaining QRs by 1998.

National QRs on bananas and article 115 safeguards restricting intra-Community trade in bananas will remain in effect until a new EC banana regime becomes effective on July 1, 1993. The proposed new banana regime envisions EC-wide duty-free access for traditional African, Caribbean, and Pacific producers and an EC-wide import-licensing system governing imports from other banana producers.

Although the EC agreed in 1991 to replace national QRs on Japanese automobiles with an EC-wide voluntary restraint agreement, during 1992 the EC and Japan failed to negotiate an

annual import ceiling for Japanese automobiles. QRs implemented under the Community's Generalized System of Preferences remain in force after the single market deadline pending a Uruguay Round agreement. QRs also remain on products of non-Eastern European nonmarket economies (China, North Korea, and Vietnam) affecting products such as footwear, pending the adoption of EC-wide restrictions.

Intellectual Property

The goal of the 1992 program in the area of intellectual property was primarily to harmonize EC member-state laws with respect to trademark, patent, and copyright protection and, where Communitywide regimes were viewed as necessary to the goals of the internal market, to create such regimes. Additionally, the White Paper proposed legislation to protect rapidly developing technologies such as those in the computer and biotechnology fields.

The EC had not met its goals in the area of intellectual property by December 31, 1992. The EC was most successful in the copyright field, where significant progress was made in 1992. Two primary 1992 program measures—ratification of the Community Patent Convention and creation of a Community Trademark system—were not achieved.

In 1992 the major developments in the copyright field were the adoption of a directive on rental and lending rights and proposals for directives on a harmonized copyright term and protection of computer databases. The EC also adopted a resolution regarding accession to the Rome Convention and the Paris Act of the Berne Convention.

In the patent and patent-related fields, legislation extending the term of protection for pharmaceutical products was adopted, and proposed measures extending protection to biotechnological inventions and to plant varieties received initial Parliament approval. Little concrete progress was made in the trademark area, although trademark-like legislation pertaining to the protection of geographical indication and designations of origin was adopted.

In general, harmonization and strengthening of the copyright, trademark, patent, and related laws in the European Community is expected to benefit U.S. business interests. Communitywide trademark and patent regimes are expected to simplify the acquisition of rights in these areas; harmonized copyright laws will standardize the term of protection in the EC; and legislation extending protection to new or rapidly developing technologies—computer and biotechnology—is expected to increase trade with the EC in high-technology products.

The Social Dimension

By the end of 1992 the EC Commission had completed drafting all but one of the 49 measures falling under the Social Charter action program. The Council had adopted 19 of these measures. Most of the measures adopted address worker safety and health matters, and were adopted under the qualified majority provisions of EEC Treaty Article 118a. Several worker safety and health directives were adopted in 1992, including the directive on the protection of pregnant women at work. Also in 1992 the Council adopted a directive amending the 1975 directive concerning collective redundancies (layoffs and reductions in force). Other more controversial directives, such as those addressing worker consultation and information, European Work Councils, subcontracting, atypical work, and organization of work time, remain stalled at the Council level, and the projected timing of their passage is uncertain.

Rising unemployment in EC member states has drawn much of the focus in the labor area away from the social dimension measures and towards unemployment issues. In addition, the reinforcement of the subsidiarity principle in the Maastricht Treaty has lessened the impetus towards adoption of Communitywide social dimension measures.

Although labor measures have taken less prominence in the past year or two, U.S. industry representatives have been particularly concerned about any extraterritorial effects that such directives could have on U.S. firms. For the most part, however, the concerns of U.S.-owned firms operating in the EC parallel those of EC-owned firms. Generally, the social dimension directives

create high standards for all firms operating in the EC in relation to the standards imposed on firms operating elsewhere in the world, but they generally have few anticompetitiveness effects for U.S.-owned firms with regard to EC-owned firms.

EC Integration and Commitments In the Uruguay Round and OECD

The United States as well as other countries have expressed concern that the EC 1992 program could result in increased EC protectionism. While the EC has made efforts to secure bilateral "reciprocal" treatment in areas such as public procurement, financial services, standards testing, and intellectual property rights, where no multilateral rules yet exist, the United States has also addressed such issues in the multilateral context of the General Agreement on Tariffs and Trade (GATT) and Uruguay Round trade negotiations. Such a multilateral venue permits the broadest possible consideration of such questions and application of multilateral principles such as most-favored-nation, national treatment, and transparency.

Given similar goals of economic and trade liberalization, the EC 1992 program and the Uruguay Round overlap in certain areas. In the area of public procurement, the EC is pressing for changes in the GATT Government Procurement Code that the EC has already included in Community-level legislation. In financial services, EC member states have largely agreed to further liberalization of capital movements under the OECD Codes of Liberalization because of similar moves towards liberalization under the EC 1992 Capital Movements Directive; other single market legislation helps underpin financial services negotiations in the Uruguay Round. In standards, the EC is seeking to extend the GATT Standards Code beyond central government obligations to cover "subcentral" governments in regions and States, as already covered in Community rules, as well as to cover private-sector standards bodies. Several intellectual property issues embodied in Community legislation, unfinished at the EC 1992 deadline, are likely to be discussed in the Uruguay Round negotiations on trade-related intellectual property rights, the first effort to cover intellectual property trade issues in a multilateral forum.

Part I
Introduction and Background

CHAPTER 1
INTRODUCTION TO THE EC 1992 PROGRAM

In 1985 the EC embarked on an ambitious program designed to stimulate growth and international competitiveness through further integration of the EC internal market by yearend 1992. The so-called EC 1992 program is now virtually complete. Although a "new Europe" did not emerge with the establishment of a single internal market on January 1, 1993, the EC market has evolved significantly since the program was first initiated.

The EC plan to create a unified internal market was foreseen more than 30 years ago in the EC founding charter, the Treaty of Rome. This treaty established a customs union and required the elimination of quantitative restrictions between the member states and all measures having an equivalent effect. These objectives were largely accomplished by 1968. However, stagnating growth, high unemployment, and increased import competition later raised domestic pressures for protectionist measures and reduced the momentum towards further integration among the member states. Not until the early 1980s did economic stagnation ("Eurosclerosis"), reduced European competitiveness, and the increasing ineffectiveness of EC institutions prompt member-state governments to seek greater cooperation among themselves.

In June 1985, the EC Commission issued a White Paper report entitled "Completing the Internal Market," which outlined a detailed plan for the removal of all obstacles to the free movement of goods, people, services, and capital by December 31, 1992. The White Paper presented a specific timetable for implementing nearly 300 separate measures or directives that would abolish all physical, technical, and fiscal barriers to trade between the member states.

Vital to the success of the 1992 project was the passage of the Single European Act, which changed the voting procedures established under the Treaty of Rome. Instead of unanimity in Council voting, the Single European Act allows certain decisions relating to the internal market exercise to be made by a qualified majority.[1] The majority voting provision applies to approximately two-thirds of the directives called for in the 1992 program; the remaining one-third, which fall primarily in the areas of taxation, professional qualifications, and the rights and interests of employees, require unanimous approval. The Single European Act became effective on July 1, 1987, and represented the final critical step in the launching of the internal market program.

[1] The qualified majority voting procedure weights the votes of the member states according to population and economic strength. For more details, 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. 1-13.

Initially, the U.S. Government registered concern that the EC 1992 program would increase competition among the 12 member states and cause EC industry to seek more protection against imports from third countries. However, such U.S. fears over the development of a "Fortress Europe" have nearly dissipated. Since 1988, consultations between the United States and the Community have been largely successful in resolving U.S. concerns over particular EC proposals. However, certain issues—such as standards, broadcasting, public procurement, and intellectual property rights—remain a source of concern and will continue to be monitored by the U.S. Government and the private sector.[2]

1992: The Critical Year

December 31, 1992, marked the EC self-imposed deadline for the completion of its internal market. The European Council meeting in Edinburgh on December 11-12 noted in its communique that "the White Paper programme for creating the Internal Market will in all essential respects be successfully completed by 31 December 1992. This is a historic moment for the Community, marking the fulfilment of one of the fundamental objectives of the Treaty of Rome."[3]

At the end of December, 261 of the 282 White Paper proposals had been adopted by the EC Council.[4] The Council had reached common positions on another three directives, bringing the total number of substantially completed measures to 264, or 94 percent of the program. Out of the remaining 18 White Paper proposals awaiting adoption, the EC Commission considers 13 to be priorities:

- Company tax regime for loss accounting;
- Special value added tax (VAT) schemes for small businesses;
- Amendment of the seventh VAT directive on second-hand goods;
- Harmful organisms (financial liability);
- Plant breeders' rights;
- Food irradiation;
- The European Company Statute;
- Community trademark (4 proposals);
- Legal protection of biotechnological inventions; and
- Modification of the regulation and directive on the freedom of movement and abolition of restrictions on movement and residence of workers and their families.

[2] Timothy J. Hauser, "The European Community Single Market and U.S. Trade Relations," *Business America*, Mar. 8, 1993, pp. 2-5.

[3] European Council, conclusions of the Presidency, Edinburgh, Dec. 12, 1992.

[4] EC Commission, DG III A2, "Internal Market Brief," Jan. 6, 1993.

The EC Commission also considers a priority to be the proposal for a company tax regime on interest payments and royalties, which was not part of the original White Paper. Furthermore, the EC Commission cited as priorities additional decisions considered essential to the removal of all internal border controls on goods and persons, including the following[5]—

- Controls on export of dual-use goods;
- VAT applied to gold and passenger transport services;
- Rabies quarantine rules for pets;
- Precious metals (marking); and
- Health controls on transfer of radioactive substances.

The most notable gap is the area of free movement of people, where disagreement about border controls on individuals continues.[6] Some member states, particularly Great Britain and Ireland, are concerned about the implications for terrorism, drug trafficking, and illegal immigration, but have agreed to "lighten controls at borders on nationals of Member States of the Community."[7] Other areas that are lagging behind schedule include veterinary and plant health standards, company law, and intellectual property.

About 233 of the 261 White Paper measures adopted by the Council were in force as of the end of 1992.[8] Although member-state transposition of EC measures into national laws is behind schedule,[9] the Treaty of Rome states that member states that have not implemented measures are still bound by them and are therefore open to lawsuits if they do not apply the rules correctly.[10]

In addition to controversial directives stalled in the EC legislative process, there are a variety of reasons why the internal market program is not completely in place. As mentioned above, member-state implementation of EC directives, which involves transposition of EC laws into national legislation, is behind schedule. In addition, some measures come into effect only after long transitional periods. Also, certain member states have obtained derogations from particular directives. Finally, topics outside the White Paper but now considered part of the internal market process, such as energy and social policies, are still incomplete.

Despite these delays, the effects of the EC 1992 program have already been felt throughout the European market. Since 1985, the EC has been implementing the single market program step by step. This process will continue as transition periods and derogations end and as the EC adopts the remaining legislation and the member states transpose it into national laws.

Widening and Deepening: The Broader EC Agenda

The vision of a more unified Europe has moved to a new economic and political level, expanding the notion of EC 1992 both geographically and conceptually. On the one hand, EC efforts to "widen" the Community by forging new relationships with the European Free Trade Association (EFTA)[11] and Eastern and Central European nations have extended the reach of EC 1992 measures geographically. On the other hand, the Maastricht Treaty has "deepened" the concept of EC 1992 from merely economic integration to political, social, and closer economic and institutional ties among the member states. Both of these efforts will likely create a larger, more influential EC in the world arena and will expand the implications of EC integration for the United States.

Widening

On May 2, 1992, the countries of the EC and EFTA signed an agreement to form the European Economic Area (EEA). The purpose of the EEA is to enable, to the greatest possible extent, the free movement of goods, persons, services, and capital between the 19 EC and EFTA countries. The realization of these "four freedoms" will be made on the basis of the EC existing legislation, known as the acquis communautaire, subject to some exceptions and transitional periods.

The EEA agreement will cover most of the EC 1992 measures, except those on indirect taxation. Upon implementation, the agreement will remove almost all remaining obstacles to the free trade of goods. For example, the EEA accord removes technical barriers to trade, creates a common market in public procurement, simplifies border controls governing goods trade, prohibits quantitative restrictions, and provides for an exemption from antidumping measures in intra-EEA trade except under certain conditions. The EEA agreement provides that EEA nationals can move freely to seek and hold employment and have the right of establishment anywhere in the EEA, and that diplomas and other qualifications are equally valid throughout the EEA.

[5] Ibid., and U.S. Department of State, "EC 1992 Update: Scorecard on Adoption and Implementation," message reference No. 16149, prepared by U.S. Mission to the EC, Brussels, Dec. 28, 1992.

[6] For more information on this topic, see chapter 7 of this report.

[7] European Council, conclusions of the Presidency, Edinburgh, Dec. 12, 1992.

[8] EC Commission, DG III A2, "Internal Market Brief," Jan. 6, 1993.

[9] For a detailed discussion of the status of implementation, see chapter 3 of this report.

[10] U.S. Department of State, "EC 1992 Update: Scorecard on Adoption and Implementation," message reference No. 16149, prepared by U.S. Mission to the EC, Brussels, Dec. 28, 1992.

[11] EFTA member countries are Austria, Finland, Iceland, Leichtenstein, Norway, Sweden, and Switzerland.

The EEA agreement was supposed to enter into effect on January 1, 1993, concurrently with the EC single market, but Swiss voters rejected participation in the EEA in a referendum taken on December 6. Following revision of the agreement in February 1993 to accomodate lack of Swiss participation, the EEA is now scheduled to enter into effect on July 1, 1993.

In addition to participating in the EEA, some EFTA countries have applied to the EC for membership. Formal enlargement negotiations began on February 1, 1993, with Sweden, Finland, and Austria. Norway began enlargement negotiations with the EC in April 1993, following receipt of a favorable opinion by the EC Commission on its application to join. Although Switzerland's application for membership still stands, the EC Commission will take into account in its opinion the particular problems raised by the country's lack of participation in the EEA. Switzerland has indicated it will not call a second referendum.[12]

Countries of Central and Eastern Europe have also been negotiating closer ties with the EC that aim toward eventual EC membership. The EC has negotiated bilateral trade and economic cooperation agreements with Latvia, Lithuania, Estonia, and Albania and more extensive "Association" agreements with Poland, Hungary, the former Czech and Slovak Federal Republic, Romania, and Bulgaria. The Association agreements call for the gradual application of EC law, notably in competition policy, and the harmonization of the laws of the associated countries with those of the EC, especially in such areas of law as customs policy, banking, and financial services; intellectual property; worker and consumer protection; environmental law; and standards.

Deepening

The Treaty on European Union, commonly referred to as the "Maastricht Treaty" for the city in the Netherlands where it was approved in December 1991, is designed to create more binding economic, political, and institutional ties among the member states. Among its objectives are economic and monetary union (EMU), leading to a common currency in 1999, and political union, including a common foreign and security policy. The treaty would also expand the power of the European Parliament, provide for Community citizenship, and extend EC powers in such fields as consumer protection, public health, and environmental policy.

The treaty was scheduled to enter into effect on January 1, 1993, but ratification by EC member states is not yet complete. By the end of 1992, eight member states had ratified the treaty, and two were expected to follow shortly. Only the outcome of votes by Denmark and the United Kingdom remained uncertain. Denmark voted "no" in a referendum taken June 2, 1992. However, at the subsequent Edinburgh summit in December, Denmark negotiated a compromise, which will exempt the country from provisions of the treaty on economic and monetary union, the common foreign and security policy, and common EC citizenship.[13] Although the compromise will be legally binding, it will not require re-ratification of the treaty. Denmark plans to hold a second referendum in April or May of 1993 and the United Kingdom, where treaty support has been weak, is expected to vote during the first half of 1993.[14]

The Future of the Internal Market

In its recently announced work program for 1993-94, the EC Commission reconfirmed the importance of a successful single market. "The frontier-free area offers considerable potential for growth and is a vital factor for economic recovery. It is also the most immediate, practical, and visible manifestation of what European integration has to offer the businessman, the worker and the man in the street."[15] Accordingly, the EC Commission announced plans to push the remaining White Paper measures through the legislative process and to devise a strategy to remedy the "thorniest problem [of] abolition of personal checks." In addition, the EC Commission announced that it would pay particular attention to the day-to-day management of the internal market and to resolve problems quickly. Several "practical measures" will likely be taken in line with the findings of the Sutherland Report, which recommends ways to ensure a successful internal market.

The Sutherland Report

With the adoption of most of the White Paper directives, EC attention has now focused on their implementation and enforcement. The EC Commission has expressed concern that ineffective and inconsistent application of EC laws could limit the benefits of the single market and undermine public support for it.[16]

[12] "EC/EFTA: EC Hopes To Conclude Swiss Issue by March 1993," *European Report*, No. 1823 (Dec. 24, 1992), External Relations, p. 1.

[13] European Council, conclusions of the Presidency, Edinburgh, Dec. 12, 1992. With respect to EMU, "Denmark will not participate in the single currency, will not be bound by the rules concerning economic policy which apply only to the Member States participating in the third stage of EMU, and will retain its existing powers in the field of monetary policy according to its national laws and regulations." With respect to defense, Denmark shall not participate "in the elaboration and implementation of decisions and actions...which have defence implications."

[14] U.S. Department of State, "EC Edinburgh Summit Success: Community 'Back on Track,'" message reference No. 00177, prepared by U.S. Consulate, Edinburgh, United Kingdom, Dec. 13, 1992.

[15] EC Commission, "The Commission's Programme 1993-94," press release, Feb. 10, 1993.

[16] U.S. Department of State, "Subsidiarity on the Ground: Has the Commission Changed its Ways?" message reference No. 13991, prepared by U.S. Mission to the EC, Brussels, Nov. 6, 1992.

In April 1992, the EC Commission established a high-level group, led by former EC Competition Commissioner Peter Sutherland, to study ways to improve the performance of the internal market. On October 28, this group presented its study, commonly known as the "Sutherland Report," to the EC Commission.[17]

The Sutherland Report makes 38 recommendations on how to meet the challenge of the internal market. For example, it recommends guidelines for issuing legislation taking into account the principle of subsidiarity. The subsidiarity principle states that the EC "shall take action, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member states and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community."[18] The report acknowledges that this concept has been examined extensively since the Maastricht ratification process uncovered strong citizen concern over the burgeoning EC bureaucracy. The concept remains important for preserving diversity and avoiding "heavy-handed" EC legislation. However, the report warns that "If the protection of diversity amounts to the application of separate rules at local, regional, or national level, the principle of the internal market itself may be put in doubt."

With respect to subsidiarity, the report identified five criteria to consider before taking legislative action:[19]

- The necessity for EC action (required when national solutions are inappropriate);
- The effectiveness of the possible measures;
- "Proportionality" to ensure that EC solutions are directly related to the objective desired, going no further than is necessary, thereby minimizing disruption to existing practices within member states;
- Consistency to ensure that the new measures fit in as closely as possible with existing Community measures;
- Communication to ensure that the details of a proposal are discussed at as early a stage as possible with those who will be most affected by it.

The report issued recommendations in a variety of other areas. First, it states that the EC must instill confidence in the internal market in consumers and firms through improved communication. This communication should take the form of both improved information flows to the public about the instruments of the single market, how to use them, and how to obtain redress, as well as increased transparency of the legislative process and the laws themselves. The latter requires increased emphasis on the legislative consolidation of EC laws, whereby the initial text of a law is combined with all subsequent amendments into a single text. The report also urges consideration of the role of domestic courts in applying EC laws and of achieving greater equivalence of legal procedures and sanctions across the Community. Finally, to ensure consistent and effective enforcement of internal market legislation throughout the Community, the report advocates active cooperation and training programs between national governments and the EC Commission.

The Internal Market Council responded favorably to the Sutherland Report by adopting a resolution that generally tracked the recommendations made in the report. The more concrete proposals presented in the resolution request the EC Commission to publish an annual report on progress of the internal market, analyze the implications of the program for the EC economy and competitiveness of EC firms in 1996, and consult member states before proposing legislation.[20]

On December 2, 1992, the EC Commission issued a communication as an initial response to the Sutherland Report. The communication reconfirms the Sutherland Report's conclusion about the importance of the EC Commission and member states sharing responsibility in managing the internal market. It argues that implementation of EC law will depend less on the legislative instruments than on "monitoring arrangements, assessment measures and direct communication." Member states must ensure that "EC legislation is applied in a consistent manner, that procedures for the recognition of approvals and conformity certificates are adapted, and that appropriate training is provided for the monitoring and implementing bodies." The EC Commission said that it welcomed the proposal for an annual report on the internal market to improve transparency of EC rules and their implementation. In 1993, it plans to publish a more detailed communication that will likely contain more concrete proposals.[21]

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[17] "The Internal Market After 1992: Meeting the Challenge," Report to the EEC Commission by the High Level Group on the Operation of the Internal Market, Oct. 28, 1992.

[18] Council of the European Communities (EC Council) and Commission of the European Communities (EC Commission), *Treaty on European Union* (Luxembourg: Office for Official Publications of the European Communities, 1992) ("Maastricht Treaty"), art. 3b.

[19] "The Internal Market After 1992: Meeting the Challenge," Report to the EEC Commission by the High Level Group on the Operation of the Internal Market, Oct. 28, 1992, pp. 7-8.

[20] U.S. Department of State, "November 10 Internal Market Council," message reference No. 14305, prepared by U.S. Mission to the EC, Belgium, Nov. 13, 1992.

[21] EC Commission, "Operation of the Internal Market: Commission Communication in Response to the Sutherland Report," press release, IP (92) 986, Dec. 2, 1992.

Internal Market Coordinating Committee

On December 22, 1992, the EC Commission approved a proposal by the Internal Market Council to set up a committee to resolve problems arising from the abolition of controls at EC internal borders on January 1, 1993. The committee will be composed of member-state officials and chaired by the EC Commission. The purpose of the committee is to ensure rapid communication between the EC Commission and member states to quickly resolve problems associated with implementation of the single market.[22]

[22] "Coordinating Committee for the Internal Market," *European Report*, No. 1823 (Dec. 24, 1992), Institutions and Policy Coordination, p. 3.

Trade and Investment

Introduction

Considered as a single entity, the 12 member states of the European Community remained the largest U.S. trading partner in 1992, accounting for roughly 20 percent of total U.S. trade (tables 1-1 and 1-2). In terms of U.S. exports, the EC ranked first in 1992, a rank it has held since 1987. Canada and Japan ranked second and third, respectively. In terms of U.S. imports, the EC ranked third in 1992, with Canada and Japan ranking first and second, respectively. The EC consistently accounted for between 17 and 19 percent of total U.S. imports during 1988-92.

Table 1-1
All commodities: SITC-based U.S. exports to the EC and rest of world, by leading markets, 1988-92

(1,000 dollars)

Market	1988	1989	1990	1991	1992
European Community:					
United Kingdom	17,255,779	19,642,736	22,236,156	20,911,121	21,379,529
West Germany	13,207,099	16,069,190	17,635,380	19,960,954	19,935,370
France	9,572,988	10,919,097	12,957,924	14,561,206	13,812,333
Netherlands	9,504,410	10,876,043	12,280,559	12,723,730	13,110,063
Belgium/Luxembourg	7,131,084	8,376,121	9,869,932	10,072,172	9,506,087
Italy	6,457,502	6,928,581	7,641,529	8,173,521	8,291,077
Spain	3,931,387	4,702,732	5,087,893	5,308,216	5,249,453
Ireland	2,104,344	2,389,077	2,436,350	2,567,120	2,741,421
Denmark	877,337	1,016,577	1,270,067	1,533,851	1,446,618
Portugal	718,383	907,894	895,335	762,649	995,925
Greece	545,312	696,662	748,401	1,023,049	876,857
Total	71,305,625	82,524,708	93,059,526	97,597,591	97,344,734
Rest of World:					
Canada	68,243,191	74,977,469	78,217,958	78,711,789	83,217,528
Japan	36,041,575	42,764,273	46,138,436	46,144,069	45,849,575
Mexico	19,853,345	24,117,255	27,467,595	32,279,218	39,604,899
Taiwan	11,599,286	10,974,696	11,141,956	12,718,074	14,533,478
South Korea	10,381,436	13,207,742	14,073,883	15,211,098	14,220,431
Singapore	5,423,053	7,001,752	7,597,516	8,277,534	8,949,292
Australia	6,671,722	8,130,170	8,304,492	8,206,686	8,693,798
Hong Kong	5,356,076	5,892,622	6,081,398	7,358,398	8,113,566
China	5,004,317	5,775,478	4,775,734	6,238,054	7,338,594
Saudi Arabia	3,534,532	3,495,164	3,958,040	6,441,524	7,023,635
Brazil	4,106,260	4,636,110	4,876,461	5,945,134	5,441,571
Venezuela	4,429,959	2,944,651	3,020,301	4,509,725	5,178,436
Malaysia	2,052,982	2,710,709	3,169,302	3,777,593	4,034,077
Switzerland	3,276,890	4,119,530	4,069,927	4,896,123	4,002,218
Thailand	1,644,229	2,216,927	2,853,297	3,535,903	3,769,910
All other	51,421,848	53,943,694	55,730,822	58,993,890	67,654,963
Total	239,040,700	266,908,242	281,477,118	303,244,811	327,625,971
Grand total	310,346,325	349,432,947	374,536,647	400,842,402	424,970,707

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

Table 1-2
All commodities: SITC-based U.S. imports for consumption from the EC and rest of world, by leading sources, 1988-92

(1,000 dollars)

Source	1988	1989	1990	1991	1992
European Community:					
West Germany	26,491,655	24,774,389	28,035,442	25,631,567	27,584,760
United Kingdom	17,752,304	17,924,428	19,928,916	18,152,227	19,616,638
France	11,910,300	12,666,411	12,794,916	13,231,284	14,725,301
Italy	11,459,798	11,785,957	12,576,638	11,617,897	12,093,709
Netherlands	4,532,008	4,734,241	4,935,263	4,826,206	5,266,193
Belgium & Luxembourg	4,492,624	4,541,556	4,563,714	4,105,343	4,682,349
Spain	3,145,993	3,253,897	3,259,100	2,812,527	2,904,642
Ireland	1,362,264	1,558,928	1,735,927	1,969,265	2,261,755
Denmark	1,665,879	1,526,625	1,668,701	1,654,219	1,661,592
Portugal	691,668	786,637	822,293	702,721	662,783
Greece	531,712	472,283	478,037	394,818	365,846
Total	84,036,205	84,025,352	90,798,947	85,098,074	91,825,568
Rest of World:					
Canada	80,678,621	87,987,651	91,198,308	90,923,823	98,242,500
Japan	89,110,486	91,841,766	88,834,279	90,468,823	94,799,563
Mexico	22,617,177	26,556,570	29,505,962	30,445,131	33,934,561
China	8,412,930	11,859,172	15,119,852	18,855,041	25,514,328
Taiwan	24,710,730	24,203,285	22,566,115	22,941,568	24,530,788
South Korea	20,071,989	19,566,725	18,336,960	16,862,383	16,523,160
Singapore	7,958,537	8,886,073	9,784,855	9,903,329	11,234,294
Saudi Arabia	5,549,315	7,081,853	9,964,557	10,960,525	10,293,645
Hong Kong	10,184,949	9,668,914	9,400,255	9,194,611	9,684,327
Malaysia	3,697,181	4,668,791	5,223,815	6,073,511	8,176,072
Brazil	9,058,916	8,483,765	7,762,112	6,760,533	7,587,882
Venezuela	5,044,996	6,492,623	9,132,322	7,758,434	7,563,941
Thailand	3,197,899	4,363,400	5,280,317	6,069,677	7,487,188
Switzerland	4,553,135	4,669,555	5,263,422	5,443,186	5,533,153
Nigeria	3,284,465	5,228,107	5,978,803	5,373,703	5,071,201
All other	54,972,653	62,428,420	66,402,855	59,895,526	66,369,228
Total	353,103,979	383,986,670	399,754,789	397,929,804	432,545,832
Grand total	437,140,185	468,012,021	490,553,739	483,027,878	524,371,400

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

Trends in U.S.-EC Trade

The U.S. Trade Balance

There is a high degree of interdependence evident in U.S.-EC trade. In general terms, transatlantic trade is broadly based, with no one sector playing a clearly predominant role. The size and significance of the U.S. market means that it is important to virtually all export-related industries in the EC. This is in stark contrast to the United States' transpacific trade with Japan, where two categories of goods (automobiles and consumer electronics) accounted for over half of Japan's exports to the United States in 1991.[23]

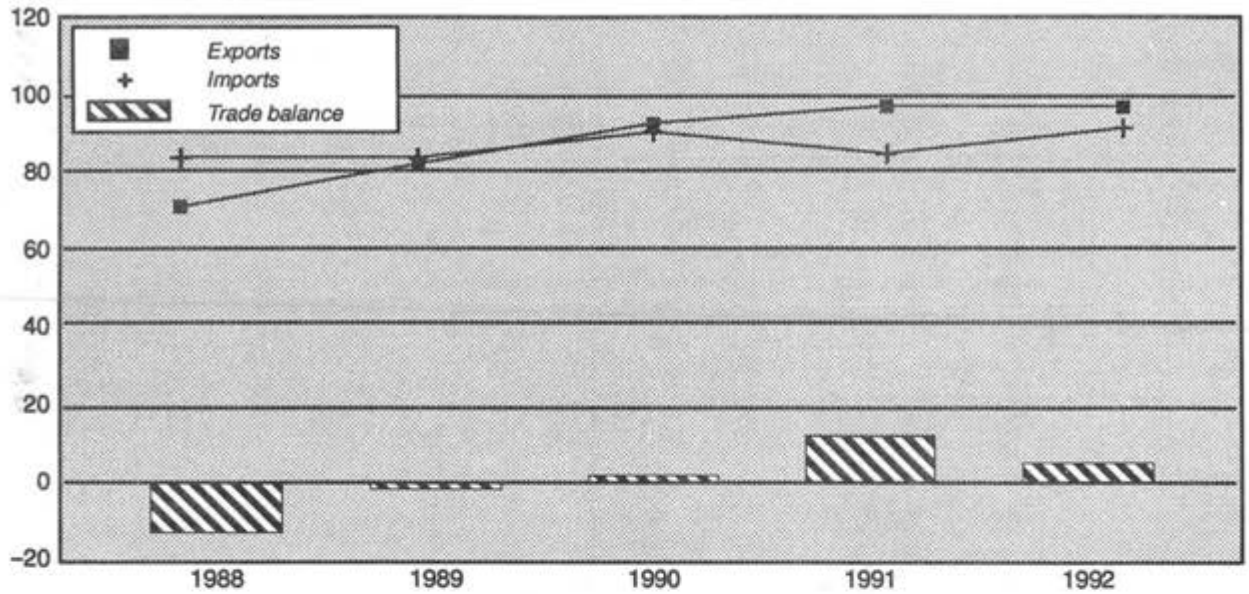
Macroeconomic factors, such as the depreciation of the dollar, have apparently had a positive effect on the U.S. trade balance vis-a-vis the EC.[24] Experiencing a deficit of roughly $12.7 billion in 1988, the United States registered a trade surplus of $5.5 billion with the EC in 1992, compared with an overall trade deficit of $99.4 billion during that year (figure 1-1). This strong U.S. trade performance with the EC has been fueled in part by the depreciation of the dollar, as well as strong import demand from the EC during 1990-91. The surplus declined relative to the 1991 figure of $12.5 billion, however. This phenomenon is likely due to the recession in the EC countries, with U.S. exports to the EC remaining almost stagnant, and U.S. imports climbing by 7.9 percent compared with those of 1991. Given the expected U.S. recovery relative to the EC in 1993, and the consequent rise in imports, the U.S. trade balance with the EC could decline further in the coming year.

[23] Based on official statistics of the U.S. Department of Commerce.

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

Figure 1-1
U.S. trade with the EC, 1988-92

Billion dollars



Source: Official statistics compiled by the U.S. Department of Commerce.

U.S. Exports

Table 1-1 shows that U.S. exports to all markets amounted to $425.0 billion in 1992, representing an increase of $24.1 billion or 6.0 percent over that of 1991. Exports to the EC during 1992 amounted to $97.3 billion, or about 22.9 percent of total U.S. exports. U.S. exports to the EC were virtually stagnant in 1992, compared with a growth rate of 8.5 percent to Asia,[25] and 10.7 percent to Mexico and Canada (5.7 percent for Canada, and 22.7 percent for Mexico). Given the recession in many EC member states and an estimated EC growth rate of only 1.1 percent in 1992,[26] the slowdown in shipments from the United States is not unexpected.

The largest categories of exports from the United States to the EC during 1992 were transport equipment, including rail cars and airplanes; office machines and automated data processing equipment; miscellaneous manufactured articles; electrical machinery, apparatus and appliances; and power-generating machinery and equipment (SITC divisions 79, 75, 89, 77, and 71, respectively). Total exports of these five categories to the EC amounted to $38.7 billion or roughly 39.7 percent of the value of all U.S. exports to the EC in 1992. Primary markets for U.S. exports among EC member states in 1992 were the United Kingdom, accounting for 5.0 percent of U.S. exports to the world; Germany with 4.7 percent; France with 3.3 percent; and the Netherlands with 3.1 percent.

U.S. exports to the EC have climbed an average of 8.1 percent per year since 1988. This rate of growth is just below that of U.S. exports to the world as a whole, which averaged 8.2 percent over the same period. In comparison, U.S. exports to Asia during 1988-92 averaged 10.6 percent, an estimated 8.7 percent to Mexico and Canada, and 6.2 percent to Japan.

U.S. Imports

Table 1-2 shows that U.S. imports from all countries amounted to $524.4 billion in 1992, an increase of 8.6 percent over the 1991 import level of $483.0 billion. Imports from the EC showed a sizable increase in 1992, rising by 7.9 percent from the 1991 total of $85.1 billion to $91.8 billion in 1992. Shipments from the EC accounted for roughly 17.5 percent of total U.S. imports from all countries in 1992. The EC has declined slightly as a source of U.S. imports over the past 5 years, dropping from a high point of 19.2 percent of the total in 1988.

The five largest SITC commodity groupings of U.S. imports from the EC in 1992 were road vehicles; power-generating machinery and equipment; machinery specialized for particular industries; miscellaneous manufactured articles; and electrical machinery, apparatus, and appliances (SITC divisions

[25] Data for Asia in this section include China, Taiwan, Singapore, Hong Kong, South Korea, Indonesia, Thailand, Malaysia, and the Philippines.

[26] U.S. Department of State, "EC Commission Discloses Pessimistic Forecasts for the EC Economy," message reference No. 15179, prepared by U.S. Mission to EC, Brussels, Dec 4, 1992.

78, 71, 72, 89, and 77, respectively). These five groupings accounted for $30.9 billion, or 33.7 percent of total U.S. imports from the EC in 1992. The most important sources of U.S. imports within the Community in 1992 were Germany, which accounted for 5.3 percent of total U.S. imports, the United Kingdom with 3.7 percent, and France with 2.8 percent.

Growth of U.S. imports from the EC, averaging 2.2 percent per year during 1988-92, lagged behind the 4.7-percent average growth rate for U.S. imports from all countries. Average growth in imports from the EC during 1988-92 was also behind that of U.S. imports from other major trading partners such as Canada with 5.1-percent growth, and Mexico with 10.7 percent. The composition of U.S. imports from the EC has not changed dramatically over the past 5 years, although imports of power-generating machinery have risen in importance.

U.S.-EC Trade in Services

Services is an important sector of the U.S.-EC trade relationship. Total cross-border[27] trade in services between the United States and the EC in 1991 amounted to roughly $95.5 billion, with a surplus of over $11.5 billion for the United States (table 1-3).[28] In 1991, the EC accounted for 35.1 percent of cross-border U.S. exports, and 42.0 percent of cross-border U.S. imports of services worldwide.

[27] "Cross-border" trade in services is distinguished from sales of services to foreign persons by nonbank majority-owned foreign affiliates of U.S. companies, and to U.S. persons by nonbank majority-owned U.S. affiliates of foreign companies.

[28] U.S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, Sept. 1992.

Table 1-3
U.S.-EC bilateral trade in services, by sector, 1986-91
(Million dollars)

Sector	1986	1987	1988	1989	1990	1991
Exports:						
Travel	4,646	6,140	7,396	8,393	9,439	11,178
Passenger fares	1,711	2,472	3,225	3,531	5,004	5,230
Other transportation	4,064	3,928	4,415	5,592	5,921	5,795
Royalties & license fees	3,846	4,935	5,771	6,215	8,306	8,951
Other services	6,496	7,748	8,464	10,733	10,762	13,048
Other private services, affiliated	3,004	3,357	4,208	5,724	6,255	6,589
Insurance	147	499	64	-98	-427	-148
Telecommunication	537	623	688	773	760	(1)
Business and professional services, unaffiliated	777	791	1,134	1,273	1,504	2,881
Total, EC	25,228	30,493	35,365	42,136	47,524	53,524
Total, World	77,097	86,802	100,683	117,966	138,136	152,252
Imports:						
Travel	8,311	9,063	10,017	10,454	11,968	11,549
Passenger fares	2,542	2,993	3,096	3,526	4,946	4,817
Other transportation	4,024	4,298	5,143	5,832	6,669	6,128
Royalties & license fees	690	1,018	1,132	1,396	1,778	2,190
Other services	4,791	6,486	6,313	6,448	7,602	9,622
Other private services, affiliated	1,555	2,349	2,477	3,333	3,991	4,665
Insurance	631	1,282	712	-396	-144	596
Telecommunication	767	910	1,164	1,286	1,321	1,445
Business and professional services, unaffiliated	369	430	677	637	625	967
Total, EC	23,680	28,829	30,731	32,516	38,756	41,979
Total, World	64,475	73,432	80,366	84,079	97,013	100,029
U.S. services trade balance—						
With EC	1,548	1,664	4,634	9,620	8,768	11,545
With world	12,622	13,370	20,317	33,887	41,123	52,223

[1] Suppressed to avoid disclosure of data of individual companies.
Source: Official statistics of the U.S. Department of Commerce.

The level of interdependence between the United States and the EC in the area of services trade goes even deeper than the above statistics would seem to imply. In addition to cross-border sales and purchases of services, there is also a significant level of bilateral services trade through affiliate companies. In 1990, the most recent year for which data are available, sales of services by U.S. companies operating in the EC amounted to $62.2 billion, or roughly 52.4 percent of services sold by majority-owned U.S. affiliates worldwide, up from 44.9 percent in 1986. Conversely, U.S. purchases of services from majority-owned U.S. affiliates of EC firms totaled $49.9 billion, or 45.3 percent of total U.S. purchases of services from all U.S.-based affiliates of foreign firms.

Trends in EC Trade with the World

Extra-EC Trade

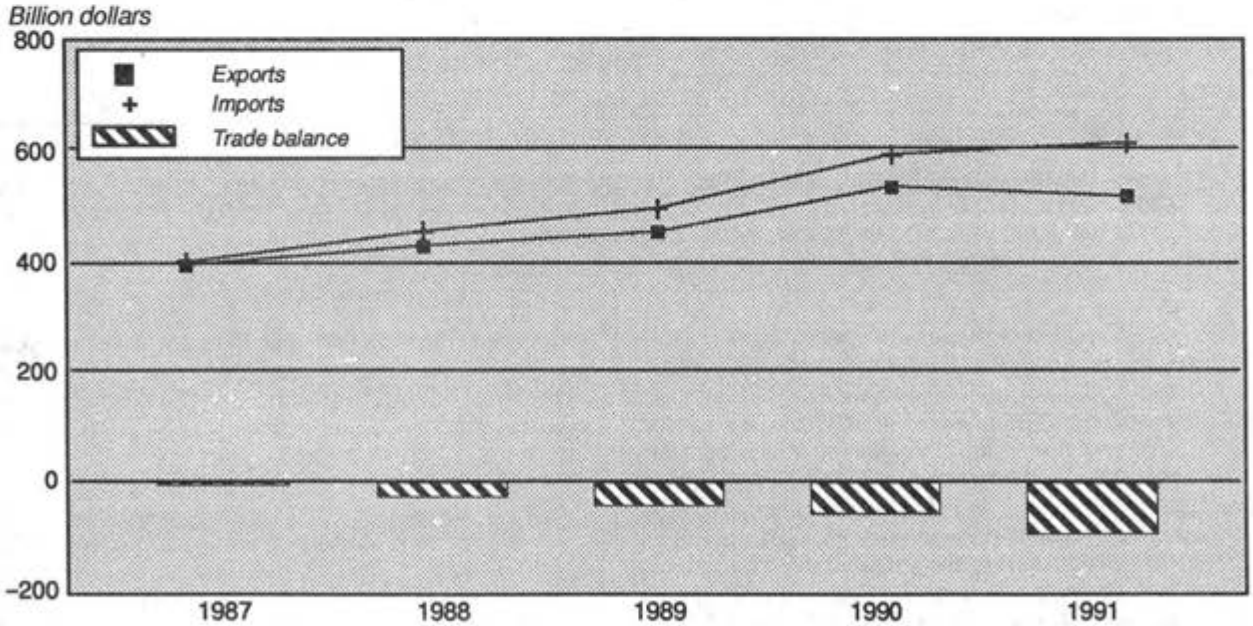
Taken as a group, the 12 member states of the EC have had a steadily worsening balance of trade with the rest of the world over the last 5 years (figure 1-2). Although the EC registered a global surplus of $9.1 billion in 1986, the Community has experienced an increasingly large trade deficit in every year since. Due in large part to increasing levels of growth, the EC registered a merchandise trade deficit of approximately $95.6 billion in 1991, an increase of roughly 64.4 percent over the 1990 deficit of $58.1 billion. A surge in EC imports, coupled with a decrease in export levels, was largely the cause of the jump in the EC global trade deficit in 1991. The three principal deficit partners of the EC were Japan, Asia,[29] and North America.[30]

Combined exports from all 12 EC member states to other member states and countries outside the Community grew by only about 0.1 percent in 1991 to $1,368 billion, compared with $1,366 billion in 1990 (table 1-4). While intra-EC exports increased, EC shipments to countries outside the Community dropped by about 3 percent. The most important markets for EC exports outside of the Community in 1991 were the United States; the three EFTA countries of Switzerland, Austria and Sweden; and Japan (table 1-4 and figure 1-3). Combined, these countries accounted for $226.8 billion or 43.4 percent of total extra-EC exports in 1991. Significantly, with the exception of EC exports to Austria, which increased by 4.0 percent, exports to all these countries decreased in 1991. EC exports to the United States showed the largest decrease, dropping nearly 9 percent from $96.5 billion in 1990 to $87.8 billion in 1991. The five largest exporters among the EC member states in 1991 were Germany ($403.2 billion), France ($216.5 billion), the United Kingdom ($185.0 billion), Italy ($169.6 billion), and the Netherlands ($133.1 billion). Of these countries, only France registered a marginal increase in global exports in 1991.

[29] The use of the term "Asia" in this section is consistent with the subcategory (consisting of 32 countries—not including Japan) listed in the International Monetary Fund (IMF), *Direction of Trade Statistics Yearbook*, 1992.

[30] North America refers to the United States, Mexico, and Canada.

Figure 1-2
EC trade with the world,[1] 1987-91



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

Source: International Monetary Fund, *Direction of Trade Statistics Yearbook*, 1992.

Table 1-4
All commodities: EC exports to the European Community member states and rest of world, by leading markets, 1987-91

(Million dollars)

Market	1987	1988	1989	1990	1991
European Community:					
Germany	116,010	126,401	132,359	175,363	194,214
France	105,746	119,019	130,220	157,115	154,987
United Kingdom	77,088	91,568	97,308	108,277	100,623
Italy	67,424	76,019	82,005	97,959	98,796
Belgium/Luxembourg	61,514	68,956	71,562	88,602	88,402
Netherlands	63,627	69,720	73,105	86,875	87,205
Spain	28,950	35,775	41,856	53,514	58,410
Portugal	8,671	11,258	12,946	16,299	18,409
Denmark	13,553	14,198	14,356	17,134	17,633
Ireland	9,520	10,798	11,837	14,308	14,309
Greece	8,084	9,367	10,525	12,737	12,667
Total	560,187	633,079	678,079	828,183	845,655
EFTA:					
Switzerland	37,869	41,603	43,576	51,801	48,951
Austria	23,243	26,765	27,804	34,321	35,704
Sweden	23,337	24,947	26,466	30,022	27,008
Norway	10,964	10,097	9,432	11,740	11,810
Finland	8,137	9,197	10,344	11,619	9,533
Iceland	789	742	645	810	837
Total	104,339	113,351	118,267	140,313	133,843
Eastern Europe[1]	17,812	19,116	21,870	30,298	30,007
Former U.S.S.R	10,640	11,943	13,734	19,169	17,670
Total	28,452	31,059	35,604	49,467	47,677
Rest of world:					
North America	95,455	99,108	101,048	113,017	105,190
of which United States	82,905	84,576	85,678	96,472	87,792
Asia	40,460	47,213	52,040	61,300	63,666
Japan	15,749	19,867	23,162	28,695	27,316
Latin America and Caribbean	18,070	17,409	17,715	20,510	21,873
All other	94,833	103,524	109,592	124,822	122,859
Total	264,567	287,121	303,557	348,344	340,904
World total	957,545	1,064,610	1,135,507	1,366,307	1,368,079

[1] Eastern Europe includes Poland, East Germany (up until 1990), Hungary, Czechoslovakia, Yugoslavia, Bulgaria, and Romania.

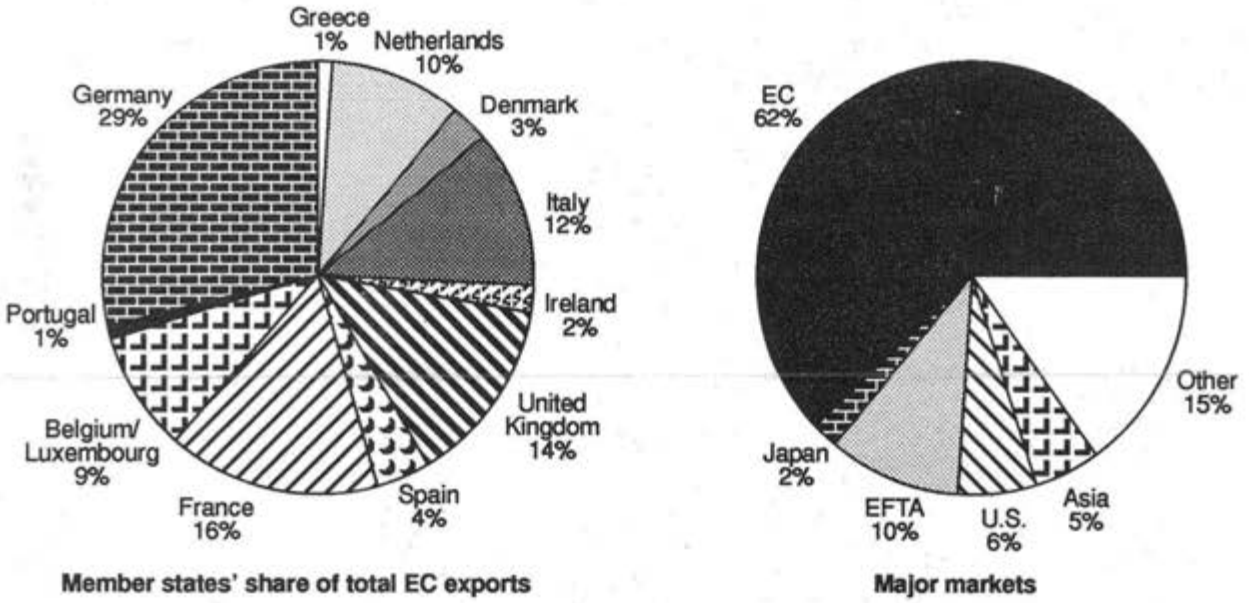
Note.—Because of rounding, figures may not add to the totals shown.

Source: International Monetary Fund, *Direction of Trade Statistics Yearbook*, 1992

The EC member states imported from other member states, as well as from third countries, a total of $1,456 billion worth of merchandise in 1991, an increase of 3 percent or $42.7 billion over 1990 (table 1-5). The most important individual suppliers outside the Community in 1991 were the United States, Japan, Switzerland, Sweden, and Austria. Combined, these five countries accounted for roughly 45.1 percent of all EC imports from outside the Community. The largest importers among the 12 member states in 1991 were Germany with $390.1 billion, France with $232.9 billion, and the United Kingdom with $209.9 billion. During the past 5 years, EC imports from the United States have registered the largest annual gain among the most important non-EC suppliers, growing by roughly 13.8 percent per year. In terms of year-to-year growth in EC imports during 1987-91, the United States was followed by Japan and Austria with 11.8 percent, and Switzerland and Sweden with 7.9-percent growth.

On a regional or trade group basis, the EC's primary sources of imports were the EFTA countries, North America (the United States, Canada, and Mexico), and Asia (not including Japan) (figure 1-4). Import patterns on a regional basis have remained relatively stable over the past 5 years. Despite EC concerns over rising imports from Japan, the Community has actually increased its imports from the rest of Asia at a far more rapid rate. EC imports from

Figure 1-3
EC exports to the world,[1] by sources and by major markets, 1991



[1] To other EC member states and to countries outside the European Community.

Source: International Monetary Fund, *Direction of Trade Statistics Yearbook*, 1992.

Asia (excluding Japan) grew by an average of 17.5 percent per year between 1987 and 1991, compared with 13.0 percent per year for North America, 11.8 percent for Japan, and 11.3 percent per year for total extra-EC imports.

The EC trading relationship with EFTA is particularly significant given the plan to go ahead with the creation of the European Economic Area. The EC and EFTA have developed an expansive web of economic links, and are highly interdependent. Both regions have displayed a high degree of homogeneity in terms of economic structure and performance. Taken together, these two groups account for nearly 30 percent of the world's gross domestic product (GDP) and will, upon completion of the EEA, represent the largest global trading bloc. Taken as single entities, the EC and EFTA are each other's most important trading partners. The EFTA region was the destination for roughly 25.6 percent of extra-EC exports, and the source of 22.3 percent of total EC imports from outside the Community in 1991. Total EC-EFTA trade (exports plus imports), was only $21.5 billion short of total EC trade with the United States and Japan combined in 1991. This level of interdependence is likely to increase when the EEA enters into effect, as well as because of the breakup of the Soviet Union—formerly a key market for Finland. Trade between the two regions is heavily concentrated on manufactured products, because trade in such products was completely liberalized in the 1970s. There is also strong evidence that a large proportion of EC-EFTA trade is intra-industry trade since 7 of the 10 most important product divisions appear in both imports and exports.[31]

Intra-EC Trade

Customs union theory generally predicts that economic integration will shift trade away from nonmember countries to trade with member countries.[32] However, the share of EC trade with the world occupied by trade between the 12 member states (intra-EC imports and exports) has remained relatively stable in recent years despite the approaching completion of the single market program. Although there was a jump in intra-EC trade from 53 percent of EC total trade in 1985 to 57 percent in 1986 when Spain and Portugal joined the Community, the share occupied by intra-EC trade subsequently rose only about 2 percentage points to 59.6 percent in 1991.

[31] EC Commission, *European Economy*, supplement A, Recent Economic Trends, No. 2, Feb. 1992.

[32] For a complete discussion of customs union theory and the concept of trade diversion, see U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: Fourth Followup Report* (investigation 332-267), USITC publication 2501, Apr. 1992, p. 2-3.

Table 1-5
All commodities: EC imports from the European Community member states and rest of world, by leading markets, 1987-91

(Million dollars)

Market	1987	1988	1989	1990	1991
European Community:					
Germany	148,131	167,330	176,711	207,340	203,101
France	89,117	102,578	110,120	135,812	143,462
Netherlands	71,910	80,296	85,725	105,677	107,834
Italy	64,508	72,097	77,582	97,469	100,013
United Kingdom	60,498	66,762	71,543	90,246	95,984
Belgium/Luxembourg	61,344	68,465	72,550	88,382	89,656
Spain	22,490	26,359	28,813	38,200	42,639
Denmark	12,458	13,838	14,450	18,470	19,629
Ireland	11,429	13,537	14,443	17,138	17,263
Portugal	6,879	8,089	9,447	12,585	12,824
Greece	5,090	5,145	5,712	6,148	6,039
Total	553,854	624,496	667,096	817,467	838,444
EFTA:					
Switzerland	30,928	34,105	34,750	43,124	41,938
Sweden	23,312	26,385	28,240	32,509	31,657
Austria	17,580	20,015	20,860	26,788	27,456
Norway	14,107	14,831	17,148	21,041	22,275
Finland	9,244	10,880	11,159	13,594	13,195
Iceland	841	886	851	1,184	1,151
Total	96,012	107,102	113,008	138,240	137,672
Eastern Europe[1]	18,564	19,930	21,872	30,558	28,024
Former U.S.S.R	10,640	11,943	13,734	19,169	17,670
Total	29,204	31,873	35,606	49,727	45,694
Rest of world:					
North America	78,425	92,574	105,224	121,149	127,775
of which United States	66,690	79,441	91,220	105,034	112,197
Asia	47,253	58,240	62,676	75,933	90,181
Japan	42,117	50,201	52,534	60,781	65,706
Latin America & Caribbean	20,502	25,342	27,454	30,683	30,426
All other	89,397	92,962	103,685	119,745	120,539
Total	277,694	319,319	351,573	408,291	434,627
World total	956,764	1,082,790	1,167,283	1,413,725	1,456,437

[1] Eastern Europe includes Poland, East Germany (up until 1990), Hungary, Czechoslovakia, Yugoslavia, Bulgaria, and Romania.

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

Source: International Monetary Fund, *Direction of Trade Statistics Yearbook*, 1992.

In 1987 approximately 58.5 percent of total EC exports were bound for other EC markets. The percentage of intra-EC exports increased gradually to just over 61.8 percent in 1991 (figure 1-3). Intra-EC exports grew at an average of 10.8 percent per year during 1987-91, surpassing the 7.1-percent average annual growth rate for EC exports to countries outside the Community during the same period.

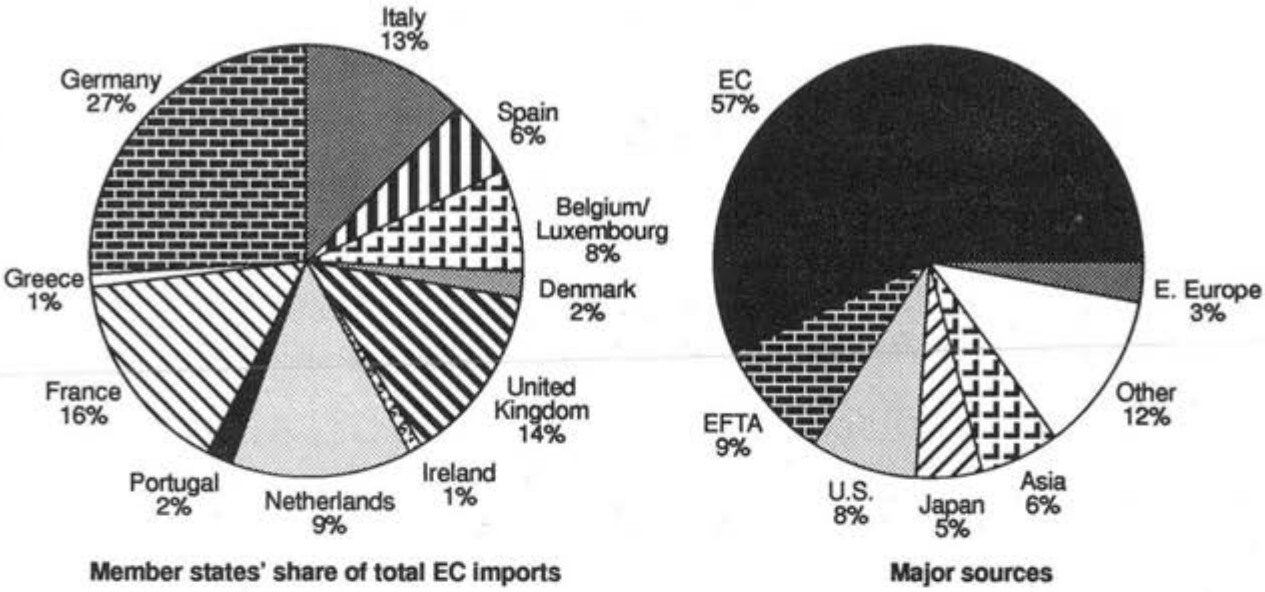
Intra-EC imports, as a share of EC imports from all countries, have been relatively stable in recent years. Between 1987 and 1991, the share of total EC imports occupied by intra-EC imports varied from a high of 57.9 percent in 1987 to a low of 57.2 percent in 1989, rebounding slightly to 57.6 percent in 1991 (figure 1-4). Not surprisingly, the average year-to-year value of extra-EC imports grew faster than that of intra-EC imports during the same period. The growth of intra-EC imports averaged 10.9 percent during 1987-91, compared with an average 11.3-percent annual growth for imports from outside the Community.

Investment

U.S. Direct Investment in the EC

Compared with recent years, U.S. foreign direct investment worldwide didn't keep pace in 1991. Due in large part to the recession in the United States and other major industrialized countries, the growth rate of U.S. overseas investment in 1991 was the lowest since 1984. The total stock of U.S. foreign direct investment

Figure 1-4
EC imports from the world,[1] by markets and by major sources, 1991



[1] From other EC member states and from countries outside the European Community.
Source: International Monetary Fund, *Direction of Trade Statistics Yearbook*, 1992.

grew by only $26.1 billion or 6.2 percent in 1991, compared with 13.9 percent in 1990 and 10.9 percent in 1989.

The EC was not immune to the overall slowdown in U.S. foreign direct investment in 1991. Cumulative U.S. direct investment in the 12 member states increased by only $11.1 billion to $188.7 billion in 1991, accounting for roughly 42 percent of total U.S. investment overseas (table 1-6). Although sizable in absolute terms, this $11.1 billion increase represented only a 6.2-percent growth rate for U.S. direct investment in the EC—roughly on par with the growth of U.S. direct investment in all countries. This was the first time since 1988 that the growth in U.S. direct investment in the EC did not exceed the growth rate of U.S. investment worldwide, although at least part of the slowdown is attributable to exchange-rate variations. Countries and regions that exceeded the average rate of U.S. direct investment included the Middle East with 18.7-percent growth, Asia with 10.0 percent, Japan with 9.2 percent, and Latin America and the Caribbean with 8.0 percent. This slowdown in U.S. direct investment in the EC could reflect (1) a levelling off of the rush to gain presence in the EC before the end of 1992, (2) a lack of confidence in sagging EC economies, or (3) shifting priorities on the part of U.S. investors due to NAFTA and high growth rates in East Asia,[33] as well as a desire to diversify investments.[34]

Analysts have often speculated whether the fear of a "Fortress Europe" beginning January 1, 1993, prompted increased foreign investment in the EC in the years leading up to 1993. Our analysis of U.S. data suggests such a trend, but other factors could also have affected investment flows. The structure of U.S. direct investment in the EC has changed in several respects during the last 5 years. Annual flows of direct investment can be broken down into three categories: (1) equity capital outflows or "new" investment; (2) reinvested earnings of U.S. firms operating abroad; and (3) intercompany debt flows. Of particular interest are the yearly equity capital outflows insofar as this category might be taken as an indicator of where U.S. investors would like to expand their business presence. In 1987, for example, U.S. equity flows to the EC as a share of total direct investment outflows to the EC measured only 16.1 percent—relatively low compared with regions such as North America (Canada and

[33] Henny Sender, "Guns for Hire: U.S. Investment Bankers Swarm to Hongkong," *Far Eastern Economic Review*, Oct. 29, 1992, p. 78.
[34] "Foreign Direct Investment Flows: Recent Developments and Prospects," *Financial Market Trends*, June 1992, pp. 13-29.

Table 1-6
U.S. direct investment position[1] abroad, by partners and by industry sectors, at yearend 1990 and 1991
(Million dollars)

Partner	All industries	Petroleum	Manu-facturing	Wholesale trade	Banking	Finance	Services	Other[2]
European Community in 1990:								
United Kingdom	68,224	10,598	21,893	2,167	2,704	27,191	2,209	1,462
Germany	27,259	2,901	16,275	1,456	1,520	3,831	279	998
Netherlands	22,658	1,541	6,801	1,091	149	11,203	1,425	448
France	18,874	(3)	11,338	3,033	157	2,198	549	(3)
Italy	13,117	703	8,442	1,749	361	1,016	394	453
Belgium	9,050	368	4,129	2,042	(3)	2,107	196	(3)
Spain	7,704	116	5,124	1,017	879	15	392	162
Ireland	6,880	-41	5,032	(3)	4	1,531	336	(3)
Denmark	1,597	(3)	280	537	(3)	295	98	(3)
Luxembourg	1,390	22	814	(3)	301	235	0	(3)
Portugal	598	(3)	292	111	(3)	(3)	(3)	(3)
Greece	288	14	86	71	81	(3)	(3)	(3)
Total, EC	177,642	17,732	80,508	13,308	6,413	49,653	5,954	4,073
Canada	67,033	11,388	31,790	4,138	1,032	11,378	1,927	5,379
Japan	20,997	3,800	9,910	3,969	222	2,343	328	425
Latin America & Western Hemisphere	71,593	4,140	23,733	2,684	6,387	29,440	1,632	3,577
Middle East	3,973	1,476	907	380	108	831	-15	286
Other Asia	22,890	5,114	7,933	3,496	2,746	2,281	266	1,055
All countries	424,086	56,957	164,466	38,217	19,783	112,374	11,401	20,888
European Community in 1991:								
United Kingdom	68,261	9,540	20,851	2,940	1,813	28,362	2,667	2,087
Germany	32,942	3,621	20,086	2,008	1,466	4,289	430	1,042
Netherlands	24,711	1,822	7,715	1,560	112	11,028	1,754	720
France	20,495	(3)	11,952	3,769	(3)	2,170	747	513
Italy	13,825	569	8,730	2,173	137	1,325	403	488
Belgium	8,838	294	4,002	2,145	(3)	1,778	438	(3)
Spain	7,712	40	5,436	831	904	(3)	355	(3)
Ireland	7,450	159	5,258	(3)	-2	1,761	257	(3)
Denmark	1,835	(3)	313	616	(3)	306	(3)	-2
Luxembourg	1,455	15	784	(3)	203	425	0	(3)
Portugal	893	39	437	132	165	12	(3)	(3)
Greece	291	26	101	34	93	3	14	(3)
Total, EC	188,710	17,810	85,664	16,243	5,200	51,486	7,258	5,048

Table 1-6—*Continued*
U.S. direct investment position[1] abroad, by partners and by industry sectors, at yearend 1990 and 1991
(Million dollars)

Partner	All industries	Petroleum	Manu-facturing	Wholesale trade	Banking	Finance	Services	Other[2]
Canada	68,510	10,847	32,360	4,388	1,047	12,208	2,206	5,455
Japan	22,918	4,195	10,437	4,851	30	2,555	401	449
Latin America & Western Hemisphere	77,342	4,339	25,687	3,381	6,838	29,888	1,741	5,467
Middle East	4,715	1,928	1,192	201	121	920	-12	365
Other Asia	25,180	5,965	9,104	4,062	2,855	2,097	297	800
All countries	450,196	59,160	175,413	43,218	18,756	117,094	13,368	23,187

[1] Direct investment as measured by valuation adjustments plus capital outflows. Capital outflows are defined as the net equity capital plus reinvested earnings plus net intercompany debt. The overall position is also generally regarded as the book value of U.S. direct investors' equity in, and net outstanding loans to, their foreign affiliates. A foreign affiliate is a foreign business enterprise in which a single U.S. investor owns at least 10 percent of the voting securities, or the equivalent.
[2] Includes insurance, real estate, and other industries.
[3] Suppressed to avoid disclosure of data of individual companies.

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

Mexico) with 25.9 percent, or Asia with 60.9 percent. In 1990, however, equity capital flows to the EC jumped to a 45.9-percent share of the total—leading all other major world regions. The EC slipped to last place again in 1991, but nevertheless maintained a comparatively high rate of equity capital investment from the United States—measuring approximately 36.2 percent of the annual total.

The largest levels of U.S. direct investment in the EC in 1991 were in the United Kingdom with $68.3 billion, Germany with $32.9 billion, and the Netherlands with $24.7 billion. Taken together, these three countries represent roughly 66.7 percent of the total stock of U.S. direct investment in the EC and nearly 28 percent of U.S. direct investment worldwide. In terms of growth rates, however, the stock of foreign direct investment climbed more rapidly in some of the smaller EC economies in recent years. Between 1987 and 1991, Greece and Luxembourg led the EC member states in terms of annual growth in U.S. direct investment, averaging 21.9 percent during this period. These two countries were followed by Portugal with 15.9 percent average annual growth, France with 14.6 percent, and Denmark with 14.4 percent.

Other significant locations for cumulative U.S. foreign direct investment in 1991 were Canada with 15.2 percent of the total, Latin America and the Caribbean with 17.2 percent, Asia (not including Japan) with 5.6 percent, and Japan with 5.1 percent. The U.S. direct investment position in the EC was greatest in the area of manufacturing, reaching a level of approximately $85.7 billion in 1991, an increase of roughly 6.5 percent over the 1990 level of $80.5 billion. U.S. direct investment in the manufacturing sector accounted for 45.4 percent of total cumulative investment in the EC in 1991, followed by the financial sector with 27.3 percent, the petroleum industry with 9.4 percent, and wholesale trade with 8.6 percent.

In terms of trends, the EC has consistently been a favorite location for U.S. investors over the past 5 years. The stock of U.S. direct investment in the EC grew by an average of 11.1 percent per year during 1987-91, compared with an average of 9.4-percent annual growth for U.S. direct investment worldwide. The greatest increase in the stock of U.S. direct investment in the EC occurred in 1990, when the cumulative total jumped by 18.9 percent over the 1989 level to $177.6 billion. This mirrored a large increase in U.S. direct investment worldwide in 1990, but still exceeded the 13.9-percent average growth rate by a substantial margin.

In comparison to the United States, Japanese direct investment in the EC has shown a much higher level of year-to-year growth. Although the cumulative direct investment position of Japan in the EC is much smaller than that of the United States,[35] the stock of Japanese investment in the EC grew by an average of 40.8 percent per year during the period 1987-91, compared with a 31.7-percent average annual growth rate for Japanese investment worldwide.[36] Among the reasons suggested for the surge in Japanese investment in the EC are the need to establish a strong manufacturing presence in the region to benefit from the single market, and concern over the possibility of increased protectionism on the part of the EC.[37]

At the end of Japanese fiscal year (JFY) 1991, the stock of reported direct investment in the EC amounted to $64.0 billion or roughly 18.2 percent of Japan's global stock of direct investment, second only to that of the United States with 42.2 percent. The structure of Japanese investment in the EC is markedly different from that of the United States, however. Unlike their counterparts in the United States, Japanese investors have concentrated their efforts on nonmanufacturing sectors, particularly finance and insurance. According to statistics provided by the Japanese Ministry of Finance, cumulative totals for notified Japanese direct investment in Europe's nonmanufacturing sector ($51.1 billion) was over three times that of the manufacturing sector ($15.2 billion) by yearend 1991.

EC Direct Investment in the United States

Foreign direct investment in the United States in the form of capital outlays by foreign countries amounted to $407.6 billion in 1991, an increase of roughly 2.7 percent over 1990 (table 1-7). The stock of direct investment in the United States by the 12 EC member states amounted to $232.0 billion in 1991, or approximately 57 percent of direct investment in the United States by all countries. Although the stock of EC direct investment in the United States climbed by 3.4 percent from the 1990 level, the investment position of the EC in the United States relative to all countries remained virtually unchanged. The United Kingdom remained first among all countries in its direct investment position in the United States, accounting for 26 percent of the world total and 45.7 percent of EC total direct investment in the United States in 1991. Other significant EC investors in the United States were the Netherlands with 27.5 percent of the EC total, and Germany with 12.1 percent. The total stock of EC direct investment in the United States in 1991 measured over two and a half times that of Japan and nearly eight times that of Canada.

The largest areas of investment by the EC in the United States were manufacturing, petroleum, wholesale/retail trade, and insurance. The foreign direct investment position of the EC in the U.S.

[35] Due to differences in the method of reporting U.S. and Japanese foreign direct investment, data for the two countries are not directly comparable.

[36] Japan Ministry of Finance.

[37] Francine Lamoriello, "East Is West: Japanese Investment in Europe," *Journal of European Business*, vol. 3 (Jan.-Feb. 1992).

Table 1-7
Foreign direct investment position[1] in the United States, by partners and by industry sectors, at yearend 1990 and 1991
(Million dollars)

Partner	All industries	Petroleum	Manu-facturing	Wholesale/ retail trade	Banking	Finance	Services	Other[2]
European Community in 1990:								
United Kingdom	102,790	15,841	47,304	7,669	1,983	3,739	8,430	17,824
Netherlands	63,938	12,686	24,717	6,356	2,361	2,057	5,732	10,029
Germany	28,309	151	15,695	7,735	772	-1,125	196	4,885
France	18,665	(3)	13,669	1,047	1,218	-3,223	1,983	385
Belgium	3,866	(3)	1,366	970	-93	(3)	3	90
Luxembourg	2,118	(3)	9	56	-7	(3)	(3)	547
Italy	1,869	69	768	359	675	(3)	-22	74
Ireland	1,208	7	215	115	(3)	(3)	(3)	(3)
Spain	790	(3)	123	165	354	(3)	(3)	1
Denmark	819	(3)	203	248	40	(3)	161	145
Greece	94	(3)	(3)	(3)	(3)	(3)	(3)	(3)
Portugal	-19	(3)	(3)	(3)	(3)	(3)	(3)	(3)
Total, EC	224,447	33,153	104,068	24,740	7,955	2,417	16,751	35,361
Japan	81,775	11	17,153	26,389	5,931	8,605	7,393	16,292
Canada	30,037	1,394	9,652	1,309	1,762	1,987	579	13,353
All countries	396,702	42,165	157,431	59,627	18,731	10,129	31,557	77,061
European Community in 1991:								
United Kingdom	106,064	14,238	50,120	7,257	2,269	2,445	11,033	18,702
Netherlands	63,848	12,254	24,137	5,532	1,933	3,186	5,502	11,302
Germany	28,171	559	16,546	7,613	838	-4,193	213	6,595
France	22,740	2,980	14,821	942	1,286	-2,009	2,236	2,483
Belgium	3,653	(3)	1,225	853	(3)	-80	11	58
Luxembourg	974	43	38	74	-2	175	(3)	(3)
Italy	2,859	-88	2,428	460	829	(3)	-76	48
Ireland	1,292	5	217	134	(3)	(3)	(3)	(3)
Spain	1,161	0	108	167	621	(3)	-3	-2
Denmark	1,219	(3)	560	232	63	0	179	161
Greece	48	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Portugal	-21	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total, EC	232,007	31,733	110,198	23,281	8,387	-1,434	19,361	40,481
Japan	86,658	113	18,657	28,037	6,797	9,120	7,574	16,359
Canada	30,002	913	9,662	271	1,978	2,462	939	13,778
All countries	407,577	39,955	162,853	59,692	20,655	9,196	31,511	83,715

[1] Direct investment as measured by valuation adjustments plus capital outflows. Capital outflows are defined as the net equity capital plus reinvested earnings plus net intercompany debt. The overall position is also generally regarded as the book value of U.S. direct investors' equity in, and net outstanding loans to, their foreign affiliates. A foreign affiliate is a foreign business enterprise in which a single U.S. investor owns at least 10 percent of the voting securities, or the equivalent.
[2] Includes insurance, real estate, services, and other industries.
[3] Suppressed to avoid disclosure of data of individual companies.
[4] Data not available.

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

manufacturing sector in 1991 was $110.2 billion, an increase of 6 percent over the 1990 level of $104.1 billion. EC direct investment in the U.S. petroleum industry continued to decline in 1991, dropping 4.3 percent from 1990 to $31.7 billion. EC direct investment in wholesale/retail trade dropped by 5.9 percent to $23.3 billion, while EC direct investment position in the U.S. insurance industry increased by 38.3 percent to $19.7 billion.

The trend of EC direct investment in the United States has largely mirrored that of total direct investment in the United States by all countries during the past 5 years. Between 1987 and 1991, the stock of EC direct investment in the United States grew by an average of 9.6 percent per year, or roughly two points below the 11.5-percent annual growth rate of direct investment in the United States by all countries. The structure of EC investment in the United States has also been similar to worldwide trends. Reinvested earnings have consistently been overshadowed by equity capital and intercompany debt flows from the EC to the United States during 1987-91.

Intra-EC Investment

Like all major industrial countries, the EC suffered relatively low economic growth in 1992, continuing the recessionary trend that began in early 1990. Real GDP in the Community is estimated to have increased by only 1.1 percent in 1992, compared with 1.4 percent in 1991 and 2.8 percent in 1990. Unemployment for 1992 is estimated to have increased to roughly 9.5 percent or above, while inflation dropped to 4.5 percent. The forecasts for 1993 suggest little change in the situation, with GDP expected to grow by only 0.7 percent in 1993 and 1.7 percent in 1994.[38] The EC Commission's slow growth forecasts are due to a number of factors, including the unexpectedly high cost of German reunification, the fall in the value of the dollar, and recessionary conditions in other developed countries. In addition, consumer and investor confidence has reportedly been shaken by uncertainty over the Maastricht Treaty ratification process, and the possible failure of the General Agreement on Tariffs and Trade (GATT) Uruguay Round.[39]

Precise data on the amount of intra-Community direct investment that occurred in 1991-92 are not available. According to a recent report by Eurostat (the EC statistical collection agency), however, the EC invested more inside its borders than outside during 1988 and 1989. The report indicated that intra-EC investment rose from European currency unit (ECU) 22 billion ($26 billion) in 1988 to ECU 33 billion ($36.4 billion) in 1989, or 50 percent. France was the leading exporter of capital within the EC in 1989. Other significant intra-EC investors were the United Kingdom, Germany, Denmark, and the Netherlands. Banking and finance were reportedly the most important sectors for intra-EC investment, attracting 30 percent of the total.[40]

Mergers and Acquisitions

The prospect of the single market program and increased intra-EC competition, combined with the possible gains to be made from economies of scale, has apparently been a factor in motivating companies to strengthen their position within the Community. The number of mergers and acquisitions in the EC increased rapidly during the mid-to-late 1980s, with a growing proportion of this kind of activity taking place on an intra-EC and international level. The boom in EC mergers and acquisitions never became as big as that in the United States, but the process has begun to reshape Europe's fragmented and sometimes protected industries.[41] Merger activity appears to have leveled off somewhat in 1990-91, with the most probable cause being the economic slowdown in the largest member states.[42]

A recent compilation of data by the EC Commission shows the number and type of mergers and acquisitions that have taken place in the EC since 1986. Among the top 1,000 firms, the total number of national, Community, and international mergers (including majority acquisitions) was 596 in 1990-91, a decrease of roughly 28 percent from the 833 mergers in 1989-90 (table 1-8).[43] Of the 596 mergers and acquisitions that took place in 1990-91, just over three-quarters occurred in the industrial sector, with combined intra-EC and international activities (as opposed to strictly national mergers) accounting for roughly 59 percent of these industrial sector mergers. The trend towards "big" mergers and acquisitions in excess of ECU 5 billion ($6.4 billion) of earlier years continued in 1990-91. Most mergers and acquisitions took place in France and Germany, which together accounted for about half of all cases in the industrial sector. Takeovers in the United Kingdom, the leader in merger and acquisition activity in 1989-90, dropped by 51 percent in 1990-91—largely due to the severe recession in that country.[44]

On a sectoral level, the greatest number of mergers and acquisitions in 1990-91 occurred in the chemical industry, with a total of 100 cases. This represented a decline of 32.4 percent from the previous period. Chemicals were followed by the food industry, with 71

[38] "EC Responds to Economic Challenges," *European Community News*, Feb. 3, 1993.

[39] "Economic Outlook: Commission Sees No Recovery Before 1994," *European Report*, No. 1817, Dec. 2, 1992.

[40] "Economy: Intra-Community Investment Up in 1989," *European Report*, No. 1751, (Mar. 11, 1992).

[41] "Europe's Sale of the Century," *The Economist*, July 4, 1992, p. 57.

[42] EC Commission, *XXIst Report on Competition Policy*, published in conjunction with the *XXVth General Report on the Activities of the European Communities—1991*, 1992.

[43] New investment activities reported in EC Commission, *XXIst Report on Competition Policy*, are based on data for fiscal years June to May.

[44] EC Commission, *XXIst Report on Competition Policy*.

Table 1-8
Mergers and acquisitions in the EC, involving the top 1,000 European firms, by industries, fiscal years, 1987-91

Sector	1986/87	1987/88	1988/89	1989/90	1990/91
Manufacturing:					
Food	52	51	76	102	71
Chemicals	71	85	107	148	100
Electrical and electronics	41	36	49	46	48
Machinery	31	38	55	52	25
Computers	2	3	4	2	7
Metal manufacturing	19	40	35	64	47
Vehicles	21	15	14	32	21
Wood, paper and furniture	25	34	61	79	49
Mining	9	12	19	19	13
Textiles and apparel	6	14	20	13	12
Construction	19	33	39	39	47
Other manufacturing	7	22	13	26	15
Distribution	49	57	58	52	38
Banking	35	78	83	113	75
Insurance	28	40	33	46	28
Total	415	558	666	833	596

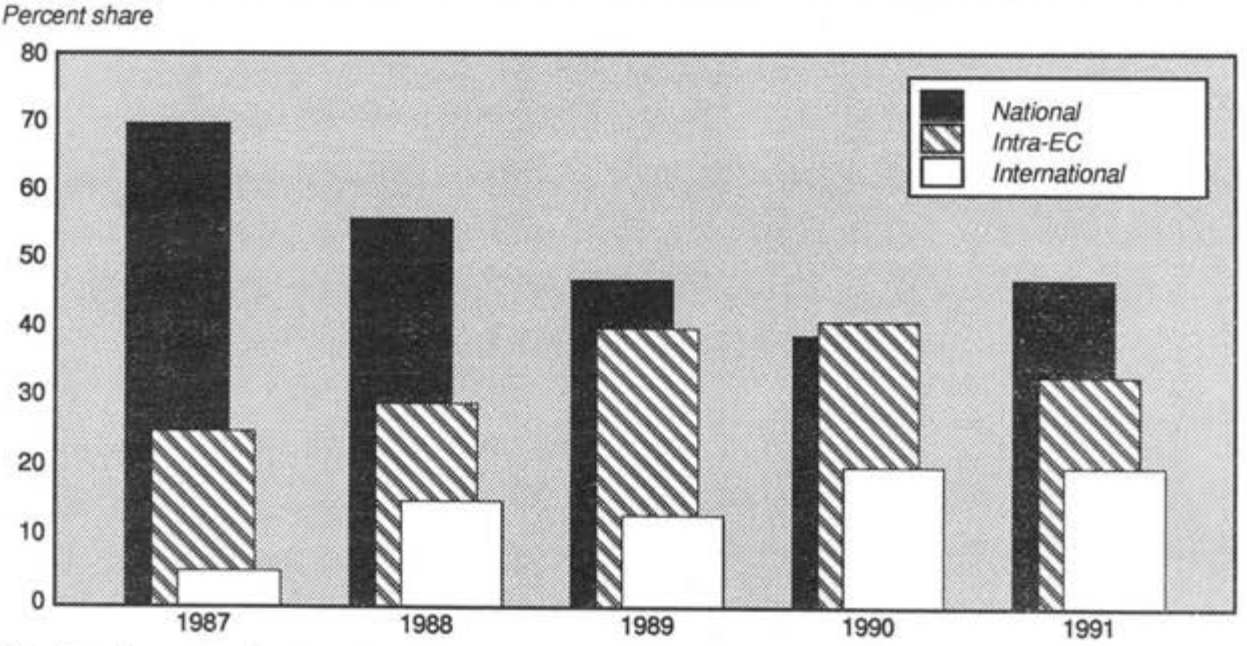
Source: EC Commission, *XXIst Report on Competition Policy.*

cases; the wood, furniture, and paper industry with 49 cases; the electrical and electronic engineering sector with 48 cases; and the metals and construction sectors with 47 cases each.

Despite the drop in the number of mergers and acquisitions involving foreign firms (both within the EC and with third-country companies) these Community and international operations still outnumbered purely national mergers in 1990-91 (figure 1-5). This contrasts sharply with 1987, when national operations were more than twice as numerous as international ones.[45] Overall, national merger and

[45] Ibid, p. 417.

Figure 1-5
Mergers and acquisitions in the EC: National, Intra-EC, and International, fiscal years 1987-91



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

acquisition operations accounted for 47 percent of the total in 1990-91, while Community and international operations accounted for 33 percent and 20 percent, respectively. Among the foreign buyers, the most active countries were the United States (which alone accounted for more than 40 percent of all third-country operations), Switzerland, Sweden, and Japan.

Strengthening of market position, expansion of commercial activities, and synergy effects continued to be the main motives cited by firms active in EC merger and acquisition activities in 1990-91—accounting for 90 percent of all operations where motives were specified. The emphasis on strong market position seems to be further proof that firms are continuing to prepare intensively for greater competition and larger geographical markets within the "borderless" European Community. It should be noted, however, that the overall decline in merger and acquisition activity in 1990-91 could be a return to a more moderate level of activity after a flurry of operations in the previous year prompted by the adoption of the Merger Control Regulation in December 1989. Observers have speculated that a desire by EC and foreign firms to avoid an examination under the new regulation might have resulted in an unusually high level of merger and acquisition activity in 1989-90.[46]

Other observers, however, have suggested that merger and acquisition activity in the EC might increase again in the coming year. Among the reasons cited for another "boom period" are the need to complete the restructuring begun in the late 1980s, and changes in stockmarket rules that will make friendly mergers more expensive, but hostile takeovers less complicated. A study conducted by a U.S. consulting firm, for example, indicated that cross-border acquisitions in Europe during the first 3 months of 1992 were up by a substantial margin.[47]

[46] Ibid.

[47] "Europe's Sale of the Century," p. 57.

CHAPTER 2
REVIEW OF RECENT RESEARCH ON THE 1992 PROGRAM

This chapter reviews recent economic research[1] that focuses on the expected impact of completing the integration of the internal market within the European Community by December 31, 1992.[2] In the first article, Ahearn (1992) examined the consequences of the EC 92 program for U.S. exports, investments, and competitiveness. Next, Arndt and Willett (1991) discuss the implications of the EC 92 program for outside industries and firms and for outside economic welfare generally. Sapir (1992) examined the external dimension of the EC 92 program and contends that the completion of the internal market will impose changes on the external trade policy of the EC. Hanrahan (1992) examined the effects of the EC 92 program on future U.S. and EC production, processing, and trade of food products and agricultural commodities. Finally, Greenaway (1992) examined the potential consequences of EC 92 for non-EC countries. For an in-depth discussion of the issues raised in this review—such as standards harmonization or quantitative restrictions—refer to part II of this report.

Raymond Ahearn

In his article, "U.S. Access to the EC-92 Market: Opportunities, Concerns, and Policy Challenges," Ahearn examined the consequences of the EC 92 market integration program for U.S. exports, investments, and competitiveness. He points out that recently the United States has been experiencing a trade surplus with the EC and that the EC is also the most important destination for U.S. foreign direct investment, accounting for over 50 percent of the total of all U.S. manufacturing investment abroad.

Ahearn notes that the potential benefits for U.S. exporters are based on expected higher economic growth in the EC as a result of market integration and the reduction of trade barriers within the Community. He states that if EC growth does increase, the demand for both European and U.S. goods should increase. However, he notes that internal trade liberalization will also increase trade among EC member states at the expense of more efficient producers in third countries. He points out that most research indicates that the trade creation effects of EC 92 will outweigh the trade diversion effects. Ahearn focuses on two aspects of EC 92 that could affect U.S. exporters: unified standards and more open government procurement.

Ahearn notes that uniform standards across the EC will allow goods to circulate freely within the EC market. He points out that U.S. exporters will benefit from adhering to only one standard as opposed to 12 different national standards. Ahearn also notes that the government procurement market in the EC is estimated at approximately $1 trillion but has been heavily protected in the past. He asserts that a single, more open EC procurement market could provide greater opportunities for U.S. firms. However, he notes, opening this market will require tough national implementation by member states. In addition, potential benefits will be limited by the utilities directive that covers water, energy, transport, and telecommunications.

Ahearn asserts that EC 92 should provide expanded investment opportunities for U.S. firms already established in Europe. In fact, he notes that U.S. multinationals with longstanding ties in Europe may even have advantages over EC firms, because the U.S. firms tend to be more diversified and less dependent on a single, national market. In addition, Ahearn expects U.S. financial firms operating in the EC to benefit from the EC 92 program. He notes that under the "single passport" concept, once a financial firm is established and licensed in one member state, that firm can offer financial services throughout the EC. Ahearn points out that the EC had passed most of the legislation to establish the single banking market by the end of 1992 but that the legislation for investment and insurance services lags far behind schedule.

Ahearn asserts that if the EC 92 program bolsters the competitiveness of European firms, U.S. firms could face increased competition in the world marketplace. In particular, he notes, EC 92 has resulted in a large number of mergers, acquisitions, and joint ventures among European firms. He notes that large firms have advantages in having the resources to support research and development, in absorbing short-term losses in hopes of long-term gain, and in launching relatively high-risk activities. However, he also notes that size alone is no guarantee of competitiveness in world markets. He points to the slowness with which large enterprises can react to changing market conditions.

Ahearn concludes by noting that many aspects of the EC 92 program are more in tune with the pressures of the global marketplace than certain U.S. policies. He points out that by liberalizing areas such as financial services and government procurement, the EC has relied on concepts that limit the ability of national

[1] Full citations for the research reviewed in this section are presented at the end of the chapter.

[2] See earlier reports for a review of the basic tenets of customs union theory and their implications for the EC 92 program. Also, see the first report, 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, for a review of Directorate-General for Economic and Financial Affairs, "The Economics of 1992: An Assessment of the Potential Economic Effects of Completing the Interal Market of the European Community," *European Economy* 35 (March 1988), commonly referred to as the Cecchini Report. This research was the primary report that the EC Commission used to predict the benefits of the EC 92 program.

policymakers to insulate their states from the international economy.

Sven Arndt and Thomas Willett

In their article, "EC 1992 From a North American Perspective," Arndt and Willett discuss the implications of the EC 92 program for non-EC industries and firms and for nonmember economic welfare generally. In particular they examined the direct effects of internal liberalization, the effects of possible changes in the level of protection against nonmembers, and the reactions that these changes may produce.

Arndt and Willett contend that the major sources of gain from the EC 92 program are likely to flow from increased competition and increased economies of scale. To the extent that the forces of EC 92 make European firms more competitive, they point out, these firms will be more competitive within the EC as well as in the global market. They note that such changes in competitiveness will enhance the efficient use of resources in the Community. In addition, outside firms exporting to the EC will benefit from the harmonizing of national standards and streamlining of distribution channels. In fact, they assert that, to the extent U.S. firms are already exporting to several EC countries and U.S. multinationals are already operating across the EC, these firms may be better poised to capture scale economies in production and distribution than many national EC firms.

Arndt and Willett assert that a major uncertainty, from the perspective of nonmembers, is the effects of EC 92 on EC trade policy. They question whether the effective rate of protection will come down and more competitive European firms emerge, or whether the EC 92 program will result in a transfer of inefficiency and lack of competitiveness from the national to the regional level. They contend that the outcome will depend on the transition from the present to the new proposed system. They point out that the transition may cause much dislocation, especially in the labor markets. Consequently, if high unemployment results in politically influential industries, there will be pressure for government polices to cushion these effects.

Arndt and Willett contend that such cushioning will likely be a key determinant of the effects of the EC 92 program on third parties. They assert that if short-run losses in output and employment during the transition outweigh efforts to mitigate their effects, there will be strong pressures for increased trade restrictions during this time. They fear that if European industry fails to become globally competitive, its demands for continued subsidies and protection will be formidable. For example, they note that the EC has given indications that it may flex its muscles on issues like reciprocity in services trade, rules of origin, and local content. They warn that protectionist pressures remain high in the United States and if the EC turns substantially protectionist it will likely push U.S. policies in that direction as well.

Andre Sapir

In his article, "Europe 1992: The External Trade Implications," Sapir examined the external dimension of the EC 92 program. He contends that the completion of the internal market imposes changes on the external trade policy of the EC. In addition, he views the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) negotiations as a crucial factor in shaping these changes.

Sapir asserts that although the EC's external trade policy is not explicitly featured in the EC 92 program, its completion will have far-reaching effects on its ultimate shape. He points out that since the EC 92 program will ensure the free circulation of goods and services within the Community, national external trade policies will have to be harmonized. He focuses on the main barriers on intra-EC trade to be liberalized, including border controls and technical barriers.

Sapir points out that the abolition of border controls will directly affect several areas of commercial policy, including the EC's current import regime. He notes that quantitative restrictions by member states on imports from third countries could become nonbinding given the principle of free circulation of goods within the EC. He notes that currently, under article 115 of the Treaty of Rome, member states can request that the EC Commission suspend the free circulation of imports from third countries. He contends that the elimination of border controls is, in effect, an abrogation of article 115 and necessitates that the member states adopt a common stand on quantitative restrictions. He argues that the most likely outcome will be Communitywide restrictions for the particularly sensitive product categories of textiles and clothing covered by the Multifibre Arrangement, automobiles, footwear, consumer electronics, and bananas. His concern with this outcome is that an equivalent Community quota would not only raise prices in previously open markets, but would also raise the average price in the Community if foreign producers have some degree of market power.

On the issue of technical barriers, Sapir notes that the mutual recognition of standards within the EC will directly affect imports from outside the EC. For example, he points out that technical regulations could still hamper imports from nonmembers. Sapir suggests that the EC could adopt strict health and safety standards, could introduce standards for high-technology products designed to exclude foreign suppliers, or could eliminate the principle of mutual recognition for direct imports that would apply to indirect imports. However, he states that, on balance, suppliers from third countries will likely benefit from the mutual recognition of standards in the EC.

Sapir examines the EC 92 program in the context of the GATT and the Uruguay Round of Multilateral

Trade Negotiations. He notes that the Community is seeking reciprocal concessions from its trading partners in exchange for improved market access after 1992. However, he states that the room for the EC to maneuver is determined by whether or not a particular policy instrument is already covered in the GATT. He points out that in areas that are not covered by the GATT, such as services, the Community is free to seek full reciprocal benefits from its trading partners either bilaterally or multilaterally. He notes financial services as an example. Sapir also points to a possible conflict of interest between internal liberalization in Europe and global liberalization being sought in the Uruguay Round. He notes that some have argued that completion of the internal market in the EC should be accompanied by an increased external barrier so as to prevent foreign firms from reaping most of the benefits.

Charles Hanrahan

In his article, "European Integration: Implications for U.S. Food and Agriculture," Hanrahan examined the effects of the EC 92 program on future U.S. and EC production, processing, and trade of food products and agricultural commodities. He begins by pointing out that EC 92 is not an effort to reform the EC's agricultural policies, nor is it directed at the EC's foreign agricultural trade. However, he notes that EC 92 will have direct and indirect effects on agricultural policy and on trade in food and agricultural products in the Community.

Hanrahan contends that the EC 92 program has direct implications for U.S. processed-food trade and indirect and less predictable effects on U.S. trade in agricultural commodities. He points out that approximately one-third of the directives affect trade barriers for food and beverage trade within the EC. He notes that this EC-wide harmonization should facilitate entry into the EC market for firms in countries that have similar standards. In addition, he points out that U.S. and European analysts have predicted that the integration process will affect agriculture in ways unrelated to the food and agriculture directives. These effects include:

- Reduced prices for agricultural commodities due to reform of the monetary system;
- Increased food consumption attributable to such macroeconomic effects as increased employment, income growth, and income redistribution;
- A possible weakening of the EC farm lobby and consequent loss of support for the Common Agricultural Policy (CAP);
- A restructuring of markets for agricultural inputs, agricultural raw materials, and processed foods; and
- The establishment of EC-wide institutions that may regulate EC agriculture, such as an EC-wide environmental agency.

He notes that, on balance, these developments would tend to lower Community agricultural product prices, reduce EC food and agriculture production, and lower EC agricultural exports. He contends that U.S. producers and exporters would welcome these effects.

On the other hand, Hanrahan asserts that U.S. food producers could face stiffer competition from EC firms in world markets for processed foods. He notes that EC producers will be able to take advantage of scale economies as a result of the larger European market. In addition, he points out that some directives have already caused some problems for U.S. exporters, in particular meat exporters. He notes that if exports from nonmembers do not meet new Community standards and are diverted from the EC market, they may seek new markets such as the United States, putting pressure on some U.S. producers of processed foods.

Hanrahan points out that the effects of the EC 92 program on agricultural commodities is more difficult to gauge. He notes that many analysts think U.S. agricultural trade will expand in third-country markets, not in the EC itself. However, he points out that most analysts think the trade effects will be relatively small. He states that if EC agricultural prices fall in conjunction with some of the macroeconomic effects predicted for completion of the EC 92 program, EC food consumption may rise and the EC's net exports of agricultural products should fall. He contends that, as a result, U.S. producers could capture some of this trade. However, he notes that if prices fall for commodities currently exported to the EC by U.S. producers, then EC consumers would switch away from the U.S. products in favor of the EC product.

David Greenaway

In his article, "An Overview of Concerns of Non-Member Countries about the Single European Act and Its Implementation," Greenaway examined the potential consequences of EC 92 for non-EC countries. He groups these consequences into two broad categories: opportunities and threats. He contends that the opportunities derive from two main sources. First, he points to the large, integrated market in the EC that offers potential scale economies to producers both inside and outside the Community. Second, he expects the EC 92 program to result in income growth in the Community and therefore to benefit producers who export income-elastic products to the EC.[3] He asserts that the threats from EC 92 stem from the potential for discriminatory application of its legislation.

In this paper Greenaway focuses more on the threats than on the opportunities that arise out of implementation of the EC 92 program. Concerning merchandise trade, he sees the potential for restrictions

[3] Income elasticity refers to the relationship between changes in income and changes in the quantity demanded for products. An income-elastic product is one whose purchases increase more rapidly than income. For example, if the income elasticity for stereos is 1.5, then the implication is that a 1-percent rise in income will lead to a 1.5-percent increase in the purchase of stereos.

on market access for nonmembers through the manner in which national restraints are eliminated and standards are harmonized. He points out that there is pressure to replace national restraints—such as quantitative restrictions on automobiles, footwear, and other goods—with Euro-restraints because some argue that third-country producers should not benefit from EC 92 as much as member firms do, and transnational arrangements are needed so that member firms can more easily adjust to the new market conditions. He asserts that for the following reasons it is the standards issue that nonmember firms fear most. First, since nearly all non-EC firms are excluded from the standardsmaking process, harmonized standards could be manipulated to exclude nonmember firms. Second, although mutual recognition applies to most sectors in the member states, it does not apply to goods of non-EC origin. Consequently, more arduous certification procedures could pertain to non-EC producers. Third, harmonization could be made at a higher level rather than a lower one with more stringent requirements than firms are used to. Finally, since certain sectors are excluded from mutual recognition requirements, these rules can be used to restrict movement within the EC even though access may have been granted in a single member's market.

On the issue of services, Greenaway focuses on financial services, government procurement, and transportation. He notes that the creation of a common financial market in the EC is essential for the success of EC 92. Consequently, he notes that a large number of directives pertain to this sector, and their primary effect on nonmember financial firms is their reciprocity provisions. He points out that the EC Commission is moving away from mirror image reciprocity and towards equal treatment and fair access for member institutions in third countries. However, he contends that there is still the potential for aggressive use of the reciprocity provisions. In the area of government procurement, he points out that local content and reciprocity provisions are the main issues. A local-content requirement of 50 percent for non-EC firms will likely result in greater inward investment in the EC, and the EC Commission may demand equal treatment or equal access for EC firms in third countries, contends Greenaway. He notes that the operation of nonmember firms in the transport sector is both precarious and complicated and is likely to focus on the issues of reciprocity and equivalent access, especially for airline services. In particular, he notes that when the single market is completed, national borders will no longer affect commerce within the EC. Consequently, intra-EC carriage by nonmember firms (formerly allowed by bilateral agreements with individual EC Governments) would, in fact, become cabotage.[4] He points out that at present the United States has not given cabotage rights to the EC for either air or ocean transport. He notes that this resulting asymmetry would not go unnoticed by the EC Commission, and it is likely that the EC would demand equivalent treatment for its carriage firms.

Greenaway sees the commercial policy of the Community as the crucial question for nonmember countries. He contends that there are two broad possible scenarios for the EC: a more protectionist (fortress Europe) or a more liberal (free Europe) outcome. The instruments that he believes could lead to a more protectionist Europe are Communitywide restraints in lieu of national restraints, discriminatory use of standards, aggressive reciprocity provisions, and more vigorous emphasis on rules-of-origin and local-content requirements. Greenaway contends that the probability of the use of these instruments in a more protectionist fashion will depend on several factors, including—

- The speed with which gains are realized;
- The distribution of those gains;
- The speed at which adjustment occurs;
- The distribution of adjustment costs;
- The strength of the protectionist lobbies;
- The trade policies of other governments; and
- The outcome of the Uruguay Round of Multilateral Trade Negotiations.

Greenaway concludes that if the full benefits of the EC 92 program are to be realized, the program should be implemented with an open external trade policy, which is critical to maintaining competitive pressures on European firms.

[4] Cabotage is a term used in the transport industry to indicate the carriage of products or people between two points within a country—such as between Miami and New York in the United States.

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CHAPTER 3
IMPLEMENTATION

General Status of Implementation

As the EC Commission, Parliament, and Council complete more and more of their work on single-market measures, implementation of those measures by EC member states assumes greater importance. Some internal-market measures are recommendations and decisions, which take effect immediately upon their issue in all member states. The vast majority of measures, however, are directives, which take effect only when they are carried over, or "transposed," into member-state law.[1]

The implementation process can be complicated.[2] 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.[3] 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.[4] In some cases a member state may consider the measure it has passed to be a proper way to implement, but the EC Commission disagrees. This disagreement is most acute in the case of administrative circulars, which often lack legally binding effect, thus leading the EC Commission to find them inadequate as implementation measures.[5]

Once the basic law or decree is issued, it must often be supplemented by administrative regulations that aid in enforcing the law. Moreover, government officials at the central, regional, and local levels must carry out the laws, decrees, and regulations properly. The EC Commission is becoming concerned about the stage beyond implementation, which can be called application, in which member states actually apply the implementing laws they have passed.[6] Some member states may formally implement but not enforce measures they find inconvenient, although under the Treaty of Rome member states who have not implemented measures are still bound by the obligations imposed on them by directives and are therefore open to lawsuits if they flout the rules.[7] Application must be uniform across the EC.[8]

Failure at any point in that chain of implementation to carry out the letter and spirit of the EC's directives can call into question the effectiveness of the 1992 program. One industry source suggested that the single market will not be totally complete until 2003. According to another source, it will take two generations to truly implement the single market, because so many complex problems and disputes will need working out.[9] The EC Commission uses such instruments as infringement proceedings under article 169 of the Treaty of Rome and information dissemination to encourage implementation. The European Parliament has warned that failure of member states to ensure the completion of the integration program by the end of 1992 "will have serious repercussions on the Community's future progress towards a European Union."[10]

By January 1, 1993, 233 internal market measures issued by the EC Council had entered into force, out of the 282 contemplated by the White Paper program. Of the 233, 194 were of a type that required implementation, and 79 had been implemented by all member states. The EC Commission considers that the resulting implementation rate has reached 75 percent, because the EC Commission's implementation rate figure takes into account the many directives that have been implemented by some member states but not all.[11]

Some directives contain transitional periods to ease the burden of implementing the new requirements. While they do not relieve member states of the obligation to implement EC directives via passage of necessary laws, transitional periods for certain standards directives permit existing member-state rules and new EC requirements to exist side by side until such time as the European standards bodies CEN and

[1] A sixth followup report will provide more complete information on the status of efforts by member states with respect to implementation. This sixth and final report is expected to be completed in the fall of 1993.

[2] See, for example, case studies on the implementation of selected directives in U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: Fourth Followup Report* (investigation 332-267), USITC publication 2501, Apr. 1992, pp. 3-8, 5-23, and 6-20.

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

[4] 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).

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

[6] Member states "must not only adopt the necessary transposition measures but, above all, ensure that the Community rules are complied with." EC Commission, *Report of the Commission to the Council and the European*

6—Continued

Parliament on the Implementation of Measures for Completing the Internal Market, SEC (91) 2491, Dec. 19, 1991, p. 1.

[7] U.S. Department of State, message reference No. 16149, prepared by U.S. Mission to the EC, Brussels, Dec. 28, 1992; Judgment of the European Court of Justice, June 22, 1988, case 103/88, *Fratelli Constanzo*.

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

[9] U.S. Department of State, message reference No. 15494, prepared by U.S. Mission to the EC, Brussels, Dec. 10, 1992.

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

[11] EC Commission official, DG III, interview by USITC staff, Brussels, Jan. 12, 1993; EC Commission, DG III A2, "Internal Market Brief," Jan. 6, 1993.

CENELEC[12] develop supporting standards. These standards will facilitate compliance by manufacturers with directives. There is no guarantee, however, that standards will actually be forthcoming by the time the transition period ends and EC-level rules come fully into force.[13] The standards bodies have a substantial backlog to complete all the standards necessary. Out of about a total of 1,000 standards required, approximately 800 were still not complete by early 1993, with top priority going to the new approach directives.[14] Business sources indicate that several member states also have been slow to name notified bodies who can conduct conformity assessments.[15]

Other directives give rise to member state obligations even before they are effective. For example, the directive on harmonization of requirements for marketing and control of explosives for civil use will not enter into force by 1993, but the EC Council agreed on a declaration establishing a cooperation procedure among member states to exchange the necessary information to control shipments of explosives after the removal of border controls on January 1, 1993.[16]

As shown in figure 3-1, a number of directives will be implemented on a delayed schedule in certain member states because those states have obtained derogations permitting such delay.

The Role of the EC Commission

Under the Treaty of Rome, the EC Commission is assigned the task of monitoring the progress of implementation. A declaration to the effect that the EC continues to view implementation as one of its chief concerns was appended to the Treaty on European Union signed at Maastricht on February 7, 1992.[17] Despite lags in some areas, the EC Commission believes that enough measures are in place to allow most aspects of the internal market to begin functioning in 1993. EC customs experts are optimistic that the program will proceed more or less according to plan at first; serious problems may take some time to manifest themselves.[18]

Martin Bangemann, until recently Vice President of the EC Commission with special responsibility for the internal market, indicated that the member states have given a very sharp boost to the transposition rate of Community directives.[19] He stated that insuring effective implementation will remain a key job for the EC Commission in the future. He added, however, that such control could only be exercised if the EC Commission is given the necessary budget.[20]

The EC Commission carries out its monitoring role in a number of ways. It holds bilateral discussions with member states that have a poor implementation record, and holds regular meetings with the senior internal market coordinators for the member states. The latter meetings are chaired by the Deputy Director General of DG III. The EC Commission publishes transposition tables that list member states' implementation rates, thereby putting pressure on those that have made poor progress. There is also an exchange of officials program that allows officials from one member state to go and work in another administration to foster mutual confidence between member states. The EC Commission has found very useful its increasing contacts with national authorities and measures to increase awareness of Community law. A high level group chaired by ex-Commissioner Sutherland has published a report that highlights problems concerning the internal market including lack of transposition.[21] In December 1992, the EC Commission responded to this report, indicating the intention to carry out many of its recommendations in the near future.[22]

Under article 169 of the Treaty of Rome, the EC Commission can bring suit against a member state in the European Court of Justice for failure to implement. This course of action is rarely undertaken, however, because the EC Commission understands that such failure to transpose is in general not due to a lack of political will, but rather due to a lack of administrative resources and complex legislative processes in many member states. The EC Commission will begin proceedings against a member state if it has not transposed a directive by the due date. There are so many stages before an actual case is filed at the Court of Justice that normally a member state has come into compliance before the case reaches the Court.[23]

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[12] The acronyms stand for Comité Européene Des Normes and Comité Européene des Normes Electrotechniques.

[13] U.S. Department of State, message reference No. 15494, prepared by U.S. Mission to the EC, Brussels, Dec. 10, 1992.

[14] EC Commission official, DG III, interview by USITC staff, Brussels, Jan. 12, 1993.

[15] U.S. Department of State, message reference No. 15494, prepared by U.S. Mission to the EC, Brussels, Dec. 10, 1992.

[16] U.S. Department of State, message reference No. 16026, prepared by U.S. Mission to the EC, Brussels, Dec. 22, 1992.

[17] *Ninth Annual Report on Commission Monitoring of the Application of Community Law—1991*, COM (92) 136, May 12, 1992, pp. I-II (*Ninth Report*).

[18] U.S. Department of State, message reference No. 16149, prepared by U.S. Mission to the EC, Brussels, Dec. 28, 1992.

[19] EC Commission database Info92, Aug. 25, 1992.

[20] U.S. Department of State, message reference No. 15851, prepared by U.S. Mission to the EC, Brussels, Dec. 17, 1992.

[21] *The Internal Market After 1992, Meeting the Challenge*, report to the EEC Commission by the High Level Group on the Operation of Internal Market, Oct. 1992.

[22] EC Commission official, DG III, interview by USITC staff, Brussels, Jan. 12, 1993; EC Commission, *The Operation of the Community's Internal Market After 1992, Follow-Up to the Sutherland Report*, communication to the Council and to Parliament, SEC (92) 2277, Dec. 4, 1992.

[23] EC Commission official, DG III, interview by USITC staff, Brussels, Jan. 12, 1993.

Figure 3-1
Major directives with delayed implementation

Derogation until	Directive	Member states
Jan. 1, 1994	Harmonized requirements on commercial agents	Ireland United Kingdom
June 1, 1994	1989 value added tax (VAT) directive	Portugal
Jan. 1, 1995	Cabotage in inland waterways[1]	France Germany
Jan. 1, 1996	Public procurement: utilities directive	Spain
Jan. 1, 1996	Banking: solvency ratios for mortgages	Germany Denmark Greece
Jan. 1, 1996	Motor vehicle insurance	Greece Ireland Spain Portugal
Jan. 1, 1996	Life insurance	Spain
mid-1996	Common taxation of parent companies and subsidiaries	Germany
mid-1996	Banks allowed to become members of stock exchanges	Belgium France Ireland
Jan. 1, 1997	Nonlife insurance	Spain
Jan. 1, 1998	Public procurement: utilities directive	Greece Portugal
Jan. 1, 1999	Nonlife insurance	Greece Portugal
Jan. 1, 1999	Banks allowed to become members of stock exchanges	Portugal Greece Spain
Dec. 31, 2000	Taxation of corporations and subsidies	Portugal
Dec. 31, 2001	Own funds directive applies to mortgage credit institutions	Denmark

[1] Ports in certain German Länder are exempt from even that deadline.

Source: U.S. Department of State, message reference No. 15494, prepared by U.S. Embassy Brussels, Dec. 10, 1992.

Implementation in Selected Sectors

Each year the EC Commission reports on the progress of the White Paper program. The latest report discusses implementation in a number of sectors.[24] For example, according to the EC Commission, the effort to remove frontier controls has made "clear progress," but the member states still need to put into place national administrative measures to insure that controls are removed. The first stage of the internal energy market program, consisting of directives on the transit of electricity and gas and the transparency of prices for consumers, has been transposed by almost all member states. The planned EC measures on veterinary controls are almost all in place, but transposition has been considerably delayed in several member states,

[24] *Seventh 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 (92) 383, Brussels, Sept. 2, 1992 (*Seventh Report*).

necessitating the imposition of transitional measures to allow gradual implementation.[25]

The EC Commission's figures show a rate of implementation of more than 71 percent for measures on the removal of technical barriers, with the most progress occurring in the areas of public procurement and financial services, and the longest delays occurring in the areas of new approach standards, securities, the right of establishment, and the supply of audiovisual services. The EC Commission characterizes transposition of directives on motor vehicles, such as those concerning emission standards, as "proceeding smoothly." In the area of foodstuffs, Denmark, Greece, and Belgium have adopted the necessary transposition measures, whereas Germany is the member state against which the most infringement proceedings have been brought. Transposition of pharmaceutical measures has generally been satisfactory, but delays have occurred, principally in Belgium, France, and the Netherlands. Implementation of measures on the free movement of workers has been proceeding at a rate unacceptable to the EC Commission with respect to the right of residence directives, but has posed fewer problems as to the harmonization measures.[26]

As to public procurement, transposition has not been without delays. As of the date of the EC Commission's report, no member state had implemented the directive applicable to the water, energy, transport, and telecommunications sectors. Greece, Spain, and Luxembourg had not transposed the public supply and public works directives; the latter had also not been transposed in Portugal. Greece, Germany, and Luxembourg had not implemented the directive on appeals procedures. The EC Commission emphasizes that, in public procurement as in other sectors, implementation requires more than transposition of a directive into national law; the EC Commission, public buyers, and tendering firms must cooperate to insure that the law is properly applied.[27]

Businessmen reportedly are concerned over the apparent failure of a number of national governments to transpose important VAT regulations and procedures. Many large firms are reportedly behind in installing software and procedures to deal with the new VAT system. Some smaller businesses reportedly plan to avoid cross-border sales in the short term until the situation is clarified.[28]

The White Paper program is only part of a larger whole, the body of EC legislation. The EC Commission publishes information on implementation of EC law as a whole on an annual basis. The *Ninth Annual Report on Commission Monitoring of the Application of Community Law—1991*,[29] listed EC progress in implementing directives in a variety of areas. The EC Commission expressed gratification as to measures applicable to the customs union (100 percent of all applicable directives had been implemented); financial institutions, direct taxation, and company law (83.8 percent, with backlogs in Greece, Italy, and Luxembourg); indirect taxation (99 percent); consumers (93 percent); transport (93 percent); environment (85 percent, with delays in Italy and Greece giving concern); energy (91 percent); and statistics (98.5 percent, with Italy experiencing a slight delay). The EC Commission expressed concern about the implementation of measures on telecommunications (62.6 percent implemented), and public procurement (85 percent, with Italy partly to blame). According to the EC Commission, the EC had achieved a rate of transposition of 91.6 percent with respect to directives applicable to competition, with delays subsisting in Greece, Ireland, and Italy. The implementation rate for employment and social policy measures was 86 percent, and for agricultural measures 93 percent.[30]

Implementation in Each Member State

Success at implementation varies among member states, and many countries have encountered significant obstacles to implementation, often due to unique local conditions. At the beginning of 1993, Denmark and France led in implementation; Italy, for a long time the laggard in this respect, had managed to clear much of its backlog.[31] Some member states, such as France and the United Kingdom, have been discussed at length in previous reports; they are treated only briefly herein. Other member states, such as Belgium, are treated in more detail because new information has become available. To indicate where member states are having difficulty with implementation, the following lists for each member state the sectors in which the EC Commission has opened infringement proceedings for failure to implement.[32]

Belgium

According to the EC Commission, by December 31, 1992, Belgium had implemented 68.6 percent of all applicable White Paper directives.[33] Belgium has experienced great difficulty in transposing EC directives because of its preoccupation with the restructuring of its Government, involving the delegation of significant powers of the Central Government to the regional and community levels. Certain EC measures, such as those concerning public procurement, must be transposed at the federal level,

[25] Ibid., pp. 2, 11, 15-16.
[26] Ibid., pp. 22, 25, 26, 28-29.
[27] Ibid., pp. 27-28.
[28] U.S. Department of State, message reference No. 16149, prepared by U.S. Mission to the EC, Brussels, Dec. 28, 1992.
[29] COM (92) 136, May 12, 1992.
[30] *Ninth Report*, pp. 5-73.
[31] EC Commission database Info92, Aug. 25, 1992.
[32] For a graphical treatment of the status of implementation in each member state, see appendix C.
[33] EC Commission, DG III A2, "Internal Market Brief," Jan. 6, 1993.

but must be applied at the regional and local levels. Other EC measures, such as those relating to sanitation, are transposed directly at the regional level.[34] The regions of Flanders, Wallonia, and Brussels have significant autonomy in implementation, and some regions have been better at it than others. For example, the EC Commission has noted that the Brussels-Capital Region has experienced significant delays in some areas, but has made up for much of that lost time.[35]

Certain EC measures fall exclusively under the jurisdiction of the "communities," of which there are three, structured according to the three languages in Belgium—Flemish, French, and German. These communities have jurisdiction over cultural issues, and transpose EC directives in this area, such as the broadcasting directive. As with the regions, one community might implement a directive and another fail to do so.[36]

Even at the federal level, implementation can be complicated and time-consuming, requiring consultations with various commissions, approval by the Belgian Council of Ministers, advice from the Council of State, and approval by the Parliament. Each region also has its own legislative system.[37]

Another reason cited for Belgium's difficulty in transposing directives is the fact that, unlike some other member states, Belgium does not transpose directives virtually word for word into national law. Rather, the Government seeks to harmonize EC law with preexisting Belgian law in many areas affected by EC measures. Belgium finds it easier to transpose EC measures when there is no local legislation already in place.[38]

As of August 15, 1992, the EC Commission had commenced infringement proceedings against Belgium for failure to implement measures on veterinary and plant health controls (21 measures), new approach standards (3), foodstuffs (2), pharmaceuticals (6), chemicals (5), construction products (1), lawn mowers (2), public procurement (1), labor and professions (6), banking (2), transport (1), broadcasting (1), company law (2), and motor vehicles (2).[39]

Denmark

By the EC Commission's reckoning, Denmark has retained first rank among member states in implementation, having implemented 88.2 percent of all applicable White Paper directives as of December 31, 1992.[40]

One aspect of implementation particular to Denmark is its concern for its fellow Nordic country Norway, which is interested in EC membership and which must apply EC directives under the European Economic Area Agreement. Denmark has sought postponed implementation and repeal of certain provisions of an EC directive on hydrocarbon licensing in part because Denmark has its own problems with the directive, but also because Norway has concerns. The timing of implementation is particularly difficult in this case because it is scheduled for the spring of 1993, during the Danish presidency of the EC Council. The press has quoted unofficial sources in the Norwegian Government as saying that they fear the hydrocarbon directive may cost Norway EC membership.[41]

As of August 15, 1992, the EC Commission had commenced infringement proceedings against Denmark for failure to implement measures on veterinary and plant health controls (9 measures), new approach standards (4), broadcasting (1), chemicals (1), and labor and professions (1).[42]

France[43]

As of December 31, 1992, France had, according to the EC Commission, implemented 80.4 percent of all applicable White Paper directives. This rate put France in second place behind Denmark.[44] The EC Commission in the past has faulted France for transposing directives by administrative circular because in the EC Commission's view such measures lack the clarity and certainty required by EC law. The EC Commission has noted that France is replacing most of the offending circulars with decrees or orders, but that not all circulars have yet been so replaced.[45]

The French Government often implements by decree rather than by legislation, which can be a cumbersome process in France. However, a constitutional amendment in July 1992 may streamline the process. The amendment requires that the French Parliament be informed as soon as the EC Commission proposes a directive that may require French legislation. This allows Parliament to advise the EC Commission on the proposal before it is actually passed by the EC Council.[46]

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[34] Belgian Government official, interview by USITC staff, Brussels, Jan. 13, 1993 (Belgian Government interview).

[35] *Ninth Report*, p. 210.

[36] Ibid.

[37] Ibid.

[38] Ibid.

[39] *Seventh Report*, Annex III.

[40] EC Commission, DG III A2, "Internal Market Brief," Jan. 6, 1993.

[41] U.S. Department of State, message reference No. 07928, prepared by U.S. Embassy, Copenhagen, Dec. 2, 1992.

[42] *Seventh Report*, Annex III.

[43] Implementation in France was extensively discussed in USITC, *The Effects of Greater Economic Integration Within the European Community on the United States: Third Followup Report* (investigation No. 332-267), USITC publication 2368, Mar. 1991, p. 1-11.

[44] EC Commission, DG III A2, "Internal Market Brief," Jan. 6, 1993.

[45] *Ninth Report*, p. 221.

[46] Officials of SGCI (Secrétariat Général du Comité Interministériel pour les Questions de Coopération Economique Européene), interview by USITC staff, Paris, Jan. 8, 1993 (SGCI interview); Loi constitutionelle 92-554 of June 25, 1992, *Journal Officiel de la République Française*, June 26, 1992, p. 8406.

As of August 15, 1992, the EC Commission had commenced infringement proceedings against France for failure to implement measures on veterinary and plant health controls (7 measures), foodstuffs (2), pharmaceuticals (6), mislabeling (1), lawn mower noise (1), transportation (2), broadcasting (1), motor vehicles (1), chemicals (1), and labor and professions (1).[47]

Germany[48]

According to the EC Commission, by the end of 1992, Germany had implemented 72.9 percent of all applicable White Paper directives.[49] The unification of Germany continues to pose difficulties for German implementation. Since October 3, 1990, the five new Länder of the Federal Republic of Germany and the reunified city of Berlin have formed part of the EC, but their integration into the EC is a gradual process involving transitional measures aimed at economic, legal, and social adaptation. The number of derogations or transitional adjustments is being kept to a minimum. Most of these derogations thus had a limited period of validity, up to December 31, 1992.[50] However, others persist, so that, for example, EC water quality standards will not be met in the eastern part of Germany before the end of 1995.[51]

Although Germany has a federal system in which the Länder or regions have significant autonomy, Belgium's problem of uneven implementation among the regions has not often arisen in Germany. However, the directive on general medical practice reportedly has not been implemented by four of the five Eastern Länder as well as by the Saarland.[52]

As of August 15, 1992, the EC Commission had commenced infringement proceedings against Germany for failure to implement measures on veterinary and plant health controls (7 measures), foodstuffs (5), chemicals (4), procurement (3), labor and professions (1), banking (1), securities (1), broadcasting (1), company law (1), and pharmaceuticals (1).[53]

Greece[54]

The EC Commission's figures show that, as of December 31, 1992, Greece had implemented 74.1 percent of all applicable White Paper directives.[55] Although transposition is proceeding faster than before, Greece has continued to experience difficulty in notifying the EC of its actions on a timely basis.[56]

As of August 15, 1992, the EC Commission had commenced infringement proceedings against Greece for failure to implement measures on veterinary and plant health controls (8 measures), new approach standards (3), motor vehicles (3), pharmaceuticals (1), construction (1), chemicals (1), procurement (1), labor and professions (2), banking (3), insurance (1), securities (1), new technologies (1), company law (2), and laboratory practices (1). Greece is the only member state that the EC Commission has not proceeded against for failure to implement the broadcasting directive.[57]

Italy[58]

The EC Commission's figures show that by the end of 1992, Italy had achieved an implementation rate of 69 percent with respect to applicable White Paper directives.[59] According to the EC Commission, Italy has in the past shown the worst performance in the EC at transposing directives into national law. However, Italy's implementation rate has improved, in large part accounted for by the notification to the EC of the implementation of around 100 directives at the end of February 1992, under Italy's legislative system that groups and passes directives in yearly batches.[60]

On December 22, 1992, Italy enacted a mini-omnibus bill which encompasses 33 directives. The bill delegates immediate authority to the appropriate parliamentary committees and regulatory bodies for the drafting of implementing legislation or regulations within 20 days. Another 43 directives were slated for full implementation into the Italian legal code in early 1993. For most of 1992, after a flurry of activity in January and February, Italy had been preoccupied with a succession of internal crises and had made little progress towards the goal of implementing all directives by the start 1993. The passage of the mini-omnibus bill was an attempt to circumvent the cumbersome legislative/consultative process and move directly from parliamentary recognition of the 33 directives to implementation without further review by Parliament. The bill includes directives covering such important and complex areas as software protection, telecommunications, regulation of credit institutions,

[47] *Seventh Report*, Annex III.

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

[49] EC Commission, DG III A2, "Internal Market Brief," Jan. 6, 1993.

[50] EC Commission database Info92, Sept. 15, 1992.

[51] *Ninth Report*, p. 216. The applicable directive is 90/656/EEC.

[52] *Seventh Report*, p. 29.

[53] *Seventh Report*, Annex III.

[54] Implementation in Greece was extensively discussed in USITC, *The Effects of Greater Economic Integration Within the European Community on the United States: First Follow-Up Report* (investigation No. 332-267), USITC publication 2268, Mar. 1990, p. 1-24.

[55] EC Commission, DG III A2, "Internal Market Brief," Jan. 6, 1993.

[56] *Ninth Report*, pp. 216-217.

[57] *Seventh Report*, Annex III.

[58] Implementation in Italy was extensively discussed in USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, p. 1-20.

[59] EC Commission, DG III A2, "Internal Market Brief," Jan. 6, 1993.

[60] *Ninth Report*, p. III.

wholesale distribution of pharmaceuticals, labeling of pharmaceuticals, and job safety standards.[61]

As of August 15, 1992, the EC Commission had commenced infringement proceedings against Italy for failure to implement measures on veterinary and plant health controls (17 measures), controls on individuals (3), new approach standards (3), foodstuffs (5), construction (1), chemicals (2), labor and professions (1), new technologies (2), company law (2), motor vehicles (1), transportation (1), technological progress (1), and laboratory practices (1).[62]

Portugal

The EC Commission's December 31, 1992, tally shows an implementation rate for Portugal of 77 percent of all applicable White Paper directives.[63] Portugal has had difficulty in implementing EC legislation because, according to the EC Commission, Portugal suffers from an absence of adequate infrastructure that hampers effective application of EC law.[64] However, Portugal's end-of-1992 implementation rate for White Paper directives put that member state among the best implementers in the EC.

As of August 15, 1992, the EC Commission had commenced infringement proceedings against Portugal for failure to implement measures on veterinary and plant health controls (11 measures), new approach standards (5), foodstuffs (4), pharmaceuticals (1), construction (1), procurement (1), labor and professions (1), broadcasting (1), company law (1), motor vehicles (2), and chemicals (1).[65]

Spain

According to the EC Commission, Spain entered 1993 with an implementation rate of 74.9 percent of applicable White Paper directives.[66] Perhaps the most significant recent transposition in Spain concerns the Second Banking Directive. In late 1992, the Ministry of Finance prepared a royal decree that implemented Spain's new financial entities law[67] and the Second Banking Directive. Although the decree was in its final version in November 1992, it would not become official until published in the Spanish Government's official bulletin, and was scheduled to be fully effective in February 1993.[68]

As of August 15, 1992, the EC Commission had commenced infringement proceedings against Spain for failure to implement measures on veterinary and plant health controls (20 measures), new approach standards (3), motor vehicles (2), foodstuffs (3), pharmaceuticals (5), construction (1), chemicals (6), procurement (2), transportation (2), banking (3), securities (2), company law (1), and broadcasting (1).[69]

Other member states

According to the EC Commission, by December 31, 1992, the United Kingdom had implemented 73.8 percent of all applicable White Paper directives.[70] This rate places it in the lower half of member states for implementation, which is a change from previous years when the United Kingdom was among the most successful implementers.[71] As of August 15, 1992, the EC Commission had commenced infringement proceedings against the United Kingdom for failure to implement measures on veterinary and plant health controls (14 measures), new approach standards (3), foodstuffs (4), pharmaceuticals (1), chemicals (5), labor and professions (1), banking (1), securities (1), broadcasting (1), and company law (1).[72]

EC Commission figures show that, by December 31, 1992, Ireland had implemented 73.8 percent of all applicable White Paper directives.[73] As of August 15, 1992, the EC Commission had commenced infringement proceedings against Ireland for failure to implement measures on veterinary and plant health controls (20 measures), new approach standards (4), foodstuffs (2), pharmaceuticals (2), construction (1), chemicals (5), cosmetics (1), labor and professions (1), securities (2), broadcasting (1), company law (2), and transportation (2).[74]

By December 31, 1992, the Netherlands had implemented 75.5 percent of all applicable White Paper directives, among the top half of member states for implementation.[75] As of August 15, 1992, the EC Commission had commenced infringement proceedings against the Netherlands for failure to implement measures on veterinary and plant health controls (13 measures), new approach standards (2), foodstuffs (1), pharmaceuticals (5), labor and professions (2), banking (2), transportation (1), broadcasting (1), company law (1), and motor vehicles (2).[76]

Luxembourg entered 1993 with an implementation rate of 70.8 percent for applicable White Paper directives.[77] According to the EC Commission, where

[61] U.S. Department of State, message reference No. 23139, prepared by U.S. Embassy, Rome, Dec. 31, 1992.
[62] *Seventh Report*, Annex III.
[63] Ibid.
[64] *Ninth Report*, pp. III, 230.
[65] *Seventh Report*, Annex III.
[66] EC Commission, DG III A2, "Internal Market Brief," Jan. 6, 1993.
[67] Law No. 13/1992 of June 1, 1992.
[68] U.S. Department of State, message reference No. 15166, prepared by U.S. Embassy, Madrid, Dec. 4, 1992.
[69] *Seventh Report*, Annex III.
[70] EC Commission, DG III A2, "Internal Market Brief," Jan. 6, 1993.
[71] See, for example, USITC, *EC Integration: Fourth Followup*, USITC publication 2501, p. 3-8.
[72] *Seventh Report*, Annex III.
[73] EC Commission, DG III A2, "Internal Market Brief," Jan. 6, 1993.
[74] *Seventh Report*, Annex III.
[75] EC Commission, DG III A2, "Internal Market Brief," Jan. 6, 1993.
[76] *Seventh Report*, Annex III.
[77] EC Commission, DG III A2, "Internal Market Brief," Jan. 6, 1993.

possible, Luxembourg transposes directives literally. As the smallest state in the EC, Luxembourg reportedly encounters difficulties in implementation primarily because of its limited administrative infrastructure.[78] As of August 15, 1992, the EC Commission had commenced infringement proceedings against Luxembourg for failure to implement measures on veterinary and plant health controls (19 measures), new approach standards (1), foodstuffs (1), pharmaceuticals (1), construction (1), chemicals (5), procurement (2), labor and professions (1), banking (3), securities (1), transportation (2), broadcasting (1), company law (2), motor vehicles (2), and technological progress (1).[79]

[78] *Ninth Report*, p. 226.
[79] *Seventh Report*, Annex III.

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

CHAPTER 4
STANDARDS, TESTING AND CERTIFICATION

The EC is translating hundreds of member-state regulations intended to protect human, animal, and plant health, and the environment into Communitywide standards. It also seeks to eliminate the need for separate national tests and inspections by setting up a one-stop product approval system. By yearend 1992 the EC had achieved many of the objectives set out in the 1985 White Paper, although progress in sectors such as agriculture lagged. Ambitions and activity in areas such as the environment have grown over the course of the single market program, and it seems likely that work on them will continue in the years ahead. While welcoming the potential cost and time savings the movement to a single set of standards and conformity-assessment procedures offer, U.S. business wants to ensure that the new requirements do not put them at a time or cost disadvantage vis-a-vis EC companies in the lucrative Community market. A number of steps aimed at improving access have been taken over the past several years, considerably easing U.S. concern.

Developments During 1992

Several overarching issues were prominent in the EC's standards agenda in 1992. A proposed policy on intellectual property incorporated in standards emerged as a major source of contention. U.S. companies warned that an excessively interventionist policy on licensing such intellectual property would deter their participation in European standards work and would limit their willingness to provide leading edge technology to the European market. The EC proposed expanding its so-called information procedure on national standards-development work to include new kinds of policy instruments such as eco-taxes. The EC action came after several member states proposed restrictive national rules that threatened to disrupt intra-EC trade. In the testing and certification area, the EC and the United States held the first round of discussions on possible agreements on mutual acceptance of test reports and product approvals. The positive tenor of the exchange fueled hopes that these agreements would prove a viable option for helping U.S. firms fully exploit the opportunities presented in the post-1992 market. Proposed regulations on packaging waste, eco-labeling and auditing, and a carbon tax stirred controversy in the environmental regulation sphere. On the industry front the EC finished most of its work in the pharmaceuticals area and put in place a single type-approval system for cars. It also acted on numerous matters in the telecommunications and information technology spheres.

Standards Development

Standards and Intellectual Property

The prime U.S. interest in the standards development area has been to ensure that U.S. firms have timely access to information about standards being drafted and reasonable opportunities for input in that process. In 1992 U.S. concern about access to the standards-drafting process was reignited as one of the European standards institutes—the European Telecommunications Standards Institute (ETSI)—pressed for adoption of a policy on intellectual property seen as prejudicial to U.S. interests in the telecommunications and computer fields. The policy also raised a number of issues concerning the relationship of standards to antitrust and industrial policies and the potential for European standards organizations to adopt policies that discriminate against outsiders, in contravention of the EC's obligations under multilateral trading rules.

The U.S. Government appealed to the EC on the matter, requesting that the EC Commission seek a delay in the finalization of ETSI policy until its concerns could be adequately addressed. In a March 19, 1992, letter then-United States Trade Representative Carla Hills urged Martin Bangemann, Vice President of the EC Commission, to intervene. The EC Commission did so, both in response to concerns expressed by the EC's trading partners as well as concerns raised within the EC about the policy's potential implications for EC competition and intellectual property objectives. Meanwhile, EC External Relations Commissioner Frans Adriesson acknowledged in a May 20, 1992 letter to Ambassdor Hills that "certain problems could arise if ETSI's present policy proposals were implemented unamended."

Despite an effort to shape the emerging ETSI policy, actions by the EC Commission in 1992 failed to significantly alter objectionable aspects of it, and raised several new issues. The U.S. Government formally requested bilateral consultations with the EC on the matter in January 1993, in hopes of forestalling final adoption of the ETSI policy at its scheduled mid-March General Assembly session. This effort failed, and the policy was finally adopted on March 18, 1993 without significant improvement. Existing members are expected to sign the document by November 1, 1993 or face expulsion from the organization.

Background

ETSI's Role in Standards

ETSI is technically a private body and participation is voluntary. However, ETSI is developing telecommunications standards to support new EC requirements on matters such as telecommunications terminal equipment and public procurement. ETSI's members are drawn from the EC, the European Free Trade Association (EFTA), and other countries. They include public telecommunications authorities (TAs) and other

users, as well as equipment and service providers. Membership and voting in the organization is still dominated by the TAs and leading European manufacturers or national champions, however, because of their major financial contributions to ETSI's operating budget. Indeed, U.S.-based multinationals with subsidiaries in Europe account for less than 4 percent of ETSI votes under its weighted majority voting rules.

ETSI's standards are an integral part of the EC's industrial policy towards the telecommunications sector, as laid out in the so-called Green Paper on Telecommunications issued in 1987. In that paper the EC decided that it made more sense for the member states to agree on a single set of standards and other requirements for emerging telecommunications products and services than to continue the practice of letting national regulators decide on them after costly and often duplicative product development for segmented markets. The purpose of ETSI setting standards in these fast-moving fields is to create EC-wide markets for new products and to assure possible entrants about the requirements they will face. It is important that the most advanced and technically feasible technology be chosen for use in ETSI standards, because a standard tends to perpetuate a given technical solution.[1] In addition, the standards being developed are significantly more prescriptive than those used in other sectors, since interoperability with the existing phone network must be ensured.[2]

Up until now U.S. firms have been fairly satisfied with their access to ETSI standards drafting committees, since, unlike the other two bodies developing 1992-related standards—the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC)—its membership is open to direct participation by manufacturers. Many major U.S. telecommunications and computer firms with subsidiaries in the EC are members of ETSI and have directly participated in ETSI's work. However, U.S. companies have made little headway in shaping a policy on licensing intellectual property rights that they say could result in a loss of remuneration for leading edge technologies, among other things.

The Issue

The field of telecommunications and information technology is both fast moving and knowledge-intensive. Nearly all of this technology is protected as intellectual property (patents, trademarks, copyrights, etc.), which gives inventors and innovators specific rights, notably a limited monopoly on the use or copying of their invention and the exclusive right to grant permission to others for such purposes. The idea is to "ensure a wider distribution and use of works of the intellect in society as a whole" while at the same time allowing full recuperation of the cost in terms of staff-hours and other aspects of research and development so as to adequately reward firms undertaking these expenditures.[3]

Less than a dozen firms account for much of the latest technology in the telecommunications and information technology sphere, and many of them are multinational in character, not exclusively European. U.S. firms such as IBM, Motorola, and AT&T are among the leaders in this industry. These firms have achieved success in Europe and elsewhere as a result of the advanced nature of their products and services, and their intellectual property right (IPR) portfolios are quite extensive.

Two issues arise when it comes to the incorporation of technologies protected by IPR into standards. First, the standardsmaking body must ensure that the IPR holder is willing to license use of the technology for purposes of incorporation in the standard. Second, it must ensure that firms wishing to use the standard for the manufacture of products are able to license the technology from the IPR holder on fair and reasonable terms.

Intellectual Property and Antitrust

The incorporation of IPR in standards raises important antitrust issues. The EC Commission has classed these issues into two categories: those relating to behavior by the standardsmaking body, and those relating to IPR holders.[4] An unwillingness on the part of leading manufacturers to supply the technology they have developed for use in standards could doom the EC to using less desirable technology in its regulations. However, it would not likely be susceptible to challenge under article 86 of the Treaty of Rome, which deals with abuse of dominant position. The European Court of Justice generally has found that refusal to license IPR is not sufficient grounds for finding such an abuse, absent evidence of improper behavior.[5]

The EC would be placed in an awkward position, however, if a particular firm's IPR were incorporated in a standard and the firm refused to grant licenses to competitors or charged inflated royalty and license fees. This scenario is a possibility because when technology protected by an IPR is embodied in a standard, the IPR owner may be given an even more dominant position as a seller of that technology and thus may be able to command a higher price than the market would otherwise bear.[6] This possibility is

[1] EC Commission, *Intellectual Property Rights and Standardization*, communication from the Commission to the Council and the Parliament, Oct. 1992, pars. 2.1.11, 2.1.14., and 2.1.15.

[2] Ibid., par. 4.8.6.

[3] Ibid., pars. 3.1.1.

[4] Ibid., section 5.0.

[5] Ibid., par. 5.1.10.

[6] Ibid., par. 5.1.8. states "the question is the extent to which a refusal by a rightholder to allow his technology to become the basis for a standard would be anticompetitive. In order to demonstrate abuse of dominant position it would be necessary to establish that the relevant market was the technological solution in question and that the owner of rights in that technology occupied a position of dominance in relation to that market."

particularly strong in the EC because adherence to the standard may be legally required or may create a presumption of conformity with legal requirements, leaving manufacturers and users with little choice but to employ it in their procurement and product specifications.[7]

On the other hand, the willingness of EC regulators to mandate use of less-than-best technology might put ETSI and its members in a stronger bargaining position in negotiations on royalties with IPR holders. Since adherence to particular standards is being mandated by EC regulations and procurement rules, the effect of EC selection of competitor's technology for incorporation in a standard would be to exclude other suppliers or impede their access to member state markets. Furthermore, ETSI has in essence been given a "monopoly" on standards setting in Europe in the telecommunications sphere as a result of official actions by the European Community. Thus, the EC Commission has suggested, a standards body could be vulnerable to charges of abuse of dominant position if they attempt to impose terms and conditions on the licensing of IPR that do not appropriately compensate rightholders.[8]

Although antitrust authorities in both the EC and the United States have paid close attention to standards setting activities because of their potential to entrench particular suppliers to the detriment of others, the issue of IPR in standards has not been a major issue in other standards forums. International standards (and to a lesser extent, American National Standards) tend to be more general in nature than those now being drafted by ETSI. Also, standardization is typically not launched in fields until technology and markets are somewhat stable (and thus readily available).[9] The non-compulsory IPR policies of these organizations are reported to work well for their purposes. However, there apprently was sentiment in the EC that these guidlines were not sufficient for ETSI work.

The factors leading ETSI to develop a more elaborate IPR policy could arise in other European standards institutes. They too are developing standards that will directly or indirectly find themselves written into Community law, sometimes in new or growing fields, such as electromagnetic immunity and medical devices. Perhaps because of this possibility, the EC Commission, in its December 1991 followup to the "Green Paper" on standards, stated that it would "welcome the development of clear conditions for the inclusion of intellectual property rights in standards," and would issue a subsequent communication of the matter.[10]

[7] Ibid., par. 5.1.11 states that, "If the standard in question had been adopted, implemented, and made mandatory by a Community instrument, refusal to license the technology necessary to use the standard would, a fortiori, create difficulties."

[8] Ibid., par. 4.8.10.

[9] Ibid., par. 4.8.2.

[10] Standardization in the European Economy, COM (91) 521, *Official Journal of the European Communities (OJ)*, No. C 96 (Apr. 15, 1992), par. 71, p. 16.

Anticipated Changes

ETSI Policy

ETSI thus issued a detailed proposal dealing with IPR consisting of two basic parts: (1) a legally binding undertaking, and (2) a policy setting down basic principles and actions by ETSI itself.

The proposed ETSI policy would require that all current and future members sign an undertaking that commits their firm as well as all of its affiliates worldwide to follow ETSI policy and to license technology needed for ETSI work. Failure to sign the undertaking and unwillingness to license a technology sought by ETSI for incorporation in a standard would be grounds for loss of privileges in ETSI, including suspension of membership and withdrawal of commitments by other ETSI members. The scope of applicability of the ETSI policy would reach beyond the European Community to EFTA and much of Central and Eastern Europe (the 39 countries falling within the so-called Standards Application Area) as well as to those countries that adopt ETSI standards or in which a major telecommunciations operator procures equipment to the standard.

Unlike other standards bodies, the proposed ETSI policy does not ensure that all comers will be able to license IPR embodied in standards on fair and reasonable terms. Instead, the proposed policy focuses on ensuring that ETSI members get preferred licensing conditions. Firms which have not signed the undertaking would not be entitled to licenses to supply the European market unless their country adopted the ETSI standard.

Under the proposed ETSI undertaking, the right to withhold licenses would no longer be absolute. Instead, an ETSI member would be obliged to grant licenses to other parties unless it notified ETSI within a prescribed time limit of its unwillingness to license them. An ETSI member would be expected to monitor standards development proposals in ETSI and to identify any IPRs it holds that fall within the scope of the standard for which it is unwilling to issue licenses. This provision contrasts with typical practice, in which the onus falls on the standardization body for identifying IPR within the scope of standardization work and then seeking a commitment from such IPR owners that they are willing to license the technology on fair and reasonable terms.

If the license is refused, the ETSI Technical Assembly would be required to evaluate whether there is a satisfactory alternative. If a viable alternative is not found, the ETSI director is empowered to ask the firm to reconsider and the firm is obliged to explain in writing its reasons for refusing to license within 3 months. ETSI would then pass the information on to the EC Commission for examination on antitrust grounds.

The terms of licenses would be subject to a number of constraints and would be more favorable for ETSI members and firms resident in the Standards Application Area. For example, ETSI members who

agree in principle to license a technology are expected to notify ETSI of the maximum royalty rate they will demand for the grant of licenses to a party within 90 days of receipt of a request from ETSI. Disagreements on licensing terms would automatically be referred to binding third-party arbitration with the third party arbiter selected by ETSI. Once licenses are granted, the IPR holder would be expected to notify other ETSI members holding licenses whenever it offers more favorable terms for the licensing of the technology. These licenseholders would be entitled to demand similar terms.

EC Commission Communication

On October 27, 1992, the EC Commission issued a communication on intellectual property rights and standardization.[11] The document reflected the evolution of EC thinking since beginning consultations with ETSI on its proposed policy in April 1992, as well as objections raised by European industry interests and trading partners such as the United States. The communication highlighted the Community's international obligations to ensure nondiscriminatory access to European standards. At the same time it seemed to signal a swing towards a greater role for competition authorities in examining IPR licensing decisions.

In the document the EC Commission states that although standards development is a vital "tool of industry policy,"[12] it is not seeking to regulate voluntary standardsmaking activities. As "private" bodies, the European regional standards institutes are free to set their own membership rules and organizational procedures, the EC Commission says. However, it states, "if certain principles are not respected by standards bodies the Community will not be able to use their standards and even less to make them mandatory."[13] Furthermore, the EC Commission said, "if a European standardization body consistently fails to ensure non-discriminatory access to its standards, the status of the standardization body itself under Community law would have to be reviewed."[14]

The EC Commission makes it clear that it is not convinced of the need for special rules for a particular sector (e.g., telecommunications)[15] nor of the need to deviate from accepted international practice, since these procedures have not proved deficient.[16] The EC Commission then sets forth a series of principles that should form the basis for internal rules in standards bodies. The EC Commission emphasizes that standardization activity must conform with the Community's laws and its international obligations and should encourage "the voluntary contribution by industry of its best technology towards the standards-making process."[17] The EC Commission stresses that European standards should be accessible to all users on fair, nondiscriminatory, and reasonable terms.

Similarly, the actions of holders of intellectual property rights must not violate the Treaty of Rome or other Community legislation.[18] Refusal to license a technology when it is the only viable technology available or after it has already been incorporated into a compulsory standard would "create difficulties," the EC Commission said.[19] "Excessive prices asked for by a dominant firm could amount to a de facto refusal to license," the EC Commission added.[20]

At the same time, the EC Commission emphasized its desire to encourage long-term investment in research and development and to avoid creating disincentives for introducing advanced technology in the Community market. The EC Commission confirmed that IPRs "cannot subsequently be expropriated unless there are overriding public interest or public safety considerations to be taken into account and no other technical solution could be devised."[21] Any decision to seek action against rightholders for refusing to license would thus be weighed against the possible negative implications such action could have for the EC's ambitions in technology-intensive fields.[22] The EC Commission suggested that the Community has a more pressing interest in access to standards permitting interoperability than those for which other technical solutions might be possible.[23]

The EC Commission implicitly accepted the premise that IPR holders have been given sufficient notice of the possibility their IPR may be incorporated in a standard if they are ETSI members and if ETSI announces in normal fashion the start of standards work (i.e., the burden is on the manufacturer).[24] Indeed, it stated that in industries where a high degree of standardization is taking place, manufacturers should know that "some of their new technology may eventually form the basis of an industry standard."[25] However, the EC Commission acknowledged that for firms with extensive IPR portfolios 90 days may not be sufficient, and it urged flexibility in granting exceptions to that limit on a case-by-case basis.[26] The EC Commission also accepted the need for binding arbitration in the case of disputes but noted that such arbitration in no way prejudiced rights under Community law.[27]

[11] EC Commission, *Intellectual Property Rights and Standardization*.
[12] Ibid., par. 4.8.8.
[13] Ibid., par. 1.1.3.
[14] Ibid., par. 6.3.3.
[15] Ibid., par. 4.8.8.
[16] Ibid., par. 6.1.1. An international standards body working in the telecommunications field, the International Telegraph and Telephone Consultative Committee (CCITT), reexamined its patent policy in July 1988, but found no need to set up detailed arrangements.
[17] Ibid., par. 6.1.8.
[18] Ibid., par. 1.1.4.
[19] Ibid., par. 5.1.11.
[20] Ibid., par. 5.1.14.
[21] Ibid., par. 2.3.5.
[22] Ibid., par. 5.1.16.
[23] Ibid., pars. 4.8.3 through 4.8.6.
[24] Ibid., pars. 4.2.5 and 4.5.1.
[25] Ibid., par. 2.1.3.
[26] Ibid., par. 4.5.1.
[27] Ibid., par. 4.3.4.

U.S. Concerns

The EC Commission communication did not fully respond to the United States' concerns, and it raised several others. In particular the Commission's statement fueled suspicions that the EC was moving closer to compulsory licensing in fields such as computers, pharmaceuticals, and automobiles, in which U.S. suppliers currently hold strong positions by virtue of their superior technology.[28]

Consultations were held in Washington, D.C. on November 5 and 6, and the United States spelled out its remaining concerns in a November 19, 1992 letter.[29] Specifically, the United States continued to have concerns about the extra-territorial reach of the ETSI policy, the burden placed on IPR holders for identifying relevant IPR and of refusing to license, the restrictions placed on licensing terms and conditions, and the immunization of firms from liability for infringement under certain conditions. The policy is extraterritorial and thus beyond what is required to accomplish single market objectives, the United States said, because all affiliates, not just those located in Europe, would be bound by the ETSI policy, benefits of the policy would extend to the entire Standards Application Area, and companies would no longer be permitted to include geographic restrictions on licenses. The United States also complained about the quasi-compulsory nature of the licensing process. Among other things, the proposed regime seriously infringes on the rights of IPR holders to negotiate cross-licenses and could discourage firms from engaging in research and development, the United States warned.

The United States urged the Community to conform as much as possible to the accepted IPR practices of existing international standards bodies and to limit the scope of its IPR policies to the EC market. The United States also proposed that ETSI should be rendered responsible for identifying IPR that must be incorporated in a standard and then for requesting from ETSI members information concerning specific, defined IPR. ETSI members would then be obliged to respond within a designated timeframe. Furthermore, the United States suggested, ETSI should be held accountable for researching IPR held by non-ETSI members.

Followup by the EC Commission

The EC Commission issued a letter to ETSI on November 25, 1992.[30] The letter objected to several aspects of the ETSI policy. However, the EC Commission indicated that if changes along the lines proposed therein were made, the draft would be an acceptable interim system.

Specifically, the EC Commission stated that the current ETSI policy does not adequately address one of the major conditions set out in its October communication, that "users must be able to use the above standards to manufacture in conformity with the standards of the Community, and to import into the Community goods legitimately manufactured in third countries in conformity with the standards."[31] The policy and undertaking must, the EC Commission indicated, be consistent with the Community's obligations under international law, notably the Tokyo Round Agreement on Technical Barriers to Trade (TBT).[32]

The EC Commission also indicated that it could not definitively agree with ETSI that the publication of its work program would constitute adequate information for purposes of triggering the 90-day clock for notifying ETSI of relevant IPRs.[33] The EC Commission reiterated that 90 days may not be sufficient for IPR holders to identify all relevant IPRs potentially falling within the scope of an approved ETSI work program, particularly for firms with large IPR portfolios.[34]

The EC Commission letter did not raise several other issues that the United States considers important such as the extra-territorial scope of the ETSI policy and the provision for binding arbitration in disputes.

Revised ETSI Proposal

On January 5, 1993, ETSI issued a proposal reflecting its attempt to respond to the EC Commission's November letter.[35] Notably, ETSI pledged to ensure that all users of its standards producing in Europe have access to IPR embodied in them on a quid pro quo basis. Moreover, the EC Commission's preeminence in determining whether a refusal to license warranted action was recognized. However, the revisions did little to assuage U.S. concerns about compulsory licensing, did not eliminate preferential terms for ETSI members, and did not change the policy's applicability beyond the EC's borders. In early 1993, the United States formally requested consultations with the EC on the matter in an effort to influence the policy. These talks did not materialize. At the private sector level, the American National Standards Institute (ANSI) offered detailed comments and expressed significant concerns about the proprosed policy and undertaking at its semi-annual meeting with its EC counterparts and EC Commission officials held on January 13, 1993.

[28] USTR official, interview by USITC staff, Feb. 15, 1993.

[29] Peter F. Allgeier, Assistant United States Trade Representative for Europe and the Mediterranean, letter to Mr. Michael Hardy, Directorate General XIII, EC Commission, Nov. 19, 1992.

[30] R. Perissich, Director General, Internal Market and Industrial Affairs, and M. Carpentier, Director General for Information Technologies, Industries, and Telecommunications, letter to A. Gnetti, Chairman of the General Assembly, ETSI, Nov. 25, 1992.

[31] Ibid., p. 3.

[32] Ibid., point 3, p. 3.

[33] Ibid., point 4, p. 4.

[34] Ibid., point 5, p. 4.

[35] ETSI, *Intellectual Property Rights Policy and Undertaking (Version Resulting from Negotiation with the EC Commission)*, Jan. 5, 1993, No. JAC05101, annex to ETSI Collective Letter No. 629.

The U.S. Department of State, the American National Standards Institute, and a variety of U.S.-affiliated associations and firms attended the March 16-18 General Assembly meeting scheduled to resolve the matter. The State Department representative read a statement on behalf of the U.S. Government opposing adoption of the ETSI policy based on several concerns, notably:

- its departure from accepted international standards-setting practices;
- its failure to provide a practical method for notifying signatories whether their IPR may be included in an ETSI standard;
- its potential applicability to standards adopted by other bodies, notably international standards organizations such as the International Telecommunications Union;
- its inclusion of a mechanism for placing artificial ceilings on royalty rates;
- its automatic referral to binding third-party arbitration, which the United States said "would probably lead to a compulsory licensing regime;"
- its applicability outside Europe; and
- its absolution of ETSI members from liability for infringements which would have been actionable prior to the signing of the undertaking.[36]

Several changes to the policy and undertaking were made prior to submitting the documents to the General Assembly for decision. The period in which members can inform ETSI of refusal to make IPR available for use in a standard was extended from 90 to 180 days, and the event triggering the time clock was clarified. The clause stating that the policy is an interim one subject to renewal in two years was changed so that the policy is permanent unless a weighted majority vote to terminate it. The policy will be reviewed no sooner than two years and no later than four years after it enters into force.

Most significantly, the provision which had been introduced during negotiations with the EC Commission providing non-ETSI members located in the EC with guaranteed access to licenses for IPR embodied in ETSI standards was removed. A voluntary code of conduct committing ETSI members to act in a nondiscriminatory manner towards third countries consistent with the Community's obligations under the TBT Agreement was also withdrawn from consideration. Thus, non-ETSI members no longer are assured access to the licenses they would need to conform with ETSI standards, even if they produce in the EC or are required to conform to ETSI standards by EC legislation. Instead, the telecommunications administrations adopted a declaration stating that the EC Commission would discuss the interpretation and implementation of the TBT Agreement, and that if the ETSI policy or undertaking were found to be in conflict with it or any other international agreement, ETSI must be ready to consider making the changes needed to bring them in conformity.[37]

The General Assembly adopted the revised policy and undertaking by an 81-percent weighted majority vote. U.S. multinationals with affiliates in Europe were virtually the only dissenters (along with NEC and Phillips). European telecommunications administrations, equipment manufacturers, and Japanese firms with affiliates in the EC (except NEC) voted in favor of the two documents. The policy went into effect on April 1, 1993. ETSI members will be expected to sign the undertaking within 6 months, or by November 1, 1993, or face expulsion from the organization.

Possible Effects

U.S. firms say that ETSI's proposed policy amounts to expropriation of their investment in research and development in a bid to breathe life into Europe's flagging telecommunications industry. Antitrust authorities and industrial policy proponents in the EC have long sought to reduce the dominant position of leading U.S. firms by, for example, requiring that they make available sufficient information about their products so as to permit other manufacturers to make equipment that can interface with it. Moreover, technological "have nots" in the EC are said to be eager to obtain IPR, receive technology transfer, and purchase state-of-the art equipment at lower-than-market rates. Not only is the ETSI policy significantly more onerous than needed to attain the desired end, U.S. suppliers complain, it is extraterritorial in application and discriminatory in effect. The American National Standards Institute, the Computer and Business Equipment Manufacturers Association, the Telecommunications Industry Association, and the EC Committee of the American Chamber of Commerce in Brussels have all registered their objections to the ETSI policy, as have a number of leading manufacturers,[38] saying it is in essence a compulsory license scheme. U.S. manufacturers also complain that their intellectual property rights are not particularly meaningful if they are subject to de facto or de jure expropriation. One U.S. firm stated that the effect of the policy is to set a ceiling worldwide on the return they could expect to receive from the sunk costs of substantial research and development expenditures made over a number of years.

Furthermore, the fact that the ETSI policy differs from accepted international practice and is broader than needed to attain the desired end could lead to

[36] U.S. Department of State, *U.S. Position on the Proposed ETSI IPR Policy and Undertaking*, Mar. 16, 1993.

[37] European Telecommunications Standards Institute, "Declaration of Administrations to be annexed to the minutes of the 15th General Assembly," Mar. 17, 1993, Temp. Doc. 16, Rev. 1.

[38] Among them, IBM, Apple, AT&T, Digital Equipment, and Motorola.

confusion and constrain the ability of U.S.-affiliated firms to participate in ETSI standards development work, U.S. business interests say. The preferential treatment accorded to ETSI members and to firms from countries accepting ETSI standards create an artificial incentive to use ETSI standards instead of, say, U.S. or international ones. As a result, European standards may come to dominate telecommunications markets outside the EC, some analysts warn. The ESTI policy may also proliferate—finding followers in CEN and CENELEC, and giving cover to developing countries that have seen little reason to offer compensation to innovators by seeking licenses for IPR on commercial terms.

Some ETSI participants are reportedly unsympathetic to the concerns voiced by U.S. interests. Many participants are service providers that do not own IPRs. Network operators and communication services providers reportedly also want to avoid being put in a position where they begin to invest heavily in implementing an ETSI standard only to have IPR owners hold up standards development work or charge unreasonable licensing fees. Other members are closely connected with the national TA or are small manufacturers wishing to benefit from easier access to IPR. Finally, the principal customers for telecommunications products and major participants in ETSI work—the telecommunications authorities—may be in a somewhat disadvantageous position in negotiating licensing terms with IPR holders. Their IPR portfolios are often not such that they can reduce royalty payments by offering cross-licenses for other products. Private competitors to the TAs, on the other hand, often have sufficient IPR portfolios so as to avoid licensing fees altogether.[39] Some ETSI members are said to be annoyed and frustrated by what they see as high-handed and ill-timed U.S. criticism of the proposed policy, and unimpressed by threats by several U.S. manufacturers to withdraw from ETSI in protest.

ETSI and European regulators, meanwhile, say they are simply trying to strike a reasonable compromise between their goal of using the best technology to frame a coherent European market for cutting-edge equipment and services while avoiding a situation in which the market power thus conferred will be abused. Some European officials point to problems encountered in the digital cellular communications standard set by ETSI's predecessor, the Conference of European Post and Telecommunications administrations (CEPT), which incorporated IPR owned by Motorola. When CEPT demanded free, worldwide licenses of the relevant IPR, Motorola refused. Motorola, for its part, says it was not party to the incorporation of its technology in the CEPT standards and did not consent to their use. Nevertheless, it has offered to license on fair, reasonable, and nondiscriminatory terms for the market CEPT had jurisdiction over and already concluded a number of license agreements.[40]

[39] Representative of European affiliate of U.S. firm, meeting with USITC staff, Brussels, Dec. 1992.

[40] USITC, informal communication with Motorola official, Apr. 16, 1993.

The U.S. Government and U.S. industry are now considering next steps. With substantial investments in research and development at stake and corporate strategies aimed at reaping the rewards, however, major multinationals perceive themselves as facing a difficult choice: giving up control of the fruits of their corporate innovation or being shut out of telecommunications markets in the EC and elsewhere due to lack of participation in, and influence over, ETSI standards.[41] Smaller U.S. suppliers and those without facilities in the EC are said to be in an even more disadvantageous position. In an April 15, 1993 letter, the Computer and Business Equipment Manufacturers Association (CBEMA) wrote to the EC Commissioner in charge of competition policy, Karl Van Miert, formally requesting that the ETSI policy be reviewed for consistency with EC competition rules, and other options are reportedly being explored.

Council Resolution on Standardization

Background

Part of the EC's "new approach" to standards was the notion of relying on private regional standards bodies to translate broadly stated regulatory goals known as "essential requirements" into technical standards. This approach has made it easier to achieve agreement on Communitywide product regulations and thereby quicken the process of removing technical barriers to trade among the member states. However, it did not obviate the need for supporting technical standards, and the bodies charged with developing them have been unable to keep up with rapidly escalating demand. The backlog in standards development by CEN, CENELEC, and ETSI led the EC Commission to produce a "Green Paper" on standardization containing proposals for ways to streamline the process, to improve coordination among the standards bodies, and to incorporate greater input from affected consumer and other interest groups.[42]

The EC Commission's paper launched considerable debate. In particular, the EC Commission's proposal to create new oversight bodies was perceived by the standards institutes and business community as unnecessary and unwanted government interference in a largely private activity. At the same time, the EC Commission's call for greater transparency and efficiency in the process was widely supported. The consensus was that opening up the process to greater participation, improving the accessibility of European standards, and quickening the pace of standards development were all urgently needed. A somewhat less prescriptive version of the "Green Paper" was released in early 1992.[43] Among

[41] USITC staff, informal communication with U.S. telecommunication industry representatives, Apr. 16, 1993.

[42] *Green Paper on the Development of European Standardization, OJ* No. C 20 (Jan. 28, 1991), p. 1.

[43] *Standardization in the European Economy, OJ* No. C 96 (Apr. 15, 1992), p. 2. This document also summarizes reactions to the original Green Paper.

other things, the paper called on the Council of Ministers to reaffirm the importance of standardization in the Community. It did so through passage of a resolution in June 1992.[44]

Anticipated Changes

The Council noted the importance of Europewide standards to achieving numerous Community objectives: removing technical barriers to trade among the member states, opening up public procurement, strengthening economic and social cohesion, attaining industrial policy objectives, and ensuring interoperability of trans-European networks. The Council underlined its desire for a coherent and responsive European and international standards development system. However, it did not endorse the EC Commission's call for creation of a European Standards Council to guide the activity of private standards bodies. Instead, it expressed sympathy for the need to avoid creating new bureaucratic structures and fragmentation.

The Council acknowledged steps being taken by European standards bodies to improve efficiency, openness, transparency, and cooperation with third countries and international standards bodies and expressed its interest in seeing them pursued further.[45] The Council also emphasized the urgency of completing standards development work for the implementation of various EC directives and policies. The European standards organizations should endeavor to strengthen coordination and optimize work flow so that high-quality standards are available for these purposes, the Council said.

The regional and national standards bodies were encouraged to work together to ensure that regional standards attain more visibility and are readily accessible throughout the Community. The Council also expressed support for one option intended to achieve those ends—creating a mark of conformity to European standards. Financial support and active participation by the private sector was welcomed, as was the organization at the European level of discrete interest groups so as to provide more effective input into standards development work.

For its part the Council reaffirmed its intention to continue employing the new approach to standards in Communitywide technical rules. It also pledged to continue providing financial support to European standards activity.

[44] *Council Resolution of 18 June 1992 on the Role of European Standardization in the European Economy, OJ* No. C 173 (July 9, 1992), p. 1.

[45] The European standards institutes have taken a variety of measures to respond to calls for greater transparency and wider representation. In early July, for example, CEN announced that industry, consumer, and union representatives would be permitted to become associate members. They will now be able to participate in CEN's seven sector boards and voting on certain organizational matters. "Wider Representation in CEN," *European Report*, No. 1782 (July 4, 1992), Business Brief, p. 12.

Possible Effects

U.S. business has expressed interest in ensuring that the standards needed to implement the EC 1992 product safety directives are available in a timely fashion. The European standards institutes are working on about 2,000 standards, which form the core of this work.[46] Steps to expedite the process and improve its accessibility are thus welcomed in the United States. At the same time, U.S. standards developers and the U.S. business community generally had registered disapproval of the EC Commission's effort to exert greater management and regulatory control over the regional standards institutes. The concern was that unnecessary governmental interference could set a bad precedent and weaken national standards institutes, which are a vital link to the international standardization process. The U.S. Government has been largely silent on the matter, while urging the EC to avoid doing anything that would impair existing channels of access.

Expanded Information Procedure

Background

An integral part of the Community's effort to reduce standards-related barriers in the EC is the so-called information procedure. Contained in Directive 83/189, the procedure calls for constant communication between the member states and the EC Commission concerning voluntary standards and compulsory technical regulations for industrial products developed at the national level. The goal is to prevent the imposition of new barriers to trade among the member states by ensuring that authorities and businesses in the Community have adequate notice of and input into national standards. In 1988 the directive was amended to include regulations and standards pertaining to agriculture, food products, and pharmaceuticals.

During 1992 the EC Commission completed an investigation of the progress of the 83/189 directive over the years 1990-91.[47] The survey revealed that the pace of standardization activity in the Community has increased dramatically. Moreover, there has been a reversal in the relationship between the amount of standardization activity at the national level and that at the European level. In 1988 20 percent of standardization was performed at the European level and 60 percent was performed at the member-state

[46] A breakdown of these standards by sector follows: pressure vessels, 42; toys, 7; construction products, 484; machinery, 184; personal protective equipment, 102; medical devices, 42; gas appliances, 54; electromagnetic compatibility, 23; information technology, 257; telecommunications, 30; public procurement, 216; European building codes, 27; steel, 129; advanced ceramics, 42; aerospace, 300. As reported in "Technical Standardization: Communication from the Commission," *European Report*, No. 1734 (Jan. 11, 1992), Internal Market, p. 1.

[47] COM (92) 565, Dec. 18, 1992, as reported in *Reuters Newsfile*, "Commission Reviews Standards Information Procedure" (Jan. 4, 1993).

level. The percentages reversed by 1991, and the majority of standardization activity now rests at the European level. The EC Commission deemed implementation of Directive 83/189 successful, noting that the number of technical regulations reported to the EC Commission substantially increased, from 386 in 1990 to 435 in 1991. However, practice revealed certain shortcomings of the procedure, the EC Commission observed, notably difficulty in sorting through the variety of information submitted and uneven notification of policies having similar effects as technical regulations but falling into a grey area.

Anticipated Changes

In November 1992 the EC Commission proposed a directive modifying the information procedure.[48] It reaffirms the basic rights contained in the original directive, including the right to participate in the standardization activities of other member countries, the right to request that a European standard be developed instead of a national standard, and the right to obtain all necessary information on national activities. However, the proposed amendment would eliminate the need to report certain national measures, would add other types of measures to those that must be reported, and would extend the so-called "standstill period," during which member states may not enact legislation while EC-level rules are being voted on, from 12 months to 18 months. The latter change reflects a more realistic timetable for passage of Communitywide measures.

Systematic notification will now be required only when national measures in a completely new field of activity are envisioned or when the national measures could reasonably be expected to have an impact on the functioning of the internal market. Moreover, the procedure for providing such notification is being made more flexible and less cumbersome. Standards bodies will need to notify only the subjects of those standards and whether it (a) transposes a European or international standard, with modifications, into a national standard; (b) will be a new national standard, or (c) will amend a national standard. ETSI is included among the bodies to be notified for the first time. The EC Commission will provide for the regular publication of titles of notified drafts in the *Official Journal* in an effort to improve transparency. It will also study the possibility of developing rules for the consolidated presentation of the information so as to improve its usefulness.

The requirement to notify is broadened beyond standards and technical specifications per se to two other categories: other requirements that may affect the free movement of that product and de facto requirements. The term "other requirement" is defined as "a requirement, other than a technical specification, imposed on a product for the purpose of protecting, in particular, consumers or the environment and which affects life cycle after it has been placed on the market, such as conditions of use, maintenance, recycling, re-use or disposal."[49] "De facto requirements" were defined to include standards made mandatory by reference in laws, regulations, or administrative provisions of member-state law and those for which compliance is encouraged through fiscal and financial measures.

These changes were apparently a response to the problems surrounding adoption by several member states of environmental measures. In particular, Germany, the Netherlands, and Luxembourg decided in 1991 to adopt tax incentives for the purchase of "environmentally clean" vehicles. Subsequently, Germany and the Netherlands have adopted programs on packaging and packaging waste aimed at encouraging voluntary recycling and reuse. So-called "eco-tax" proposals in some member states are also within the scope of the proposed directive.[50]

Several new obligations are added. Standardization bodies are required to inform bodies of the disposition of their comments. Member states are to ensure that their national standards bodies do not publish new or revised national standards that differ from existing harmonized European standards.

Possible Effects

The revised procedure should offer some indirect benefits to U.S. firms. The environmental area has been one of growing interest and concern to U.S. firms selling in the EC market, and the expanded procedure may improve the chances that they will receive adequate notice of and opportunity to influence national environmental rules. Furthermore, the regular publication by the EC Commission of notified standards may also make it easier for U.S. firms to track member-state standardization activity. The United States and the EC have discussed the desirability of improving the usefulness of each others' standards information. To the extent that the directive spurs the Community to improve member-state information, it may offer benefits to U.S. suppliers and spur U.S. standards bodies to follow suit.

Dialog with the United States

The United States has initiated a two-tiered dialog with the Community to improve the chances for meaningful U.S. participation in European standards development work. At the governmental level the United States launched a dialog with the EC Commission commonly referred to as the Mosbacher-Bangemann agreement in the name of the two principals involved in the dialog's initiation in July 1989. Through this dialog the EC committed to rely on international standards as much as possible in its

[48] *Proposal for a Council Directive Amending for the Second Time Directive 83/139/EEC Laying Down a Procedure for the Provision of Information in the Field of Technical Standards and Regulations*, COM (92) 491, *OJ* No. C 340 (Dec. 23, 1992), p. 7.

[49] Article 1 of proposed directive.

[50] *Reuters Newsfile*, "Commission Reviews Standards Information Procedure," Jan. 4, 1993.

regulation-related standards and committed to a joint effort to improve participation in international standards forums. A subcabinet-level meeting was held in Brussels on October 19, 1992, between Deputy Under Secretary of Commerce Thomas Duesterberg and his EC Commission counterpart, Ricardo Perissich. They discussed several particular standards-related directives of concern to U.S. industry and potential followup on an earlier effort to improve the functioning of the international standards system. At the private sector level the American National Standards Institute began consulting with the European standards institutes CEN and CENELEC on a semiannual basis in 1990. ETSI was formally included in this dialog for the first time in early 1992. Another meeting was held in mid-January 1993 in Brussels. On the agenda were the EC Commission's guidance documents on implementation of new approach directives and on notified body activities, the relationship of intellectual property to standardization, the negotiation of mutual recognition agreements, and the EC's expanded information procedure.[51]

Standards Development Progress and Implementation

Many of the directives associated with the 1992 program cannot become fully operational until (1) European standards institutes have developed standards and/or (2) the member states have named "notified bodies"—that is, testing labs, product certifiers, and quality systems assessors formally designated by the member states as capable of conducting product tests and inspections required by particular EC directives. Uncertainty has surrounded those directives that have technically gone into effect but for which these two steps are not complete. A host of directives of significant commercial relevance to U.S. interests are now coming on line, and U.S. producers are unsure about what requirements they will face. Transition periods have generally been added as a way to avoid trade disruption. They permit manufacturers to meet existing national requirements, using current conformity-assessment procedures, until such time as notified bodies and standards are in place. In essence, then, manufacturers and regulators are given breathing room to meet the new requirements, but the benefits of a single market are deferred as the status quo continues.

The electromagnetic compatibility (EMC) directive is a case in point. The directive entered into force on January 1, 1992, but legislation passed in April 1992 provided for a transition period through the end of 1995. As of March 1993 only a few competent and notified bodies had been identified, and none have been formally recognized by the EC. The EC Commission has officially published 11 reference standards for the EMC directive in the *Official Journal*. However, appropriate standards have not been finalized for some products, such as heavy industrial equipment. Another example is the personal protective equipment directive which entered into force on July 1, 1992. The only standards available are those on respirators, and no notified bodies have been named. An amendment to the directive has been proposed to add a transition period, as the directive does not currently provide for one.

Telecommunications Terminal Equipment (TTE) is another example of this deferral of benefits. The directive was slated to become effective on November 6, 1992. The directive covers all equipment capable of being connected to the public telecommunications network and sets seven essential requirements such equipment must meet before it can be placed on the EC market or connected to the public network. Mandatory common technical regulations (CTRs) are being developed by the Approvals Committee for Terminal Equipment, based on technical standards drafted by ETSI to translate many of these essential requirements into product standards. The TTE directive cannot become fully operational until the necessary CTRs are finalized. Work on CTRs reportedly is behind schedule, making it likely that the present system of existing harmonized standards, national standards, and national type-approvals will continue to regulate the sale and use of TTE.

Standards for Procurement

EC directives liberalizing member-state public procurement rules include a requirement for covered purchasing authorities to use harmonized European standards if they are available and appropriate. U.S. firms in the telecommunications and energy sectors have been particularly keen to gain a foothold in these previously protected markets for network equipment and services. However, many of these firms see their niche in marketing state-of-the-art or propriety technology items, and some U.S. suppliers already sell equipment to European authorities on this basis. These suppliers therefore have urged the EC to keep open the possibility of specifying unique equipment in public procurement specifications. In 1992, U.S. oil and gas firms expressed particular interest in having the standards being developed in the energy equipment fields reflect existing international standards, which are largely based on U.S. standards. There were reports that standards that deviate substantially from accepted international practice were being contemplated by CEN. U.S. producers are considered leaders in the field and would thus stand to lose should the EC decide to impose requirements significantly different from international standards for such equipment.

Subsidiarity

At the Edinburgh Summit in December 1992 the EC Commission proposed and the Council accepted the notion that several standards measures under development were not appropriate. The action was a response to the Lisbon Summit's call for a review of existing and pending EC legislation in light of the subsidiarity principle in the Maastricht Treaty. The EC

[51] American National Standards Institute, "Agenda for Meetings With Representatives of European Standards and Conformity Assessment Organizations, January 11-15, 1993," Dec. 7, 1992.

Commission concluded that "some proposals were not fully warranted in terms either of value-added by Community action or of comparative efficiency in relation to other possibilities of action in national or international contexts."[52] As a result, the EC Commission withdrew several standards-related directives (compulsory labeling of nutritional values of food and radio frequency allocations for land-based communications with aircraft and for remote processing facilities in road transport). The EC Commission is also considering withdrawal of measures related to allocation of radio frequencies for the coordinated introduction of digital short-range radio communications. The EC Commission is also planning to revise the data-protection directive to make it less prescriptive, and to examine existing legislation on foodstuffs with an eye towards streamlining and replacing excessively detailed specifications. It announced its intention to scrutinize directives relating to machinery safety to determine whether areas of overlap with other directives can be clarified. Finally, the EC Commission announced that it will abandon certain planned initiatives, notably harmonization of technical standards on used machinery, playground equipment, dietary foods, and fasteners.[53]

Implications for the United States of Standards Policy Developments in 1992

Actions taken in 1992 regarding standards development in the EC should help alleviate U.S. concerns about the slow pace of standards development work. Thus far the uncertainty in implementing standards directives in the absence of standards and notified bodies has not actually slowed the flow of U.S. goods to the EC. However, U.S. industry may experience delays as an option for certification contained in directives on machinery safety and active implantable medical devices becomes mandatory by 1995. Moreover, the ETSI IPR policy has been transformed from an issue of fairly narrow impact to one with implications for other aspects of standards development work, as well as trade and IPR policy generally. U.S. industry and U.S. Government representatives will continue to monitor the situation closely.

Testing and Certification

The EC's new conformity-assessment structure envisions the establishment of uniform conformity-assessment procedures. Manufacturers will be required to follow these procedures before they can place a product on the EC market. Manufacturers will generally be permitted to self-declare conformity with European standards for low risk products such as toys. For riskier products, however, product testing or production monitoring and control will be required, usually by a testing laboratory or quality control firm that is deemed competent and impartial by one of the member states. As a matter of EC policy, these "notified bodies" must be located on EC territory. Once the required procedure is satisfactorily completed, however, there should be no need to repeat tests and approvals to gain entry into different national markets within the EC. This uniform conformity assessment system offers potential time and cost savings to sellers. However, since the new procedures must be followed to sell products in any of the 12 markets, the proposed conformity assessment structure also raises the prospect of losing access to the entire EC market should difficulties associated with the procedures make it impractical or financially unrewarding to continue serving the EC.

Firms seeking to serve the EC through exports from their home markets, including those from the United States, have been eager to find ways to have products tested and inspections conducted by qualified domestic third-party labs. Two options are being pursued: (1) negotiation of formal government-to-government agreements on the mutual recognition of test results and (2) subcontracting of certain functions to U.S. facilities by EC-based labs. There was action on both fronts in 1992, as well as other testing and certification developments of potential relevance to U.S. firms.

Mutual Recognition Agreements

On September 21, 1992, the Council of Ministers finally approved the negotiating mandate permitting the EC Commission to launch negotiations with third countries on the mutual recognition of tests and approvals. The mandate was virtually unchanged from previous iterations, leaving in place the EC's insistence that such agreements result in "a balanced situation," a requirement for foreign government involvement in assuring the continued competence of designated bodies, and a new twist—a requirement that the agreements be limited to goods "originating" in the parties. The United States had urged the EC to avoid setting unworkable preconditions for such negotiations.

With mandate in hand the EC Commission agreed to meet with the U.S. Government for exploratory talks on possible mutual recongition agreements (MRAs). The meeting, which took place in Brussels on October 20, 1992, clarified a number of issues associated with the EC's negotiating mandate.[54] Among other things, the EC appeared willing to consider a range of possible models for governmental guarantees of competence and to share the U.S. view that the negotiations should

[52] EC Commission, *Report to the Council at the Edinburgh Summit Regarding Subsidiarity*, annex 2 to pt. A (Dec. 1992).

[53] EC Commission, *Report to the Council at the Edinburgh Summit Regarding Subsidiarity*, annex 2 to pt. A (Dec. 1992).

[54] This section is based upon U.S. Department of State, "Highlights of Exploratory Discussions With the Commission of the European Communities on Mutual Recognition Agreements (MRA's)," prepared by U.S. Mission to the European Communities, Brussels, Nov. 3, 1992.

proceed on a sector-by-sector approach rather than the narrower, directive-by-directive approach. The two exchanged thoughts about sectors that might be ripe for negotiation. Reportedly, telecommunications and information technology may be early candidates.

One area of disagreement was the origin clause included in the EC's negotiating mandate. The U.S. Government says that an origin requirement is unnecessary and could impede, rather than promote, international trade. The EC justified its insistence on an origin clause in MRAs by indicating that it was a means of discouraging "free riders." The EC clarified that the U.S. labs would not be required to certify the origin of the product; instead, EC customs officials would be charged with enforcement. The United States noted that in light of previous disagreements on origin matters, the drawbacks of closer scrutiny of product origin may outweigh the benefits of MRAs to U.S. exporters.[55] The U.S. side suggested that the EC devise an alternative method of addressing such concerns.

Another issue addressed was the role that the Government would play in MRAs. The EC has been insisting on direct Government involvement. In light of the very different way the U.S. Federal Government regulates products and relates to the private sector and local governments (compared with the EC), the U.S. Government has urged that the EC be flexible in the types of involvement it demands. The EC side said it expects the U.S. Government to sign the agreement, to be responsible for handling complaints and resolving issues, and to ensure the continued competence of designated bodies. While a governmental guarantee of competence is a prerequisite from the EC perspective, the EC assured the United States that it has no intention of asking the United States to set up new structures or to do more than the EC member states are being asked to do. (Some EC members do not have formal accreditation schemes, and in others private accreditation schemes are relied on. The United States has a variety of lab accreditation schemes, both Government and private.) The EC thus appeared flexible concerning the required role of government in administering and implementing MRAs.

The U.S. side also explored the EC's concept of how it will determine whether an MRA will result in a "balanced situation," another condition the EC has said must be satisfied before an MRA can be concluded. The U.S. Government has expressed concern about the EC's insistence on a "balanced situation" for two main reasons. First, it rejects as a matter of policy the notion that agreements on technical matters should include trade policy criteria. Second, to the extent that they accept test results from private sector bodies, U.S. regulators are constrained by law to do so on a nondiscriminatory basis. The relative openness of the U.S. market could thus make it difficult to achieve balance. The EC Commission suggested that it will consider balance to be based on equal competitive opportunities in a given field. There is no need for an agreement to cover strictly balanced volume of trade, and in fields where access is already unfettered, a simple declaration that it will remain so will suffice, EC officials suggested.

The EC also transmitted a model MRA document to the United States for its consideration. Followup talks are tentatively planned for the first half of 1993.

Meanwhile, the U.S. Department of Commerce and the Office of the United States Trade Representative have been working closely with U.S. regulatory agencies and the U.S. private sector to determine priorities and how the U.S. Government will ensure the competence of its assessment bodies. The challenge is to formulate a proposal that will appeal to the U.S. private sector and instill confidence in the EC.

The U.S. Commerce Department's National Institute for Standards and Technology (NIST) has proposed to devise an "assurance program" for U.S. businesses that could facilitate EC acceptance of U.S. test results. The proposed program is known as NVCASE, for National Voluntary Conformity Assessment Systems Evaluation Program.[56] NVCASE would, upon request, evaluate domestic conformity assessment activities related to laboratory testing, product certification, and quality system registration. Those activities which satisfy all applicable criteria would be provided with a U.S. Government recognition of competency. The NVCASE proposal is currently under review by NIST management.[57] Many comments were offered on NIST's formal proposal. Some U.S. businesses expressed the view that the U.S. Government should avoid establishing new structures that add little value to, or actually duplicate, functions being performed satisfactorily in the private sector.

Subcontracting

U.S. industry had hoped that it could get around some of the expected difficulties associated with being required to test and certify products in the EC if the EC Commission would allow "notified bodies" there to subcontract tests and inspections to labs in the United States. The EC policy on subcontracting was reportedly approved in September 1992. This policy is slated to be contained in a document providing informal guidance on conformity assessment. At this writing, the guidance document is expected to be finalized by mid-1993, and no changes in the policy from the September 1992 version are currently predicted.

[55] Issues associated with the EC's rules of origin and local-content requirements are described 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, Mar. 1990, pp. 14-3 to 14-9.

[56] 57 F.R. 10620-10621 and 57 F.R. 18121.

[57] NIST, informal communication with USITC staff (telefax), Mar. 9, 1993.

The EC has adopted a fairly liberal attitude towards subcontracting, permitting it not only for routine tasks but for certain aspects of quality systems registration. This attitude was welcomed by U.S. producers, particularly those who must demonstrate that their production process meets quality system standards (the EN 29000, derived from the ISO 9000). The process of "registering" one's quality system is a time-consuming and expensive one, even more so if it is being done long distance, and the concern was that if all aspects had to be performed by EC-based bodies, costs and delays could be prohibitive.

CE mark regulation

A key element of the EC's standards agenda is the creation of a single mark of conformity to Community requirements. Once secured, this mark will provide an entry ticket into all EC markets. In May 1991 the EC Commission proposed a regulation formally establishing the "CE mark" as the official mark of conformity to EC new approach directives and setting forth the conditions for its application and use. However, confusion continued to persist regarding how and when the mark could be applied, what it would mean, and whether it would in fact be sufficient to secure entry into member-state markets. Among other things, this confusion reflected the fact that numerous directives had already been passed calling for use of a CE mark, and they varied considerably from one another. Parliament proposed a number of amendments to the EC Commission's proposal at its first reading in April 1992; the EC Commission accepted most of them and submitted a revised proposal to the Council on July 10, 1992.

After examining the EC Commission's proposal, the Council decided to take a different approach. In an effort to make legal requirements and limits clear for all parties, the Council decided that it would be best to formally amend the prior directives. It also decided that it would be useful to incorporate the rules about use and meaning of the CE mark into its prior decision establishing conformity assessment "modules".[58]

The Council of Ministers thus asked the EC Commission to translate the earlier CE mark proposal into 2 proposals: a directive and a decision, both of which went forward for Council consideration on December 7, 1992.[59] The directive would amend the directives already passed in accordance with the new approach so as to make their rules on the application, use, and meaning of the CE mark uniform.[60] In certain cases the mark would have to be accompanied by the identification number of the notified body supervising its application and the date of product manufacture. U.S. firms had argued against these requirements on the grounds that they might undermine the usefulness of the mark by making it possible for member-state officials or purchasers to discriminate against nonnational goods. The proposed directive would also convert the so-called Low-Voltage Directive into a new approach directive, for which products must bear the CE mark.[61] Many U.S. suppliers have successfully sold products covered by the Low-Voltage Directive, and they had been concerned that conversion of the directive to the new approach format might disrupt current access routes. However, the EC proposal would seem to relieve that worry, as it permits self-declaration of conformity. The decision would amend an earlier decision setting forth the various conformity-assessment procedures to be used in Community legislation (the so-called "modular approach").[62] Passage by the Council is not expected until mid-1993, with implementation in mid-1994.[63]

European Organization for Testing and Certification

Besides requiring that member states accept the CE mark of conformity issued by notified bodies regardless of location in the EC, the EC is hoping to ease the burden of multiple testing and inspection requirements in the nonregulated sphere. The European Organization for Testing and Certification (EOTC) was established in 1990 to create the foundation of confidence that undergirds mutual acceptance of tests in the private sector. The organization will also serve as a source of information and advice to the EC Commission on conformity-assessment matters. The EOTC comprises sectoral committees and agreements groups, and as of yearend 1992 two sectoral committees, covering testing and certification for the information technology and electrotechnical sectors, had been established and two more were in process—one for water supply and one for fire and security alarms. There are now 10 agreements groups, and another 5 are being set up.[64] U.S. industry has

[58] EC Commission, "Explanatory Memorandum" to *Modification of the Proposal for a Council Regulation Concerning the Affixing and Use of the CE Mark of Conformity on Industrial Products*, COM (92) 499, SYN 336 A-B, Dec. 7, 1992, p. 2.

[59] COM (92) 499, SYN 336 A-B, Dec. 7, 1992 (not published in the OJ at this writing).

[60] The directives being amended deal with simple pressure vessels, toys, construction products, machinery, personal protective equipment, electromagnetic compatibility, non-automatic weighing instruments, active implantable medical devices, gas appliances, telecommunications terminal equipment, hot water boilers, and electrical equipment designed for household use.

[61] The low voltage directive is directive 73/23/EEC, OJ No. L 77 (Mar. 26, 1973), p. 29.

[62] *Council Decision of 13 December 1990 Concerning the Modules for the Various Phases of the Conformity Assessment Procedures Which Are Intended To Be Used in the Technical Harmonization Directives*, 90/683/EEC, *OJ* No. L 380 (Dec. 31, 1990), p. 13.

[63] Matt Shears, U.S. Mission to the EC, interview by USITC staff, Dec. 14, 1992.

[64] U.S. Department of State, "The EOTC 1992 Symposium," message reference No. 15822, prepared by U.S. Mission to the EC, Brussels, Dec. 17, 1992.

been working through ANSI to establish dialogs with their sectoral counterparts. Consultations were held among relevant parties in the context of ANSI's January 1993 semiannual meeting with EOTC on the information technology, electrotechnology, high voltage electrical equipment, medical device, and water treatment sectors. These consultations could smooth the way for U.S. access in affected fields.

Bolstering the EC's Conformity Assessment Infrastructure

On April 29, 1992, the EC Council passed a decision adopting a program of research and technological development in the field of measurement and testing.[65] The program is to run through 1994. Among other things, the EC will evaluate the efficiency and competitiveness of Community testing, inspection, certification, and quality assurance services and identify infrastructure needs. Passage of the program bolsters the EC's efforts to ensure that EC-based conformity-assessment bodies are in a position to effectively document and monitor compliance of products and manufacturers to EC-mandated requirements. The program should also support efforts to negotiate mutual recognition agreements with third countries such as the United States. To the extent that the program results in a further upgrading of European testing capabilities, however, it could disadvantage U.S.-based firms offering such services.

Implications for the United States of Testing-related Policy Developments in 1992

Whatever benefit could be derived by the harmonization of standards could be more than offset if the EC 1992 program makes it more difficult for U.S. suppliers to get their products approved and placed on the EC market. U.S. suppliers strongly advocate the option of having their products tested here in the United States for sale in the EC. This option would not only save time and money, it would avoid the need to establish new relationships with test houses in the EC with which U.S. suppliers are unfamiliar. Although the EC has opened some avenues for that to occur, U.S. industry has been frustrated with the slow pace of progress, particularly now that directives are entering into force. However, the fairly flexible policy on subcontracting now finalized may make U.S.-based testing and quality system audits possible. Mutual recognition agreements are considered a possibility in several sectors and could substantially improve U.S. access in the medium term.

[65] *Council Decision of 29 April 1992 Adopting a Specific Research and Technological Development Programme in the Field of Instruments and Testing (1990-1994)*, 92/247/EEC, *OJ* No. L 126 (May 12, 1992), pp. 12-19.

Environmental Protection

Introduction

With the passage of the Single European Act (SEA) in 1987, the EC gained explicit authority to enforce member state implementation of its environmental legislation. The SEA added a new title on the environment to the EEC Treaty.[66] Central to the theme of this new title is the mandate that, "Environmental protection shall be a component of the Community's other policies."[67] Coupled with increasing international attention to environmental concerns, as recently manifested at the 1992 Earth Summit, there has been an increased emphasis on Communitywide environmental regulations.

Developments During 1992

The Fifth Environmental Action Program

In December 1992 the Council approved the Fifth European Community Programme of policy and action in relation to the environment.[68] The Fifth Action Programme covers the years 1993 to 2000. It focuses on five main sectors in which pollution needs to be reduced: industry, transport, energy, tourism, and agriculture. The report notes that several areas still are in need of legislation—namely, air pollution, water pollution, soil quality, nature conservation, urban environment, and waste management. The program emphasizes the use of economic and fiscal instruments to influence environmental behavior.

Eco-Audit

Environmental auditing refers to "a management tool comprising a systematic, documented, periodic and objective evaluation of the performance of the organization, management system and equipment designed to protect the environment with the aim of: (i) facilitating management control of environmental practices; and (ii) assessing compliance with company policies, including observance of the existing regulatory requirements."[69] In March 1992 the EC Commission presented its draft proposal for a regulation allowing voluntary participation by companies in a Community eco-audit system.[70] The proposed regulation has been discussed extensively by the Council and the European Parliament.[71] At a December 1992 meeting the environmental Ministers agreed on a text largely based on the EC Commission proposal but including some technical amendments.[72]

[66] EEC Treaty, pt. 3, title VII, added by SEA, art. 25.
[67] EEC Treaty, art. 130r, par. 2.
[68] EC Commission, press release, Dec. 16, 1992.
[69] *Proposal for a Council Regulation (EEC) Allowing Voluntary Participation by Companies in the Industrial Sector in a Community ECO-Audit Scheme*, COM (91) 459, *OJ* No. C 76 (Mar. 27, 1992), p. 2., art. 2(h).
[70] Ibid.
[71] EC Commission official, interview by USITC staff, Brussels, Jan. 12, 1992.
[72] Ibid.

The proposed regulation allows companies participating in any industrial activity to participate in the eco-audit scheme at any of their industrial production sites. Manufacturers registering under the scheme would have to carry out an environmental audit of the activities at the site. The audit may be conducted either by the company's auditors, if the company has set up its own appropriate system, for example within the framework of CEN/CENELEC's EN 29000 quality system standard, or by external auditors accredited by a body recognized by the member state. The text, as revised by the Council, provides additional details concerning the procedures for the accreditation of verifiers, in order to assure the maximum consistency among the procedures and criteria applied in the various member states.[73]

For each participating site the company must prepare an environmental statement, written "specifically for the public in a concise, non-technical form." The environmental audits and statements must be validated by accredited external environmental verifiers. The company must then submit the verified environmental statement to the competent authority and keep it at the disposal of the public. The normal auditing frequency in the proposal varies from 1 year for activities with high environmental impact to 3 years for activities with low environmental impact.

The EC Commission proposal allowed companies that have successfully undergone an environmental audit to place an eco-audit logo on their advertisements (but not on the products themselves.) The Council, however, has deleted the provisions allowing for the use of the logo. Companies may instead include in their advertisements a statement of participation in the Community eco-audit scheme.[74] The prohibition against reference to the eco-audit on actual products remains.

The proposed regulation provides for review and possible revision of the regulation after 4 years. The EC Commission has accepted the principle that the use of eco-audits should gradually be expanded to the transport and service areas.[75]

Although the regulation establishes a voluntary system, many industry representatives believe that the regulation is likely to have the actual effect of requiring companies to participate to remain competitive. Compliance with the proposed system will be costly, particularly for small and medium-size firms.[76] The text as revised by the Council, however, addresses this problem somewhat by providing that member states may provide small companies with technical assistance and training. Some local associations already provide funding or assistance in environmental management for small and medium-size firms.[77]

Larger firms, which account for the great majority of U.S.-owned companies operating in the EC, for the most part already have environmental management tools and audit procedures.[78] Industry representatives, including those for U.S. firms, believe the use of external verifiers poses considerable problems but support the alternative use of internal management systems and audits certified through appropriate European standards.[79] The use of external verifiers could create particular competitiveness problems for U.S. firms that export to the EC, as the verifier must operate somewhere in the EC.

There was initially a good deal of concern about the public disclosure requirements of the proposed eco-audit scheme, as such provisions may have required public disclosure of confidential or privileged information. The revised test clarifies that the company will be required to publish not the actual audit report but only the external verification of the report.[80]

With these qualifications businesses generally, including U.S.-owned firms, support the spread of environmental auditing to all levels of European industry and government.[81] The chemical industry is likely to be the first to see widespread use of the eco-audit system.[82] That industry already has extensive experience with environmental management and auditing, and there is public pressure for that industry to demonstrate environmentally sound practices.[83]

Eco-Label

On March 23, 1992, the Council adopted a regulation on a Community eco-label award scheme.[84] The regulation became effective on adoption. As explained in the previous USITC report on EC 92,[85] the regulation establishes a voluntary Communitywide system for awarding an ecological label for products that have a reduced environmental impact during manufacturing, distribution, consumption, and disposal after use.

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[73] EC Commission official, interview by USITC staff, Brussels, Jan. 12, 1992.

[74] Ibid.

[75] Ibid.

[76] Official of CNPF, French Employers' Association, interview by USITC staff, Paris, Jan. 8, 1993 (CNPF interview).

[77] Ibid.

[78] Ibid.; Representative of AmCham Environment Committee, interview by USITC staff, Brussels, Jan. 11, 1993 (AmCham interview).

[79] Ibid.; EC Committee of the American Chamber of Commerce in Belgium (AmCham), *Business Guide to EC Initiatives* (Brussels: EC Committee, AmCham, Winter/Spring 1993), p. 38; UNICE, letter to Mr. C. Ripa de Meana, Apr. 7, 1992.

[80] EC Commission official, interview by USITC staff, Brussels, Jan. 12, 1992.

[81] AmCham, *Business Guide to EC Initiatives*, p. 38.

[82] EC Commission official, interview by USITC staff, Brussels, Jan. 12, 1992.

[83] Ibid.

[84] *Council Regulation 880/92/EEC, OJ* No. L 99 (Mar. 23, 1992), p. 1.

[85] USITC, *The Effects of Greater Economic Integration Within the European Community on the United States: Fourth Followup Report* (investigation 332-267), USITC publication 2501, Apr. 1992, p. 5-29.

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

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

The advisory committee has designated thirty-five product categories and assigned them to various member states. The assigned member state is responsible for setting the standards for the product line it was given charge of. The first group discussions of relevant criteria began in April 1992 and are continuing. Progress has been slow, largely due to the range of questions that must be addressed within each product category. For example, the group must define the most environmentally sound production over the life of the product and must ascertain whether the life cycle should focus on the front-end production processes or on the handling of the product at the end of its use.[86] At best, discussions for the first series of product categories may be completed early in 1993.[87] These categories include several paper categories, detergents, laundry and dishwashing machines, paints and varnishes, and packaging materials.[88]

U.S. industry representatives recognize that defining criteria that are fully relevant will require substantial efforts and time.[89] Assuming the establishment of objective and scientifically sound criteria for awarding the eco-label, the larger U.S. firms, whether maintaining facilities in the EC or exporting products to the EC, are unlikely to experience competitive disadvantages. However, for small U.S. firms intending to export to the EC, it may not be cost effective to go through the paperwork of applying for the eco-label, even if they use clean technology.[90] In addition, there is some global concern that the eco-label scheme could serve as a trade barrier to imports of products, especially textiles, from developing countries.[91] Although meeting eco-label requirements is not particularly problematic for the United States, the eco-label scheme could create the potential for the diversion of such exports to the United States.

Packaging and Packaging Waste

As detailed in the previous USITC report on EC 92,[92] over the past 2 years the EC Commission has issued several drafts of the controversial framework directive for packaging and packaging waste management programs that would reduce the environmental impact of packaging waste and encourage lower consumption of raw materials and energy. In August 1992 the EC Commission issued its fifth draft proposal for a directive on packaging and packaging waste.[93] It is expected that this latest draft will be forwarded to the Parliament for a first reading.[94] The Danish EC Presidency has indicated that it will make the packaging waste directive a priority.

Like the earlier versions of the proposal, the latest proposal would apply to all packaging placed on the EC market and all packaging waste, whether it is used or released at industrial, commercial, office, shop, service or household level, but would not apply to packaging exported from the EC. The current proposal continues to set a 10-year target of recovering 90 percent by weight and recycling 60 percent by weight of the packaging waste. Under the current proposal each member state can meet the 90-percent objective by whatever means it chooses. Unlike the previous drafts, the fifth draft allows for incineration of some of the waste.

These changes were opposed by Germany, whose own recycling laws do not permit incineration.[95] The proposal closely reflects the new French laws, which allow incineration.[96] The proposal is not yet firm, and several member states disagree as to the targets. Some member states, such as Portugal, believe the proposal is too restrictive, whereas other member states, such as Denmark, do not believe it is restrictive enough.[97] Some countries may have a problem meeting the currently proposed targets, because the requirements make no distinction among different types of packaging. Further changes to the proposal may be necessary to establish different percentages for different types of materials.[98]

The current proposal is based on article 100a of the Treaty of Rome, as added by article 18 of the SEA. This article applies to measures adopted to complete

[86] Official of U.S. Embassy, Paris, interview by USITC staff, Paris, Jan. 7, 1993.
[87] AmCham, *Business Guide to EC Initiatives*, p. 37.
[88] Ibid.
[89] AmCham, *Business Guide to EC Initiatives*, p. 37.
[90] Official of U.S. Embassy, Paris, interview by USITC staff, Jan. 7, 1993.
[91] OECD official, interview by USITC staff, Paris, Jan. 7, 1993.
[92] USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 5-30.
[93] COM (92) 278, *OJ* No. C 263 (Oct. 10, 1992), p. 1.
[94] AmCham, *Business Guide to EC Initiatives*, p. 26.
[95] AmCham interview.
[96] Ibid.
[97] Ibid.
[98] Ibid.

the internal market and aims at undistorted conditions of competition. Adoption under article 100a will require qualified-majority approval, but only after adherence to the SEA's cooperation and consultation procedures, which give the European Parliament a greater role in the process. It is possible that environmental lobbyists will challenge this authority,[99] on the grounds that the regulation should be adopted under EEC article 130s, pertaining to measures relating to the environment. Article 130s allows member states to maintain or introduce more stringent measures than those contained in the Communitywide environmental measure. Article 130s would require unanimous approval of the directive.

Whatever the content of the final directive as adopted, it will inevitably have a major impact on the production, marketing, and distribution of most products.[100] Essentially, any producer who sells products in the EC, whether manufactured there or imported, will need to know at the time of manufacture how the product will be disposed of at the end of its life cycle. Some industry representatives believe the regulation of volume weight and shape of packaging is unduly restrictive, reduces market flexibility, and creates trade barriers.[101] For some firms adoption of the directive, or derogation to member states under the directive, may require major new investments in production and recycling equipment. For example, EuroDisney produces many tons of waste per day, some of which is transhipped from France to Germany for disposal. However, it does not have the equipment to sort waste, as required by German law. If the final EC directive likewise requires the sorting of waste, or permits member states such as Germany to impose such a requirement, companies such as EuroDisney may have to change all of their waste disposal equipment.[102] The directive as currently proposed, however, differs from the German law in that it places the burden for taking back the packaging waste on the waste management system, not on the manufacturer.

The Department of Commerce recently solicited comments from U.S. industry on the proposed EC packaging directive. Most responding U.S. companies applauded the harmonizing goal of the proposal, but objected to the recovery targets set by the EC Commission as unrealistic.[103] All survey respondents expressed concern that the targets are not based on scientific research and incorrectly assume that that recycling is always the preferable method of recovery. They also suggested that the allowed incineration levels are unreasonable low, particularly in light of current incineration technology.

[99] AmCham interview.
[100] AmCham, *Business Guide to EC Initiatives*, p. 26.
[101] Ibid.
[102] EuroDisney official, interview by USITC staff, Paris, Jan. 8, 1992.
[103] U.S. Department of Commerce, Office of European Community Affairs, *Business America*, "Commerce Department, U.S. Industry Analyze EC's Proposed Packaging Waste Directive," by Catherine Vial, Jan. 25, 1993.

The Commerce Department is concerned with assuring that U.S. companies, particularly those that export products to the EC, have access to member states' national waste management systems.[104] Commerce seeks to avoid the possibility that U.S. firms could have their applications delayed either through reduced access to the member state's bureaucratic process or by having their products subjected to more scrutiny than products manufactured by EC firms.[105] Regarding the obligation to take the packaging waste back, EC representatives have assured the Commerce Department that U.S. exporters would not be required to take the packaging waste back to the United States.[106]

The potential problems associated with the proposed packaging directive are further compounded when viewed in the context of the EC Commission's proposal for a European Waste Catalogue. That proposal uses an exhaustive list approach to define both hazardous and nonhazardous waste for the purposes of dealing with the 1991 waste framework directive and hazardous waste directive. These directives, in turn, are interrelated to the packaging directive. The packaging directive addresses the front-end requirements of production to assure that the life cycle of the product is planned. The framework and hazardous waste directives address the handling of the product at the end of its life cycle, i.e., when its components become waste. Because the proposed packaging directive would require that the producer plan for the handling of the components at the end of the life cycle, the definition of what constitutes hazardous and nonhazardous waste could play an important role in the original packaging of a product. U.S. industry representatives have warned that close attention should be paid to the waste catalog and that the catalog as currently proposed contains items that a producer would not normally think of as "hazardous" waste.[107] For example, the catalog defines cadmium batteries as hazardous waste. A computer manufacturer who used computer screens with built-in cadmium batteries would be required to assure that the product could meet hazardous waste disposal requirements. If, however, the manufacturer used a screen with snap-out batteries, the problem would be avoided. For these reasons, U.S. industry and Government representatives following EC environmental measures are closely monitoring the waste catalog proposal.[108]

Integrated Pollution Prevention and Control

The EC Commission is actively working on a directive on Integrated Pollution Prevention and Control (IPC). The proposal has been in draft for over a year and is nearly ready for presentation.[109] The

[104] Ibid.
[105] Ibid.
[106] Ibid.
[107] AmCham interview; U.S. Department of State, U.S. Mission to the EC (USEC) official, interview by USITC staff, Brussels, Jan. 11, 1993.
[108] Ibid.
[109] EC Commission staff, interview by USITC staff, Brussels, Jan. 12, 1993.

proposed directive will address emissions of air, water, and solid waste in the same legal instrument. Permits will be granted by competent authorities through a process that takes an integrated approach towards prevention of all three types of pollution in the same permit framework. The objectives of IPC, as stated in the explanatory memorandum to the current draft proposal, are to prevent or solve pollution problems rather than transferring them to other parts of the environment; to make pollution controls more efficient for industry and effective for the environment; to increase the ability to set priorities; and to encourage consistency in environmental law.

Under the proposal best available techniques (BAT) must be applied to prevent or minimize the pollution from air, water, and land sources. BAT refers to technology that is available anywhere in the world. The current version of the proposed directive does not require that any particular piece of technology must be used but sets guidelines for the levels to be achieved by whatever technology or techniques chosen. The proposal incorporates a certain amount of flexibility to allow for local environmental conditions to be taken into account. The proposal specifically states that a cost-benefit analysis is required.

The proposal incorporates the emission levels and quality standards already in existing directives or national laws. The competent authorities must assure that all existing quality standards under national or Community legislation are adhered to, even if the levels set by these standards are stricter than what is achievable with BATs. If there is no existing quality standard, then the BAT would set the floor in the first instance. At present there are only three EC-wide substance-specific directives addressing air pollutants and 8 to 10 quality standards for water pollutants.[110]

The proposed directive would apply to plants in the following industries: energy, metals, cement, glass, asbestos, refractory, chemicals, waste disposal, and paper and pulp manufacturing. Prescribed industries operating existing plants would have 10 years to come into compliance. New installations in those industries would be required to obtain a permit before beginning operations. The local permitting authorities will examine applications and decide on whether to grant the permit. A permit may include one or more processes or activities on the same site.

Adoption of an IPC directive is not likely to result in major changes in existing laws, although some tailoring may be needed to meet the directive.[111] Six EC countries already have integrated pollution legislation. Denmark and France have had such legislation for 20 years, and IPC laws recently have been passed by the United Kingdom, Ireland, Luxembourg, Flanders, and Portugal.

Industry in general, including companies of U.S. parentage, have not conclusively passed judgment on the draft IPC directive but have reacted positively to the initiative of using one single permit and controlling authority to regulate all emissions.[112] Industry representatives have, however, voiced a number of concerns about the substance of the directive, including enforcement questions and the appropriate reference criteria.[113] Industry groups are advocating the use of fixed, harmonized control parameters to avoid controversies with the local authorities.[114]

Because the BAT concept refers to technology available anywhere in the world, state-of-the-art technology, which is often manufactured in the United States, would become the norm. As such, adoption of the IPC directive could provide a constant market for leading U.S. pollution control technology.

Carbon Tax

In 1992 the EC Commission presented a proposal for a directive on the EC strategy to reduce carbon dioxide emissions and improve energy efficiency.[115] The proposed strategy involves research and development to improve energy efficiency, legislation setting vehicle emissions standards, fiscal measures such as taxes on privately owned automobiles, and introduction of a carbon dioxide/energy tax. The tax will gradually increase to $10 on a barrel of oil by the year 2000. The tax will be divided 50 percent as an energy tax and 50 percent as a carbon-content tax. The EC Commission stated that the tax will be fiscally neutral, so that it will not result in an increased tax burden for the consumer but will be offset by tax compensation in other areas. To prevent the creation of a competitive disadvantage to industries with high energy consumption which compete in the international market (such as steel, chemical, and glass industries), the proposal provides a partial exemption for such industries that will apply unless trading partners impose a similar levy.

Prior to the Earth Summit in Rio de Janeiro in June 1992, the environment Ministers openly favored a unilateral EC tax, regardless of action or inaction by other OECD countries such as the United States and Japan. In the latter half of the year, however, the Council suggested that it will not impose a unilateral tax. Many industry representatives strongly oppose the adoption of the directive, particularly if the United States and other trading partners do not take similar measures.[116] These industry organizations believe the tax will cause severe economic problems in an already-suffering economy without achieving the stated objective of reducing carbon dioxide emissions.[117] They also note that a tax levied in the

[110] Ibid.
[111] Ibid.
[112] AmCham, *Business Guide to EC Initiatives*, p. 29.
[113] Representative of U.S. law firm, interview by USITC staff, Brussels, Jan. 12, 1993.
[114] AmCham, *Business Guide to EC Initiatives*, p. 29.
[115] *OJ* No. C 196 (Aug. 3, 1992), p. 1.
[116] CNPF interview; *Business Guide to EC Initiatives*, p. 36.
[117] Ibid.

EC and not in its trading partner countries would inevitably hinder the competitiveness of any firms doing business in the EC.[118]

The French employers' association, CNPF, has proposed a third option to taxation or regulation of energy. That proposal calls for the use of voluntary agreements by which certain industries set a timetable over which they will reduce emissions.[119] A voluntary agreement of this sort is under negotiation between the French Government and the French chemical industry. To date, only France has tried this approach, but France may try to institutionalize it at the European level.[120]

Industry analysis

Agriculture

The agriculture sector generally comprises farm-based products at a primary or intermediate level of processing, such as live animals and plants, fresh or frozen meat, fruits and vegetables, and feedstuffs. As such, the EC directives affecting this sector generally are under the general categories of animal and plant health and involve such issues as disease control, feed safety and quality, and meat inspection regimes.

On November 13, 1992, the EC and the United States, reached an agreement that will help resolve disputes stemming from the EC's Third Country Meat Directive.[121] The directive requires third-country meat producers wishing to export meat to the EC to comply with specific technical standards and to undergo inspection of their production facilities by EC regulatory officials. The United States has contended that there is equivalency between the U.S. and EC inspection procedures and urged EC acceptance of inspections conducted by the U.S. Department of Agriculture.[122] EC imports of most pork and beef from the United States have been prohibited since November 1, 1990, and January 1, 1991, respectively.[123] As a result, the Meat Industry Trade Policy Council, an ad hoc group of interested parties, filed a complaint with the Office of the United States Trade Representative (USTR) under section 301 of the Trade Act of 1974. The USTR initiated a section 301 investigation on January 10, 1991. A series of bilateral consultations ensued, but several interim settlements broke down and failed to result in the relisting of U.S. meat plants to export to the EC.

The new agreement reached has a target date for full implementation of December 31, 1993. The agreement involves a two-stage process, the first of which resulted in the review and relisting of U.S. plants to export to the EC.[124] The second stage involves establishing the equivalency of the EC and U.S. inspection systems.[125] In the interim the EC agreed to provide a more clearly defined basis for EC approval of U.S. meat-exporting plants and to consider acceptance of meat from plants certified by the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) as meeting EC import requirements. The agreement will allow for EC approval of additional U.S. meat plants for export prior to full implementation of the new agreement. The agreement also states that the U.S. will accept the EC's regionalization for control of animal disease, consequently will be prepared to amend its own import regulations,[126] and will fashion a greater role for the FSIS in approving U.S. meat plants for export to the EC.[127] The United States also recognizes the need to apply uniform standards to all EC member states. With the agreement imminent, the section 301 investigation was terminated by USTR on October 16, 1992.[128]

The American Meat Institute (AMI) has expressed doubts about the agreement reached between the United States and the EC and has criticized the termination of the section 301 trade petition by USTR. The AMI stated that the section 301 petition was filed to encourage complete settlement of the issue, but the settlement only commits the United States and the EC "to undertake to endeavor to complete all the necessary procedures to achieve a final solution by December 31, 1993." Without the threat of certain retaliation in the absence of a timely agreement provided by the section 301, the AMI believes that the incentive for a final resolution to the dispute has been significantly lessened.[129]

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[118] Ibid.

[119] CNPF interview.

[120] Ibid.

[121] Office of the United States Trade Representative, press release 92-63, Nov. 13, 1992.

[122] For a more detailed discussion of the dispute see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, pp. 5-34 to 5-36.

[123] U.S. exports of pork and beef to the EC were relatively minor prior to the implementation of the directive; for further background, see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 5-35 to 5-36.

[124] According to the Food Safety Inspection Service of the USDA, as of Feb. 2, 1992, 42 U.S. plants were eligible to export red meat to the EC. Of these, 11 were eligible to export horsemeat and had not been affected by the Directive, and 31 had been relisted to export beef and/or pork.

[125] USDA, Food Saftey Inspection Service, *Meat and Poultry Inspection: 1991 Report of the Secretary of Agriculture to the U.S. Congress*, Dec. 1992, p. 24.

[126] Regionalization allows for different disease status among EC member states. The major concern regarding U.S. imports is that some EC members have an increased incidence of animal disease or weaker inspection regimes.

[127] The EC has agreed to allow "pre-listing," whereby FSIS approval will be accepted prior to site inspections by EC inspectors.

[128] 57 F.R. 47508-47509. The USTR announced that it would monitor the implementation of the agreement and would continue action under section 301 if the agreement was not completed within a reasonable period of time.

[129] American Meat Institute, press release, Oct. 13, 1992.

Processed Foods and Kindred Products

The processed foods and kindred products sector generally comprises agricultural products processed beyond primary and intermediary stages, such as packaged foods, tobacco products, and beverages. The bulk of EC directives pertinent to this sector are under the general category of food law and involve such issues as labeling, product standards, and food claims.

Certificates of Specific Character

Background and Anticipated Changes

Council Regulation (EEC) No. 2082/92 of July 14, 1992,[130] seeks to recognize that certain agricultural products and foodstuffs derive market value from their inherent characteristics, which distinguish them from similar products.[131] The regulation provides the methods by which such products may be registered with the EC and may display a special Community symbol. Additionally the regulation calls for the uniform inspection of such products throughout the Community and includes provisions allowing trade with third countries that offer equivalent measures in their markets.

Possible Effects

Though ostensibly the ability to obtain and carry a Community symbol showing the specific character of a product would be an indication of a uniqueness of that product that would differentiate it from competing products, the carrying of a Community symbol has the potential to become associated by consumers with Community approval of the product—a type of "Good Housekeeping" seal. Provisions are made in the regulation for the granting of such Community symbols to agricultural products and foodstuffs coming from third countries. The regulation stipulates that the third country must be able to provide identical or equivalent certification of products from the EC and must have equivalent protection and inspection arrangements. Products from third countries without equivalent certification systems may find it more difficult to compete in the EC market with similar products carrying the Community symbol.

Data on U.S. exports to the EC of products that could be eligible for certificates of specific character are not available. Although U.S. trade and investment in agricultural and processed food products with respect to the EC are not expected to be significantly affected by this regulation, uncertainty regarding its implementation are a cause of concern to U.S. agricultural interests.

[130] *OJ* No. L 208 (Jul. 24, 1992), p. 9.

[131] For example, some foodstuffs specified by the directive include beer, chocolate, pasta, soups, and ice cream.

Organic Production of Foodstuffs

Background and Anticipated Changes

The EC Council in July 1992 approved a regulation (2083/92)[132] postponing until January 1, 1993, the implementation of a regulation on the marketing and labeling of organic products.[133] The new regulation also provided for a 3-year transitional system allowing importers to request approval of the importation and distribution of specific organic products before the inclusion of a country on the official equivalence list.

Possible Effects

The United States currently does not have Federal standards for certifying food as "organic." In the United States 15 organic certification programs are run by State and independent organizations, and the quality of U.S.-produced organic foods is generally recognized as equal or superior to that required by the EC. The EC plans to accept the various U.S. programs as meeting its new certification requirements but will still require review through a Federal agency.[134] The new 3-year transitional period should allow time for the finalization of U.S. Federal organic certification standards by the U.S. Department of Agriculture.[135] The U.S. organic foods industry reportedly views the eventual Federal standards as a positive marketing tool, both for domestic and export sales.[136] According to an industry survey, U.S. retail sales of organic food products totaled an estimated $1.25 billion in 1991, including approximately $40 million in exports (mainly to the EC and Japan).[137]

Food Additives

Background and Anticipated Changes

The purpose of the original food additive directive (Commission Directive 89/107/EEC)[138] was to establish a framework for the use of food additives in the manufacture, processing, treatment, packaging, and storing of food in the EC.[139] Three specific directives

[132] *OJ* No. L 208 (Jul. 24, 1992), p. 15.

[133] USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, p. 4-52.

[134] In response to the regulation, the USDA submitted dossiers of the existing U.S. organic certification organizations for EC approval. However, some individual EC members are requiring that additional applications be submitted for approval of U.S. exports of organic foodstuffs to their markets. USDA official, telephone conversation with USITC staff, Feb. 11, 1993.

[135] The National Organic Standards Board, established in January 1992, is currently drafting recommendations for federal certification standards. Details of the standards are not yet available. According to officials of the U.S. Department of Agriculture, these standards are not likely to be enacted for at least a year.

[136] Official of the USDA, Agricultural Marketing Service, conversation with USITC staff, Feb. 4, 1993.

[137] Ken Murgentine, New Hope Communications, Boulder, CO, conversation with USITC staff, Feb. 11, 1993.

[138] *OJ* No. L 40 (Feb. 11, 1989), p. 27.

[139] USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, p. 5-56.

(92/C 12/05, 92/C 206/03, and 92/C 206/02) within the framework established by the original Food Additive Directive have been proposed on sweeteners, colors, and other additives. The EC continues to use the "positive list" approach to the regulation of food additives, meaning that use of any additive not on the list is strictly prohibited. The use of the positive list approach has been a source of concern for some U.S. industries, which find this approach exceedingly restrictive.

The original 1989 Framework Directive and the draft sweeteners and additives directives have been revised following controversy over a footnote in the sweetener directive proposal that prohibited the use of sweeteners in low-alcohol beer.[140] As a result of the controversy, a modified draft Framework Directive has been proposed that integrates the footnote into the overall text, allowing member states to forbid the use of certain food additives in the production of traditional products within that member state, provided that trade from other member states continues to move freely and production of non-traditional products is permitted. The draft directive on food colorings was rejected by the European Parliament's Committee on the Environment, Public Health and Consumer Protection, which found that the directive interfered with national legislation.

Possible Effects

The continuing revisions of the draft directives, as well as the controversy over the definition of what constitutes a "traditional product" and the protection of national legislation,[141] have scuttled the possibility of meeting the original 1989 Framework Directive requirement for the details on the use of specific classes of food additives to be laid out before 1993. The uncertainty caused by this situation makes assessment of the potential effect on the U.S. industry difficult to determine. Virtually all processed food would be affected by the three directives.[142]

Labeling of Tobacco Products

On May 15, 1992, the EC's Council of Health Ministers gave final approval to the directive on the labeling of tobacco products (Commission Directive 92/41/EEC)[143]. In addition to obligations concerning health information, the directive also prohibited the marketing of certain oral-use tobaccos beginning July 1, 1992. The directive has been a source of concern to U.S. industry.[144]

Advertising of Tobacco Products

An amended proposal resulting from earlier draft directives restricting tobacco product advertising in 1989 and 1990 was approved by the European Parliament on February 11, 1992 (92/C 129/04).[145] However, the EC Council of Health Ministers, which must give final approval to the controversial directive, failed to approve the directive in the July and November sessions. The directive remains on hold. The directive is intended to prohibit all direct and indirect tobacco advertising except inside authorized tobacco-selling establishments from January 1, 1993. The directive also would prohibit the free distribution of tobacco. Whereas the ban could have little effect on consumption of U.S. products that are well known to EC consumers, it could hamper the introduction of U.S. tobacco products to new markets and make the introduction of new product lines more difficult.

Materials and Articles in Contact With Foodstuffs

Background and Anticipated Changes

Commission Directive 92/39/EEC of May 14, 1992,[146] amends Directive 90/128/EEC by allowing monomers and other starting substances listed in its annex II to be used for the manufacture of articles coming into contact with food following January 1, 1997. The amendment also states that member states should permit trade in and use of the plastic materials and articles that comply with this directive by March 31, 1994, and should prohibit trade in and use of those that do not comply by April 1, 1995. These directives, 92/39/EEC and 90/128/EEC, are two of the more product-specific (vertical) directives outlining the specifics of the Framework Directive 89/109/EEC adopted on December 21, 1988.

Possible Effects

Similar to the situation with food additives, the EC directives on materials and articles intended to come into contact with foodstuffs use a "positive list" approach in which the EC Scientific Committee for Food formulates a list of substances that are acceptable. The EC's approach is inherently more restrictive than the one employed by the U.S. Food and Drug Administration and thus could result in trade discrimination for certain U.S. exporters. Among the potentially affected U.S. interests are makers of pulp and paper, chemicals, plastics, glass, ceramics, metals and alloys, and a host of other miscellaneous products associated with food and beverage packaging and serving applications.

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[140] The footnote was in response to concerns by the German beer industry about the need to retain strict purity standards for traditional German beers.

[141] Legislation establishing standards, such as the German purity standards for beer.

[142] Although precise data are not available on U.S. exports of the processed foods that would be covered by these directives, it is believed that they would affect a substantial share of overall U.S. agricultural exports to the EC, which totaled $6.9 billion in 1991.

[143] *OJ* No. L 158 (June 11, 1992), p. 30.

[144] For further background, see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 5-40.

[145] For further background, see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 5-40.

[146] *OJ* No. L 168 (June 23, 1992), p. 21.

Chemicals and Related Products

The primary developments in the chemicals and related products sector in 1992 dealt with cosmetics and dangerous substances. A significant change to cosmetics manufacture surfaced in an amended proposal that would regulate allowable ingredients and approval processes for new ingredients. Further, all unnecessary animal testing of cosmetic ingredients would be eliminated over a 5-year period. The EC also continued to update restrictions covering trade in, marketing, and use of certain dangerous chemical substances and preparations.

Cosmetic Products

Background and Anticipated Changes

Directive 76/768/EEC, as amended, describes the procedures and the regulations that will be permitted by the EC for the manufacture and marketing of cosmetic products. The directive describes the ingredients that are allowed to be included in cosmetic products, as well as the procedures for approval of new ingredients. The current amendment, Directive COM (92) 364 — SYN 307,[147] significantly changes the regulations described in the original directive, by requiring the elimination (over a 5-year period) of all unnecessary animal testing of cosmetic ingredients. The meaning of term "unnecessary" is not clearly spelled out, however.

Possible Effects

As there is no equivalent U.S. Federal provision, this directive could eliminate a significant number of U.S.-produced cosmetic products from eligibility for sale within the European Community. U.S. firms lag in phasing out animal testing. However, there is a significant consumer trend within the U.S. marketplace that is providing an impetus for the U.S. industry to consider implementing similar changes on their own. Also, at least one U.S. state has enacted legislation that is similar, though not equivalent, to the proposed EC regulation. Although many believe that similar regulatory changes are inevitable in the United States, the development of the EC regulations may accelerate the timetable for such regulation in the United States. As there is also an associated cost with such a changeover, a significant cost to the U.S. industry can be anticipated related to this directive in terms of achieving compliance both in the EC market and in the U.S. market.

U.S. Exports to the EC

The value of exports of U.S.-produced cosmetics to the EC increased from approximately $159 million in 1989 to more than $231 million in 1991. This steady increase is expected to continue with no real slowdown associated with the directive in question, as a result of two principal factors. European consumers are becoming more familiar and interested in typically U.S. products. Also, the globalization of the cosmetic industry has allowed for rationalization of production of certain products in single locations instead of multiple locations throughout the world.

Diversion of trade to the U.S. market

The majority of the cosmetics produced worldwide are produced in Western Europe and in the United States. The nations in these regions are also the world's major exporters. It would be very unlikely to have third-country exports diverted from the EC member nations to the United States, as the EC is a net exporter, and imports from non-U.S. sources capture only a minor share of the EC market for cosmetics.

U.S. investment and operating conditions in the EC

There will have to be a large investment throughout much of the EC cosmetics industry during the next 5 years to prepare for the changes associated with this directive. The globalization of this industry has in many ways ignored international boundaries, and a significant new investment will probably be made by U.S.-owned firms in their facilities in the EC for this reason alone. However, conversely, there will probably be a reciprocal flow of investment from EC-based firms to their subsidiaries and other associated firms in the United States in an effort to remain equally competitive with the U.S.-based counterparts because of globalization.

U.S. Industry Response

There has been no formal response by the domestic industry to the directive; however, the domestic industry strongly favors the continuation of animal testing when necessary.

Restrictions on Dangerous Substances

EC Council Directive 91/173[148] restricts the marketing and use of pentachlorophenol (PCP).[149] Potentially affected U.S. exports of this substance to the EC amounted to approximately 14,000 kilograms, valued at $41,000 in 1991, compared with 28,000 kilograms, valued at $40,000, in 1990.[150] According to an industry source, U.S. exports of PCP to the EC increased to 46,000 kilograms in 1992, valued at $484,000, to supply European wood treatment companies prior to the effective date of EC regulation 2455/92 (discussed below). Most of the remaining U.S. exports are used for purposes permitted in the proposed EC directive. The proposal would also allow each member state to maintain health and

[147] EC Commission, *OJ* No. C 249 (Sept. 26, 1992), pp. 5-15.

[148] EC Council, *OJ* No. L 85 (Apr. 5, 1991), pp. 34-36.

[149] Allowable uses are to treat wood for construction, to impregnate fibers and heavy-duty textiles not intended for clothing or decorative furnishings, or to synthesize or process industrial chemicals in the EC.

[150] Compiled from official statistics of the U.S. Department of Commerce.

environmental protection measures that are stricter than the EC legislation under certain conditions.[151]

EC Commission Directive 91/659[152] prohibits the marketing and use of magnesium silicates in certain highly diversified products.[153] U.S. exports of this substance to the EC were valued at $1.5 million[154] in 1991,[155] compared with total U.S. exports of this substance valued at $17.1 million[156] in 1991.[157] Two-thirds of U.S. exports of magnesium silicates to the EC ceased as a result of this directive and business conditions in the EC.

Under the EC Commission proposal submitted to the EC Council and the European Parliament under COM (92) 195—SYN 414,[158] each member state would uniformly restrict the marketing and use of substances (and preparations containing them) that cause (category 1) or probably cause (category 2) cancer, genetic mutations, or birth defects under the provisions of EC Council Directive 67/548,[159] as amended, unless they fall into certain exempted categories.[160] Uniform restrictions on the marketing of certain wood-treatment substances and preparations[161] would also be established.[162] Wood treated with these products would be banned from certain uses.[163] U.S. exports of these substances and preparations to the EC amounted to approximately 1.1 million kilograms, valued at $5.6 million in 1991.[164] Total U.S. exports of these substances in 1991 were 2.7 million kilograms, valued at $66.9 million.[165] Even though most of the exported U.S. products are not used in these situations, U.S. exports are expected to cease as a result of U.S. implementation of EC Regulation 2455/92 discussed below.

Under another amendment proposed in 1992,[166] preparations containing more than 0.1 percent, by weight, of certain chlorinated hydrocarbons[167] would be restricted from sale to the general public and indelibly marked "Restricted to professional users."[168] EC producers and importers would have 5 years after this proposal enters into force to restrict sales of nonexempted products specifically containing more than 0.1 percent 1,1,1-trichloroethane to professional users and to mark their packaging thus. U.S. exports of these substances and preparations to the EC amounted

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[151] If the stricter national law preceded the EC directive, or if the Member State voted against the directive. Passage of the directive is contingent upon France, Greece, and Italy resolving their doubts as to the availability of substitute products, so that any impact on trade will be limited and will not amount to national discrimination. "Single Market: German Ban on PCP [sic] Within EEC Rules," *European Report* No. 1760 (Apr. 11, 1992), Internal Market, p. 9-10.

[152] EC Commission, *OJ* No. L 363 (Dec. 31, 1991), pp. 36-38.

[153] Toys; sprays; powders; tobacco holders; catalytic heaters using liquefied gas; paints and varnishes; filters for air, liquids (this prohibition will not apply to filters for medicinal use until January 1, 1995) or natural gas; certain road surfacing material (the material may not contain magnesium silicate exceeding 2 percent, by weight); mortars, protective coatings, fillers, sealants, jointing compounds, mastics, glues, and decorative finishes; certain insulating materials (material with a density less than 1 gram per cubic centimeter); underlays for plastic floor and wall coverings; finished textiles not treated to avoid silicate release (such textiles may be marketed and used as diaphragms for electrolysis until January 1, 1999); and roofing felt in the EC.

[154] Composed of 57,000 kilograms valued at $563,000 and an additional $964,000 in unweighed goods to the EC in 1991.

[155] Compiled from official statistics of the U.S. Department of Commerce.

[156] Composed of 133,000 kilograms valued at $8.6 million and an additional $8.5 million in unweighed goods to all markets in 1991.

[157] Compiled from official statistics of the U.S. Department of Commerce.

[158] EC Commission, *OJ* No. C 157 (June 6, 1992), pp. 12.

[159] EC Council, *OJ* No. L 196 (Aug. 16, 1967), p. 1. Directive as last amended by *Directive 79/831/EEC, OJ* No. L 259 (Oct. 15, 1979), p. 10.

[160] Medicinal or veterinary products *(Directive 65/65/EEC, OJ* No. 22 (Feb. 9, 1965), p. 369), cosmetic products *(Directive 76/768/EEC, OJ* No. L 262 (Sept. 27, 1976), p. 169), motor fuels *(Directive 85/210/EEC, OJ* No. L 96 (Apr. 3, 1985), p. 25), waste *(Directive 75/442/EEC, OJ* No. L 194 (July 25, 1975), p. 39), hazardous waste

160—*Continued*

(Directive 78/319/EEC, OJ No. L 84 (Mar. 31, 1978), p. 43), or other substances or preparations regulated under *Directive 76/769/EEC* (EC Council, *OJ* No. L 262 (Sept. 27, 1976), p. 201), as amended.

[161] Anthracene oil, CAS No. 90640-80-5; coal tar acid oil, CAS No. 65996-85-2; coal tar distillates, naphthalene oils, CAS No. 84650-04-4; coal tar distillates, upper, CAS No. 65996-91-0; creosote, CAS No. 8001-58-9; creosote, wood, CAS No. 8021-39-4; creosote oil, CAS No. 61789-28-4; creosote oil, acenaphthene fraction, CAS No. 90640-84-9; and tar oil, low-temperature, alkaline extracted, CAS No. 122384-78-5.

[162] If these products contain more than 0.005 percent benzo-a-pyrene or more than 3 percent water-extractable phenols, by weight, or both; however, such products containing less than 0.05 percent benzo-a-pyrene may be placed on the EC market in packaging with a capacity of at least 200 liters, which would be indelibly marked "For use in industrial installations [such as railways, electric power transmission, telecommunications, industrial fencing, harbors, and waterways] only."

[163] Inside buildings, in containers for growing edibles for human or animal consumption, and in outdoor resorts and playgrounds, but such wood placed on the second-hand market may be used for other nonindustrial uses.

[164] Compiled from official statistics of the U.S. Department of Commerce.

[165] Compiled from official statistics of the U.S. Department of Commerce.

[166] EC Commission, COM (92) 195, SYN 414, *OJ* No. C 157 (June 24, 1992), pp. 6-12.

[167] Carbon tetrachloride, CAS No. 56-23-5; chloroform, CAS No. 67-66-3; 1,1-dichloroethylene, CAS No. 75-35-4; pentachloroethane, CAS No. 76-01-7; 1,1,1,2-tetrachloroethane, CAS No. 630-20-6; 1,1,2,2-tetrachloroethane, CAS No. 79-34-5; and 1,1,2-trichloroethane, CAS No. 79-00-5.

[168] Such products regulated as medicinal, veterinary, cosmetic, waste or hazardous waste products would be exempt from regulation under this proposal.

to approximately 15.3 million kilograms, valued at $10.0 million in 1991,[169] compared with total U.S. exports of these substance of 116 million kilograms, valued at $56.9 million.[170] These exports are expected to decline as a result of this proposal, since most are used by nonprofessionals.

Export and Import of Certain Dangerous Chemicals and Preparations

Background and Anticipated Changes

The EC and the United States are participating in an international information-sharing program sponsored by the United Nations (U.N.) called Prior Informed Consent (PIC) procedures. EC Regulation 2455/92[171] implements these PIC procedures by identifying all substances considered severely restricted under EC directives on dangerous substances and preparations and on plant protection products and placing them on its list of domestically prohibited goods for which prior informed consent would be required. This action would effectively ban the import of listed products unless the member state concerned gives its consent.

Nigeria and Cameroon have called for the voluntary guidelines on dangerous chemicals and preparations[172] and on plant protection products[173] to be adopted by GATT. U.S. acceptance of the PIC procedures was announced by the U.S. Environmental Protection Agency (EPA) on December 9, 1992.[174] The U.S. EPAs inventory of banned and severely restricted pesticides was transmitted to the International Registry of Potentially Toxic Substances on April 27, 1992. The EPA inventory of such chemicals for industrial or consumer uses was transmitted on May 27, 1992. The next step is for the U.N. Environment Programme (UNEP) and Food and Agriculture Organization (FAO) to decide whether the candidate chemicals submitted by the EC and the United States will be entered into the international PIC procedures.

Possible Effects

EC Council Regulation 2455/92[175] extends controls to trade in certain goods that are banned or severely restricted for use in the EC market.[176] U.S. exports of these products to the EC amounted to approximately 16.3 million kilograms, valued at $90.2 million, in 1992 compared with total U.S. exports of these substances of 41.8 million kilograms, valued at $246.9 million. All of these exports could be affected by the regulation, because PIC by the member state concerned will be required before imports into the Community are permitted. Proposed Directive 92/195 (discussed above) significantly expands the scope of substances considered severely restricted in the EC. If this directive is passed, another $5.6 million in U.S. exports would be affected by this regulation, as imports of these goods would be banned unless prior informed consent was secured.

Under the proposal[177] each member state must enact identical sanctions for violations of the proposed regulation and must notify the EC Commission within one year of the entry into force of these sanctions. Authorized uses of severely restricted substances and preparations must be clearly identified. The EC Commission shall immediately forward to the member states decisions of third countries subject to PIC procedures. Such decisions must ban or severely restrict both foreign and domestic supplies of the chemical. If a country imports a product notified under the PIC procedures, EC exports of notified products may not be refused in order to source imports elsewhere. Further, for example, if no U.S. company is currently importing a product subject to PIC, then a 15-day waiting period is required by the EC on its exporters to allow the U.S. EPA to decide whether or not to restrict imports of this potentially hazardous product. Each year the EC Commission shall compile a report on EC participation in international notification systems, on the coverage provided by such systems, and on how they are complied with by third countries. The list of chemicals banned or severely restricted by the EC shall be reviewed by the Committee on the Adaptation to Technical Progress[178] when further chemicals, which are subject to similar information procedures applied by any member state wishing to trade with third countries, are banned or severely restricted in the EC within the framework of the Organization for Economic Co-operation and Development, the UNEP, and the FAO. International traders in the substances subject to PIC in the EC must

[169] Compiled from official statistics of the U.S. Department of Commerce.

[170] Ibid.

[171] EC Council, OJ No. L 251 (Aug. 29, 1992), pp. 13-22.

[172] United Nations, United Nations Environment Programme, *London Guidelines for the Exchange of Information on Chemicals in International Trade* (Nairobi, Kenya: UNEP, 1989).

[173] United Nations, Food and Agriculture Organization, *International Code of Conduct on the Distribution and Use of Pesticides* (Rome: FAO, 1989).

[174] 57 F.R. 58390.

[175] EC Council, *OJ* No. L 251 (Aug. 29, 1992), pp. 13-22.

[176] The U.S. products which are severely restricted are aldrin, alkyl mercury compounds, asbestos, endrin, mercuric oxide, mercurous chloride or calomel, heptachloro-tetrahydro-endo-methanoindene, and polybrominated biphenyls (PBB). EC Council, *OJ* No. L 155 (June 22, 1988), pp. 2-6 (EEC Regulation No. 1734/88).

[177] EC Commission, *OJ* No. C 6 (Jan. 10, 1992), pp. 5-20 [COM (91) 468].

[178] The Committee on the Adaptation to Technical Progress of the Directives for the Elimination of Technical Barriers to Trade in Dangerous Substances and Preparations.

specify the major use category of each entry as a plant protection product, industrial chemical, or consumer product chemical. The EC Council adopted Council Regulation 2455/92 on July 23, 1992, effective November 29, 1992.

Pharmaceuticals and other Medicinal Products[179]

The original legislative program for pharmaceuticals as mapped out in 1985-86 with the issuance of the White Paper is almost complete following the adoption of several pieces of legislation in 1992. Included among the adopted legislation were directives and regulations pertaining to the advertising of pharmaceutical products, wholesale distribution of medicinal products, labeling and information on medicinal products, homeopathic medicines, and the creation of the supplementary protection certificate (SPC).[180] A proposal to establish new authorization procedures for pharmaceuticals, however, remains outstanding. Additionally, several new directives concerning the pharmaceutical industry were proposed in 1992.[181] These directives are not expected to have a significant impact on the U.S. pharmaceutical industry. The pharmaceutical industry, which expressed varying degrees of concern about many of the pieces of legislation as they were being drafted, believes that the approved directives and regulations are generally acceptable.[182]

The SPC would automatically take effect when a patent expires and would cover the particular indications registered for the product at the time of expiration.[183] The regulation confers a total period of effective protection of 15 years from the date of the first marketing authorization in the European Community. The duration of the SPC cannot exceed 5 years. Provisions have also been made for patented drugs that have received marketing approval after January 1982, as long as the SPC application is made within 6 months of the date that the regulation is implemented, or by July 2, 1993.[184]

[179] A separate discussion concerning blood products is also included in this section.

[180] More specifically, Council Directives 92/28/EEC, 92/25/EEC, 92/27/EEC, and 92/73/EEC; and Council Regulation (EEC) 1768/92.

[181] The directives introduced in 1992 included two dealing with the import of certain raw materials for the pharmaceutical processing industry, coming from certain third countries that appear on the list established by Council Decision 79/542/EEC (92/183/EEC) or do not appear on said list (92/187/EEC).

[182] According to a representative of the Pharmaceutical Manufacturers Association (PMA).

[183] The SPC is more limited than a patent in that the SPC protects only the pharmaceutical product for which an EC marketing authorization was granted and not the larger number of compounds usually covered by a patent. Additionally, the SPC only protects the authorized medicinal uses of the product and not any other potential uses.

[184] Individual countries chose different reference dates for the grant of the first marketing authorization in the EC. The United Kingdom, Ireland, Luxembourg, France, and the Netherlands, for example, chose January 1, 1985; Germany and Denmark chose January 1, 1988; and Italy and Belgium chose January 1, 1982. Moreover, because Greece, Spain, and Portugal implemented national laws in 1992 that allowed for the patenting of medicinal products (as compared with only the processes), the regulation will not take effect in these countries until 5 years after implementation, to allow these countries time to gauge the changes associated with the new laws. According to a note by the legal department of the European Federation of Pharmaceutical Industries' Associations entitled "A Reading of the Current Texts: EC Regulation Concerning the Creation of a Supplementary Protection Certificate for Medicinal Products," 1992.

Blood Products

Background and Anticipated Changes

Directive 89/381[185] "extended" the general pharmaceutical product directives to cover human blood products, incorporating by reference guidelines to be developed by the World Health Organization (WHO), the Council of Europe, and the European Pharmacopeia. Among other things, this directive encourages self-sufficiency in blood products and discourages use of paid blood donors. The directive is intended to establish a consistent set of Community-wide practices with respect to these products.[186]

The international bodies whose guidance was sought completed their deliberations in 1992 and are issuing their guidelines, which reportedly are minimally reflective of U.S. practices. Several countries have introduced implementing legislation, which is still under consideration. The proposed legislation treats the goals presented as requirements but allows waiver for necessity. Several countries reportedly are pressing the Council to adopt more stringent guidelines EC-wide, reducing the scope for national variation of standards with respect to practices.

Possible Effects

U.S. blood products are largely (80 percent) produced from blood plasma obtained from paid donors. Blood products, primarily plasma but including higher valued manufactured products, represent a $400 million annual export market in the EC for U.S. producers. If self-sufficiency were achieved, or blood products derived from paid donors were banned, at least half this export market would be jeopardized.

U.S. firms are now operating in the EC. Their operations or access to EC blood supplies is not expected to change. However, all EC manufacturers, public and private, may face a shortage of supplies if this directive is implemented in such a way as to make mandatory its most stringent goals.

[185] *OJ* No. L 181 (June 28, 1989).

[186] For background see USITC, *The Effects of Greater Economic Integration Within the European Community on the United States: First Follow-Up Report*, (investigation No. 332-267), p. 6-80. The information in this section was provided by U.S. industry sources.

U.S. Industry Response

The U.S. industry has been lobbying to encourage implementation on a basis that takes into account U.S. practices and that treats self-sufficiency and use of only unpaid blood donors as a goal rather than a requirement. The U.S. industry is more concerned now that the process of national implementation is beginning, because their hoped-for "watering down" through the guidelines has not been successful.

Medical Equipment

The EC is striving to harmonize various member country standards and conformance procedures for medical devices and to establish a single regulatory approval system for such equipment. The previous USITC reports discussed proposed directives on active (electronic) implantable medical devices (AIMD), medical devices (MDD), in vitro diagnostic devices (IVD), and conformity-assessment issues.[187] This report updates the status of those directives and U.S. industry views about recent developments on conformity-assessment issues.

Active Implantable Medical Devices

The AIMD directive went into effect on January 1, 1993,[188] as scheduled. There is a 2-year transitional period ending December 31, 1994, in which manufacturers can either continue to meet existing national requirements to put their devices on the market or declare conformity to essential requirements directly after obtaining third-party approval from a notified body. Although no country had yet transposed the directive into its own national law, the Netherlands, Belgium, France, Luxembourg, and the United Kingdom were reportedly very close to doing so.[189] Germany will not have to use legislation to implement the requirements of the directive, since the language of the directive is very similar to current requirements. Implementation by other countries is not expected before the end of 1993.

Medical Devices

The EC Commission published a proposed amendment to the Medical Device Directive in September.[190] The most significant provisions relate to reimbursement and to devices for administering drugs.[191] Based on industry recommendations, the EC added language to make it easier for manufacturers to predict that devices determined to be in compliance with the directive would be reimbursed under member-state health and sickness insurance schemes. With respect to drug-administering devices, language was softened in the directive so that most of these devices would not be subject to additional directives related to medicinal products.[192] All of the other changes were minor clarifying language that should make the directive easier to understand by notified bodies, testing houses, and companies. Both U.S. and EC industry officials believe these changes will benefit the competitiveness of their companies in the EC market.[193]

In Vitro Diagnostic Devices

The IVD Directive remains in the first draft stage.[194] EC officials indicated in December that it would take at least one more year before the draft would be ready for initial proposal to the Council as a directive.[195] The IVD directive is expected to become effective sometime in 1995 and to contain a 3-year transition period.

The IVD directive is expected to follow the same principles of the AIMD and MDD directives. Specifically, it will reportedly take into account postmarket surveillance requirements inserted into the other two directives after they were first proposed. These requirements will require producers and users to track devices after they are approved and placed on the market. Because many researchers learn more about the effectiveness of in vitro devices after they have been on the market for some time, EC officials believe that these devices may require even more of this type of control than will many other medical devices.[196]

Conformity Assessment

Many of the larger U.S. and EC medical device manufacturers indicate they have prepared themselves to meet the new requirements of the AIMD directive and would prefer to utilize EC rather than national conformity-assessment requirements to place their products on the market.[197] The only remaining

[187] USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, pp. 6-7 and 6-17; USITC, *EC Integration: First Followup*, USITC publication 2268, Mar. 1990, pp. 6-71, 6-72, and 6-81 to 6-84; USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, pp. 4-62 to 4-64; USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 4-38 and 4-39; and USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, pp. 5-55 to 5-57.

[188] *Council Directive of 20 June 1990 on the Approximation of the Laws of the Member States Relating to Active Implantable Medical Devices*, 90/385/EEC, OJ No. L 189 (Jul. 20, 1990), p. 29.

[189] EC official, interview by USITC staff, Brussels, Dec. 14, 1992.

[190] *Amended Proposal for a Council Directive Relating to the Medical Devices*, COM (92) 356, SYN 353, OJ No. C 251/02 (Sept. 28, 1992), p. 40.

[191] "Regulatory Affairs," *Medical Device and Diagnostic Industry*, Sept. 1992, p. 32.

[192] EC official, interview by USITC staff, Brussels, Dec. 11, 1992.

[193] U.S. and EC medical industry officials, interviews by USITC staff during fieldwork in the United States and Europe, 1992.

[194] In vitro diagnostic devices covered by the IVD Directive cover chemical tests and analytical instruments that are used in medical laboratories for diagnostic purposes but that are not directly used on the human body.

[195] "EC Commission Round-Up," *Pharmaceutical Business News*, Oct. 9, 1992.

[196] EC official, interview by USITC staff, Brussels, Dec. 11, 1992.

[197] U.S. and EC industry officials, interviews by USITC staff during fieldwork in the United States and Europe, 1992.

obstacles to implementing full conformity assessment under the new directive are finalization of necessary standards by CENELEC, transposition of the directive into member-state legislation, and establishment of notified bodies in at least some EC countries.

EC officials indicate that standards development for the AIMD directive is 6 months behind schedule. Even though they were supposed to be ready on January 1, 1993, when the directive went into effect, standards will not be completed until at least the middle of 1993. EC officials indicate they have persuaded the relevant standards groups to reduce the number of standards for the AIMD directive from 150 to 6 as a result of taking a broader and less detailed approach to standards development.

As of January 1, 1993, no member state had yet transposed the AIMD directive into its own national law.[198] However, five of the countries were reportedly very close to doing so, and the remaining ones were expected to do so before the end of the year.

Another factor affecting implementation of the AIMD directive will be the availability of notified bodies deemed competent with respect to the requirements of the directive. The first notified bodies are expected to be the German TUV, three German State Government bodies, and BSI in the United Kingdom.[199] The Netherlands, France, and Belgium are expected to have notified bodies somewhat later in the year. Most other countries will probably not establish notified bodies for the AIMD directive, because it would be expensive and they have little experience with active implantable devices, such as pacemakers.

U.S. Industry Concerns

The U.S. industry supports EC efforts to harmonize requirements for placing medical devices on the EC market and to establish a single regulatory approval system for such devices.[200] The industry believes that EC harmonization based on private sector input will provide significant efficiencies for both European and foreign companies and will reinforce the already strong growth trends in the EC medical device market. The industry's greatest concerns are in the areas of subcontracting, mutual recognition, and FDA actions and policies that could impede progress toward international standardization and opportunities for U.S. manufacturers in the EC market.

Just prior to EC finalizing EC policies with regard to notified-body subcontracting, U.S. industry officials had urged U.S. trade officials to raise the subcontracting issue with relevant EC officials to lock in what industry officials believe is a favorable EC policy and to ascertain that EC discussions on mutual recognition remain on schedule.[201] Specifically, they asked that the United States seek the EC's continued commitment to allow EC notified bodies to subcontract for both quality system inspections and product tests. Industry officials were thus satisfied when the flexible policy was formally adopted by the EC.

The U.S. medical equipment industry would like to eventually see the establishment of U.S. notified bodies that could certify products for sale in Europe.[202] Having U.S. notified bodies would help ensure timely access to the EC product approval process as well as alleviate U.S. concerns about market access. Thus, the industry believes that the medical equipment sector should be a priority for possible negotiations of MRAs between the United States and the EC.[203] Industry officials believe that, in addition to guaranteeing access to the EC market, an MRA between the United States and the EC for medical devices would help foster confidence in private-sector-driven approaches and certification bodies for regulating medical devices.

To alleviate EC concerns with regard to the competence of foreign certification bodies, U.S. industry officials believe that some form of participation by the FDA is likely to be needed in the U.S. accreditation process for notified bodies. Development of such an accreditation system would not only provide assurances that U.S. private sector test houses are competent to test products to EC requirements, but would also foster mutual recognition of equivalent standards. U.S. industry officials believe that one benefit the United States may be able to offer the EC involves mutual recognition of quality system audits. The FDA and EC are already exploring this possibility, but U.S. industry officials believe that a greater political commitment on both sides would be helpful.

The U.S. medical equipment industry is very concerned that recent FDA product approval and enforcement activities could impede progress toward global regulatory harmonization and efficiency and could diminish opportunities that would otherwise accrue to U.S. producers as a result of the EC program.[204] Both U.S. and EC medical industry trade associations have expressed concern that a forthcoming FDA rule on medical device surveillance reporting goes well beyond the provisions required by U.S. legislation and the forthcoming EC directive on medical devices concerning reporting frequency and reportable content.[205] In addition, the EC associations

[198] EC official, interview by USITC staff, Brussels, Dec. 11, 1992.

[199] Ibid.

[200] Alan Magazine, "Global Opportunities and Global Cooperation," closing remarks at the Third Annual Global Medical Device Conference, Nice, France, Sept. 30-Oct. 2, 1992; officials of U.S. medical equipment producers in California, New Jersey, Connecticut, and Massachusetts, interviews by USITC staff, Apr. 1992 and Sept. 1992.

[201] Health Industry Manufacturers Association (HIMA), "EC-U.S. Mutual Recognition Agreements (MRAs): Key Issues for the Medical Device Industry," Oct. 14, 1992.

[202] Ibid.

[203] Ibid.

[204] HIMA, letter to Commissioner of Food and Drugs, U.S. Food and Drug Administration, Aug. 6, 1992.

[205] Safe Medical Devices Act of 1990, Pub. L. 101-629, 104 Stat. 4511; Coordinating Committee of the Radiological and Electromedical Industries (in Europe), letter to the Deputy Director General, DG III, EC Commission, Apr. 1, 1992.

believe that present FDA practices concerning noncompliance with their regulations put EC and other foreign manufacturers at a disadvantage to U.S. manufacturers by banning the import of goods without advanced notice. Meanwhile, U.S. manufacturers only receive a warning letter allowing correction of the noncompliance before any further regulatory action takes place.

There was also concern by EC industry officials about differences of interpretation between the FDA and the EC with respect to quality assurance standards.[206] Several years ago FDA began revising their current good manufacturing practices (GMP) regulation for medical device manufacturers, adding design controls. The revised GMP regulation[207] is expected to be more stringent than the corresponding international ISO 9001 standard and the related European EN 29001 standard. An FDA official reportedly indicated that the likelihood that the GMP revision will be more stringent than ISO 9001 will give U.S. manufacturers who want to sell medical devices in Europe an advantage "because U.S. firms will be able to meet EC requirements, while the reverse may not be the case."[208] However, industry officials believe that this discrepancy in standards could present a problem for efforts to harmonize the regulatory regimes of the EC and the United States.

Although U.S. trade association officials have tried to correct some of what they believe to be misinformation in the EC regarding current FDA activities, they believe that there is more than a little validity to the EC concerns.[209] The U.S. industry suggests, therefore, that the FDA—

1. Seek to eliminate premarketing and postmarketing requirements that appear to be conflicting or redundant in implementation of the Safe Medical Devices Act of 1990,
2. Coordinate with foreign regulators in the EC and in other countries before implementing regulations designed to achieve the same regulatory objective,
3. Provide greater certainty with regard to product approval times for products and ensure that such approval times are comparable with those in other developed countries,
4. Support the development and utilization of international standards to the maximum extent possible to foster harmonization,
5. Make a concerted effort to harmonize the proposed U.S. GMP regulations with the pending quality system requirements of Europe and Canada,
6. Consider Europe's plans to privatize parts of the testing and inspection process to generate regulatory efficiency, and
7. Take steps to ensure that FDA regulations and practices do not discriminate against firms that manufacture some or all of their devices overseas.

By taking these steps, U.S. industry officials believe that the establishment of mutual recognition agreements between the United States and the EC for medical devices will be greatly facilitated and will enable U.S. companies to take advantage of many of the opportunities expected to result from EC harmonization efforts.[210]

Motor Vehicles

Under the EC 1992 program the EC is harmonizing member states' laws on motor vehicle standards and developing a single EC approval procedure, referred to as whole-type approval. The EC has adopted a broad range of technical standards for motor vehicles and motor vehicle parts in this effort. U.S. motor vehicle industry representatives have expressed their support for harmonizing member states' technical standards,[211] but some are concerned about the test procedures and the certification process that will be used to ensure conformity with them.[212]

Type-Approval of Motor Vehicles

Background and Anticipated Changes

Directive 92/53/EEC provides the overall framework for whole-type approval for passenger automobiles and light-duty trucks.[213] Vehicles that meet the technical standards provided for in 44 separate directives listed in annex IV of the directive (annex XI for special-purpose vehicles) will be eligible for sale in all member states. The proposal marks the culmination of a decades-long effort to adopt Communitywide technical rules for cars and a single approval procedure. The directive describes the administrative procedures to be followed for conducting whole-type approval. Until December 31, 1995, member states shall apply whole-type approval only at the request of the manufacturer, giving manufacturers the option of seeking national type-approval (to EC or national standards) until that date. After December 31, 1995, whole-type approval to the EC requirements will be mandatory.

[206] EC official and EC medical industry officials, interviews by USITC staff during fieldwork in Europe, Dec. 1992.

[207] The proposed revised GMP regulation was expected to be proposed in the *Federal Register* in early 1993.

[208] Cliff Henke, "ISO 9000: Choice or Necessity," *Medical Device & Diagnostic Industry*, Oct. 1992, p. 46.

[209] HIMA letter.

[210] U.S. industry and trade association officials, telephone conversations with USITC staff, Jan. 1993.

[211] USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, ch. 20, pp. 7, 10-11.

[212] U.S. industry officials, interviews by USITC staff; USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, ch. 20, pp. 7, 10-11.

[213] *OJ* No. L 224, (Nov. 8, 1992), p. 1.

Possible Effects

U.S. industry representatives favor whole-type approval,[214] although some have expressed minor concern over testing, certification, and costs to U.S. producers. However, these issues are associated with specific standards directives rather than Directive 92/53/EEC. The U.S. industry can easily meet the various technical standards required for whole-type approval, and the benefits of having one approval process instead of many outweigh their concerns. EC subsidiaries of U.S. firms, which supply most of the vehicles sold by U.S. firms in the EC, operate relatively independently from U.S. producers and thus are less likely to share the concerns voiced by their U.S. counterparts. Exceptions to whole-type approval are provided for in the directive, notably for vehicles built in small batches or when a member state determines that, despite meeting all technical standards for type approval, a vehicle is unsafe or not roadworthy, in which case the member state may refuse the sale or use of the vehicle for a maximum period of 6 months, while the EC Commission settles the dispute.

In 1991, U.S. exports of automobiles to the EC totaled 77,000 vehicles, compared with 18,300 vehicles in 1987. U.S. exports of automobiles to the EC increased by about 14 percent in 1992 compared with 1991,[215] despite declining EC automobile sales in 1992. The directive is unlikely to hurt U.S. exports, and some U.S. industry officials believe that whole-type approval may facilitate sales of vehicles in the EC.[216]

Whole-type approval is expected to make it easier for firms to sell vehicles in the EC market, and U.S. firms have long expressed their support of the process.[217] However, there is no indication that the procedure will significantly affect U.S. investment.

Heavy Trucks

Background and Anticipated Changes

The EC is attempting to harmonize technical standards in the heavy truck industry, mainly through directives relating to the weights and dimensions of the vehicles. The EC proposed 91/C 313/23 amending Council Directive 85/3/EEC on the weights, dimensions, and certain other technical characteristics of certain road vehicles.[218] The amendment will extend the deadline for manufacturers to meet certain technical requirements and will allow trucks under 9.5 tons to avoid certain technical requirements. Council Directive 92/7/EEC was adopted February 10, 1992, and also amends Directive 85/3/EEC (cited above) in a similar manner.[219] The directive allows heavy trucks fitted with tandem axles and air suspensions to meet a less stringent set of certain technical standards, whereas trucks under 9.5 tons are not required to meet these standards.

Possible Effects

The U.S. exported about $54 million of heavy trucks to the EC in 1992, less than 2 percent of worldwide U.S. sales.[220] U.S. industry representatives note that thus far the harmonization of heavy truck standards has posed no significant problems for U.S. producers, but they will continue to monitor developments in this area.

Emissions From Motor Vehicles

Background and Anticipated Changes

Directive 91/441/EEC, the latest EC directive related to motor vehicle emissions, was introduced on June 26, 1991, to amend Directive 70/220/EEC (the original EC directive that addressed this subject). The limit values as defined by Directive 70/220/EEC for carbon monoxide and unburnt hydrocarbon emissions from motor vehicles were subsequently reduced, broadened, or amended by Directives 74/290/EEC, 77/102/EEC, 78/665/EEC, 83/351/EEC, 88/76/EEC, 88/436/EEC, 89/458/EEC, and 91/441/EEC. In 1992 the EC Commission accepted a proposal making further adjustments to limit values, test procedures, and implementation dates.[221] These regulations do not pose a technical challenge to U.S. automobile producers, and should not affect U.S. automobile exports to the EC. The most significant element in these new regulations with regard to U.S. suppliers is for emission-related products, and relates to the EC's refusal to accept the U.S. EPA testing cycle as of October 1996 as an alternative to European testing procedures.

Possible Effects

U.S. exports of catalytic converters to the EC were valued at $80 million in 1992, or 17 percent of total U.S. exports of these products to the world. The EC's future refusal to accept the EPA certificate could slow future U.S. exports of emission-related products to the EC.

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[214] USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, ch. 20, pp. 7, 10-11.

[215] USITC staff estimate based on official statistics of the U.S. Department of Commerce.

[216] USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, ch. 20, p. 10.

[217] Ibid.

[218] *OJ* No. C 313 , (Apr. 12, 1991), p. 14-17.

[219] *OJ* No. L 57, (Feb. 3, 1992), p. 29-32.

[220] USITC staff estimates using official statistics of the U.S. Department of Commerce.

[221] *Proposal for a Council 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*, (92/C 100/05), COM(92) 66—SYN 398 (submitted by the Commission on March 20, 1992).

U.S. Industry Response

Once implemented, EC restrictions related to motor vehicle emissions, such as those restrictions included in this new directive, may cause an administrative cost burden to U.S. automakers. U.S. industry sources cited a longstanding lack of reciprocity[222] between U.S. and European limit values and test procedures as the major cause for the EC's planned refusal to accept the EPA cycle. However, aside from the additional cost burden imposed by separate European testing, which is viewed as a relatively significant nontariff barrier, U.S. industry officials do not anticipate any technical difficulties in complying with European regulations. U.S. industry representatives claim that the United States is the leading worldwide supplier of mobile-source control technologies.

Permissible Sound Levels and the Exhaust System Of Motor Vehicles

Background and Anticipated Changes

Directive 70/157/EEC set forth limit values pertaining to the sound level of motor vehicles. These requisites were subsequently made more stringent by Directives 77/212/EEC and 84/424/EEC. In 1992 the EC proposed to amend these prior directives to further lower permissible noise emission levels emitted by motor vehicles.[223] Most noise emission from motor vehicles is generated by the interaction of motor vehicle tires and the road surface. The effects of these mandated noise reductions are particularly significant in the case of buses and trucks, because these larger and heavier vehicles may have more difficulty reducing noise pollution generated by the interaction of their large size tires and various European road surfaces.

Possible Effects

U.S. exports of new passenger automobile and light truck tires to the EC amounted to $125 million in 1992. U.S. exports of new truck and bus tires to the EC were valued at $30 million in the same year. In 1992, U.S. exports of motor vehicle tires to the EC accounted for 14 percent of U.S. exports of these products to the world. U.S. tire manufacturers expect European road conditions to improve, thereby mitigating some of the compliance concerns that have arisen with regard to more stringent noise emission requirements. Currently, there are no Federally mandated noise pollution requirements in the United States. There are, however, certain noise-level requirements set at the State level that closely emulate EC standards.

The new EC sound-level values could present a challenge to U.S. tire manufacturers, as they are not accustomed to constant monitoring of sound-level emissions from tires as part of their quality control procedure. Implementation of the new EC requirement, however, should not be a concern to the U.S. industry, because U.S. manufacturing technology is on par with world class standards.

U.S. Industry Response

U.S. industry sources indicate that they plan to continue monitoring European noise-level requirements to ensure that U.S. tire manufacturers remain in compliance with EC standards. In a related matter of noise emitted by exhaust system components, as referenced by the title, U.S. industry representatives noted that the increased use of exhaust silencers (mufflers) in the EC should pose no difficulties to U.S. suppliers, because the U.S. industry is already strong and export-competitive in this field.

Motorcycles, Mopeds, and Other Two- or Three-Wheeled Motor Vehicles

Background and Anticipated Changes

During 1991-92 the EC Council adopted various proposals and directives designed to ensure the safe operation of motorcycles, mopeds, and other two- or three-wheeled motor vehicles. These proposals and directives were deemed necessary because disparities among the 12 EC markets regarding national technical regulations forced manufacturers to provide numerous versions of their basic models. This legislation marked the latest in a series of regulations on these types of vehicles under the 1992 program. Previously, U.S. industry sources expressed concern about one of these: a proposal for a Council Directive on statutory markings for two- or three-wheeled motor vehicles, which was adopted during June 1992.

Possible Effects

U.S.-owned manufacturers still have many concerns about this legislation. For example, Harley-Davidson and other U.S.-owned producers are not sure if they will be able to meet certain standards required under this directive—primarily noise standards. The present noise directive mandates that by October 1993 the noise level of motorcycles over 175 cubic centimeters capacity be lowered from 82 decibels to 80 decibels. Another proposal also has been drafted that would mandate that the level be decreased to 78 decibels by October 1996. After investing $37 million in research and development to redesign and retool its engines, Harley-Davidson claims that some, but not all, of its models will be able to meet the 80-decibel target, but that they definitely do not believe that they will be able to meet the 78-decibel target. Harley-Davidson

[222] European automobile exporters indicate that U.S. EPA regulations have long served as a nontariff barrier to European exports of automobiles to the United States.

[223] *Amendment to the Proposal for a Council Directive Amending Directive 79/157/EEC on the Approximation of the Laws of the Member States Relating to the Permissible Sound Levels and the Exhaust System of Motor Vehicles,* (92/C 179/06) COM(92) 263—SYN 337 (submitted by the Commission on June 11, 1992).

and other U.S.-owned manufacturers are also concerned about the exterior projection, tailpipe emission, and tire standards required under this directive. However, the above-mentioned standards are still proposals and therefore may be modified before the type-approval directive is implemented. The majority of Japanese-owned producers in the United States do not appear to have any significant difficulties conforming with any of the above-mentioned proposals or directives.

In addition, U.S. industry sources are uncomfortable with the type-approval directive because many of the procedures required to test for conformity to certain standards have not been developed. This directive also requires that conformity testing for some standards be done by EC-approved third-party laboratories in Europe. However, EC labs will be able to conduct onsite tests and inspections, and the concern by U.S. officials may be unwarranted. Lastly, Harley-Davidson is concerned that since motorcycles are typically a "fringe" or luxury product, which attracts only a limited number of consumers, many of the EC countries will establish testing facilities for more staple products, such as automobiles, before constructing testing facilities for motorcycles. The U.S. motorcycle maker fears that motorcycle manufacturers will thus be required to send their prototypes to the one or two testing facilities in the EC. These facilities are likely to get backlogged. Harley-Davidson has expressed concern that U.S. manufacturers may experience considerable delay in marketing their products in the EC as a result of these backlogs.

Other Machinery

The EC has attempted to standardize health and safety protection among the EC member states and to harmonize regulations and conformity-assessment procedures for machinery.[224] The main focus of these efforts has been the Machine Safety Directive (89/392).

In 1992 the EC adopted a directive to require labeling of household appliances with consumer and energy consumption information (92/75/EEC).[225] The directive covers labeling of refrigerators, freezers, washing machines, dryers, dishwashers, ovens, water heaters, lighting appliances, and air-conditioners. U.S. industry sources anticipate that the EC will adopt standard test procedures to harmonize methods to evaluate energy consumption of appliances and to create uniform, energy-related design standards, minimum efficiency standards, or both.[226]

The directive is not of major concern to U.S. producers of household appliances, because the directive does not actually set energy-efficiency standards. One U.S. manufacturer believes that energy consumption and noise levels of its products are the same as or lower than those of EC producers, and thus, the firm perceives that the directive will have little or no effect on the U.S. industry. However, since this information is being required for the first time in the EC market, its publication may influence consumers to purchase an appliance that is more energy efficient and could therefore work to the advantage of U.S. producers.[227]

The EC Council published proposed directives on protective systems (principally underground and surface mining equipment) for use in potentially explosive atmospheres (COM (91) 516—SYN 375)[228] and on elevators, or "lifts" (COM (92) 35—SYN 394).[229] The U.S. industries producing these products have indicated that the proposed directives are not of major concern.[230]

In late 1992 the U.S. construction and agricultural machinery industry began discussions with the EC Commission to urge that the remaining divergent national standards for off-road construction equipment and agricultural machinery be harmonized.[231] Harmonization could be accomplished by amending the Machinery Safety Directive or by adopting a new directive. The areas of concern are requirements for speedometers, suspension, and mechanical steering features due to vehicle travel speeds; vehicle weight load limits for travel on bridges and roads; limits on vehicle dimensions for travel on roads; and requirements for safety lighting and signaling equipment on vehicles. Caterpillar Corp. has indicated that it markets three basic types of construction equipment configurations for 12 different EC countries due to differing road travel restrictions, with those of Italy and Germany being the most costly to implement. If the EC Commission does not harmonize the differences among countries, firms like Caterpillar will have to continue marketing different versions of its equipment for certain member states.[232]

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[224] USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, pp. 6-31 to 6-33; USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, pp. 6-89 to 6-97; USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, pp.4-65 to 4-67; USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, pp. 4-41 to 4-43; USITC, *EC Integration: Fourth Followup*, USITC publication 2501, pp. 5-25 to 5-26 and 5-50 to 5-53.

[225] *OJ* No. C 271, (Oct. 20, 1992), pp. 9-11.

[226] Official of Maytag Co., telephone interview by USITC staff, Jan. 11, 1993.

[227] Ibid.

[228] *OJ* No. C 46, (Feb. 20, 1992), pp. 19-49.

[229] *OJ* No. C 62, (Mar. 11, 1992), pp. 4-22.

[230] Official of the Office of European Community Affairs, U.S. Department of Commerce, interview by USITC staff, Jan. 12, 1993.

[231] Officials of the U.S. Mission to the European Communities, Brussels, interview by USITC staff, Dec. 14, 1992.

[232] U.S. Department of Commerce, "Meetings With Caterpillar and DGIII on the Machine Directive," Nov. 18, 1992, Brussels, message reference No. 12356.

During 1992[233] three Commission communications were published relating to the machine safety directive and to machinery in general. In June 1992 the EC Commission published communication 92/C 157/03, which lists the appropriate CEN standards that would apply to machine safety.[234] In August 1992 the EC Commission published communication 92/C 210/01[235] pursuant to Council Directive 73/23/EEC of February 19, 1973,[236] relating to electrical equipment designed for use within certain voltage limits. This communi- cation lists member-state administrative organizations that cover the standards relating to the directive, the logo marks drawn up by such bodies, the standards as of January 1992 that pertain to the directive, and models of the certificates issued by the national administrative bodies. In October 1992 the EC Commission published communication 92/C 271/04, which lists the French certification bodies that can carry out "type examinations" as mandated in the machine safety directive for certain types of machines.[237]

These EC Commission communications reflect progress in implementing the machinery safety directive and in allowing both EC and U.S. industry to access the appropriate standard and administrative authority.

Construction Products

The Construction Products Directive was implemented on June 27, 1991,[238] with an indefinite transition period. Progress on implementing the Construction Products Directive (89/106/EEC)[239] has been slowed by a failure of some member states to pass required legislation and by difficulty in reaching agreement on the six interpretative documents.[240] These documents are being developed to help member state regulators and manufacturers interpret and apply the directive's essential health and safety requirements.[241] The documents will also serve as guidance to CEN and CENELEC committees involved in developing product-specific standards. Completion of interpretative documents has been delayed by internal disagreements, especially over fire safety. Member states have been unable to agree on common testing requirements for fire safety, and recently agreed to undertake a research program to resolve this problem. Recommendations by the research group are due in three to four years. The five other interpretative documents are expected to be published in 1993, facilitating ongoing standards work. The EC Commission has issued 33 provisional mandates for standards to CEN and CENELEC, covering most of the standardization requirements under the Construction Products Directive. CEN and CENELEC have reportedly addressed some 75 percent of these requirements to date.[242]

Products for which there are no existing or planned standards may be submitted to an authorized body for approval. This European technical approval (ETA), which is valid for 5 years after issuance, permits the manufacturer to affix the CE mark. Currently, technical approvals issued by the European Union of Agrément (UEATc) are being honored until ETAs are issued.[243] The issuing body of ETAs, the European Organization for Technical Approvals, was officially established in October 1990. Since then, seven areas for ETAs have been proposed, and include liquid waterproofing for roofs; external insulation with thick and thin rendering; systems for structural glazing; prefabricated partitions; and anchor bolts for concrete. ETAs cannot be issued until the interpretative documents have been agreed on and published, however.

Telecommunications

The EC Commission considers the harmonization of telecommunications to be an essential precondition to the completion of the internal market. To this end the EC has introduced a series of measures designed to create a unified, Communitywide telecommunications structure. During 1992 the Council adopted directives on leased lines and satellite television broadcast standards and the EC Commission issued new or amended draft directives concerning data protection and transport communication systems standards.

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[233] The machine safety directive was amended to incorporate essential health and safety protection against workplace risks associated with machinery for lifting persons (other than elevators). OJ No. C 25 (Feb. 1, 1992), pp. 8-11, and *OJ* No. C 252 (Sept. 29, 1992), p. 3.

[234] *OJ* No. C 157 (June 24, 1992), p. 4.

[235] *OJ* No. C 210 (Aug. 15, 1992), pp. 1-39.

[236] *OJ* No. L 77 (Mar. 26, 1973), pp. 29-33.

[237] *OJ* No. C 271 (Oct. 20, 1992), pp. 9-11.

[238] The EC has initiated legal steps to enforce the adoption of the directive by Greece, Spain, Portugal, France, and Belgium, all of which had not done so as of December 1992.

[239] *OJ* No. L 40 (Feb. 11, 1989), p. 13.

[240] The EC has initiated legal steps to enforce the transposition of the directive by Greece, Spain, Portugal, France, and Belgium into national law.

[241] The essential requirements in these documents are as follows: (1) safety in case of fire; (2) mechanical resistance and stability; (3) adequate hygiene, health, and environmental protection, including a list of substances legally banned or restricted; (4) safety in use; (5) protection against noise; and (6) energy economy and heat retention.

[242] Mary Saunders, U.S. Department of Commerce, International Trade Administration, "Is There a Single Market for Construction Products?" *Europe Now*, Jan. 1993, p. 3.

[243] Mary Saunders, "Is There a Single EC Market for Construction Products?" p. 3. The UEATc was established in 1978 to facilitate trade in construction products through a series of bilateral agreements between national member bodies. Greece and Luxembourg have not yet established programs.

Packet-Switched Data Services and Integrated Services Digital Networks

Background and Anticipated Changes

In accordance with the open network provision (ONP) directive,[244] the EC Council adopted recommendations that would establish the criteria for minimum service offerings and nondiscriminatory access to packet-switched data and ISDN offerings.[245] The objective of these directives is to ensure that end users and unaffiliated service providers have equal access to the telecommunication authorities'(TAs) networks on which these services are provided. In addition, these directives seek to guarantee fair conditions between the TAs and other entities that provide value-added services.

Possible Effects

U.S. firms do not export value-added telecommunications services to the EC. Rather, they provide these services through foreign direct investment. These directives establish competition guidelines for U.S. and other firms providing value-added services in competition with TAs in the Community.

In general, U.S. industry welcomes these directives as measures that ensure equal access for end users and private service providers. However, there is concern that the TAs may be able to bundle their monopoly voice telephony services with packet switched data services (PSDS) and ISDN, which are nonreserved, competitive services.[246]

Voice Telephony

Background and Anticipated Changes

In August 1992 the EC Council adopted a proposal for a draft directive on the application of ONP principles to the voice telephony sector.[247] This directive would establish the rights of end users of the public telephone network with regard to the TAs and improve private service providers' access to the public telephone network infrastructure. If adopted, this directive will be implemented on January 1, 1994.

Possible Effects

This directive will improve the ability of both U.S. and EC non-TA service providers to operate in the European Community. U.S. service providers are concerned about vague language in the proposed directive that does not sufficiently distinguish between reserved and competitive services, and they believe that national regulatory authorities may use this ambiguity to prevent private operators from providing nonreserved value-added services.[248]

There is also concern that the proposed directive does not contain adequate nondiscrimination provisions. Though the directive contains a nondiscrimination requirement, there is no specific provision prohibiting the TAs from offering favorable interconnection terms to their own value-added service divisions or subsidiaries. In addition, the goal of transparency is compromised by the lack of an obligation to publish the interconnect agreements that the TAs conclude with other operators.[249] Finally, U.S. service providers are concerned that the proposed directive appears to abandon the principle of cost-based pricing for reserved services, a situation that may allow TAs to subsidize their competitive service offerings with revenues from their reserved services.[250]

Mutual Recognition of Licenses

Background and Anticipated Changes

In August 1992 the EC Commission proposed a directive that would establish procedures allowing a service provider licensed in one EC member state to provide those services throughout the Community.[251] The proposal also establishes a procedure whereby recognition may be granted to certain categories of telecommunication service providers, thus eliminating the need for individual applications for recognition.

Possible Effects

This proposed directive will improve the ability of U.S. service providers to operate throughout the Community. Mutual recognition of licenses will facilitate the development of a Communitywide

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[244] For previous discussion of the ONP directive, see USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, p. 6-106, and USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, p. 4-67.

[245] *Council Recommendation on the Harmonized Provision of a Minimum Set of Packet-Switched Data Services (PSDS) in Accordance With Open Network Provision (ONP) Principles, OJ* No. L 200 (July 18, 1992), p. 1 and *Council Recommendation on the Provision of Harmonized Integrated Services Digital Network (ISDN) Access Arrangements and a Minimum Set of ISDN Offerings in Accordance With Open Network Provision (ONP) Principles, OJ* No. L 200 (July 18, 1992), p. 10.

[246] Official at the U.S. Mission to the EC, interview by USITC staff, Brussels, Dec. 9, 1992.

[247] *Proposal for a Council Directive on the Application of Open Network Provision (ONP) to Voice Telephony, OJ* No. C 263 (Oct. 12, 1992), p. 20.

[248] EC Committee of the American Chamber of Commerce in Belgium, *Final Draft Position Paper on the Proposal for a Council Directive on the Application of ONP to Voice Telephony*, Dec. 7, 1992.

[249] Ibid.

[250] Ibid.

[251] *Proposal for a Council Directive on the Mutual Recognition of Licenses and Other National Authorizations To Operate Telecommunications Services, Including the Establishment of a Single Community Telecommunications License and the Setting Up of a Community Telecommunications Committee, OJ* No. C 248 (Sept. 25, 1992), p. 4.

marketplace for telecommunication services by enabling service providers to introduce new offerings without the delay and inconvenience of applying for licenses in each EC member state.

U.S. Industry Response

U.S. industry welcomes the EC Commission's proposals for Communitywide licensing of telecommunications service providers. However, there is concern that much of the information required of license applicants does not relate to the licensing condition of "compliance with essential requirements" and is business-sensitive.[252]

Television Programming

Background and Anticipated Changes

In June 1992 the EC Commission proposed an action plan to accelerate the development of advanced television services delivered by satellite and cable.[253] D2-MAC, the new European television transmission standard, will supplant the current, mutually incompatible national standards. D2-MAC will allow transmission of programming with a 16:9 aspect ratio.[254] In time D2-MAC will be replaced by HD-MAC, which is Europe's proposed high-definition television (HDTV) transmission standard. As noted in a previously adopted directive,[255] the EC would provide funding to assist in the transition from the existing standards to D2-MAC and HD-MAC. The proposed action plan specifies that the funding will go to broadcasters, cable companies, and program producers.

The action plan discussed in this proposal would assist in the implementation of Council Directive 92/38/EEC on the adoption of standards for satellite broadcasting of television signals, by providing funding for those companies introducing and developing advanced satellite broadcasting services for television programs using the D2-MAC and HD-MAC standards. However, at a meeting in December 1992, the United Kingdom again blocked EC funding for the plan.[256] The British believe that the proposed funding is not justified, because new technologies such as digital television are being developed that could supersede the HD-MAC standard promoted by the EC.[257] The British did, however, support a compromise that calls for spending only ECU 80 million for HDTV in 1993 instead of implementing a 5-year, ECU 850 million plan. In addition, the British propose that the prospects for digital HDTV be reviewed before investing additional funds in analog (HD-MAC) HDTV.[258]

Possible Effects

U.S. television program producers do not recoup their entire costs from the networks, but rely instead on selling programming into syndication and into foreign markets for profits. Any additional restriction imposed by the EC that would add to the cost of production makes the payback period longer. Although the proposal specifies that 25 percent of EC funding will be reserved for program production and conversion, it remains to be seen whether U.S. program producers or rightholders will be subsidized by the EC.

If funding for advanced television productions is reserved for EC producers, then the restrictive definition of an EC producer could prevent U.S. producers in joint ventures from receiving funding for performing the same function that EC producers perform.

The United States is the largest foreign supplier of programming to the EC. Video programming is one of the few U.S. industries with a positive balance of trade. The Motion Picture Association estimates that U.S. exports of TV programming to the EC were nearly $1.3 billion in 1990.

U.S. Industry Response

The association representing the U.S. industry reiterated its opposition to any restriction to the marketing of and trade in programming.[259]

Air Traffic Control Systems[260]

Background and Anticipated Changes

Air traffic control (ATC) systems in the EC have been developed in accordance with national and local specifications that are often technically and operationally incompatible. This incompatibility has hindered the transfer of controlled flights between traffic-control bodies, thus contributing to air traffic

[252] *Proposal for a Council Decision on an Action Plan for the Introduction of Advanced Television Services in Europe, OJ* No. C 139 (June 2, 1992), p. 4.

[253] United States Council for International Business, "Statement on the Draft Proposal for a Council Directive on the Mutual Recognition of Licenses and Other National Authorizations for Telecommunications Services," June 3, 1992.

[254] The aspect ratio is the ratio of picture width to picture height. The current broadcast TV aspect ratio is 4:3, and the HDTV aspect ratio will be 16:9.

[255] *Council Directive on the Adoption of Standards for Satellite Broadcasting of Television Signals, OJ* No. L 137 (May 20, 1992), p. 17.

[256] Andrew Hill, "Britain Again Blocks Funding for HDTV," *Financial Times*, Jan. 8, 1993, p. 2.

[257] The Japanese HDTV system uses an analog video signal and a digital audio signal, as does the HD-MAC system planned for implementation in the EC. The systems under consideration by the United States use digital signals for both audio and video.

[258] Philip Stephens and Lionel Barber, "Compromise Sought on HDTV Row," *Financial Times*, Dec. 19/20, 1992.

[259] Industry representative, Motion Picture Association of America, interview by USITC staff, Jan. 1993.

[260] Air traffic control (ATC) systems are a combination of equipment and procedures used to manage aircraft travel over a relatively small geographic area. ATC systems are primarily developed using systems integration services, software, and equipment. A large portion of this equipment consists of "off-the-shelf" computers, telecommunications apparatus, navigational aids, and sensors.

congestion in the European Community.[261] The proposed directive[262] seeks to reduce this congestion by requiring EC member states to harmonize and integrate some of their air traffic management capabilities and to standardize some of their equipment specifications.

The proposed directive sets forth specific ATC management capabilities, such as interoperable radio and data transmission equipment, that EC member states must have in place by 1994, 1996, and 1998. The directive also authorizes the EC Commission, assisted by an advisory committee composed of representatives of the EC member states, to make mandatory Eurocontrol technical standards concerning certain communications, navigation, and surveillance equipment used for ATC.[263]

Possible Effects

U.S. Exports to the EC

Demand for ATC systems in the EC has risen over the past few years and is expected to continue to grow because existing ATC installations are inadequate for handling current air traffic volumes, given the rapid increase in EC air traffic.[264] U.S. firms supply most EC software support and systems integration services.[265] In 1991, sales of ATC systems in the EC were estimated at $2.2 billion, with U.S. firms accounting for as much as 25 percent of these sales.[266] The principal U.S. suppliers of ATC systems are Westinghouse Electric Corp., Raytheon Co., Hughes Electronics, IBM, Paramax, AT&T, and Harris Corp..

Overall demand for U.S. exports of ATC systems will likely increase as EC member states upgrade their ATC capabilities to meet the directive's mandate. Moreover, the harmonization of standards required in the directive will likely enhance the ability of U.S. and other producers to supply ATC products and services by reducing nonrecurring engineering costs and the complexity of bidding for contracts. Small U.S. firms are particularly likely to benefit from this harmonization. In the past such firms often did not pursue sales in the EC, deciding that the volume of business in the Community did not warrant maintaining the capabilities needed to meet the EC's numerous standards.

However, certain factors could also limit sales opportunities for U.S. firms in the EC. Major contracts for ATC systems in the EC are often awarded on the basis of political and cost considerations rather than standards.[267] In addition, standards could be used to exclude suppliers of certain equipment needed to fulfill these contracts. This possibility is particularly threatening because Eurocontrol, which is responsible for developing the standards in the directive, has allegedly pursued policies in the past favoring the purchase of products made by firms from Eurocontrol-member countries over those produced by firms from other countries.[268]

U.S. Investment and Operating Conditions in the EC

U.S. investment in the EC will likely increase and operating conditions will improve if, as the directive mandates, the number of standards specifications is reduced. U.S. investment would also likely increase to meet the additional demand for ATC systems generated by the directive's mandate for developing additional ATC capabilities. However, it is difficult to separate the directive's effect on U.S. investment from that of the ATC systems upgrades currently taking place in the EC due to increased air traffic and the present inadequacy of many ATC installations in the Community.

U.S. producers will likely increase their investment in the EC to better service additional business there and to meet the local procurement requirements of certain member-state governments that favor domestic producers over foreign suppliers.

U.S Industry Response

The U.S. industry believes that the proposed directive is a step toward a better business environment for ATC systems suppliers.[269] In particular, the harmonization of standards makes the EC market for ATC systems more accessible to U.S. suppliers.[270] However, there is some concern that the directive grants Eurocontrol too much authority. Some industry representatives indicate that the leadership of

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[261] "A Groundswell for European ATC Upgrades," *Transport World*, July 1992, pp. 77-90.

[262] *Proposal for a Council Directive on the Definition and Use of Compatible Technical Operating Specifications for the Procurement of Air Traffic Management Equipment and Systems*, *OJ* No. C 244 (Sept. 23, 1992), p. 5.

[263] Eurocontrol was established about 30 years ago to control cross-border flights in Europe's upper airspace and serve as a vehicle for harmonizing and integrating ATC systems in Europe. The organization is similar to the U.S. Federal Aviation Administration (FAA) but historically has had significantly less regulatory authority than the FAA.

[264] "A Groundswell for European ATC Upgrades," pp. 77-90.

[265] U.S. industry representatives, interviews by USITC staff, Jan. 1993.

[266] Estimated by USITC staff based on the size of certain major ATC contracts awarded to U.S. firms during 1992 and estimates of U.S. market share in certain EC member states. Data on U.S. exports of software and systems integration services are generally not collected, and most other U.S. exports of ATC products are classified along with other computer and telecommunications equipment.

[267] U.S. Government and industry representatives, interviews by USITC staff, Jan. 1993.

[268] Eurocontrol is responsible for procurement for an ATC center that it operates in the EC and has increasingly coordinated the procurement of equipment for joint programs in the EC. Michael Donne, "Making the Most of Europe's Airspace," *Financial Times*, Aug. 1, 1991, p. 6-IV, and U.S. Government and industry officials, interviews with USITC staff, Jan. 1993.

[269] U.S. industry representatives, interviews by USITC staff, Jan. 1993.

[270] U.S. Department of Transportation, Federal Aviation Administration, Office of International Aviation, written submission to USITC, Feb. 23, 1993.

Eurocontrol has recently changed and no longer encourages favorable treatment of goods made by firms from Eurocontrol countries.

Other industry observers indicate that Eurocontrol's setting of standards could restrict U.S. sales of ATC systems not only in the EC, but also in third countries that use Eurocontrol's standards in developing ATC capabilities.[271] These observers are also concerned that by making the standards mandatory, the directive may force smaller EC countries that cannot afford to comply with such standards to draw on aid from Eurocontrol or the European Development Bank in upgrading their ATC systems.[272] U.S. and other foreign suppliers generally oppose measures that promote such funding, because their access is allegedly limited in contracts that use this type of aid.

Satellite Television Transmission Standards

Background and Anticipated Changes

This directive,[273] adopted by the EC Council in May 1992, charges member states to take all appropriate measures to promote and support the introduction of advanced satellite broadcasting services for television programs, using the HD-MAC standard for partially digital HDTV transmission, and the D2-MAC standard for other partially digital transmission in the 16:9 aspect ratio format. The directive states that, effective January 1, 1994, all new television sets with 16:9 aspect ratio must be capable of receiving D2-MAC, and all other new television sets and all new domestic satellite receivers for sale or rent in the EC must possess at least a standardized socket by means of which a D2-MAC decoder may be connected to the equipment.

Any service existing prior to January 1, 1995, in PAL, SECAM, or D-MAC[274] may continue to transmit as long as the service provider wishes. From January 1, 1995, the services must also be transmitted using the D2-MAC standard. Furthermore, any new terrestrial redistribution system, or any existing system having the necessary technical capability, must be configured in such a way that HD-MAC signals can be transmitted through the system. Finally, before January 1, 1994, and every 2 years thereafter, the EC Commission will submit a report on the application of this directive, the evolution of the market, and the use of EC funding.

[271] U.S. Government and industry representatives, interviews by USITC staff, Jan. 1993.

[272] Ibid.

[273] *Council Directive on the Adoption of Standards for Satellite Broadcasting of Television Signals, OJ* No. L 137 (May 20, 1992), p. 17.

[274] PAL and SECAM are current incompatible European television standards. D-MAC is the cable version of the MAC standard.

Possible Effects

The effect of this directive on the U.S. industry is still unclear. The EC adoption of D2-MAC and HD-MAC is expected to establish an HDTV broadcasting system that is incompatible with the Japanese HDTV system and with any of the HDTV systems vying for selection by the Federal Communications Commission as the U.S. terrestrial broadcasting standard. This means that there will be three separate and incompatible systems in place throughout the world, leading to limits in economies of scale. The standard will increase the cost of TV receivers sold in the EC and may well dampen the spread of satellite television broadcasting, particularly into Eastern Europe.

Complicating the issue is the development of all-digital HDTV systems. When the EC HD-MAC system was proposed, it was believed that all-digital HDTV would not be feasible for a decade. However, there are now four proposals in the United States for all-digital HDTV, and EC companies are now pursuing the development of all-digital HDTV.

Leased Lines[275]

In June 1992 the EC Council adopted a directive that establishes the criteria for nondiscriminatory access to leased lines.[276] The directive also outlines the harmonization measures that the member states must take to increase the availability of value-added services provided by means of leased lines throughout the Community.

Whereas the directive requires that leased lines be priced on a cost-oriented basis, U.S. service providers would like the EC to ensure the availability of leased lines on a flat-rate, rather than a volume-sensitive, basis, because the former provides unlimited usage for a fixed price.[277] In addition, the directive's provisions apply only to leased lines among EC member states. U.S. service providers and end users would like similar guarantees for leased lines between EC and non-EC termination points.[278]

Data Protection

Background and Anticipated Changes

In November 1990 the EC Commission proposed a directive that would establish the conditions under which information may be collected on individuals in the Community.[279] In October 1992 this proposed

[275] For further information see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, pp. 5-58 to 5-59.

[276] *Council Directive on the Application of Open Network Provision to Leased Lines, OJ* No. L 165 (June 19, 1992), p. 27.

[277] U.S. industry representative, telephone interview by USITC staff, Jan. 12, 1993.

[278] U.S. industry representative, telephone interview by USITC staff, Jan. 14, 1993.

[279] For further information see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, pp. 5-57 to 5-58.

directive was amended[280] in response to opinions delivered by the European Parliament, the Economic and Social Committee, and direct marketing and banking groups—the primary users of personal data files.

The amended proposal simplifies the statement of the grounds on which personal data on individuals may be collected and processed. The original proposal required "express consent" before personal data could be stored, processed, or transferred. The amended proposal states that such consent is not necessary, provided that data subjects have access to an "opt-out" facility, whereby they may object to commercial uses of their personal data. However, the explicit consent of individuals is required when the data contain "sensitive" information such as racial origin and political or religious affiliation.

The original proposal would have required that the controllers of data files notify the national supervisory authority before data could be transferred to third parties. The amended proposal requires only that the controllers register with the supervisory authority, providing information such as the types of data to be processed, the purposes for which the data will be used, the categories of third parties to which data might be disclosed, and third countries to which data might be transferred. Thus, notification is not required each time processing takes place. Member states are free to grant exemptions to this notification obligation by establishing simplified registration procedures in cases where data collection and processing do not diminish the rights of data subjects.

Finally, the amended proposal clarifies the conditions under which data may be transferred to third countries. As in the original proposal, the third country must have an "adequate level of protection" and the member states are responsible for making this determination. However, controllers can be exempted from this provision if third-country transfer is necessary for the performance of a contract and if the data subject has consented to such a transfer prior to entering into the contract.

Possible Effects

Any U.S. firm that operates in the EC will be affected by this directive. Examples of data records that will be covered include banking transactions, personnel data, and mailing lists. Because the amended draft directive eases many of the restrictions contained in the original proposal, U.S. firms may not be hurt. However, since the amended draft directive allows the member states to make the determinations concerning the adequacy of third countries' data protection regimes, there could be additional restrictions on the cross-border transfer of personal data.

[280] *Amended Proposal for a Council Directive in the Protection of Individuals With Regard to the Processing of Personal Data and on the Free Movement of Such Data*, COM (92) 422, SYN 297, Oct. 15, 1992.

U.S. Industry Response

In general, U.S. companies in the EC view the amended proposal as an improvement that strikes a better balance between the privacy rights of individuals and the business interests of those that use personal data to facilitate commercial transactions. However, there is some concern about the wide margin of discretion afforded the member states with regard to third-country data transfer and "adequate protection."[281] A major U.S. industry concern is that some member states might make third-country adequacy determinations in a "worst-case scenario" context, resulting in unnecessary administrative and financial burdens for U.S. companies.[282]

In addition, some U.S. firms feel that intra-corporate data transfers should be included in the directive's list of situations in which data transfer is allowed regardless of the adequacy of data protection in the third-country destination.[283] Overall, there is still the feeling that greater clarification is needed to enable U.S. firms to operate in complete confidence with regard to data protection procedures. Some observers believe that harmonization at the EC level would eliminate the burden and expense of individual member-state requirements.[284]

Electromagnetic Compatibility

Background and Anticipated Changes

In May 1989 the EC Council adopted a directive on electromagnetic capability that mandated the establishment of harmonized protection requirements for equipment that may cause or be affected by electromagnetic disturbances.[285] However, as of December 1992 only 11 reference standards were drafted,[286] and only a few national legislatures had begun drafting product-specific standards.[287] As a result, the EC Commission adopted an amended directive that extends the transition period for the introduction of harmonized standards to December 31, 1995.[288] Until this date manufacturers may sell in the

[281] U.S. industry representative, telephone interview by USITC staff, Jan. 12, 1993.

[282] Ibid.

[283] U.S. industry representative, telephone interview by USITC staff, Jan. 11, 1993.

[284] U.S. industry representative, telephone interview by USITC staff, Jan. 14, 1993.

[285] *Council Directive on the Approximation of the Laws of the Member States Relating to Electromagnetic Compatibility*, *OJ* No. L 139 (May 23, 1989), p. 19. For further information, see USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, pp. 6-109 to 6-112.

[286] American National Standards Institute, "Agenda for Meetings with Representatives of European Standards and Conformity Assessment Organizations," January 11-15, 1993.

[287] USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 5-25.

[288] *Council Directive Amending Directive 89/336/EEC on the Approximation of the Laws of the Member States Relating to Electromagnetic Compatibility*, *OJ* No. L 126 (May 5, 1992), p. 11.

EC market electrical equipment that satisfies national electromagnetic standards but does not satisfy the EC harmonized standards.

Possible Effects

The electromagnetic directive is expected to do no harm to future U.S. exports of telecommunications equipment to the EC for two reasons. First, the extended transition period provides ample time for U.S. manufacturers to comply with the new standards as they are introduced. Second, the EC is recognizing private U.S. laboratory electromagnetic testing results for the few products that already have harmonized standards.[289] In general, U.S. industry expects that this directive will not significantly divert trade to the United States nor affect U.S. investment in the Community.

1993 and Beyond

Standards, Testing and Certification

Progress to Date

The EC has made very good progress in achieving its aims in the standards area. For purposes of this series of USITC reports, we have considered the EC 1992 standards agenda to include the goals set out in the 1985 White Paper regarding veterinary and plant health controls (falling within the overarching goal of achieving free movement of goods) and technical harmonization and standards (falling within the overarching goal of removing technical barriers). Efforts to improve environmental protection were also considered within the standards purview. Goals in the environment area were formally recognized in the 1987 Single European Act as well as the Fourth Environmental Programme launched the same year.

Progress has been most rapid and complete in the technical harmonization category, prompting the EC Commission to declare this field to be among those where the most progress has been made.[290] Among other things, an information procedure intended to forestall imposition of new standards-related barriers to trade has been amended and improved and is credited with improving the business environment in the EC (details in figure 4-1). Nearly all of the specific directives required to achieve technical harmonization in the industrial product category have been passed, and a good deal of them formally transposed into member-state law. Several key supporting measures have also been put into place, notably policies on and procedures for conformity assessment of products falling under the "new approach." Passage of the CE mark directive and modification of the conformity-assessment modules will complete the technical harmonization package, and are expected during 1993.

It has proven much easier to achieve consensus on directives related to industrial products than on those relating to human health and the environment. Adoption of directives in some areas, like processed foods, has lagged behind. Even in the industrial products field, application of some directives (notably new approach ones), has proved difficult. For example, development of supporting standards by CEN, CENELEC, and ETSI has proved more time-consuming and difficult than anticipated, making it hard for regulators and manufacturers to ensure compliance with directive requirements.

The veterinary and plant health spheres have posed more difficult problems and called for more significant changes in current member-state practice. However, the past year has seen substantial movement on passing EC-wide requirements. It is expected that the needed structure for implementing new regulations will be in place soon.

With the growing concern for environmental protection both in Europe and worldwide, environmental measures have played an ever-increasing role in EC legislation. Although some progress has been made towards the adoption of framework cross-sector directives addressing environmental auditing and labeling, waste management, pollution, and natural resource protection, the broad impact of these measures on all industry segments and the sensitivities of these issues among the various member states has slowed adoption. Recently the Community adopted measures implementing international environmental agreements, such as the Basle Convention on transportation of hazardous waste and the Montreal Protocol on protection of the ozone layer. The EC Commission has also issued a proposal for EC Council approval of the Convention on Climate Change addressing the reduction of carbon dioxide and other greenhouse gas emissions.[291] The proposed European environmental agency is discussed in the "chemicals" section, below.

It is likely that with the increased international attention to environmental matters Community action in the area will focus on more global concerns, very likely the same types of environmental matters that will be addressed by the United States and other OECD countries. The recently adopted Fifth Environmental Action Programme suggests that the EC may rely increasing on economic and fiscal instruments in setting environmental policy.

Although progress in the technical harmonization, veterinary and plant health, and environmental areas has been good, realization of the benefits expected as a

[289] U.S. industry representative, interview by USITC staff, Jan. 1993.

[290] EC Commission, *Seventh Report of the Commission to the Council and the European Parliament Concerning the Implementation of the White Paper on Completion of the Internal Market*, COM (92) 383 Sept. 2, 1992, p. 22.

[291] *Proposal for a Council Decision Concerning the Conclusion of the Framework Convention on Climate Change*, COM (92) 508, *OJ* No. C 44 (Feb. 16, 1993), p. 1.

Figure 4-1
Progress in attaining single-market goals in the standards and conformity-assessment spheres, 1979-92

Date	Event and contribution to single-market goals
1979	The European Court of Justice's Cassis de Dijon Decision establishes the principle of mutual recognition. According to the ruling and subsequent interpretations, member states are permitted to retain existing national product standards. However, they are not permitted to use them to impede intra-EC commerce unless doing so is needed to protect animal, human, or plant health, the environment, or consumers, as permitted under article 36 of the treaty. It is only in these fields that binding Community-level legislation will be pursued in the Single Market Program.
1983	An information procedure is established to prevent imposition of new barriers to trade among the member states. The procedure is expanded in 1988 to include agriculture, food products, and pharmaceuticals. Environmental measures will be added to its scope under a pending amendment.
1985	The "new approach to standardization" is approved. The approach separates the process for establishing regulatory requirements from that of developing actual product standards. Regulatory requirements will be broadly stated "essential requirements" and will be contained in EC-level legislation. Manufacturers will have a choice of means to achieve the regulatory ends. Adherence to product standards being developed by the European regional standards institutes—CEN, CENELEC, and ETSI—will be considered conformity to the requirements. Manufacturers may resort to different standards or product specifications but will need to engage a recognized testing lab—notified body in EC parlance—to demonstrate product conformity. Product Liability Directive is passed. Considered a vital complement to the EC's standards harmonization agenda, it harmonizes existing member-state law and establishes new obligations in some cases. Manufacturers are obligated to ensure the safety of their products, and are liable for defective products. Consumers have redress even if negligence is not present. Damages awards are possible, but are considered more limited than those possible in the United States.
1989	The "global approach to conformity assessment" is proposed. Key elements include giving manufacturers a choice of conformity-assessment procedures (under the modular approach adopted in 1990), establishing a single mark of conformity (the CE mark), and improving the climate for mutual recognition of test reports and product certificates in the nonregulated sphere (by establishing the EOTC in 1990). Confidence in test results is to be built through the adoption of internationally recognized standards of competence and conduct and through encouragement of regular communication and cooperation among relevant bodies. Notified bodies must meet these minimum criteria.
1990	Green Paper on Standards published to speed standards development by CEN, CENELEC and ETSI, in face of substantial backlog of work. Improved transparency and responsiveness are also called for. Extensive consultations and comment from business and consumer groups lead to several improvements in operation procedure, and the identification of some 2,000 "core standards" under development that are crucial to realization of 1992-related goals.
1992	Preliminary negotiations on mutual recognition of conformity assessment launched with 10 countries deemed priority markets by EC business. The United States tops the list and is interested in pursuing this option as one way to alleviate concern that testing-related problems could frustrate attainment of expected benefits under the Single Market Program. The General Product Safety Directive is passed and an information-sharing mechanism on product risks is established. The first is intended to fill any gaps that may exist in Community requirements on product safety. The second creates a procedure for withdrawal of unsafe products by means of a mechanism similar to the U.S. Consumer Product Safety Commission.

result of all three types of standards-related measures will probably take considerably longer than originally envisaged. Several factors underlie this assessment. Most crucially, before the measures can be applied with confidence, an adequate infrastructure and procedural clarity must be attained in testing whether products conform with legislated requirements. A good deal has been accomplished on this score, but the new structures and procedures are largely untried. Problems are widely predicted but are not expected to be so serious as to unravel progress made. Rather, adjustments in both operating requirements and ambitions are seen as likely with the accumulation of experience. Various points in the implementation process could also slow progress. The EC Commission has thus signaled its intention to shift its energies towards monitoring transposition and implementation of directives at the member-state level as well as towards establishment of additional supporting standards and conformity-assessment structures as the need arises.[292]

The scope of what the Community hopes to achieve by passage of standards regulations has also increased over the course of the single market program. The EC has decided that Community action is needed to regulate matters that are not part of the original White Paper. Among the products affected are pleasure boats, upholstered furniture, passenger elevators, pressure equipment, and appliances and protective equipment for use in potentially explosive atmospheres, for which Council action remains pending. EC ambitions in the environment area have also grown along with public awareness of and concern about environmental degradation and international efforts to manage environmental problems such as the 1992 Earth Summit in Rio de Janiero, Brazil. In this regard the EC has also undertaken to pass measures adopting and putting into effect international environmental treaties. Realization of these goals will probably be the single most important outstanding standards-related issue for the Community to resolve.

Implications for the United States

Standards has been singled out as the aspect of the EC 92 program of most concern to U.S. business. Creation of uniform standards could be a boon to U.S. firms by replacing 12 separate national standards and approval processes with one. These steps should save time and money and create the potential for more fully exploiting economies of scale. The chances that the 1992 program will benefit U.S. interests have improved with steps to open the process to indirect U.S. influence and to increase U.S. access to internal documents and decisionmakers. U.S. business also welcomes the efforts made within the Community to improve cooperation with international standards bodies in which the United States plays a key role.

The biggest outstanding U.S. concern is EC acceptance of U.S.-generated test results for purposes of product approval. The EC's relatively flexible policy on notified-body subcontracting may improve U.S. options for proving conformity to new EC requirements in the short run. Negotiations on mutual recognition are a longer term prospect, and it appears that agreements may be possible in a few sectors, such as telecommunications and electronics.

A shorter term issue is confusion about delays in member-state implementation and the availability of standards from European standards institutes. U.S. business appears more comfortable with the notion of transition periods and has accepted postponement of the day when they can serve a truly unified market. However, the entry into force of several directives likely to affect major U.S. export interests in 1993 may cause more practical problems to emerge.

Furthermore, the EC's evolving thinking on the relationship of intellectual property protection to standards has been a major cause of concern. Striking a balance among various Community goals that does not undermine the value of intellectual property rights will be an important barometer of EC intentions in technology-intensive fields. Leading U.S. firms may find themselves facing a choice of fully participating in the EC standards process or losing control of IPR.

The EC 1992 process has also had spillover effects on U.S. standards policy. It has caused a rethinking of the role of standards in U.S. international competitiveness, has heightened appreciation of the need for global cooperation on regulatory matters, and has called into question the adequacy of existing mechanisms for ensuring that standards and product approval systems adequately protect health and safety but do not serve as obstacles to domestic commerce. These second-round effects will continue to challenge U.S. policymakers and U.S. business in the years ahead.

Any effects on U.S. businesses of the harmonization of environmental measures in the EC are likely to be beneficial. First, U.S. businesses have consistently expressed their preference for uniform standards that can be applied to all their manufacturing facilities and products. Second, to the extent some EC countries employ restrictive environmental measures that could be used as barriers to trade, the harmonization of EC environmental standards is likely to reduce the efficacy of such measures. Additionally, the presentation of such measures at the Community level often has brought restrictive measures into the light and resulted in pressure from other member states to remove unfair trade barriers. Finally, the adoption of many of the EC measures will undoubtedly result in an increased demand for both U.S. technological control products and consulting services.

[292] EC Commission, *Seventh Report*, p. 22.

Progress on and Implications of Standards-Related Measures Affecting Particular Sectors

Agriculture

Goals

The goals of the EC single market in the farm-based agricultural sector have been to increase the general level of animal, plant, and public health; to improve the safety and quality of the food supply; and to eliminate internal barriers to the free movement of animals and food products.

Means

These goals have been pursued by the harmonization and mutual recognition of national rules and standards in such areas as animal and plant genetics, feed additives, animal and plant disease control, food inspection, and pesticide residues. This harmonization has been effected through the adoption of general framework directives followed by the implementing directives and regulations that specify technical standards and administrative procedures. There has been a general shift over time from proposing vertical (product-specific) to horizontal (generally applicable) directives to lessen the time involved in adopting regulations.[293]

Progress to Date

As of January 1993 approximately 176 directives and regulations (including amendments) covering agricultural and processed food products have been adopted; 170 of these measures have been implemented.[294] In addition, approximately 59 directives and regulations have been proposed and are being adopted and implemented.[295] Although the EC has implemented the bulk of the directives, many of the more controversial ones have not yet been proposed. These directives include those on third-country poultry meat imports, establishing limits for pesticide residues, and third-country feedstuff imports.

Implications for the United States

U.S. agricultural interests view the EC single market measures as providing a net benefit. The harmonization of 12 different sets of rules and standards is expected to facilitate access, and U.S. rules and standards generally were comparable with those in the more stringent EC members. However, several unresolved issues are of concern, including mutual recognition and regionalization with respect to animal and plant health and disease; equivalency versus identicalness with respect to inspection and certification; and the so-called "fourth criterion," whereby nonscientific factors, such as economic effects, may be considered in regulating agricultural products.

With respect to mutual recognition and regionalization, the concern regarding exports is that the individual EC members may continue to maintain individual animal and plant health and inspection regimes, thus requiring U.S. exports to meet several different sets of standards. There is also concern based on the prospect of EC standards requiring U.S. adherence to particular production methods to meet criteria rather than EC acceptance of U.S. standards as equivalent. A more general concern is the uncertainty of directive implementation. According to officials of the U.S. Department of Agriculture, various implementing directives, such as those extending the Third-country Meat Directive to poultry products, may take as long as 5 years to complete.

Processed Foods and Kindred Products

Goals

Prior to the EC 1992 program five types of barriers fragmented the EC processed-foods market: (1) tax discrimination, (2) specific import restrictions, and technical rules on the (3) use of specific ingredients, (4) content and description of processed foods, and (5) packaging and labeling of processed foods. The goals of the EC single market in the processed-foods and kindred products sector generally have been to ensure the quality and safety of processed foods, to improve consumer information regarding food product contents and claims, and to eliminate internal barriers to the free movement of processed-food products.

Means

The 1985 White Paper called for the passage of seven framework measures covering six areas: (1) additives; (2) materials coming into contact with foodstuffs; (3) food for particular nutritional uses; (4) labeling; (5) inspection of foodstuffs; and (6) irradiation of foodstuffs. The framework measures have been adopted (and some have since been modified), and the EC Commission is continuing to develop and manage directives necessary to implement them.

Progress to Date

As mentioned above, approximately 176 directives and regulations (including amendments) covering agricultural and processed-food products have been adopted as of January 1993. Progress has been slow. There are still several processed-food directives pending, and many are quite controversial, particularly those on additives and irradiation of foodstuffs. The three specific directives on food additives have engendered much criticism from member states, some of which fear that they will be forced to permit

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[293] See, for example, "Food Law: EC Retailers Oppose Standardisation of Foodstuffs," *European Report*, No. 1809, business brief, (Nov. 4, 1992), p. 6.

[294] U.S. Department of Commerce, International Trade Administration, Single European Market Information Service, unpublished list.

[295] Ibid.

additives currently prohibited in their nation to be marketed. Some states fear that well-known additives in their foodstuffs will be prohibited. The proposal on the irradiation of foodstuffs—which had originally included meat, seafood, fruits, vegetables, and cereals—was watered down to include only herbs and spices. Communitywide methods for testing are still undecided.

Implications for the United States

U.S. industry concerns generally have focused on the EC use of a "positive list" approach to food regulation, the equivalency of testing and standards, and labeling requirements. The EC's positive list approach is particularly important for materials coming into contact with foodstuffs and food additives, because any material or ingredient not listed as approved by the EC is prohibited. There are no direct channels for third-country suppliers to petition for inclusion of an ingredient or product on the list. Many materials and additives commonly used in the United States may not be specifically permitted by the EC and thus may threaten U.S. exports. The EC has been very specific on the controls and testing requirements for many processed-food products, such as quick-frozen foodstuffs, minced meat, and other meats. U.S. industry indicates that EC unwillingness to recognize the equivalency of U.S. controls and testing requirements could curtail U.S. exports or add considerable expense. EC labeling requirements, particularly those concerning lot marking, alcohol content, dating format, and food claims (i.e. "light"), may make it necessary to continue separate labeling for products intended for sale in the EC and U.S. markets.

Chemicals and Related Products

Goals

The European chemical market before the integration of the EC could be characterized as a group of small domestic markets with large differences in domestic policies on health protection, energy, transportation and handling, product labeling, and the environment. These differing regulations for chemical products spawned a multitude of problems. Consistency in classification, packaging, and labeling requirements for chemical products needed to be agreed on and adopted to ensure free movement of these products throughout the Community. Consistent levels of protection for the health and safety of chemical workers, users, and the environment also needed to be established. Moreover, the EC required a means to ensure that these rules were based on consistent policy objectives and data and were enforced throughout the Community.

Means

To accomplish these goals, the EC decided to (1) establish a European Environmental Agency (EEA), (2) set up a new registration process for plant protection products (pesticides), (3) harmonize rules dealing with dangerous substances and preparations, and (4) strengthen and make uniform regulations on cosmetic products.

Progress To Date

A proposed EC environmental agency evolved out of the continuing awareness of the European Community's need to develop a clearer and more coherent environmental policy. Originally established in 1985[296] as an experimental 4-year program to gather, coordinate, and ensure the consistency of information on the state of the environment and natural resources within the Community, the program was later extended to 6 years, then established as an EEA and a European Environmental Monitoring and Information Network.[297]

Initially the EEA will have no legal powers comparable with those of the U.S. EPA. Rather, its primary responsibility will be to collect and disseminate data on the European environment. It will also provide scientific and technical support to further the goal of environmental protection. Significant discrepancies in environmental quality among member states are major deterrents to creating an agency with more legal powers.

Despite the difficulties, in February 1990 the European Parliament called for the proposed EEA to play a limited regulatory role. Proposed new powers include creating an environmental inspectorate to enforce EC rules, conducting environmental impact studies on projects funded by the EC, and developing the EC "green label" for environmentally friendly products.

A two-tiered registration process for new active ingredients will harmonize regulation and registration of fungicides, herbicides, plant-growth regulators, and other pesticide products throughout the European Community.[298] Ten years after implementation of this directive, all pesticide active ingredients used in the EC, new or in use at implementation, must be registered at the EC level. The proposed registration procedures are comparable with those used in the United States. The concept of "mutual recognition" will also prevail in that once a member state has registered a pesticide formulation that includes a new active ingredient, other member states must also accept the registration, unless regional plant health or environmental conditions are not comparable.

With respect to dangerous substances and preparations, the EC has developed EC-wide regulations and directives that—

- Prohibit, phase out, or restrict marketing and use of particular dangerous substances and preparations;

[296] COM (85) 3387.

[297] Proposals 89/542 and 89/303, cited in USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, p. 6-68.

[298] COM (89) 34.

- Establish uniform rules on classification, packaging, and labeling of such substances;
- Harmonize laws on exchange of information and assessment of risks posed by these substances to man and the environment; and
- Broaden the scope of EC rules to include "sensitizing" substances, which may produce an adverse reaction of the immune system. These substances would require laboratory tests before they may be legally marketed in the EC or approved for use by EC member-state environmental authorities.

Further directives amended standard notification procedures for dangerous substances on weight and volume level bases such that information compiled for the U.S. EPA could generally be resubmitted to a competent authority in the EC.[299]

Directives on the classification, packaging, and labeling of dangerous substances and on marketing and use of dangerous substances and preparations[300] will likely continue to be amended to keep pace with the advances in scientific knowledge. Specific chemicals will also continue to be subject to prohibition or restriction.

On June 15, 1990, the EC also updated the European Inventory of Existing Commercial Chemical Substances already available on the EC market.[301] The EC established harmonized classifications of hazard,[302] packaging requirements, nomenclature, responsible party, danger symbols, indications of risk, and required safety advice. The EC also issued its first European List of Notified Chemical Substances (ELINCS). This list, which will be updated and published each year, consists of all the chemical substances for which the competent authorities of the member states have received premanufacturing notices. Hazardous substances are included in the ELINCS only if their hazard classification has been adopted by the EC Commission. The official classification of provisionally classified hazardous substances will be included in future publications of the ELINCS.

The EC updated its rules pertaining to cosmetic products dealing with labeling requirements, health and safety issues, and registration procedures. Amendments adopted over the course of the 1992 program improved labeling regulations; specifically permitted or prohibited coloring agents, substances, and preservatives for public health and safety reasons; refined regulations to allow for easier and clearer product definition;[303] and, most recently, proposed to eliminate after a 5-year period all unnecessary animal testing of cosmetic ingredients.[304]

Implications for the United States

In general, U.S. companies operating in the EC feel that unified regulations on chemicals will be beneficial since a single set of operating parameters has been established, and U.S. companies, through local trade associations, have had some input in establishing these parameters. Several concerns have been raised, however. One is that the growth of the environmental movement in the EC may result in the promulgation of stringent regulatory requirements that may force release of sensitive business information. With respect to plant protection products, industry concerns center around the additional layer of bureaucracy for registration procedures, inherent costs for such, and how the issues of "mutual recognition" and comparable plant health and environmental conditions will be resolved.[305] According to a spokesperson for the U.S. chemical industry, concerns about changes to directives on dangerous substances and regulations are outweighed by the benefit derived from being able to place labels meeting the regulatory requirements for the entire EC market on every hazardous container exported from a specific plant. The Chemical Manufacturers Association (CMA) is concerned about the time and effort that must be expended to comply with differing regulations on dangerous substances; member companies have been pressing to increase uniformity in the application of specific regulations. The CMA thus generally welcomes EC moves to develop uniform requirements. On the other hand, U.S. industry has expressed concern that it may need to make expensive capital investments to ensure that U.S. manufacturing plants comply with EC regulations. With respect to cosmetic products, the U.S. Cosmetic, Toiletry, and Fragrance Association has complained that the treatment of EC- and of non-EC-produced cosmetics differ slightly. The U.S. industry also strongly favors the continuation of animal testing for cosmetic ingredients when necessary.

Pharmaceuticals

Goals

As part of its efforts to promote freedom of movement of pharmaceuticals while ensuring consumers a high level of protection, the EC drafted a series of directives and other legislation designed to remove or reduce many existing national nontariff barriers for pharmaceuticals. The most significant of these measures were price controls, regulatory

[299] The most significant effect would be for U.S. manufacturers with production of less than 1,000 pounds and EC sales quantity greater than 100 kilograms, since they fall into a category for which the EPA grants an exemption and the EC requires substantial information for conforming to notification requirements.

[300] *EC Council Directive 76/769, OJ* No. L 262 (Sept. 27, 1976), pp. 201-203.

[301] *EC Council Directive 79/831, OJ* No. L 259 (Oct. 15, 1979), pp. 10-28.

[302] Explosive, oxidizing, extremely flammable, highly flammable, flammable, very toxic, toxic, harmful, corrosive, irritant, dangerous for the environment, carcinogenic, mutagenic, and teratogenic.

[303] *EC Commission Directive 91/184 OJ* No. L 91 (Apr. 12, 1991), pp. 59-60.

[304] *Directive COM (92) 364,* SYN 307, *OJ* No. C 249 (Sept. 26, 1992), pp. 5-15.

[305] USITC, *EC Integration: First Follow-Up,* USITC publication 2268, Mar. 1990, p. 6-68.

approval mechanisms, and patent terms. Advertising, labeling, and distribution were also identified as problem areas in need of EC-level attention.

Disparate price control and reimbursement systems exist in almost all of the member states, generating widespread price differentiation within the EC. This price differentiation, in turn, often results in increased parallel trade and, in countries with lower prices, can reduce industry revenues. Further revenue loss can occur in those cases in which national systems delay the marketing of a pharmaceutical product until an officially approved price is issued. Moreover, in some cases the system of setting prices could be discriminatory in that it could favor local companies or effectively force companies to locate facilities in a particular country, despite continuing overcapacity in the EC.[306]

Makers of pharmaceuticals were also required to go through separate national procedures to get new pharmaceuticals registered as safe by member-state health authorities. The EC sought to change these approval procedures in such a way as to afford comparable health protection in each member state, to save industry the effort of applying through each member-state government to get the necessary marketing approval, and to reduce registration periods.

Finally, the EC sought to address the shortening of the effective patent life of a pharmaceutical because of time lost during regulatory review. Although innovators applying for patents in the EC are generally entitled to 20 years of market exclusivity from date of filing, the average effective patent term for pharmaceuticals has decreased to 8 to 10 years because the average product development time has increased to about 10 to 12 years. This decline in the product's period of market exclusivity reduces the time during which a company may recover its investment, potentially reducing revenues that could be reinvested in research and development (R&D).

Means

In an attempt to reduce concerns of discrimination associated with price-setting systems, the EC developed the Transparency Directive. It partially addressed the issue by requiring member states that impose price or profit controls to publish the criteria used in making pricing decisions and to provide the reasons for issuing said decisions.[307]

The EC also proposed a single-market authorization procedure for new pharmaceuticals. A centralized authorization procedure would be established that would be required for biotechnology products and optional for other high-technology pharmaceutical products. A decentralized procedure would replace the current multistate approval system for other pharmaceuticals. Additionally, the proposal would require that pharmaceuticals containing or consisting of genetically modified organisms be evaluated in terms of environmental risk. This provision is said to be similar to that contained in another directive that addressed the deliberate release into the environment of genetically modified organisms.[308]

A European Medicines Evaluation Agency also would be created as part of the proposal. Although the EC Commission would be responsible for issuing marketing authorizations, the Agency would provide the EC Commission with a scientifically based "expert" opinion on which the EC Commission could base its decision.[309] Although some perceive the Agency to be a less bureaucratic version of the U.S. Food and Drug Administration, others, particularly at the national level, wish to limit its role in the approval process.[310]

Concerns about patent restoration are addressed by the creation of the supplementary protection certificate. The SPC would automatically take effect when a patent expires and would cover the particular indications registered for the product at the time of expiration.[311] The regulation confers a total period of effective protection of 15 years from the date of the first marketing authorization in the European Community.

Progress to Date

The original legislative program for pharmaceuticals as mapped out in 1985-86 with the issuance of the White Paper is almost complete following the adoption of several pieces of legislation in 1992. Included among the adopted legislation were directives and regulations pertaining to the advertising of pharmaceutical products, wholesale distribution of medicinal products, labeling and information on medicinal products, homeopathic medicines, and the creation of the SPC.[312] The proposal to establish new

[306] For a fuller discussion, see ibid., pp. 6-70 to 6-81. In some cases, these systems have linked decisions on pricing to factors such as investment levels.

[307] Ibid.

[308] "Centralized Authorization and Supervision of Medicinal Products," *European Law Press*, Dec. 16, 1991.

[309] All marketing authorization decisions issued by the EC Commission, whether approvals or refusals, would apply throughout the EC. Marketing authorizations issued by the EC Commission would be valid for 5 years and renewable for 5-year periods. For a fuller discussion of the single-market authorization procedure and the responsibilities of the new agency, see USITC, *EC Integration: Third Followup Report*, USITC publication 2368, Mar. 1991, pp. 4-36 to 4-38.

[310] "Commission Finalizes Proposal for European Agency," *European Report*, No. 1623 (Oct. 20, 1990), Internal Market, p. 10; "EC Stakes Out Agreement for European Agency," *European Report*, No. 1778 (June 20, 1992), Internal Market, p. 1.

[311] The SPC is more limited than a patent in that the SPC only protects the pharmaceutical product for which an EC marketing authorization was granted and not the larger number of compounds usually covered by a patent. Additionally, the SPC protects only the authorized medicinal uses of the product and not any other potential uses.

[312] More specifically, Council Directives 92/28/EEC, 92/25/EEC, 92/27/EEC, and 92/73/EEC and Council Regulation (EEC) 1768/92.

authorization procedures for pharmaceuticals, however, remains outstanding. As of early 1993 the package reached the second-to-last stage in the legislative process, but it still has to return to Parliament for a final reading. The expectation is that no further changes will be made to the legislation and that it will be finally adopted sometime in 1993. Under the terms of the current legislation, the new authorization procedure is scheduled to go into effect January 1, 1995. Additionally, harmonization of pricing/reimbursement policies is still outstanding and, according to an industry source, is of "keen interest" to the EC Commission and the pharmaceutical industry.[313]

Implications for the United States

The legislation of most interest to the U.S. industry deals with existing national pricing/reimbursement systems, the creation of a single-market authorization procedure, and the restoration of effective patent terms for pharmaceuticals.[314] These issues, singly and combined, can have a significant impact on the pharmaceutical industry in that they affect the level of revenues, which, in turn, directly impacts the level of R&D spending. The pharmaceutical industry, which expressed varying degrees of concern about many of the pieces of legislation as they were being drafted, believes that the approved directives and regulations are generally acceptable.[315] The U.S. industry, through an industry association, was actively involved in the drafting process at many levels. The primary effect of many of the directives adopted to date would be to put into EC law provisions already in effect at the member-state level. In addition, it is thought that many of the changes will result in a premarketing approval process that is easier to use and more efficient.

Medical Devices

Goals

The EC harmonization efforts for medical devices were motivated by concerns that diverse safety requirements among various EC member states substantially increased costs of EC manufacturers and thus impeded their competitiveness in the EC and global markets.

Means

To accomplish regulatory harmonization, the EC Commission proposed three "new approach" directives on medical devices based on standards developed by CEN/CENELEC with private sector input. Although adoption of the directives has taken somewhat longer than initially contemplated, most EC and U.S. industry observers believe that what has been accomplished thus far has brought the EC much closer to establishing a single regulatory approval system.

Progress to Date

The first of the three directives, the Active Implantable Medical Device Directive, went into effect on January 1, 1993, and will affect the marketing of implanted electronic devices like pacemakers in the EC. There is a 2-year transition period ending December 31, 1994, in which manufacturers can continue to meet existing national requirements. Full implementation of the AIMD directive depends on finalization of necessary standards work, transposition of the directive into member-state legislation, and establishment of notified bodies. Reportedly, each of these issues should be resolved by the end of 1993. The other two directives, the medical device directive, and the in vitro diagnostic device directive will follow the same principles as the AIMD directive. They are now expected to become effective sometime in 1995 and will have a 3-year transition period.

Implications for the United States

U.S. industry is very supportive of EC efforts to harmonize medical device requirements and to establish a single regulatory approval system for medical equipment. Harmonization should enable U.S. firms to reduce costs associated with having to comply with different member country requirements, to benefit from economies of scale, and to increase productivity. However, a few concerns remain. The U.S. industry would like to see the EC quickly finalize its current flexible policy for subcontracting, which would allow EC notified bodies to subcontract with U.S. and other foreign test bodies for required quality system inspections and product tests. Moreover, the U.S. industry would like to see greater efforts on the part of U.S. and EC regulatory officials to establish mutual recognition agreements on medical devices. Finally, the U.S. industry is very interested in the eventual possibility of U.S. notified bodies in this area.

Automobiles and Automobile Parts

Goals

Under the EC 1992 program an effort has been made to harmonize the technical standards of the EC automobile industry to create a more open and competitive trading environment within the industry.

Means

The EC proposed harmonized technical standards and test methods for 44 separate aspects of passenger automobiles (tires, windshields, etc.), as well as for other vehicles and parts. It also proposed creation of a single approval procedure for passenger automobiles, light-duty trucks, and heavy-duty trucks. Finally, the EC 92 program made it a priority to reduce emissions from the engines of new motor vehicles.

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[313] According to a representative of the PMA.

[314] The industry has also been closely following the efforts now being made towards harmonizing the drug approval process among the United States, Europe, and Japan.

[315] According to a representative of the PMA, interview with USITC staff, Jan. 8, 1993.

Progress to Date

As a result of EC efforts, a wide range of technical standards have been adopted that will allow the EC to implement a whole-type approval system for passenger automobiles and light-duty trucks. Efforts to implement such a procedure for heavy-duty trucks are still in progress. U.S. industry representatives note that the EC is working on other technical standards for the automobile industry, and the harmonizing of technical standards will continue.[316] The EC member states have reached an agreement on limits for motor vehicle exhaust emissions and the various brake components that have to be inspected when a uniform EC-wide type-approval system for motor vehicles becomes mandatory in the Community on January 1, 1994. The EC goal of reducing emissions from the engines of motor vehicles has been largely achieved. However, the EC failed to enact postmarket surveillance of emissions.

Implications for the United States

There is a general view within the U.S. industry that EC harmonization will reduce the administrative costs of doing business in the EC and make it easier to market vehicles in EC countries. Manufacturers will be able to meet one set of technical standards rather than those of individual member states.

The major concern of the U.S. automotive industry has to do with EC emissions testing and certification. The EC Commission made it clear that as of October 1996 it will not accept the U.S. EPA testing certificate as an alternative to European testing. U.S. automobile and parts makers remain concerned that separate European testing will cause an administrative cost burden that may slow U.S. vehicle and parts exports to the EC.

Machinery

Goals

As part of the 1992 program, the EC Commission proposed a number of directives to unify product regulations and approval procedures for machinery sold in the Community and sought to ensure human health and safety, improve energy efficiency, and adopt uniform and reliable metrology.

Means

Directives related to machinery focused on machinery safety; noise emissions (for household appliances, lawnmowers, and certain construction machinery); tractor safety (for type-approval and protective structures); and energy efficiency (for residential boilers and appliance labeling).

[316] U.S. industry officials, interviews by USITC staff, Jan. 1993.

Progress to Date

The tractor safety and noise emissions directives were adopted early in the EC 92 program. Under the "new approach," a framework or horizontal directive on safety of machinery (machine safety) was adopted. It was followed by several vertical directives building on the original directive by setting forth detailed requirements for specific types of machinery (simple pressure vessels, mobile machinery, elevators, and equipment for use in explosive atmospheres) because of greater safety and health risks associated with such machinery. Directives on nonautomatic weighing instruments and gas appliances were also passed, as were new labeling rules for residential boilers and appliances.

Future developments under the EC 92 program include a proposed standard on the use of complex pressure vessels (still being drafted). Transposition of directives by the member states and the slowness of developing standards by CEN and CENELEC have caused delay in implementing a number of machinery directives. As a result, the EC Commission has launched measures to move the process forward.

Implications for the United States

Thus far, the EC 92 program has not significantly hurt the machinery industry, and U.S. industry has had a voice in the development of directives and standards. Several U.S.-based multinationals have welcomed the harmonization of EC rules, saying they will save time and money. Current U.S. industry concerns are focused on implementation, particularly on how the conformity-assessment process works in practice. Access to U.S.-based testing and certification is a key issue, since it is impractical to ship heavy or highly expensive, specialized machinery to the EC for required tests and approvals, and many U.S. makers are relatively small firms that serve the EC market primarily through direct exports. U.S. industry also faces the challenge of adopting the metric system—thus far, the EC has only imposed "soft metric" requirements.

Telecommunications

Goals

In 1987 the EC Commission issued a Green Paper in which it outlined the concept of a European framework for future development of the telecommunications sector.[317] The Green Paper underscored the importance of telecommunications development to the success of the EC Internal Market Program. In addition, the EC Commission recognized the need for a fundamental review of telecommunications regulations and institutions in order to maintain the competitiveness of EC industries, given factors such as the pace of technological progress in

[317] EC Commission, *Toward a Dynamic European Economy: Green Paper on the Development of the Common Market for Telecommunications Services and Equipment*, COM (87) 290, June 30, 1987.

the telecommunications industry and the growing demand for advanced services.

Means

The EC Commission has pursued these objectives through a series of measures designed to facilitate the harmonization of technical standards for telecommunication services and equipment, to liberalize the markets for telecommunications equipment and services, and to introduce telecommunications technologies and services on a Communitywide basis.

Progress to Date

To date the EC has proposed or adopted many measures identified in the Green Paper. The most important of these are decisions concerning the introduction of competition in the markets for terminal equipment and value-added telecommunication services; the harmonization of operating conditions and competition guidelines for service providers; the harmonized introduction of new technologies and services; and the mutual recognition of type-approval procedures for terminal equipment.

Still pending are decisions concerning liberalization of the voice telephony sector, the right of competitive service providers to provide their own network infrastructure, mutual recognition of licenses to operate telecommunication services, data protection regulations, and definition and introduction of certain radio-based telecommunication systems. Particularly controversial are the proposals for data privacy protection and the liberalization of voice telephony.

The EC Commission addressed the latter issue in an October 1992 report that reviews the situation in the telecommunication services sector.[318] This report, mandated by the competition directives adopted in 1990,[319] concludes that the liberalization of the voice telephony sector is necessary to fulfill the Green Paper's objective of developing a Communitywide, technologically advanced market for telecommunications. The review report examines several policy options, but the EC Commission has apparently decided in favor of a plan that would introduce competition gradually, initially in the area of voice telephony among EC member states.

Implications for the United States

U.S. firms in Europe, both telecommunications users and service providers, are generally encouraged by EC progress in liberalizing the market for telecommunication services and equipment.[320] However, U.S. industry would like to see further progress in the area of voice telephony, particularly with regard to provisions that will uphold the principles of nondiscrimination, transparency, unbundling of reserved and competitive services, and cost-oriented accounting.[321] In addition, U.S. industry emphasizes that the effectiveness of the EC Commission's telecommunications policies depends on the pace and manner of implementation at the member-state level.[322]

[318] EC Commission, *1992 Review of the Situation in the Telecommunications Services Sector*, SEC (92) 1048, Oct. 21, 1992.

[319] *Commission Directive on Competition in the Markets for Telecommunications Services*, *OJ* No. L 192 (July 24, 1990), p. 10, and *Council Directive on the Establishment of the Internal Market for Telecommunications Services Through the Implementation of Open Network Provision*, *OJ* No. L 192 (July 24, 1990), p. 1.

[320] U.S. industry representatives, telephone interviews by USITC staff, Jan. 11 and 13, 1993.

Construction Products

Goals and Means

EC directives in the construction sector were adopted with the intent of eliminating barriers to trade in construction equipment and materials and harmonizing standards for buildings. The EC Commission has passed directives that cover all its objectives specified in its 1985 White Paper on completing the internal market. The directive on construction products is by far the most complex directive, and its implementation will likely take years to accomplish.

Progress to Date

The EC Commission adopted directives that harmonized technical provisions for determining the sound levels of construction tower cranes, set minimum fire safety standards for hotels, and established health and safety standards for construction products. The directive setting basic fire safety standards for hotels was particularly important because many of these buildings were old.

The directive on construction products covers those products that are permanently incorporated in buildings or construction works and addresses a broad spectrum of product characteristics. Under the directive products have to satisfy certain essential requirements to ensure that they are fit for their intended use and that they provide an economically reasonable working life to the user. These essential requirements are mechanical strength and stability; safety in case of fire; hygiene, health, and the environment; safety in use; protection against noise; and energy economy and heat retention.

The most important development, which is expected to occur in 1993, is the publication of the interpretative documents for the six essential requirements of the Construction Products Directive. These documents will explain how the essential requirements can be met and will guide CEN and CENELEC committees in developing product-specific standards.

[321] U.S. Council for International Business, "Statement on the Commission's Review of the Situation in the Telecommunications Services Sector," Jan. 28, 1993.

[322] Ibid., p. 7.

Implications for the United States

U.S. producers in a variety of fields have been watching EC construction-related activity with interest. Manufacturers of heating, ventilating, and air-conditioning equipment and wood products are among the potentially affected U.S. interests. With the publication of interpretative documents, U.S. industry will be in a better position to judge the scope and strictness of this directive.

CHAPTER 5
PUBLIC PROCUREMENT AND THE INTERNAL ENERGY MARKET

Public Procurement

At an estimated 15 percent of the European Community's gross domestic product, the EC public sector represents a large and potentially important market for a number of U.S. industries. However, U.S. suppliers have not been ensured access to nearly half of the value of EC public sector contracts, because these contracts have fallen outside the scope of EC and international trading rules. As part of the 1992 program, the EC is putting in place rules intended to provide greater openness, transparency, and nondiscrimination in all phases of public purchasing.

Developments During 1992

During 1992 the EC nearly completed the EC 92 single market program in public procurement as defined in the 1985 White Paper. The EC Council adopted the Public Services and Utilities Remedies Directives and approved a common position of the Utilities Services Directive, the final White Paper directive on procurement. The Council also took action to consolidate the various pieces of legislation related to public works and public supplies, and the EC Commission released two communications relating to public procurement. However, in April 1992 the United States informed the EC that it would retaliate in 1993 if the EC implemented the Utilities Directive as scheduled in 1993. The U.S. Administration alleges that the Utilities Directive, which establishes procedures for the award of supplies and works contracts in the excluded sectors, discriminates against U.S. suppliers.

The Public Services Directive

The Public Services Directive sets forth procurement procedures for the award of public service contracts.[1] The Council adopted the directive on June 18, 1992. The directive is scheduled to come into effect by July 1, 1993. There are no derogations for any member states.

The adopted directive is almost identical to the common position, which was described and analyzed in detail in the last USITC EC 92 report.[2] The only change is a provision allowing a transition from the existing common product classification (CPC) nomenclature references to the new CPC nomenclature at some future date, without the need for a Council amendment. The nomenclature references are used to define those "priority" services that are subject to all of the provisions of the directive and those "residual" services that are subject only to basic rules prohibiting discriminatory behavior. Priority services are those services for which cross-border transactions are likely to occur, such as management consulting. Residual services are less likely to be traded across member-state borders. A decision will be made at a later date as to whether to extend full application of the directive to residual services.

The Utilities Remedies Directive

The Utilities Remedies Directive establishes appeals procedures for contracts awarded in the four excluded sectors of water, energy, transport, and telecommunications. The directive was adopted by the Council on February 25, 1992,[3] and was scheduled to enter into effect in most member states by January 1, 1993. Spain has until June 30, 1995, and Portugal and Greece have until June 30, 1997, to comply with the directive. The Utilities Remedies Directive was described in detail in the last USITC EC 92 report.[4]

The Utilities Directive

Extending the Utilities Directive to Cover Services

The Utilities Directive adopted in September 1990 covers procedures for procurement of supplies and works by entities operating in the water, energy, transport, and telecommunications sectors.[5] The proposed Utilities Services Directive[6] extends its coverage to the purchase of services.[7] On December 21, 1992, the EC Council adopted a common position that integrates the provisions of the proposed Utilities Services Directive into the Utilities Directive.[8] The

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[1] *Council Directive of 18 June 1992 Relating to the Coordination of Procedures for the Award of Public Service Contracts, 92/50/EEC, Official Journal of the European Communities (OJ)*, No. L 209 (July 24, 1992), pp. 1-24.

[2] U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: Fourth Followup Report* (investigation 332-267), USITC publication 2501, Apr. 1992, p. 6-5.

[3] *Council Directive of 25 February 1992 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*, 92/13/EEC, *OJ* No. L 76 (Mar. 23, 1992), pp. 14-20.

[4] USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 6-8.

[5] *Council Directive of 17 September 1990 on the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Telecommunications Sectors*, 90/531/EEC, *OJ* No. L 297 (Oct. 29, 1990), pp. 1-47.

[6] *Proposal for a Council Directive Amending Directive 90/531/EEC on the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Telecommunications Sectors*, COM (91) 347, *OJ* No. C 337 (Dec. 31, 1991), p. 1.

[7] For a complete discussion of this directive, see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 6-7.

[8] *Common Position Adopted by the Council on 21 December 1992 With a View to the Adoption of the Directive Co-ordinating the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Telecommunications Sectors*, Brussels, Dec. 1992.

Utilities Directive entered into effect for most member states on January 1, 1993. The Utilities Services Directive is scheduled to enter into effect on July 1, 1994, for most member states. However, Spain has until January 1, 1997, and Greece and Portugal have until January 1, 1998, to comply with the services provisions.

The Utilities Services Directive is generally modeled after the Public Services Directive. However, the Utilities Services Directive, unlike the Public Services Directive, contains provisions addressing third-country tenders. Originally the proposal permitted the EC Commission to impose limitations on tenders from third-country firms determined to discriminate against EC suppliers without Council approval but subject to Council revision. These third-country provisions were changed in the common position to require Council adoption of such trade measures proposed by the EC Commission before they can become effective. This change simply restates a power that already existed and that was retained for political reasons and to parallel the third-country provisions contained in the Utilities Directive for supplies.[9]

U.S. Title VII Procurement Review

The Utilities Directive is a source of U.S. concern because of provisions that permit discrimination against U.S. bids for supplies contracts. One provision mandates a 3-percent price preference to EC bids over equivalent non-EC-origin offers. Another provision states that procuring entities may exclude offers without additional justification when less than half the total value of the component products constituting the tender are of EC origin (the so-called 50-percent-content rule).

According to the Utilities Directive, these provisions may be waived for those third countries that negotiate a bilateral or multilateral agreement with the EC that would "ensure comparable and effective access for EC undertakings to the markets of those third countries." Ongoing negotiations to expand and strengthen the General Agreement on Tariffs and Trade (GATT) Government Procurement Code could end the formal discrimination of the Utilities Directive by committing signatories to follow a set of rules specifying open, nondiscriminatory procurement.[10] However, by yearend 1992, Code talks remained stalled because of delays in the broader Uruguay Round negotiations.[11]

In the meantime the United States threatened to impose sanctions on the EC should it implement the discriminatory provisions of the directive.[12] The Trade Agreements Act of 1979, as amended by Title VII of the Omnibus Trade and Competitiveness Act of 1988,[13] requires the President to submit to Congress an annual report each April identifying foreign countries that discriminate against U.S. firms in the award of public contracts.[14] On April 22, 1992, the President identified the EC as discriminating against U.S. businesses in government procurement and announced the imposition of sanctions by January 1993, subject to the implementation of the discriminatory provisions of the Utilities Directive.[15] Following several meetings that extended the January 1993 deadline, the United States announced on April 21, 1993, an agreement with the EC that would remove the discrimination against U.S. suppliers of heavy electrical equipment, but not for telecommunications equipment. Consequently, the United States annouced it would proceed with title VII sanctions commensurate with the remaining discrimination and agreed to continue negotiating on remaining procurement issues such as telecommunications.[16]

Other

In another development, in December 1992 the EC Commission presented a proposal to simplify procedures for awarding contracts relating to the exploration or extraction of oil, gas, and coal in France. Under article 3 of the Utilities Directive, member states are permitted to request exemption from the detailed procedures outlined in this directive if these industries meet certain competitive conditions.[17]

Works

In January 1992 the EC Commission presented a proposal to consolidate existing legislation on procurement procedures for public works contracts.[18]

[9] U.S. Department of State, "Internal Market Council Adopts Directives on Public Procurement of Services," message reference No. 08318, prepared by U.S. Mission to the EC, Brussels, June 23, 1992.

[10] For example, see Delegation of the Commission of the European Communities, Office of Press and Public Affairs, "EC Commission Responds to U.S. Trade Measures in Telecommunications and Procurement," *European Community News*, Feb. 1, 1993; and EC Commission, "U.S. Threat of Trade Sanctions Against EC Under Title VII of the U.S. Trade Act," press release, IP (92) 377, May 12, 1992.

[11] For more information on the Code talks, see part III of this report.

[12] For more information, see part III of this report.

[13] Pub. L. 100-418, Title VII ("Buy American Act of 1988"), Sec. 7003, *Procedures to Prevent Government Procurement Discrimination*, amending Sec. 305 of the Trade Agreements Act of 1979.

[14] 19 U.S.C. sec. 2515(d).

[15] Office of the United States Trade Representative, "USTR Announces Special 301, Title VII Reviews," press release, Apr. 29, 1992.

[16] USTR. "Statement by Ambassador Mickey Kantor," press release No. 93-26, Apr. 21, 1993; and USTR, LEGI-SLATE transcript, "Press conference with United States Trade Representative Mickey Kantor re: Trade agreement with European Community, " Apr. 21, 1993.

[17] "Public Procurement: Last Part of EC Legislation Adopted," *European Report*, No. 1823 (Dec. 24, 1992), Internal Market, p. 12.

[18] *Proposal for a Council Directive Concerning the Coordination of Procedures for the Award of Public Works Contracts*, SEC (91) 2360, *OJ* No. C 46 (Feb. 20, 1992), pp. 79-105.

The Council reached a common position on June 18, 1992 and the Parliament approved it without amendments on October 28, 1992. According to the EC, all rules on the award of public works contracts can be found in this one document.[19] The consolidation procedure did not modify the substance of the original pieces of legislation.

The EC Commission also proposed a directive in July 1992 that would amend the Works Directive (71/305/EEC) by permitting the EC Commission, assisted by the advisory committee for public works contracts, to adopt certain technical conditions regarding notification, statistical reports, and nomenclature used to classify works. The purpose of the directive is to align procedures in the public works market with those set out in the utilities and services procurement directives.[20] The Council adopted the directive on February 8, 1993.[21]

Supplies

In September 1992 the EC Commission proposed a directive[22] that consolidates the various directives previously adopted covering public supply contracts.[23] The purpose of this directive is both to clarify the rules and to align them with the provisions in the Public Works and Public Services Directives. The Parliament completed its first reading in February 1993.

Other Developments

In June 1992 the EC Commission published two communications relating to public procurement. The first covers measures the EC intends to take to help small and medium-size companies (SMEs) participate more fully in EC public contracts.[24] The second proposes measures to help those industries that supply the utilities in the structurally disadvantaged regions of the EC to adjust to the opening of public procurement and participate actively.[25]

[19] The following directives and decision are repealed: 71/305/EEC, 72/277/EEC, 78/668/EEC, 89/440/EEC, 90/531/EEC (only art. 35(2)), and 90/380/EEC.

[20] U.S. Department of State, "February 8 Internal Market Council," message reference No. 01824, prepared by U.S. Mission to the EC, Brussels, Feb. 9, 1993.

[21] *Council Directive of 8 February 1993 Amending Directive 71/305/EEC Concerning the Coordination of Procedures for the Award of Public Works Contracts*, 93/4/EEC, *OJ* No. L 38 (Feb. 16, 1993), p. 31.

[22] *Proposal for a Council Directive Coordinating Procedures for the Award of Public Supply Contracts*, COM (92) 346, *OJ* No. C 277 (Oct. 26, 1992), p. 1.

[23] Directive 77/62/EEC is repealed, including the provisions that amended this directive, namely 80/767/EEC, 88/295/EEC, 90/531/EEC (only article 35(1)), and 92/50/EEC (only article 42(1)).

[24] EC Commission, *SME Participation in Public Procurement in the Community*, communication from the Commission, SEC (92) 722, June 1, 1992.

[25] EC Commission, *Communication of the Commission to the Council Concerning Measures Relating to the Industries Supplying the Utilities Sectors in the Structurally Disadvantaged Regions of the Community*, SEC (92) 1052, June 3, 1992.

The first communication identifies several ways to help SMEs benefit from the liberalized procurement market. For instance, the communication recommends the development of more effective information resources, including improvement in the quality and dissemination of information to potential bidders. Also, it identifies measures offering direct help to SMEs so they can exploit contract opportunities, including various training and counseling programs. Finally, the communication recommends that guidance be provided on Community legislation, including clarification of the laws and their correct application. The EC Commission, member states, contracting authorities, and SMEs all play roles in fulfilling these recommendations.

The second communication states that the EC Commission recognizes the need for the restructuring of certain industries that sell to public utilities in the poorer regions of the EC, in order for these industries to remain competitive once the EC's public markets in the utilities sectors are opened. The communication says that businesses in Spain, Portugal, and Greece must take advantage of their derogations from the Utilities Directive. According to the commmunication, during the derogation period these companies can exploit the enlarged EC market but will not be subject to the same pressure on their domestic base. The communication also proposes specific measures that member states can take to help suppliers win procurement contracts and to speed up economic diversification of areas that are now heavily dependent on these industries. For example, it recommends that measures should be established to assist firms by supplying managerial and marketing expertise. The communication enumerates various EC programs that can provide EC funds to help member states take such measures.

1993 and Beyond

Progress to Date

The 1985 White Paper cited discriminatory public procurement as "one of the most evident barriers to the achievement of a real internal market." Public purchasers in the EC rely almost exclusively on national suppliers. Only about 2 percent of public contracts are awarded to firms in other member states.

In the White Paper, the EC Commission proposed a substantial strengthening of member-state commitments on public procurement. The legislation envisaged as part of the 1992 procurement program took shape in seven directives:

1. Supplies Directive;
2. Works Directive;
3. Public Services Directive;
4. Remedies (or Compliance) Directive, which covers appeals procedures against discrimination in the award of public contracts covered by the Supplies, Works, and Public Services Directives;

5. Utilities Directive, which expands the scope of EC discipline to procurement in the four excluded sectors of water, energy, transport, and telecommunications;
6. Utilities Services Directive, which will amend the Utilities Directive to extend its coverage to services and which has now been integrated into the Utilities Directive; and
7. Utilities Remedies Directive, which covers appeals procedures for contracts covered by the Utilities Directive.

By the end of 1992 the EC had virtually completed its program outlined in the White Paper to eliminate national barriers in public procurement. All of the seven directives have been adopted by the EC Council with the exception of the Utilities Services Directive (see above). In addition, all of the procurement legislation was scheduled to enter into effect in member states by January 1, 1993, except the two directives on services, which come into force on July 1, 1993 (Public Services Directive) and July 1, 1994 (Utilities Services). Countries of the European Free Trade Association will be required to apply all of the procurement directives as part of the European Economic Area (EEA) agreement.

Implications for the United States

U.S. suppliers and procurement experts generally believe that the EC's 1992 procurement program will eventually open the EC's public sector markets. Increased transparency of award procedures should increase awareness of contract opportunities and create competition where none currently exists. Also, the introduction of EC-wide procurement rules, which replace disparate member-state regulations, should facilitate U.S. firms' access to the entire EC market. However, these experts also agree that short-run effects are likely to be small, because procuring authorities are reluctant to change their tradition of relying on national suppliers. Some procuring entities reportedly have avoided the intention of procurement directives by inappropriately invoking the "compatibility" clause, which permits procurement authorities to reject bids that would impose "disproportionate" costs or technical difficulties to make the product technically compatible. Also, whereas cross-border contracts have been awarded, many procuring entities, particularly at the local and regional level, reportedly have ignored publishing requirements and have resisted market opening.

Enforcement will play an important role in determining whether the new laws are effective. The EC Commission has instituted several programs to ensure compliance, including computer spot checks of published notices and a program that monitors compliance of projects supported by the EC's structural funds.[26] The success of the two "Remedies" directives, which establish appeal procedures to prevent discrimination in the award of public contracts, will depend on the willingness of suppliers to initiate cases against their customers. Although this practice is common in the United States, it is new to Europeans.[27] The Sutherland Report,[28] which recommends ways to improve the functioning of the internal market in general, addresses this confidentiality problem by recommending that each member state appoint a mediator, who would be independent of the complainant and the awarding authority.[29]

U.S. suppliers have generally focused their concern on the 50-percent EC-content rule in the Utilities Directive, which could restrict their ability to take advantage of more open procurement. This rule, they claim, would result in an unpredictable bidding situation and could have the effect of requiring U.S. firms to invest in the EC in order to win procurement contracts.

The Utilities Directive requires the EC to impose this restriction on third countries unless any such country can offer reciprocal procurement opportunities. The EC has asked the United States to demonstrate reciprocity in ongoing negotiations to revise the GATT Code on Government Procurement, but these talks are currently stalled due to delays with the broader Uruguay Round negotiations. Lack of Code agreement could lead to more bilateral actions and pressure on the United States to implement such measures as sanctions under title VII of the 1988 Trade Act.[30]

The Internal Energy Market

EC member states have traditionally protected their markets for energy products because of the strategic economic importance of the energy sector. The creation of an EC-wide energy market through the removal of existing obstacles should reduce energy costs to consumers and improve the competitiveness of EC industry.

Developments During 1992

Common Rules for the Internal Market in Electricity and Gas

In January 1992 the EC Commission proposed two directives as part of the second stage of a three-stage plan to create an internal energy market (IEM). These two proposals—the Electricity Directive and the Gas

[26] For more information on the EC's compliance programs, see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, pp. 6-9 and 6-22.

[27] Steven Woolcock, *Trading Partners or Trading Blows? Market Access Issues in EC-U.S. Relations* (New York: Council of Foreign Relations Press, 1992), p. 77.

[28] For more information on the Sutherland Report, see chapter 1 of this report.

[29] High Level Group on the Operation of the Internal Market, "The Internal Market After 1992: Meeting the Challenge," report to the EC Commission, Oct. 28, 1992, pp. 14-15.

[30] Woolcock, *Trading Partners or Trading Blows?*, p. 89.

Directive[31]—have three major objectives: (1) the removal of exclusive rights to generate electricity and build power lines and gas pipelines; (2) the unbundling or separation of production, storage (in the case of gas), transmission, and distribution activities in vertically integrated companies; and (3) the introduction of third-party access (TPA). TPA would give third parties, such as large industrial customers[32] and energy distributors,[33] the right to use at reasonable rates the energy networks currently controlled by the EC's large gas and electricity producers, as long as there is capacity available to supply the third party. These directives note that a third stage introducing TPA for small consumers on January 1, 1996, will be formulated in light of the experience of the second stage.

The directives require member states to establish objective and nondiscriminatory criteria for granting licenses to producers and investors in the markets for electricity generation and power line and gas pipeline construction. The criteria are required to relate exclusively to the security and safety of the installation and equipment, environmental protection, land-use planning, and the technical and financial capacity of the applicant entity. However, under certain conditions member states may supplement these criteria or attach conditions to the license. For example, member states may prohibit nuclear electricity generation on their soil or may fix upper limits for gas, oil, and coal-fired electricity.[34] Because liberalization is expected to increase the number of operators of the transmission and distribution systems, member states are responsible for designating for each region a systems operator, who must ensure the network's secure and efficient operation.

Opposition to the electricity and gas directives is fierce.[35] In general the electric power and gas utility companies, trade unions representing energy workers, and the majority of member states oppose the directives. The EC Commission, large energy- intensive industries, consumer groups, and a minority of member states support the proposals. The central concern of opponents is TPA and the dismantling of national energy monopolies. They fear that TPA would threaten security of supply, would raise prices, and would disadvantage small customers. According to opponents, TPA would encourage producers to invest in gas-fired plants, which have lower startup costs, rather than nuclear or coal facilities, which are more profitable in the long run.[36] This scenario would raise prices and create a dependence on gas rather than a diversification of energy sources. Opponents also claim that TPA only benefits large consumers, since it creates two markets: a free market and one for captive consumers who do not meet the TPA thresholds and have little negotiating power.[37]

Opponents also fear that the disclosure of costs under unbundling, which requires vertically integrated companies to separate divisions and accounts, would weaken the international negotiating position of EC suppliers and would lead to an increase in the price of imported gas.[38] Gas producers have further complained that the current sharing of the risks of demand and price fluctuations between producers and consumers under "take-or-pay" arrangements[39] would disappear.[40] With the risk shifted to suppliers, the incentive to invest would decline, supply would decrease, and prices would rise. Finally, opponents argue that the effects of the first stage must be evaluated before the second stage, which introduces TPA, can be implemented.[41]

The EC Commission and large consumers, on the other hand, support the directives as necessary to address the problems of the current system, wherein all customers are captive. For example, the EC Commission argues that consumers face unnecessarily high energy prices because the current system protects utilities from the consequences of overinvestment or inappropriate investment and permits discrimination among customer groups.[42] TPA should permit eligible

[31] *Proposal for a Council Directive Concerning Common Rules for the Internal Market in Electricity*, COM (91) 548, SYN 384, *OJ* No. C 65 (Mar. 14, 1992), pp. 4-14, and *Proposal for a Council Directive Concerning Common Rules for the Internal Market in Natural Gas*, COM (91) 548, SYN 385, *OJ* No. C 65 (Mar. 14, 1992), pp. 14-23.

[32] Large industrial consumers are defined as those whose annual consumption exceeds 100 gigawatt-hours of electricity or 25 million cubic meters of gas. About 400-500 consumers would be affected. In the case of electricity, the most affected consumers are in the aluminum, steel, chemicals, construction materials, and glass sectors. The most affected gas consumers are fertilizer and electricity producers.

[33] Eligible distributors are those that supply at least 3 percent of the electricity or 1 percent of the gas consumed in their member state. Distributors can join forces to reach this threshold. A total of about 100 each of electricity and gas distributors, individually or in association, will likely be eligible.

[34] "Energy Liberalisation: Commissioner Speaks Out; ESC Organises Hearing," *European Report*, No. 1802 (Oct. 9, 1992), Internal Market, p. 5.

[35] For more information on the positions of proponents and opponents of TPA, see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 6-26.

[36] "Energy: Utilities Critical of Commission's Approach to Deregulation," *European Report*, No. 1772 (May 28, 1992), Business Brief, p. 2.

[37] Ibid.

[38] U.S. Department of State, "Round-Up of German Business and Financial Press Commentary on EC issues," message reference No. 28433, prepared by U.S. Embassy, Bonn, Oct. 20, 1992.

[39] Take-or-pay contracts enable suppliers and buyers to share the risk of demand and price fluctuations on the natural gas market. The purchaser agrees to a set quantity at a set price. If unable to take that quantity, the purchaser must still pay for it. Thus the purchaser accepts the volume risk and the supplier accepts the price risk.

[40] U.S. Department of State, "Round-Up of German Business and Financial Press Commentary on EC issues."

[41] Ibid.

[42] Antonio Jose Baptista Cardoso E Cunha, EC Energy Commissioner, "Liberalizing the European Energy Market," *Public Utilities Fortnightly*, Jan. 15, 1992, pp. 11-14.

consumers to choose their gas and electricity suppliers freely, effectively restricting the monopoly powers of the large energy utilities. Proponents claim that TPA would lead to more responsible investment by existing firms and new entrants and would improve security of supply by diversifying investment. They contend that TPA would open up new possibilities for diversified capital investment, including joint ventures, and would lead to diversified fuel and technology use.[43] According to the EC Commission, new commercial relationships in the gas sector would emerge, replacing current "take-or-pay" arrangements, which would lower prices and reduce the disparities in prices charged to large and small consumers.[44] Captive consumers, which are ineligible for TPA, are expected to benefit from the directives indirectly through the ability of their distributors to negotiate supply with different producers.[45]

The EC Commission argues that unbundling and price transparency requirements should lower prices and expose discriminatory rate structures.[46] The directives state that unbundling would also ensure that state subsidies granted to one division could not benefit another,[47] thus ending cross-subsidization, which could be a barrier to entry for independent operators.

The electricity and gas directives were originally intended to be adopted and implemented by member states by January 1, 1993. However, opposition from member states has delayed a decision until 1993.

Trans-European Networks

In February 1992 the EC Commission proposed a regulation introducing a declaration of European interest to facilitate the establishment of trans-European networks in the electricity and natural gas areas.[48] A declaration of European interest is defined as an acknowledgement by the EC Commission that the project meets certain criteria, such as it generates direct economic effects in the EC and has been subject to various feasibility studies. The purpose of such a declaration is to show that a large-scale project is considered a priority by the EC and thus to help attract private investment for such projects. The European Parliament adopted the regulation, with amendments, in November. The original date scheduled for implementation—January 1, 1993—was not met.

The Hydrocarbons Directive

In March 1992 the EC Commission proposed a directive on the conditions for granting and using authorizations for the prospecting, exploration, and extraction of natural gas and oil.[49] Whereas the generation (production) of electricity was covered in the Electricity Directive mentioned above, the production of gas and the production of oil are covered in this directive because of their similarity to each other. This proposal removes the final major obstacle to the completion of the single market for oil.

The goal of the Hydrocarbons Directive, like the electricity and gas directives, is to create an open and competitive market by improving transparency and removing discrimination in the allocation of licenses. Member states would retain authority to prohibit or impose conditions on the granting of licenses if justified by "defense of the territory, public security, public health, security of transport, protection of the environment, safety of installations and of workers or the planned management of hydrocarbon resources."[50] The directive also permits member states to refuse licenses to third-country companies if the EC Commission determines that the home country does not grant "comparable treatment" to EC firms.

Because the directive would prohibit governments from granting preferences to companies from their own nation, Denmark and Norway have taken a leading role in opposing the Hydrocarbons Directive.[51] Denmark opposes the directive since it would end the Danish practice of requiring Government participation in hydrocarbon exploration.[52] Norway, which would have to apply the directive under the EEA agreement, strongly opposes it since the Norwegian industry is currently characterized by strong state involvement and preferences for Norwegian firms.[53]

This controversy has delayed adoption of the directive. The Hydrocarbons Directive had been scheduled to be adopted and implemented by member states by January 1, 1993, but this date was not met. In the first reading of the measure on November 16, 1992, the European Parliament approved it together with

[43] "ESC/Parliament: Energy Liberalisation," *European Report*, No. 1771 (May 23, 1992), Internal Market, p. 4, and "Energy Liberalisation: Commissioner Speaks Out; ESC Organises Hearing," *European Report*, No. 1802 (Oct. 9, 1992), Internal Market, p. 5.

[44] "Energy Liberalisation: Commissioner Speaks Out;" p. 5.

[45] Yvan Capouet, "Completion of the Internal Market for Electricity and Gas," *Energy in Europe*, July 1992, p. 12.

[46] Ibid.

[47] *Proposal for a Council Directive on Electricity*, p. 13, and *Proposal for a Council Directive on Natural Gas*, p. 21.

[48] *Proposal for a Council Regulation (EEC) Introducing a Declaration of European Interest to Facilitate the Establishment of Trans-European Networks in the Electricity and Natural Gas Domains*, COM (92) 15, *OJ* No. C 71 (Mar. 20, 1992), p. 9.

[49] *Proposal for a Council Directive on the Conditions for Granting and Using Authorizations for the Prospection, Exploration and Extraction of Hydrocarbons*, COM (92) 110, *OJ* No. C 139 (June 2, 1992), pp. 12-16.

[50] Ibid., p. 13.

[51] "Energy Council: Gas and Power Liberalisation Plan Back to the Drawing Board," *European Report*, No. 1817 (Dec. 2, 1992), Internal Market, p. 9.

[52] U.S. Department of State, "EC Hydrocarbon Licensing Directive: Danish Position and Problems," message reference No. 07928, prepared by U.S. Embassy, Copenhagen, Dec. 2, 1992.

[53] "EC/Norway: Trouble Over Draft Oil Exploration Directive," *European Report*, No. 1805 (Oct. 19, 1992), Internal Market, p. 4.

amendments, including one that would remove provisions that allow member states to revise existing contracts.[54]

Transmission Infrastructures

In a communication issued in March 1992,[55] the EC Commission outlined some initial ideas for strengthening and integrating the natural gas and electricity transmission infrastructures of the EC member states. These network infrastructures were developed to achieve self-sufficiency on the national level and were accompanied by limited international cooperation based on supply requirements. Some member states, particularly those on the periphery, are not connected to EC gas or electricity networks and accordingly rely heavily on imported oil and suffer problems related to security of supply. According to the EC Commission this situation is incompatible with the completion of the internal market and increased cooperation envisaged with third countries, such as those of EFTA and Central and Eastern Europe. To promote trade and increase flexibility and security of energy supplies, the EC Commission has proposed strengthening the networks by increasing Community financial aid and developing energy exchanges with third countries. The EC Commission intends to outline more concrete guidelines, as required by the Treaty on European Union (title XII), at a later date.

Import-Export Monopolies

The EC Commission began legal proceedings in March 1991 against several member states that have granted exclusive rights for the import and export of electricity and natural gas.[56] These rights were viewed by the EC Commission as an obstacle to creating an IEM and a violation of article 37 of the Treaty of Rome. Article 37 prohibits commercial monopolies that establish discriminatory conditions for the procurement and marketing of goods.

In October 1992 the EC Commission gave six member states 2 months to demonstrate that they are adapting national laws on exclusive rights granted to import and export energy monopolies to comply with EC competition laws. Otherwise, they risk court action. The member states cited in the investigation are France, Ireland, Italy, the Netherlands, and Spain for electricity and Denmark and France for natural gas.[57]

[54] "European Parliament Plenary Session," supplement to *European Report*, No. 1819 (Dec. 9, 1992), p. 10; and Buraff Publications, "News in Brief," *Eurowatch*, Nov. 30, 1992, p. 9.

[55] EC Commission, *Electricity and Natural Gas Transmission Infrastructures in the Community*, communication from the Commission to the Council, SEC (92) 553, Mar. 27, 1992.

[56] For more background see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 6-24.

[57] "Energy Monopolies: Member States Given Two Months to Act on Exclusive Rights," *European Report*, No. 1806 (Oct. 22, 1992), Business Brief, p. 2.

1993 and Beyond

Progress to Date

In 1986 the EC Commission issued broad objectives for the energy sector, including the need for "greater integration, free from barriers to trade, of the IEM with a view to improving security of supply, reducing costs and improving economic competitiveness."[58] Although the EC Commission's White Paper did not explicitly address the energy sector, the goal to complete the IEM by January 1, 1993, has been considered an integral part of the EC's broader single market program.

Member-state markets for energy products have long been characterized by high barriers to trade. One of the first steps the EC Commission took to achieve the IEM was to identify the factors that have contributed to the segmentation of the EC energy market. These factors include the wide variation in products, end uses, size of operators, political traditions, taxation policies, and energy resource endowments among the member states. The cost of the fragmented market has been estimated at between 0.5 and 1.0 percent of EC GDP, or ECU 20-30 billion per year.[59]

The EC's strategy to remove these barriers to achieve the IEM has focused on (1) applying White Paper directives that affect the energy sector; (2) applying EC laws in such areas as the free movement of goods, competition policy, monopolies, and state aid; and (3) developing a program to address obstacles to the IEM that are specific to the energy sector. The White Paper addresses energy in the areas of harmonization of standards, the opening of public procurement, and the approximation of indirect taxation.[60] In accordance with its commitment to apply the laws of the EC Treaty, the EC Commission has pressured member states administering direct or indirect aid to the coal industries, notably Germany and Spain, and has begun legal proceedings against several member states that have granted exclusive rights for the import and export of electricity and natural gas.

In developing a program focusing on energy in particular, the EC Commission has followed a three-stage approach based on four general principles. The four principles are—

1. A phased approach to give industry the time to adjust to the new environment;
2. Subsidiarity, whereby the EC is granted jurisdiction only for those policies that cannot be effectively handled at the national level;
3. The avoidance of excessive regulation; and

[58] *EC Council Resolution, OJ* No. C 241 (Sept. 25, 1986).

[59] EC Commission, *Panorama of EC Industry, 1989*, p. 1-2.

[60] For developments and prospects in these areas, see the chapters in this report on standards, public procurement, and taxation.

4. The use of the step-by-step cooperation procedure under article 100A of the Single European Act to introduce legislation.

The directives required to create the IEM focus on the electricity and gas sectors, for which there is a high incidence of state or state-sanctioned monopoly.

The first stage involved the implementation of three directives that were adopted in 1990-91: (1) procedures to improve the transparency of natural gas and electricity prices; (2) the right of transit between integrated high-voltage electricity grids; and (3) the right of transit of natural gas in the high-pressure transmission grid.[61] The Price Transparency Directive requires that for publication purposes electricity and gas utilities notify the EC's statistical office of the rates they charge to all categories of customers. The EC Commission hopes that this directive will pressure companies charging the highest rates to reduce their prices in order to remain competitive. The Electricity and Gas Transit Directives create the "right of access" for transmission utilities to energy networks controlled by other transmission utilities, as long as reliability of electricity and gas flows is not affected. Previously, transfrontier transit among the large networks was based on voluntary interutility agreements. The Price Transparency and Electricity Transit Directives entered into effect on July 1, 1991, and the Gas Transparency Directive became effective on January 1, 1992. Most member states have transposed these directives into national law.[62]

The second phase, as described in the previous section, further liberalizes the electricity and gas sectors, most notably through the introduction of TPA to large energy consumers. This stage was originally scheduled to be in place by January 1, 1993. However, because of member-state opposition, decisions have been delayed until the next Energy Council meeting, scheduled for April 1993. Reportedly the EC will "consider modifications," but withdrawal or amendment of the directives is unlikely.[63] Although the EC Commission was discouraged by the delay, it has been reconciled to a long approval process. According to EC Commissioner for Competition Sir Leon Brittan, "...any change which affects the privileged position of established structures takes time to digest."[64]

The third and final stage will begin January 1, 1996, and will extend TPA to small consumers. When TPA is extended to these consumers, the IEM for gas and electricity will be complete.

Implications for the United States

Since the United States does not export electricity or natural gas to the EC, the creation of an integrated EC energy market will not directly affect U.S. trade of energy, except possibly coal. The United States may be affected through U.S. companies that operate subsidiaries in the EC and through the market for energy-related technology and equipment.

In general, U.S. subsidiaries operating in the EC should benefit from lower energy costs, more consistent energy prices across the member states, and increased purchasing flexibility in terms of both the types of energy consumed and suppliers. Energy-intensive industries, such as the petrochemical industry, should benefit in particular. However, U.S. companies are concerned that liberalization of the EC energy market would improve the competitiveness of EC rivals as well. Also, U.S. companies in the EC involved in the production or supply of energy tend to oppose the IEM because they believe that TPA could result in a complex and burdensome regulatory structure that could reduce investment, hurt supply, and possibly raise gas prices.[65]

Completion of the IEM will ultimately result in the approximation and assimilation of national energy infrastructures, entailing significant structural change. TPA should encourage new entrants and increase competition in the energy market, thereby resulting in increased investment in the sector, a more diverse set of companies making investment decisions, and a shift of investment incentives toward more efficient equipment. Each of these changes could provide new opportunities for U.S. firms selling energy-related technology and equipment—such as gas and steam turbines for electric utilities; gas exploration equipment; and power circuit breakers, transformers, and generators. However, U.S. firms will have to sell equipment in markets that have traditionally had a strong "buy national" policy. The Utilities Directive, which liberalizes public procurement in the energy sector, entered into effect on January 1, 1993, and should benefit U.S. suppliers if it is effectively enforced.[66]

Finally, the IEM could increase U.S. exports of coal to the Community. Demand for cheaper inputs, such as imported coal, by the EC electricity industry and controls over subsidies to Germany's coal industry could provide expanded opportunities for U.S. coal. However, U.S. coal producers will have to compete with producers of rival fuels.

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[61] For more background see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 6-24.

[62] EC Commission, *Seventh 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 (92) 383, Brussels, Sept. 2, 1992, p. 11.

[63] David Gardner, "Energy Plans Survive EC Row," *Financial Times*, Dec. 1, 1992.

[64] "Energy Liberalisation: Public Debate on Deregulation Plan Heats Up," *European Report*, No. 1799 (Sept. 30, 1992), Internal Market, p. 8.

[65] For more information on U.S. views, see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 6-28, and USITC, *Effects of EC Integration: First Follow-Up* USITC publication 2268, Mar. 1990, p. 4-11.

[66] See the previous section of this chapter for more information on public procurement initiatives.

CHAPTER 6
FINANCIAL SERVICES

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. The program for liberalization in the banking and insurance sectors is largely complete. However, the program for liberalization of the securities sector has lagged far behind.

Developments During 1992

During 1992 the EC made progress on two banking directives. The EC adopted the Directive on the Supervision of Credit Institutions on a Consolidated Basis and proposed a Directive on Deposit-Guarantee Schemes. In insurance the EC adopted the final two directives to complete the program for insurance services. With the adoption of the Third Nonlife Insurance Directive and the Third Life Insurance Directive, the EC is ready to begin moving towards a single market for insurance services. As in banking, the EC is poised to begin a single market in insurance services. In the investment services area significant compromises were reached on the two core directives, the Investment Services Directive and the Capital Adequacy Directive.

Banking Services

With the Second Banking Directive set for implementation on January 1, 1993, the European Community continued to fine-tune prudential regulations and expand consumer protection during 1992. In March the Council of Ministers formally amended the Own Funds Directive,[1] tailoring it so as to allow Denmark's small mortgage credit institutions to include claims on members and certain borrowers in their calculation of own funds. Work continued on the Directive on Monitoring and Controlling Large Exposures of Credit Institutions,[2] with the Council establishing a common position on the proposal in July. This directive establishes rules on credit institutions' total permissible exposure to a single client or related groups of clients and is intended to enhance the stability of the EC banking system and prevent competitive distortions resulting from differences in member states' financial regulation.[3]

[1] *Council Directive on the Own Funds of Credit Institutions*, COM (89) 299, *Official Journal of the European Communities (OJ)*, No. L 124 (May 5, 1989).

[2] *Proposal for a Council Directive on Monitoring and Controlling Large Exposures of Credit Institutions*, COM (92) 273, OJ No. C 175 (July 11, 1992).

Proposed Directive on Deposit-Guarantee Schemes

Background

EC Commission Recommendation 87/63/EEC[4] urged EC member states to establish deposit-guarantee systems. Currently 10 member states have deposit-guarantee schemes in place,[5] although these systems vary as to the insured amount, coverage of deposits in domestic branches of foreign banks, and coverage of deposits in foreign branches of domestic banks. In light of the failure of the Bank of Credit and Commerce International (BCCI), the EC Commission has proposed the adoption of a directive that would guarantee deposits in all of the European Community's banks.

In April 1992 the Council reached a common position on the EC Commission's proposed directive,[6] which stipulates that each member state must establish at least one deposit-guarantee scheme and that all credit institutions with origins in the European Community must participate.[7] Member states may require that banks headquartered outside the European Community participate in deposit protection schemes on their territory. Regardless of whether foreign institutions are required to join deposit-guarantee schemes, these firms must inform prospective clients as to the name and conditions of the guarantee scheme to which they belong or inform prospective depositors that such guarantees are absent.

Deposit-guarantee schemes devised as a result of the proposed directive would be required to cover aggregate deposits of up to ECU 15,000 ($18,000),[8]

[3] For background, see U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: Fourth Followup Report* (investigation No. 332-267), USITC publication 2501, Apr. 1992, p. 7-4.

[4] *Commission Recommendation 87/63/EEC of Dec. 22, 1986 on Introduction of Deposit-Guarantee Schemes in the Community*, *OJ* No. L 33 (Feb. 4, 1987).

[5] Portugal and Greece have no current deposit-guarantee schemes.

[6] *Proposal for a Council Directive on Deposit-Guarantee Schemes*, COM (92) 188, *OJ* No. C 163 (June 30, 1992).

[7] Official of the Delegation of the Commission of the European Communities, telephone conversation with USITC staff, Washington, DC, Jan. 15, 1993.

[8] Member states may stipulate that certain deposits or depositors are not covered by guarantee schemes or are covered, but at lower levels. Depositors that may not be protected by guarantee schemes are other financial institutions, including insurance companies; government authorities at the municipal, local, Provincial, regional, or Federal levels; firms providing collective investments in transferrable securities, including pension or retirement funds; corporate officers such as directors, managers, and persons holding at least 5 percent of the credit institution's capital; and relatives or third parties acting on behalf of such individuals.

although the directive would not preclude the maintenance or adoption of schemes that offer guarantees for larger amounts. In the event of a credit institution's failure, payments under the scheme would be made within 3 months of the date on which the deposit becomes unavailable.[9] These schemes would extend protection to both domestic and foreign depositors in participating institutions.

The proposal currently resides with the European Parliament and the Economic and Social Committee for their initial opinions.[10] The Council of Ministers is expected to adopt the proposal in early 1993.[11] If adopted, the proposed directive will enter into force on January 1, 1994.

Possible Effects

The proposed Directive on Deposit-Guarantee Schemes would likely have a trade-liberalizing influence. In particular, adoption of the directive would likely enhance the ability of credit institutions from Belgium, Luxembourg, Ireland, Spain, Portugal, and Greece to establish retail banking operations in other EC member states. Credit institutions in these countries currently guarantee less than $18,000 in deposits, or in the case of the latter two, offer no deposit guarantees.[12] From the viewpoint of U.S. banks, which are required to guarantee retail deposits of $100,000 in the home market, the burden imposed by adoption of the directive is relatively light.

Directive on Supervision of Credit Institutions on a Consolidated Basis

Background

A 1983 Council directive[13] provided for the consolidated supervision of credit institutions.[14] However, because credit institutions are often organized under holding companies[15] and because the lack of coordinated international banking supervision has been highlighted by the demise of BCCI, the EC Commission has undertaken efforts to strengthen the 1983 measure.

The Council of Ministers formally adopted the Second Directive on the Supervision of Credit Institutions on a Consolidated Basis during April and the directive entered into effect on January 1, 1993.[16] The Second Directive provides for the consolidated supervision of credit institutions organized under financial holding companies and mixed-activity holding companies[17] and obliges member states to share information pertinent to financial supervision. The directive clarifies supervisory responsibilities when financial holding companies operate credit institutions in two or more member states. When credit institutions in two or more member states are organized under the same financial holding company, the member state that is host to both one of the subsidiary credit institutions and the holding company supervises on a consolidated basis. If the member state that hosts the financial holding company does not host at least one of the subsidiary credit institutions, member states are required to reach an agreement as to which member state will provide supervision. In the absence of such an agreement, supervision on a consolidated basis is exercised by the member state that accounts for the largest share of the holding company's aggregate business.

In addition, the directive grants the EC Commission the right to negotiate agreements pertaining to supervision with third countries when a financial holding company in a third country establishes a credit institution in the European Community and when a holding company in the European Community establishes credit institutions in third countries.

Possible Effects

The Directive on the Supervision of Credit Institutions on a Consolidated Basis is likely to have a trade-liberalizing influence. The directive appears to adequately address multinational banking and complex corporate structures, which have complicated banking regulation in recent decades. By doing so, the directive enhances the safety of credit institutions in the European Community and improves the protection of EC depositors. Greater safety and consumer faith in the soundness of the Community's banking system should enhance the ability of EC banks to attract deposits, allocate capital efficiently, and facilitate economic growth. In addition, the directive conforms to the guidelines adopted in July 1992 by the Basle Committee, comprising banking regulators of the world's largest 12 economies. For the U.S. industry

[9] Under certain circumstances the guarantee scheme may request an extension of the time limit, but the extension may last no longer than 3 months.

[10] EC Commission, INFO 92 electronic data base, Jan. 14, 1993, #7298.

[11] "Banking: Deposit Guarantee Proposal Left-Off ECOFIN Agenda," *European Report*, No. 1820 (Dec. 12, 1992), Economic and Monetary Affairs, p. 6.

[12] K. Alec Chrystal and Cletus C. Coughlin, "How the 1992 Legislation Will Affect European Financial Services," *The Federal Reserve Bank of St. Louis Review*, vol. 74 (Mar./Apr. 1992), p. 72.

[13] *Council Directive 83/350, OJ* No. L 193 (July 18, 1983), p. 18.

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

[15] The subject directive defines financial holding companies as a financial institution the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, with at least one subsidiary being a credit institution.

[16] Council Directive on the Supervision of Credit Institutions on a Consolidated Basis, COM (92) 30, OJ No. L 110 (Apr. 28, 1992).

[17] The subject directive defines a mixed-activity holding company as a parent undertaking, other than a financial holding company or a credit institution, with at least one subsidiary being a credit institution.

the Directive on the Supervision of Credit Institutions on a Consolidated Basis will reduce the risk for firms that have financial service operations in Europe.

Insurance Services

The Third Nonlife Insurance Directive and the Third Life Insurance Directive largely completed the EC's harmonization program for insurance services.[18] The Council of Ministers adopted the Third Nonlife Insurance Directive in June 1992 and the Third Life Insurance Directive in November 1992.[19] Both Third directives for the most part replace previous directives and establish the following principles for EC insurance markets effective July 1, 1994:

- Coordination of essential rules for prudential and financial oversight;
- Mutual recognition of member-state insurance regulatory systems; and
- Creation of a single license for companies to operate throughout the Community subject to control by the member state of origin.[20]

No new "core" directives in insurance are anticipated. Yet to be completed, however, is an EC directive establishing a process for bankruptcy and insolvency procedures, commonly referred to as a "winding-up" directive for insurance companies.

The 1994 implementation date for both Third insurance directives will delay U.S. insurers hoping to rapidly progress to cross-border insurance sales from a single EC subsidiary. The implementation date of the Third directives and the time EC regulators will need to adjust to them probably postpone significant extensive cross-border insurance sales within the EC to the year 2000 or later.

Securities Services

Although the Capital Adequacy Directive (CAD)[21] and the Investment Services Directive (ISD)[22] have yet to be adopted,[23] compromises reached by EC Finance Ministers during 1992 make formal adoption likely during 1993 and implementation likely in 1996. Progress on the CAD had been stalled by disagreements regarding minimum capital requirements needed to offset exposure to large risks and capital adequacy rules for investment firms. Since 1990, progress on the ISD had been stalled by disagreements regarding market transparency (firms' obligations to report trades) and banks' direct access to national stock markets. The ISD is the cornerstone directive for the investment services market—it is in effect the single passport directive for this industry.

Proposed Directive on Capital Adequacy of Investment Firms and Credit Institutions

Background

In June 1992 EC Finance Ministers reached a common position on the two most contentious issues pertaining to the Capital Adequacy Directive. With respect to the capital required to offset investment firms' exposure to large risks, EC Finance Ministers agreed on a "10-day window" that would exempt firms from the prohibition against taking on a single exposure larger than 25 percent of the firms' capital base. After 10 days expire, a formula determining the required amount of capital would be implemented, with the minimum capital requirement gradually increasing over time. This compromise has calmed fears in the United Kingdom, where the 25-percent capital requirement would have prevented firms from underwriting block trades—a common practice in the London securities market.

In addition, EC Finance Ministers agreed in June that short-term subordinated loans of up to 250 percent of core capital could be used to meet capital adequacy requirements. This compromise, too, calmed fears in London, where investment firms had been maintaining that higher capital adequacy requirements would impose an onerous burden on small firms.[24] The CAD is a key regulatory complement to the ISD, and the compromise pertaining to the CAD has enlivened the EC's program to form a harmonized investment market.

The directive has received a second reading from the European Parliament and is now before the Council for formal adoption.[25] Formal adoption by the Council

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[18] For nonlife insurance, *Third Council Directive 92/49/EEC of June 18, 1992, OJ* No. L 228 (Aug. 11, 1992). For life insurance, *Third Council Directive 92/96/EEC, Nov. 10, 1992, OJ* No. L 360 (Dec. 9, 1992).

[19] The Third Nonlife Directive was analyzed in USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 5-6. The Third Life Insurance Directive was analyzed in USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 7-6.

[20] U.S. Department of State, "November 10 Internal Market Council," message reference No. 14305, prepared by U.S. Embassy, Brussels, Nov. 1992.

[21] *Proposal for a Council Directive on Capital Adequacy of Investment Firms and Credit Institutions*, COM (90) 141, OJ No. C 152 (June 21, 1990).

[22] *Proposal for a Council Directive on Investment Services in the Securities Field*, COM (89) 629, OJ No. C 42 (Feb. 22, 1990).

[23] For background and a more complete discussion, see USITC, *The Effects of Greater Economic Integration Within the European Community on the United States* (investigation No. 332-267), USITC publication 2204, July 1989; USITC, *EC Integration: First Followup*, USITC publication 2268, Mar. 1990; USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990; USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991; USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992.

[24] "Credit Institutions: Finance Ministers Make Breakthrough on Capital Adequacy Rules," European Report, No. 1776 (June 13, 1992), Economic and Monetary Affairs, p. 2.

[25] EC Commission, INFO 92 electronic data base, Jan. 14, 1993, #61611.

is likely during 1993, and implementation is likely in 1996.[26]

Possible Effects

If adopted, the Capital Adequacy Directive would have a clear trade-liberalizing impact. The compromise directive would ensure the safety and solvency of investment firms while allowing firms, including small ones, to undertake large trades, the ultimate result of which is greater market efficiency and liquidity. In addition, an adopted Capital Adequacy Directive, complemented by an adopted Investment Services Directive, would provide the basis for nondistorted competition between banks and investment firms by putting them on equal footing in terms of capital reserves.

Proposed Directive on Investment Services in the Securities Field

Background

In June EC Finance Ministers reached a very complicated compromise on the ISD, in large part because of the breakthrough on the CAD reached shortly before then. With respect to market transparency, the Council agreed that share prices of particular positions should be quoted at the highest and lowest levels reached during the first 3 hours of trading. In addition, after the first 6 hours of trading, a weighted average of share prices must be calculated and published, with publication transpiring no more than 8 hours after the beginning of trading. Such regulations could be suspended when very large or illiquid transactions are in progress or when large transactions are conducted in very small markets.

With respect to banks' direct access[27] to stock markets, the Council decided that direct participation would be phased in over the remainder of the 1990s. Under the terms of the compromise, France, Italy, and Belgium will continue to prohibit banks' direct participation until 1996 and Spain, Portugal, and Greece, until 1999.[28]

The Council reached a common position on the ISD in December 1992, and the directive is currently before the European Parliament for its second reading.[29] Formal adoption by the Council is likely during 1993, and implementation is likely in 1996.[30]

[26] U.S. Department of State, "Implementation of EC Financial Services," message reference No. USEC 00363, prepared by U.S. Embassy, Brussels, Jan. 1993.

[27] Banks may currently participate in certain national stock markets only through brokers or subsidiaries.

[28] "Credit Institutions: Breakthrough on Investment Services," *European Report*, No. 1781 (July 1, 1992), Economic and Monetary Affairs, p. 3.

[29] EC Commission, INFO 92 electronic data base, Jan. 14, 1993, #7314.

[30] U.S. Department of State, "Implementation of EC Financial Services."

Possible Effects

If adopted, the Investment Services Directive would have a clear trade-liberalizing impact. The directive would provide all investment firms with a single passport, allowing them to trade on all Community stock exchanges once authorized to trade on any one member state's exchange. As with the Capital Adequacy Directive, the ultimate result of the directive would be greater market efficiency and liquidity. In addition, the Investment Services Directive provides for nondistorted competition between banks and investment firms. U.S. investment firms have been establishing operations in EC member states for several years in anticipation of the eventual adoption of the Investment Services Directive. Adoption of the directive should enhance the ability of these firms to conduct cross-border securities transactions and establish securities subsidiaries in other member states. Without adoption of the ISD, investment firms are at a distinct disadvantage, as they must compete against banks that have the advantages of single passports and uniform regulations.

1993 and Beyond

Progress to Date

The EC program in financial services had several objectives:

- To facilitate market entry for firms operating in various countries;
- To ease capital restrictions; and
- To increase competition among firms to provide a wider variety of products at lower prices.

The EC program in terms of completed and adopted directives has largely been finished for the banking and insurance industries, but it remains significantly behind in the securities area.

Banks

With respect to banks and the financial services they offer, the principal objective of the EC 1992 program has been to establish a regulatory framework whereby a bank, once established in any EC member state, may sell services and establish branches throughout the Community. The single license, or single passport, requires member states to adhere to the principle of "home authorization"; i.e., member states must recognize both the legitimacy of firms established in other member states and EC-wide prudential regulations protecting the financial system and consumers. In addition, EC member states are responsible for exercising "home country control," whereby the member state authorizing a bank's license is responsible for monitoring the bank's financial safety and compliance with prudential directives adopted by the European Community.

The program to establish a single banking market has been successful despite the BCCI affair, which elevated fears regarding the adequacy of international—especially intra-Community—pruden-

tial regulation. Early passage of the Second Banking, Own Funds, and Solvency Ratio Directives assured that the Community would have a unified retail banking market[31] on January 1, 1993. The adoption of several ancillary directives focusing on prudential regulation has followed; only the directive on large exposures remains to be formally adopted, with this likely in 1993.

Although the program to forge a unified banking market has achieved the objectives set forth in the White Paper, there is disagreement regarding the extent to which the European Community's banking market is truly unified. Certain analysts have noted that home country authorization may not release banking subsidiaries from the obligation to observe host country conduct of business rules. Conduct-of-business rules are regulations regarding the nature of acceptable financial products and the manner in which they may be advertised and sold. EC banking directives have focused solely on the separate and distinct issues of licensing and prudential control. Under conduct-of-business rules, for instance, foreign banking subsidiaries may not be allowed to introduce interest-bearing checking accounts in France, which prohibits such accounts. Other member states impose conduct-of-business rules that regulate the price of financial vehicles and regulate foreign involvement with domestic banks. Conduct-of-business rules that vary across member states impose high market entry costs on foreign banks and may reduce the likelihood that newly established foreign banks will compete successfully against established domestic retail banks.[32]

In banking there will continue to be differences among countries with respect to certain issues, like depository insurance, for a number of years after 1993, but these differences are expected to narrow, and perhaps disappear, over time. However, bankers with single passports will enjoy the advantages of unified markets from 1993 onward and a distinct competitive edge over securities firms until 1996.

Insurance

The overall design of an EC-wide market for insurance has largely been completed.[33] The EC's insurance work exceeded the expectations of the initial program as outlined in the 1985 White Paper. Once an agreement for a "common passport" for the banking industry was reached in 1989, it became clear that insurance would have to follow suit or likely face the loss of a great deal of business to banks, particularly in life insurance. A common passport for insurance based on "mutual recognition" and home-country regulatory control followed quickly.

Outstanding issues in the insurance area principally include: a revised directive for "winding up," and harmonization and clarification of member-state tax policy as it affects insurance. One other obstacle to the completion of the EC's program is the lack of effective regulatory supervision of the growing number of financial conglomerates, which mix insurance subsidiaries with banking and securities functions. Still another unresolved issue is the EC's apparent inability to agree on methods to make individual pension-rights transferrable throughout the Community. This is especially problematic given the increasing fusion between insurance, banking, savings, and other financial instruments.[34]

Securities

Similar to banking and insurance, the EC has planned to apply the same principles of a single license and home country control to the investment services sector. The key directives for this sector have yet to be adopted, and it was only in the past year that the EC was able to reach agreement on the substance of these directives.

Although the unification process in the securities area has trailed significantly behind progress in banking, breakthroughs in the Investment Services and Capital Adequacy Directives during 1992 appear likely to yield a unified securities market in 1996. Key ancillary directives focussing on regulatory issues and market efficiency have been implemented by all or most member states. In addition, the European Community's program to link stock exchanges has shown progress as a group of about 150 stocks, representing the EC's largest companies, are currently listed or displayed on the stock exchanges of most member states. The most optimisic view at present is that the core securities-related directives will be adopted and implemented at the national level in 1996. Until 1996, investment firms will likely experience disadvantages as they compete with other financial service firms in the European Community.

Implications for the United States

Overall, the establishment of a unified banking market in the European Community is expected to have a positive effect on the U.S. banking industry. Easier movement across member-state borders, and the ability to establish and expand operations in the securities and insurance areas, will aid U.S. banks in their efforts to diversify in terms of geography and product line. Diversification will reduce U.S. banks' vulnerability to downturns in specific markets.

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[31] The program to establish a unified banking market has focused solely on retail banking, wherein banks conduct transactions with individual depositors. Europe's wholesale banking market, in which banks transact business with other banks and large corporations, has been unified for a number of years.

[32] For a fuller discussion of these issues, see Chrystal and Coughlin, "How the 1992 Legislation Will Affect European Financial Services."

[33] For a discussion of past and future insurance work, see Sir Leon Brittan, Vice President of the European Commission, speech before the European Committee of Insurers (Comite Europeen des Assurances), London, Oct. 15, 1992.

[34] Adverse legal decisions complicate taxation matters further. See, for example, discussion of the January 1992 *Bachmann* decisions of the European Court of Justice in USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 7-7.

U.S. insurance companies either residing in the EC, or contemplating entering the EC market, are expected to benefit from the EC passport afforded by the completion of the program for life and non-life insurance. Companies will be regulated by only one EC national insurance authority in their "home" member state. This should permit much greater flexibility, increased economies of scale, and lower establishment and administrative costs. U.S. insurance companies, some of whom have long European experience, will likely continue to prosper in niche markets they have developed (e.g., errors and omissions insurance). Emerging European insurance concerns, such as in the area of environmental liability, may also offer U.S. companies new markets due to their experience in offering such insurance products at home.

The cumulative effect of the EC's 1992 insurance program thus far can fairly be described as trade liberalizing. EC consumers will have a much wider array of insurance services to choose from. Insurance companies, including U.S. companies established in Europe, will find it easier to offer new products to new markets. Many companies may choose, over time, to close many of the subsidiary operations they operate in various member states, retain a single EC subsidiary, and take full advantage of the EC single passport. The trend of mergers and acquisitions between European insurance companies (as well as banks) is likely to continue. Insurance regulators across the Community have perhaps the largest adjustment to make. The EC 1992 program that permits insurers (as well as bankers and securities companies) to operate cross-border under the supervision of their home country regulator presents unique challenges.

Overall, the establishment of a unified securities market in the European Community is expected to have a positive effect on U.S. securities firms, many of which have already established operations on the London Stock Exchange and other important EC stock exchanges. U.S. firms' enjoyment of the full benefits of the Community's unified securities market, however, will require continued cooperation between U.S. and EC regulatory authorities, the latter of which will continue to seek the protection of EC investors. Furthermore, until the provisions of the ISD are implemented at the member-state level, U.S. securities firms will continue to encounter restrictive regulation in certain securities markets.

CHAPTER 7
CUSTOMS CONTROLS

To accomplish market integration and to achieve fully the principles of the Treaty of Rome establishing the European Communities, the EC Commission included in its integration program measures to dismantle internal border formalities impeding the free movement of goods and people. With respect to customs controls, the Single-Market Program is aimed at the elimination of all, or nearly all, customs formalities at internal frontiers of the EC.[1] These control measures are being replaced by stronger, harmonized external measures and enforcement and by greater regulation at the level of production or original documentation. Thus, goods will be regulated at their points of origin and destination, and the activities and status of persons who move to other member states will be controlled by their home country or their country of present work or residence, with computerized information-sharing networks bridging the gap between the two countries. Measures aimed at imposing controls on third-country goods, such as consumer protection regulations, will be enforced at external frontiers, after which complying goods will circulate freely in the EC.[2] At some internal frontiers controls already do not apply to citizens and transport of some member states; however, achieving actual free movement of persons continues to lag behind attaining the generally free movement of goods.

Developments During 1992

Overview

Free movement entails not only the obvious ability to move easily among the member states, but also, under EC law, the legal status of goods and persons after they have arrived in their country of destination. The EC Commission has worked toward reducing barriers by promoting EC-wide criteria or, in certain cases, requirements that differing member-state rules, measures, or certifications be granted mutual recognition by other member states.

Schengen Agreements

The abolition of border controls already is being accomplished by parties to the Schengen Agreements, numbering nine after 1992 accessions are ratified.[3] Under these agreements, which have yet to enter into full force, movements of goods or persons from one signatory to another will be treated in the destination country as domestic arrivals subject to no formalities. However, the signatories have decided not to sanction any member country continuing particular border checks deemed to be national necessities, a position contrary to the developing view of the EC Commission that such obstacles may warrant penalty.[4]

The EC Commission and the member states are continuing their efforts to assuage the security concerns of member-state governments through use of a computerized network of customs and police information. Policy concerns—such as the nonaccountability of EC institutions—also continue, as the Netherlands reserved to itself the right to veto Schengen Executive Committee decisions and to refer such matters to the Dutch Parliament.[5]

Other Significant Events

Maastricht Treaty

From a customs standpoint the objectives of the integration program should be advanced by work under the Maastricht Treaty to clarify the legal capacity of EC institutions and to achieve general EC financial and monetary policies. That is, it would seem that the growing consensus as to the legal principle of subsidiarity[6] and the focus on transparency in

[1] David T. Keeling, "The Free Movement of Goods in EEC Law: Basic Principles and Recent Developments in the Case Law of the Court of Justice of the European Communities," *International Lawyer*, vol. 26 (summer 1992), p. 467. For example, baggage formalities as to EC and European Free Trade Area nationals and to persons already admitted into the EC customs territory must end. *Commission Regulation 1823/92 on Baggage Formalities To Be Abolished Upon Implementation of the Internal Market, Official Journal of the European Communities (OJ)*, No. L 185 (July 4, 1992), p. 8.

[2] "Free circulation" refers to the legal capacity of goods, in particular, to move freely within the post-1992 EC after complying with all EC laws and regulations at first crossing of the external frontier of the customs territory. Some checks on internal free movement, such as those aimed at detecting the unlawful movement of national treasures, may remain for the time being; others (such as "public morality checks") already have been dropped by all or nearly all member states. In many instances, member states must set up appropriate infrastructures to help implement agreed Community policies. *Commission Recommendation of 27 November 1992 Calling upon Member States to Set Up the Infrastructures Needed to Identify Dangerous Products at the External Frontiers*, 92/579/EEC, *OJ* No. L 374 (Dec. 12, 1992), p. 66.

[3] Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, and Spain have acceded with or without reservations; implementation is not complete (and may not have been completed by the informal deadline of March 1993). The United Kingdom, Ireland, and Denmark have continued to insist on border checks and may impose some formalities even after 1992, despite EC measures setting contrary obligations. The Greek accession marks the parties' growing sense of trust in Schengen provisions, because Greece is noncontiguous to other signatories and has a long coastline. Crowell and Moring, *EC-US Business Report*, Mar. 1, 1992.

[4] "Schengen Agreements: No Real Certainty of Borders Coming Down Next March," *European Report*, No. 1779 (June 24, 1992), Internal Market, p. 8.

[5] Crowell and Moring, *EC-US Business Report*, Aug. 1, 1992, p. 3.

[6] The legal doctrine, now evolving, that holds the EC's institutions may act on a matter within their apparent jurisdiction only when the member states are unable to achieve the pertinent objective independently. Procedures for ascertaining when subsidiarity is to apply were adopted at the European Council's Edinburgh summit on Dec. 11-12,

government actions would benefit efforts to attain consistent EC-wide customs administration. Because foreign and domestic governments, firms, and individuals frequently must consult with member-state and EC customs authorities on a broad range of questions, clarifying legal rules on institutional capacity and procedural norms is of great value. In addition, Maastricht's emphasis on increasing intergovernmental contacts and coordination should carry over into the formulation of EC-wide policies on free movement of persons (immigration, migration, and asylum). These policies have been difficult and controversial, presenting as-yet unresolved problems in the integration process.

Actions Regarding Taxation

The adoption and entry into force of various measures regarding the imposition and levels of taxation (especially value-added tax) and the points of its collection now permit many customs directives to move forward. Because customs officials formerly were responsible for several aspects of tax collection as to cross-frontier shipments of goods, the abolition of customs formalities at internal EC boundaries had awaited action on tax proposals for much of the period of work on the single market.[7] Many subjects of single-market directives involve a change in the point at which government regulation occurs. For example, related customs and taxation measures focus on intervention and regulation across the entire EC market (at production points and ultimate destinations) rather than on doing so at common frontiers, where customs agents will no longer be available to collect data or taxes. Electronic information-sharing exchanges are being used to identify taxable goods, persons, and transactions at the necessary stages.[8] Similarly, warehouses will be covered by another data base to ensure that excises are collected properly. The new statistical programs developed for customs and tax purposes also will assist in administration and enforcement and will allow better dissemination of data throughout the EC.

6—*Continued*

1992. Mary McCaughey, "Edinburgh Summit Puts EC Back on Track," *European Report*, No. 1821 (Dec. 16, 1992) [special report].

[7] EC Commission, *Communication of the Commission to the Council and the European Parliament on the Abolition of Border Controls on Goods, Capital and Services*, June 17, 1992, par. 2.

[8] For example, the Customs Information Service was announced on Sept. 17, 1992, to allow all customs officials within the EC to communicate, to verify tariff classifications, to help prevent fraud and illegal trafficking, to stop smuggling, and so on. The system will allow direct contact in "real time" (as opposed to having data or answers received later) and will provide direct access to EC data bases, as well as translating all information into any member-state language. Police officials and Interpol also can obtain information through the network, which is scheduled to have 150 terminals by the end of 1992 and 200 by the end of 1993. "Customs Union: Customs Information Service in Place," *European Report*, No. 1797 (Sept. 23, 1992), Internal Market, p. 2.

Free Movement of Goods

Measures Adopted

Community Customs Code

On October 12, 1992, the EC Council adopted a new common customs code to take effect January 1, 1994.[9] The code will contain in one document the substance of numerous prior customs directives while incorporating the provisions of new internal market measures. It is notable for the procedures it establishes to ensure uniform application on the simplest regulatory basis throughout the EC and in particular for the binding rulings system created for the use of the trading community.[10] Both EC nationals and persons from third countries may seek such rulings and appeal adverse determinations, under specific criteria set forth in the code.[11] The drafters also addressed the problems inherent in administering the Common Agricultural Policy (CAP) without border formalities.[12]

The code covers the classification of goods under the customs tariff, the origin of goods, valuation and appraisement, entry procedures, storage and transit rules, special customs procedures (such as outward processing or entry into warehouse), and the release of goods for free circulation within the EC. In addition, there are provisions on external transit, inward processing (very similar to the U. S. entry-under-bond for export-oriented processing), outward processing (similar to the U. S. tariff provision 9802.00.80, assembly abroad from U. S. components), drawback, processing under customs control, and temporary importation. The code regulates procedures for the export of goods, their presence or manipulation in free zones, and their eligibility for "privileged operation" status. The latter includes reliefs from duty,[13] returns

[9] *Council Regulation No. 2913/92 Establishing the Community Customs Code, OJ* No. L 302 (Oct. 19, 1992), p. 1. Certain provisions take effect on January 1, 1995, as to the United Kingdom.

[10] *Regulation 2913/92*, ch. 2: sundry general provisions relating in particular to the rights and obligations of persons with regard to customs rules. See also *Commission Regulation No. 2674/92 Supplementing the Provisions for the Implementation of Council Regulation (EEC) No. 1715/90 on the Information Provided by the Customs Authorities of the Member States Concerning the Classification of Goods in the Customs Nomenclature and Amending Regulation (EEC) No. 3796/90, OJ* No. L 271 (Sept. 16, 1992), p. 5. This regulation (applicable as of January 1, 1993) requires the holder of a ruling to provide customs officials with a translation into the pertinent language(s) in order to invoke it and imposes a rule that customs authorities notify the EC Commission if a ruling ceases to be valid.

[11] Article 243 gives a right of appeal to any interested person, without regard to nationality, but article 245 leaves implementation of this right to the member states.

[12] Commissioner Christiane Scrivener, comments in EC Commission, "Au Service du Grand Marché et des Entreprises: Le Code des Douanes Communautaire," press release IP (92) 820, Oct. 14, 1992.

[13] Under article 184 of the code, the Council acts by a qualified majority to determine "the cases in which, on account of special circumstances, relief from import duties

of goods from abroad, and goods obtained from the sea. Detailed provisions cover the payment of customs debt and the repayment and remission of duty. A Customs Code Committee is established to administer the new system and to recommend amendments or actions as needed in the future. Last, specified regulations adopted from 1968 through 1991 are repealed as of the effective date of the new code.

A separate regulation provides the legal and administrative framework for goods being exported, as well as goods intended for export that were entered under certain temporary importation measures. Among other provisions, the regulation provides for documentation of the goods while inside the EC—even those that pass through the hands of subcontractors and transporters—and provides for proof that the goods ultimately leave the EC customs territory. The regulation also creates simplified export formalities for particular shipments, including facilitated entry and clearance criteria. The regulation was applicable as of January 1, 1993.[14]

A third, related regulation covers in great detail the documentary and administrative controls to be used to verify the use or destination of goods moving within the EC. Effective January 1, 1993, the measure established rules for the completion, holding, and review of documents covering this normally small portion of goods in trade.[15]

Community Transit Procedure

A simplified procedure for regulating goods being transported through and between EC member states was established in a regulation adopted on April 21, 1992, effective on May 19, 1992.[16] In the absence of border formalities, and in the interest of reducing documentation and avoiding the need to present goods for inspection, a new method was needed to control and monitor goods of differing status being moved through the EC under the numerous available customs programs. The regulation prescribes arrangements for goods having Community status and those ineligible for it. Community status encompasses (1) goods transported directly between member states or (2) goods covered by member-state documentation but moving between member states through the territory of nonmember states. The second class of merchandise frequently includes goods covered by customs carnets.[17] Such goods comprise an important category of merchandise given the geographic separation of some member states from others.

The regulation sets forth criteria for the content of loading lists for all shipments under the internal transit procedure (described in effect as a customs preclearance system). Guarantee documents are allowed under specific provisions and may be waived in particular circumstances, such as very small shipments and classes of goods deemed to pose little risk. Transport by air, sea, pipeline, and mail is regulated individually; a simplified procedure for transport by rail is made available, and goods crossing the territories of European Free Trade Area (EFTA) countries are eligible for the procedure under limited circumstances. The eligibility of a particular class of goods is subject to the exclusions of individual member states. Attached to the regulation are approved specimen forms to document all transactions under the procedure.

A related regulation, adopted on September 2, 1992, amended certain prior EC law to specify the amounts of the guarantees that might be required by member states and to enumerate certain goods eligible for flat-rate guarantees.[18] The regulation was binding as of September 18, 1992.

Single Administrative Document

On July 31, 1992, the EC Commission adopted a regulation to implement a 1991 EC Council measure on the Single Administrative Document (SAD), the basic customs form required in trade with the EC.[19] The regulation provides for the use of coding, facsimile signatures, and other modern technological changes.

13—*Continued*

or export duties shall be granted where goods are released for free circulation or exported."

[14] *Commission Regulation No. 3269/92 Laying Down Certain Implementing Provisions of Articles 161, 182 and 183 of Council Regulation (EEC) No. 2913/92 Establishing the Community Customs Code, as Regards the Export Procedure and Re-export and Goods Leaving the Customs Territory of the Community, OJ* No. L 326 (Nov. 12, 1992), p. 11.

[15] *Commission Regulation No. 3566/92 on the Documents To Be Used for the Purpose of Implementing Community Measures Entailing Verification of the Use and/or Destination of Goods, OJ* No. L 362 (Dec. 12, 1992), p. 11. For example, such goods might be those entered under so-called "actual use" tariff provisions or those consigned to named government or nonprofit entities.

[16] *Commission Regulation No. 1214/91 on Provisions for the Implementation of the Community Transit Procedure and for Certain Simplifications of That Procedure, OJ* No. L 132 (May 16, 1992), p. 1.

[17] Carnets constitute documentation prepared in the country of origin of the pertinent goods based on standardized criteria (usually set by treaty) and accompanied by vouchers for the signature of officials in each country of passage to show the goods are unchanged and did not enter such country's commerce.

[18] *Commission Regulation No. 2560/92 Amending Regulation (EEC) No. 1062/87 on Provisions for the Implementation of the Community Transit Procedure and for Certain Simplifications of That Procedure, OJ* No. L 257 (Sept. 3, 1992), p. 5.

[19] *Commission Regulation No. 2453/92 Implementing Council Regulation No. 717/91 Concerning the Single Administrative Document, OJ* No. L 249 (Aug. 28, 1992), p. 1. This document was amended on Dec. 21, 1992, to reflect certain changes in the attached SAD form and to provide for particular goods traded between the EC and the Principality of Andorra. *Commission Regulation No. 3694/92 Amending Regulation No. 2453/92 Concerning the Single Administrative Document, OJ* No. L 374 (Dec. 22, 1992), p. 37.

Procedures for preparing and handling the SADs are set forth, and the member states are required to provide mutual assistance and recognition relating to trade and customs formalities. However, the special documentation required by certain other EC measures, such as the regulations on the Community transit procedure, is not banned or superseded by the SAD. The regulation, effective as of September 4, 1992, was accompanied by coding annexes and specimen forms, along with a lengthy explanatory note giving instructions for the completion of each part of the SAD.

Goods Subject to Excise Duty

On February 25, 1992, the EC Council adopted a directive concerning the arrangements to be implemented as of January 1, 1993, on goods subject to excises and moved through the EC.[20] The measure deals with goods that are assessed excises in all member states, thereby affording EC institutions the capacity to set generally applicable provisions. In addition, it was intended to permit differing treatment of commercial shipments of merchandise and the same goods acquired by individuals for personal use. Last, the directive had to take into account the elimination of internal customs formalities and the numerous customs procedures that might apply to a category of goods but avoid obstacles to trade and ensure that appropriate revenues reach each member state.

The directive, which covers certain mineral oils, alcohol and alcoholic beverages, and manufactured tobacco, applies to transactions in the member states and in certain overseas territories thereof. It provides that excise duty is chargeable upon the goods' release from warehouse for consumption, and it establishes rules for collecting the excises at authorized customs or tax warehouses and from registered traders. First, these duties are to be collected from the person making delivery or holding the goods for commercial delivery, if the goods have been held outside the member state of intended consumption and such person is taking the goods to that country. Second, for goods acquired in other member states by private persons who transport the goods between member states, excises are to be charged in the member state of acquisition. Third, for goods being held for commercial purposes and any excises become due (whether at points of production or destination), the member state where the goods are held is to collect the tax from the holder of the goods. In other instances (generally involving noncommercial transactions), the country of destination taxes goods that are purchased by persons not authorized under the directive and that are transported or shipped by the vendor. Fourth, particular shipments can be shipped only between tax warehouses to ensure proper assessment and collection of excises. Last, the activities of consignees and other persons regarding goods subject to excise are regulated in detail and are subject to requirements on reporting to tax authorities.

Provisions exempting the subject goods from excises are included for the benefit of diplomats, international organizations, foreign armed forces, and countries having treaties regarding value-added taxes and excise exemption. Apart from the directive's procedures for collection and reimbursement, its other notable provision deals with tax markings or national identification marks used for fiscal purposes. The member states are required to inform each other of such marks and to send copies to warehousekeepers in other member states. They may accord mutual recognition of markings by specific arrangement.

The member states were instructed to implement the directive on January 1, 1993, and to cooperate with a new Committee on Excise Duties created to help the EC Commission administer the excise framework. The documentation requirements for goods moving within the EC after release by a member state from storage or other holding status are set forth in another measure, also effective January 1, 1993.[21]

Customs Agents and Other Officials

On September 22, 1992, the EC Council decided to establish an action plan for the exchange of member-state officials responsible for implementing EC single-market legislation.[22] The 5-year program would assist participants in developing expertise on uniform application of EC measures; the officials would be encouraged to cooperate more fully with each other during and after such exchange periods. Most of the expense involved would be borne by the EC Commission, with the member states contributing half of their own officials' subsistence expenses. The program took effect on January 1, 1993.

Unlike the above decision, applicable to currently employed officials with pertinent training and expertise, other measures address member-state customs officials who are losing their jobs as their functions are eliminated or who must be trained to handle new laws and programs. The EC Commission's focus has been on providing vocational retraining and temporary support for those losing posts and on developing an EC-wide common training program for new customs staff.[23] A Council regulation adopted on

[20] *Council Directive 92/12/EEC on the General Arrangements for Products Subject to Excise Duty and on the Holding, Movement and Monitoring of Such Products, OJ* No. L 71 (Mar. 23, 1992), p. 1.

[21] *Commission Regulation No. 3649/92 on a Simplified Accompanying Document for the Intra-Community Movement of Products Subject to Excise Duty Which Have Been Released for Consumption in the Member State of Dispatch, OJ* No. L 369 (Dec. 18, 1992), p. 17.

[22] *Council Decision 92/481/EEC on the Adoption of an Action Plan for the Exchange Between Member State Administrations of National Officials Who Are Engaged in the Implementation of Community Legislation Required To Achieve the Internal Market, OJ* No. L 286 (Oct. 1, 1992), p. 65.

[23] *Commission Decision 92/39/EEC Prescribing Certain Provisions of Implementation for the Council Decision of 20 June 1991 on the Adoption of a Programme of Community Action for the Vocational Training of Customs Officials Undergoing Initial Training (the Matthaeus Programme), OJ* No. L 16 (Jan. 23, 1992), p. 14.

December 17, 1992, would recast the profession of "customs agent" as internal customs functions are terminated and would provide technical assistance and funding to the member states during 1993.[24]

Other Measures

Several other customs-related directives were approved or proposed during 1992. One regulation set up technical codes to permit monitoring of goods moving between specified areas within the EC.[25] The measure appears to be intended to bring within the scope of the internal transit procedure goods being shipped for the European Coal and Steel Community, certain taxable goods, and enumerated other articles.

A second regulation made amendments in the documentation rules for goods entered into type B customs warehouses; commercial documentation, usually invoices, that formerly was used with respect to such entries was replaced by new forms.[26]

A decision of the EC Commission set criteria for continued, limited member-state border inspections of third-country goods subject to veterinary checks.[27] The border checks must be done by or under the supervision of official veterinarians under specified rules and with documentation requirements.

Last, systems for sharing various types of statistics among member states would be established or broadened in scope and made subject to standardized documentation under several measures, both adopted and proposed.[28] The overall scheme is designed to substitute for the various member-state data collection programs, which have been run by customs officials, upon the termination of all internal border formalities. These systems would also limit the burden imposed on the trading community by standardizing the types of information to be collected. The statistical network known as Intrastat also underwent changes to assist in the effective administration of value-added tax and the accurate assessment of the value of goods in trade.[29]

Other Internal Controls

Security Controls

Customs officials in the EC, like their counterparts elsewhere, have enforced any measures pertaining to international traffic adopted by other government authorities and, in the EC, have applied many of these measures at internal frontiers. These measures range from immigration policies to standards to criteria for trade in goods. These criteria reflect the diversity and complexity of issues that pose serious difficulties for policymakers.[30] More importantly, customs authorities at internal borders have collected taxes and handled matters relating to the CAP. To allow trade to cross these borders without obstacle, new substitute controls are necessary, as noted above.

Many subjects of regulation already are subject to EC-wide legislation, or to harmonized member-state measures, all of which are to be applied at external frontiers. A number of these provisions entered into force on January 1, 1993. The goods included in these measures range from weather instruments to animals, motor vehicles to beverages, and so on. However, other areas of customs regulation—of a sensitive nature due to the subjects of control—continue to present serious difficulties for the member states and EC institutions. Among these areas are firearms and munitions, works of art (especially those alleged to have been stolen or representing cultural heritage), nuclear materials, contraceptives, pornographic materials, explosives, protected or wild animals and birds, and similar goods. Although considerable work has been completed to date in these areas, most continue to be controversial or otherwise difficult to regulate under a common policy at the EC level.

Some of these categories present particular problems because they are the subject of international agreements and/or have significant impact on each country's security. A few, such as immigration and asylum, are the focus of efforts to obtain separate multilateral treaties instead of EC legislation. This course of action may arise from a desire to keep such sensitive matters within the ultimate jurisdiction of the

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[24] *Council Regulation No. 3904/92 on Measures To Adapt the Profession of Customs Agent to the Internal Market, OJ* No. L 394 (Dec. 31, 1992), p. 1.

[25] *Commission Regulation No. 2713/92 on the Movement of Goods Between Certain Parts of the Customs Territory of the Community, OJ* No. L 275 (Sept. 18, 1992), p. 11. In addition, Commission Regulation 3566/92 (*OJ* No. L 362 (Dec. 11, 1992), p. 11) creates a scheme for verifying the use and/or destination of goods entered from third countries.

[26] *Commission Regulation No. 3001/92 Amending Commission Regulation No. 2561/90 Laying Down Provisions for the Implementation of Council Regulation No. 2503/88 on Customs Warehouses, OJ* No. L 301 (Oct. 17, 1992), p. 16, referring to Council regulation found in OJ No. L 225 (Aug. 15, 1988), p. 1.

[27] *Commission Decision 92/525/EEC Laying Down Requirements for the Approval of Community Border Inspection Posts Responsible for Veterinary Checks on Products Introduced From Third Countries, OJ* No. L 331 (Nov. 17, 1992), p. 16.

[28] *Commission Regulation 3046/92 on Statistics on Trade Among Member States, OJ* No. L 307 (Oct. 23, 1992), p. 27; *Proposal for a Council Regulation on Transit Statistics and Storage Statistics Relating to the Trading of Goods Between Member States*, COM (92) 97, *OJ* No. C 107 (Apr. 28, 1992), p. 16. The statistical units used in monitoring production within the EC would be standardized, and statistics on trade involving multiple member states would be improved, under other proposals.

[29] *Commission Regulation No. 3046/92 Laying Down Provisions Implementing and Amending Council Regulation (EEC) No. 3330/91 on the Statistics Relating to the Trading of Goods Between Member States, OJ* No. L 307 (Oct. 23, 1992), p. 27 (effective Oct. 30, 1992). The measure covers goods under countertrade or lease arrangements, aid programs, approval contracts, and other temporary use arrangements as well as personal purchases; many exemptions—some as a result of multilateral obligations—are set forth in annex III.

[30] EC Commission, "Liste des Côntroles aux Frontieres: Controles en Cours d'Examen," direction générale [French title indicates "general direction"], May 19, 1992.

member-state governments, rather than EC institutions, for reasons of internal sovereignty and policy. Moreover, such treaties can be drafted to allow third countries to sign on, thereby broadening the scope and application of the various obligations while permitting signatories to lodge reservations to unacceptable provisions. Last, the use of a treaty pushes the subject matter to a higher level of legal importance than legislation, and difficulties in amending treaties may discourage frequent changes in language and policy.

Agricultural Controls

As another facet of the integration program, the EC is abolishing the monetary compensatory amounts (MCAs) system, a financing mechanism of the CAP. Prior to 1993, these levies were collected largely by customs officials at internal and external ports of entry.

The EC denominates farm support prices in European currency units (ECUs). Because national currencies fluctuate daily against the ECU, which results in daily fluctuations in agricultural prices, the EC created separate exchange rates for agriculture, known as green rates, to convert common agricultural prices denominated in ECUs into national currencies. However, green rates resulted in different commodity prices in various member states. To compensate for these price differences and prevent trade distortions, the EC introduced MCAs as a system of border taxes and subsidies. In countries with strong currencies, where domestic prices exceed the common EC price level, MCAs serve as import levies and export subsidies. In countries with weak currencies, where domestic prices are below the common price level, MCAs are applied as subsidies on imports and taxes on exports.

MCAs originally were viewed as temporary measures to apply only until exchange rates became stable, but they effectively have become a permanent and significant part of the CAP.[31] Efforts began in the mid-1980s to dismantle the MCAs for particular commodities as member states adopted arrangements to control pricing and production, but provisional measures adopted by the EC Commission for many products have been renewed repeatedly. With the abolition of internal customs controls, however, an alternative collection framework is being devised that likely will resemble the tax collection scheme, with regulatory intervention at points of production and destination/sale.[32]

[31] See discussion in Commerce Clearing House, *Common Market Reporter*.

[32] The EC Commission proposed a regulation on July 8, 1992, but the draft does not deal with collection and administration of the MCAs. See COM (92) 275, *OJ* No. C 188 (July 25, 1992), p. 23.

Free Movement of Persons

Measures Adopted

Background

According to the EC Commission,—

> The only proposals in the White Paper programme which have not been adopted and will probably not be by the end of the year are those relating to the free movement and residence of workers and the members of their families; these proposals aim to widen the circle of direct beneficiaries of Community law, to improve equality of treatment and to protect the rights of workers employed on a short-term basis and their families. These proposals have been with the Council since 11 January 1989 without it having been possible to find a qualified majority in favour of them.[33]

Thus, it is apparent that going beyond the basic guarantee of the Treaty of Rome pertaining to free movement for workers (and thereby extending that right to their families or servants, students, retired persons,[34] and others) presents problems for the member states in housing, schooling, health care, employment, welfare (if the worker loses his or her post), and other areas. These costs and difficulties likely will increase when free movement on a broader scale is adopted as a matter of EC law. Even after all of these measures are implemented fully, it may be necessary to raise to the Community level certain regulatory measures imposed by some member states. For example, action to control anticompetitive arrangements may be taken by the EC Commission.[35] Other areas of continuing interest for EC institutions include vocational training and work-related social benefits. Still another difficult area is the treatment of EC nationals who obtain third-country licenses or credentials that they can use in their own member state, due to reciprocal arrangements, and who then move to another member state.[36]

[33] EC Commission, *Seventh 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 (92) 383 (Sept. 2, 1992), par. 90.

[34] On June 30, 1992, students and retired persons acquired the right to reside in member states other than that of their nationality as previously adopted measures were to have been given effect. Ibid., par. 92. The EC Commission notes that most member states have not submitted national implementing legislation, in part because the Court of Justice on July 2, 1992, invalidated on technical legal grounds Directive 90/366 on residence rights for students, but nonetheless the Court ordered the effects of the measure should be maintained until its readoption.

[35] "Liberal Professions: EC Commission Considering Curbs on Anti-Competitive Rules," *European Report*, No. 1802 (Oct. 10, 1992), Internal Market, p. 11.

[36] *Council Resolution of 18 June 1992 Concerning Nationals of Member States Who Hold a Diploma or Certificate Awarded in a Third Country*, *OJ* No. C 187 (July 24, 1992), p. 1, encouraging the member states toward mutual recognition of such qualifications.

Free Movement of Workers

A July 27, 1992, regulation of the EC Council addresses the complete implementation of the principle of nondiscrimination between and free movement of EC-national workers. This ideal was originally proclaimed in the Treaty of Rome but not fully realized to date.[37] Free movement of workers, as opposed to other EC nationals, is provided for specifically in the treaty and to a large extent was achieved before the White Paper was issued (at least in terms of changes in residence for workers who already have obtained new positions). However, in some respects nonnationals have not been given the same legal footing as nationals, especially those nonnationals who lose their posts but cannot find new jobs or afford to return home.

In particular, the new measure would attempt to go farther toward ensuring that nationals of all member states are treated identically in the EC labor market and that any national can ascertain job vacancies in every member state and compete for them. Each member state is required to establish a "specialist service" (presumably a specially trained bureau of employment experts). Each such service is to exchange all job vacancy notices and individuals' applications with the other member states and the European Coordination Office.[38] The program imposes member-state annual reporting requirements and provides for EC Commission and Parliamentary oversight. The regulation became effective on August 27, 1992.

Professional Qualifications

First proposed in 1989, an EC Council directive has established a set of rules for the mutual recognition of particular types of professional education and training.[39] The preamble to the directive indicates that it will supplement a previous measure only requiring mutual recognition of higher education diplomas awarded after professional training and education of 3 years or longer. The preamble also mentions that the directive supplements job-specific directives adopted beginning in 1964.[40] These diplomas generally follow programs required by the various member states to enter into particular regulated professions (lawyer, doctor, engineer, etc.). One complication has been the high degree of variation in the member states as to the scope of "regulated professions." Curricula and expertise/experience criteria for most of these professions also have been covered by EC measures that effectively harmonize qualifications among the member states and create rules for discipline on a national-treatment basis.

By contrast, the new directive regulates formal programs providing diplomas for training in particular technical skills or for certain positions, but not skills acquired in a self-employed capacity or by informal on-the-job instruction. Article 1 provides that to fall under the directive, the diplomas must be awarded following training that occurred mainly in the Community and that comprised (a) a post-secondary course not covered by the 1989 directive of at least 1 year's duration or (b) a course enumerated in an annex to the directive.[41] The directive also covers particular certificates, awarded after completion of technical or vocational training, that allow the holders to pursue regulated professions not covered by other measures. The directive applies to persons with qualifying credentials who work or wish to work in member states other than that of training or first licensure.

Aptitude tests, experience requirements, and other criteria may be imposed under the terms of the directive. The member states agree to accord mutual recognition to such credentials not covered by prior EC measures to both employed and self-employed persons who meet minimum qualifications. These minimum standards include 2 years of professional/vocational experience during the past 10 years in most cases (and more than 2 years if a credentialholder's training was at least 1 year shorter than the training in the host member state). No more than 4 years of experience may be required, but applicants can be required to choose either to take an aptitude test or to undergo supervised "adaptation periods." The member states are allowed to require an aptitude test if the particular profession necessitates a detailed knowledge of national law, unless the profession also falls under the 1989 directive (because of the overlapping coverage). Holders of certificates are covered by slightly lower threshold criteria and shorter experience periods.

If an applicant establishes compliance with all appropriate criteria, mutual recognition must be given to his or her credentials by the host member state. In addition, if the host member state regulates a particular profession and requires an attestation of competence, the host member state must honor such an attestation from another member state and must give the holder national treatment. Other specified qualifications may also be required.

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[37] *Council Regulation 2434/92 Amending Part II of Regulation 1612/68 on Freedom of Movement for Workers Within the Community, OJ* No. L 245 (Aug. 26, 1992), p. 1.

[38] This office also works with CEDEFOP, the European Centre for Vocational Training.

[39] *Council Directive 92/51/EEC on a Second General System for the Recognition of Professional Education and Training To Supplement Directive 89/48/EEC, OJ* No. L 209 (July 24, 1992), p. 25. The 1989 measure appeared at OJ No. L 19 (Jan. 24, 1989), p. 16. It may be noted that the so-called nonregulated professions (now numbering 209) and the regulated professions (19 in number) have been treated under two separate sets of EC measures because of wide variations in the structures, training requirements, functions, and regulation of all of these fields among the member states. EC Commission, *Seventh Report*, paras. 93-94.

[40] Among them, annex A to the directive lists such occupations as food manufacturing, beverage processing, wholesalers in retail trade and small craft industries, coal traders, travel agents, itinerant laborers, restaurant and tavern operators, innkeepers, and insurance agents.

[41] The pertinent professions are grouped by member state and range from licensed child care workers to speech therapists, masseurs/masseuses to master craftsmen (including opticians and other health care professionals, ships' officers and fishermen, surveyors, bailiffs, and other persons), and certain mine workers. Additional provisions deal with the unique vocational regulations of the United Kingdom.

Chapter VII of the directive contains measures "to facilitate the effective exercise of the right of establishment, freedom to provide services and freedom of movement of employed persons." Other chapters set up coordination provisions and the procedures to be utilized when the "aptitude test or adaptation period" choice is required. Last, provisions covering amendments to the directive's annexes and for reporting are set forth. The directive is to be implemented by the member states by June 18, 1994.

Other Matters

Immigration and Asylum

Issues in regard to these two policy areas are considered so important, and still controversial, that a special meeting of immigration Ministers of the member states was held November 30 to December 1, 1992, following an unsuccessful meeting on June 11-12, 1992. At least two member states have opposed the complete termination of controls on movement of persons within the EC even after 1993, because of concerns over "drug trafficking, terrorism, and uncontrolled immigration."[42] One of these states is the United Kingdom, which has a longstanding dispute with Spain over Gibraltar, which Spain would like to regain. Thus, the Convention of the Member States of the European Community concerning the crossing of the External Frontiers (on immigration policy) and the Dublin Convention on Asylum (proposed in 1990) have yet to be ratified by all member states, and indeed some terms have not been defined clearly (such as "first country of entry" and "serious risk of persecution" with regard to asylum requests). Other unresolved matters have included family reunification and visa policies, particularly with respect to the republics of the former Soviet Union and Eastern Europe. Also, terrorism and organized crime controls are not yet fully developed at the Community level and accordingly are not implemented at the frontier. Completion of a new Communitywide legal regime in these critical areas may not occur even well after 1993. The EC Commission reportedly has considered imposing sanctions on intransigent member states that retain controls on free movement of persons after January 1, 1993.[43]

Status Of Non-EC Nationals

As suggested above, the status and treatment of immigrants already in the member states—legally or illegally—and of guest workers and other temporary visitors have not been finalized.[44] Nor is it altogether clear that EFTA nationals or nationals of other countries with which the EC has special legal ties or arrangements will obtain benefits on the same or similar terms as do EC nationals. However, in all cases if a third-country national is a member of the immediate family of an EC national or is the latter's servant, that third-country national effectively should be treated on the same footing as would an EC national in similar circumstances.

1993 and Beyond

Progress to Date

The objectives of the White Paper program would seem largely to have been achieved at the EC level, but member-state implementation and consistent administration are essential to the long-term real success of these measures. More important, the ongoing work on achieving free movement of persons means that changes likely will continue over time, notably with respect to the as-yet unresolved issues on EC-wide policies dealing with immigration and similar matters. Similarly, only the use of new customs mechanisms by the trading community will permit assessment of their helpfulness and role in the post-1992 EC.

Free Movement of Goods

In terms of the White Paper's proposals on this aspect of the Internal Market Program, the EC Commission has succeeded in obtaining Community measures that eliminate internal barriers to free movement of goods and set the framework for regulating goods at the external frontiers of the EC. At the member-state level, however, full implementation of EC directives has yet to occur, and procedures for ensuring uniform application of directly applicable regulations are new or as yet developing.[45] In addition, the transition measures previously adopted to permit Spain and Portugal to join the EC will continue as agreed until 1995; these provisions have allowed some differential treatment, especially of agricultural products, to continue until that year. External frontier measures, especially those to be enforced at airports and seaports, also must be handled uniformly and fully by the member states, but all necessary procedures reportedly are not yet in place.

Member states have thus far initiated many administrative procedures to ensure consistent interpretation of EC measures and many information-sharing regimes to help in day-to-day application of measures at external frontiers. Some of these measures, such as the Communitywide tariff-rate quota provisions, must be administered by EC institutions; others will be coordinated through the member states. However, it is not yet possible to assess the operations and usefulness of these regimes, which are not completely accessible to private business or

[42] "Immigration Council: Conflict Continues on Internal and External Borders," *European Report*, No. 1777 (June 17, 1992), p. 10.

[43] "Immigration: UK Refuses To Budge," *European Report*, No. 1768 (May 13, 1992), Internal Market, p. 15.

[44] One report states that these matters, including the employment and integration of such immigrants, are "not yet on the Member States' programme." "Standing Committee on Employment: Free Movement of Immigrants," *European Report*, No. 1769 (May 16, 1992), Internal Market, p. 17.

[45] EC Commission, *Seventh Report*, pt. II, par. 36 and following.

transparent to public and private interests.[46] Similarly, it is not yet known whether member states can or will administer these measures internally without discrimination as to the origin of goods (whether from member states or in free circulation). Moreover, much of the future success of these programs seems likely to depend on the successful retraining and effective redeployment of customs officials and on the programs for rotating these officials throughout the EC. Last, the implementation of all directives dealing with goods, particularly sanitary/phytosanitary and other standards-related provisions and tax measures, is a necessary precursor to the abolition of all customs controls at internal frontiers.

Free Movement of Persons

As the EC Commission itself has noted, the record is not as favorable with regard to achieving all of that institution's broad objectives, even with respect to rights that would be accorded to EC nationals (such as rights of residence for various categories of nonworkers):[47]

> [A]s far as the free movement of persons is concerned, the Commission has to acknowledge that there is nothing to suggest that the agreements on the abolition of controls at internal frontiers will be in force before the end of this year [1992]. If decisive progress is not achieved in doing away with border checks on individuals, the Commission will examine all the possible consequences of such a situation and will draw the necessary conclusions in the light of its interpretation of Article 8a of the Treaty [of Rome].

The agreements referred to, and discussed earlier in this chapter, would deal with the implementation of a Communitywide set of rules on immigration, asylum, and controls on terrorism and other illegal activities. Once adopted by the member states, the agreements would require member-state implementation through administrative actions, such as revisions of existing visa schemes.

In addition to these unachieved objectives, implementation of all measures dealing with professional and vocational credentials and practice is not complete at the member-state level, and efforts to harmonize to the fullest extent possible all training curricula and national requirements will be needed in the future. While some of the programs to assist workers and other persons in moving throughout the EC have been in effect for some time, it is still difficult to ascertain the extent to which EC citizens can make use of them or have moved to other member states to take up positions, practice vocations, or rejoin family members who previously did so. Nor is it possible to obtain complete, current information on the extent to which EC-sited companies and public entities (EC or third-country) actually are seeking new workers from other member states or transferring workers among them.

[46] Ibid., par. 41.
[47] Ibid., par. 36.

Implications for the United States

Free Movement of Goods

Because the various measures on movements of goods do not differentiate on the basis of origin, all third-country goods are treated identically for customs purposes and are eligible on the same basis to utilize the EC's customs procedures (free circulation, internal transit, and so on). Thus, the implications for goods produced by existing EC-based subsidiaries of U. S. firms are legally the same as those for goods of EC firms—namely, simplified, less costly movements with standardized documentation at points of origin and destination, but few (eventually no) time-consuming obstacles within the EC. Similarly, U. S. exports that enter into free circulation within the EC (or under other EC customs procedures) must be treated identically with EC-origin goods and accordingly must receive the same benefits just mentioned. Nor are U. S. exports treated differently than goods from other third countries.

Accordingly, trade in goods, regardless of source but intended to move across member-state frontiers, can be expected to benefit from the removal of internal border checks and formalities. Reductions in costs, resulting from simplified administration and documentation, may encourage new firms, especially smaller ones, to begin to export to the EC. Also, subsidiaries of U. S. and other foreign firms may be able to compete more effectively throughout the EC as trade among the member states is facilitated and fewer facilities need be established. A final benefit to business and government alike appears to be the greater transparency of and access to EC customs administrative procedures.

It may be observed, however, that the EC Commission has not advocated the elimination or reduction of external-frontier impediments to entry on goods imported from third countries. For example, documentation burdens on such goods probably will not be reduced in the future, and the enforcement of entry criteria likely will become more rigorous as internal controls are eliminated completely. If U. S. firms can comply with such EC measures more successfully than firms in other third countries, U. S. exports from such firms may expect to qualify for advantageous EC customs arrangements more easily than do third-country goods. In addition, many larger U. S. firms in particular may find it more beneficial to establish manufacturing or other facilities within the EC than to export from the United States, and they may thereby attain the advantages available to EC entities.

Free Movement of Persons

As indicated in all of the previous reports in this investigation, the eventual benefits to be obtained from the various directives and agreements facilitating the free movement of people within the EC will flow principally to EC nationals, their families, and their servants, and perhaps in future to such persons having EFTA nationality. To a lesser extent, third-country tourists and businesspersons visiting multiple member states likely will be able at some point to move among these countries without visa or baggage checks or other formalities. These changes might encourage more independent travel and tourism through the EC and help salespeople or other business visitors from the United States and other third countries. Again, such measures for the most part (except potentially those countries having particular political problems, those considered to be involved in international terrorism or other illegal acts, etc.) likely will be nondiscriminatory in their application. Nationals of the United States would receive the same advantages as those of other third countries but would continue to face more controls at the EC's external frontiers than would EC nationals.

With respect to the directives on professional and vocational qualifications, the intended beneficiaries of these measures are EC nationals/credentialholders and the small number of foreign nationals who also have been educated and licensed in EC member states. As to such measures, no other third-country citizens (unless immediately related to EC nationals) can expect to obtain new rights or benefits. In fact, in some cases the changes in prior regulations pertaining to some professions or vocations may effectively foreclose opportunities to foreign nationals, such as attorneys, who previously had been able to work in particular member states but now may face restrictions (on present or future functions) as host-country practitioners face new EC competitors. Again, the implications of some new measures cannot be assessed at present, because member-state rules and curricula still are evolving and will be harmonized as additional EC-wide criteria are adopted.

Firms and many non-EC governmental entities established or operating in the EC will benefit from an increased ability to hire workers from the broader EC-wide labor pool and to transfer workers among EC facilities. The new EC directives in this area are nondiscriminatory in their application, because they are aimed at providing opportunities and protections to all member-state nationals. On the other hand, EC-sited foreign entities will be competing for such persons with all firms and government bodies in the EC, domestic and foreign, and may be forced to provide higher pay or benefits to attract staff. If housing in the area around a particular firm is scarce or unusually expensive, the firm may not be able to compete for new workers as effectively as firms in lower cost areas. If disadvantages are too great, the firm may decide to relocate to one of these lower cost areas, and it should be able to transfer workers to the new location more easily than before.

CHAPTER 8
TRANSPORT

EC initiatives pertaining to the single-market program concerning transport services have two major objectives. The first objective is creation of a unified transport market among the EC member states, which encompasses such measures as eliminating border controls, streamlining customs documentation requirements, and harmonizing technical and safety standards. The second objective, economic deregulation, entails removing barriers to entry and limiting governmental involvement in routing and pricing decisions. EC transport initiatives generally focus on a particular sector—air transport (including both passenger and freight), surface transport (including trucks, passenger buses, barges, combined motor-rail and motor-barge services, and to a limited extent railroads), or ocean transport (carriage of goods in ocean vessels). A few initiatives in the air-transport sector affect U.S. airlines operating in the EC. Most EC transport initiatives, however, do not address third-country issues and do not have a direct impact on U.S. firms.

Developments During 1992

The Air-Transport Sector

Overview

Adoption by the EC Council of the "third liberalization package" of air-transport regulations constituted the most prominent 1992 activity pertaining to the single-market air-transport program. The "third liberalization package" restricts member states' ability to regulate fares for passenger transportation, provides uniform standards for the licensing of air carriers within the EC, and addresses EC airlines' right to engage in "cabotage"—the transportation of passengers by a carrier licensed in one member state between two points in another member state.

Also in 1992 the EC Commission issued proposed regulations specifying revisions to the code of conduct for computerized reservations systems (CRS's) and indicating the types of joint activities between carriers that will be granted categorical, or "block," exemptions from the anticompetition provisions of the Treaty of Rome. There were also harmonization initiatives addressing noise emissions and air-traffic control.

Third Liberalization Package for Air-Transport Services

The "third liberalization package" concerning air-transport services 1992 consists of five regulations: one concerning the fares and rates that carriers may charge for air-transport services within the EC, one addressing access to air routes within the Community, one pertaining to the licensing of air carriers, and two concerning the rules on competition. The former three regulations became effective on January 1, 1993; the two regulations on competition became effective in August 1992.

Fares and Rates

The regulation on fares and rates for air services[1] specifies that new fares carriers propose for regularly scheduled passenger air transport within the EC will become effective except in two circumstances: (1) when one of the involved member states objects to the fare and the other member state does not disagree with the objection or (2) when only one member state objects to the fare, the other member states disagrees, and the objecting member state's position is sustained by the EC Commission.[2] Member states may object to a fare increase on the basis that it is "excessively high to the disadvantage of users in relationship to the long-term fully allocated relevant costs of the air carrier." They may object to a fare decrease when "market forces have led to sustained downward development of air fares deviating significantly from ordinary seasonal pricing movements and resulting in widespread losses among all carriers for the air services concerned."

The regulation states that the provisions described above do not apply to fares for charter or cargo operations, which may be freely set by carriers. The regulation is applicable only to fares and rates charged by EC-based carriers. It does not apply to fares for passenger service on "public service" routes.

Access To Intra-Community Air Routes

The regulation on access to intra-Community air routes grants carriers licensed in the EC free and voluntary access to passenger routes within the EC subject to two limitations.[3] The first limitation pertains to cabotage. The final regulation does not accord carriers full cabotage rights within the EC.[4] Instead, cabotage is permitted only after April 1, 1997, only with respect to services that originate from or are destined to the carrier's country of registration, and only when the carrier devotes 50 percent or less of its capacity on the service for cabotage passengers. The

[1] *Council Regulation (EEC) No. 2409/92 of 23 July 1992 on Fares and Rates for Air Services, OJ* No. L 240 (Aug. 24, 1992).

[2] By contrast, under the regulation proposed by the EC Commission in 1991, proposed fares could be rejected only if both member states involved disapproved. U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: Fourth Follow-Up Report* (investigation No. 332-267), USITC publication 2501, Apr. 1992, p. 9-4.

[3] *Council Regulation (EEC) No. 2408/92 of 23 July 1992 on Access for Community Air Carriers to Intra-Community Air Routes, OJ* No. L 240 (Aug. 24, 1992).

[4] The regulation proposed by the EC Commission, by contrast, would have accorded full cabotage rights. This aspect of the proposal, however, engendered significant opposition from a number of member states. USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 9-5.

second limitation is that member states may require carriers to perform certain types of regional air services and limit competition on these routes.[5]

The regulation generally eliminates capacity restrictions for routes within the EC. Member states may continue, however, to regulate distribution of traffic between multiple airports serving the same urban area, provided that such regulation is nondiscriminatory and conforms to EC slot allocation rules. Member states may also limit traffic rights to remedy "serious congestion and/or environmental problems." Such limitations must be nondiscriminatory, and of less than 3 years' duration. They are subject to review by the EC Commission and Council.

Licensing

The regulation on licensing establishes uniform standards for the licensing of air carriers within the EC.[6] The final regulation requires that carriers possess both an air operator's certificate (AOC) and an operator's license. The provisions of the final regulation specifying the entities that are entitled to AOC's and operator's licenses are essentially identical to those in the proposed regulation that were described in the Fourth Followup Report.[7] The final regulation, unlike the proposed version, does not contain specified criteria for granting of an AOC. Instead, the regulation states that these criteria will be established pursuant to a later regulation; until that regulation is promulgated, each member state's national regulations will continue to apply.

Rules of Competition

The "third liberalization package" contains two final regulations that apply the anticompetition provisions of the Treaty of Rome to air-transport undertakings. The first regulation extends the existing anticompetition provisions, which currently concern only air transport between points in different member states, to encompass all air transport within the EC.[8] The second regulation authorizes the EC Commission to grant "block" exemptions from the anticompetition provisions for joint agreements involving planning and coordination of airline schedules, fare consultations, joint operations on new services, airport slot allocation, and common purchase, development, and operation of computer reservation services.[9]

Proposed Revisions to the Code of Conduct for Computerized Reservation Systems

The EC Commission proposed a regulation amending the EC "Code of Conduct" for CRS's.[10] The existing code of conduct, which was issued in 1989, was discussed in the First Follow-up Report.[11] In its proposal, the EC Commission states that the proposed amendments seek to clarify possible ambiguities in the existing code and to strengthen the proscriptions of the code against discriminatory conduct.

The proposed amendments address three principal areas. First, the proposal seeks to include nonscheduled, as well as scheduled, services within the code of conduct to the extent of requiring all services offering air transport only (as opposed to air transport plus additional ground services) to be listed in the same CRS display. Second, the proposal would require an air carrier that operates a CRS to provide the same information on fares, schedules, and availability to competing CRS's that it does to its own CRS and to accept booking on its flights from other CRS's. Third, the proposal requires carriers to separate by technical means their internal reservation systems and CRS's that they operate. Additionally, the proposal contains a number of clarifications concerning the scope of the code of conduct. The proposal must be adopted by the EC Council before it can become effective.

Authorized Joint Activities

The EC Commission issued two proposed regulations during 1992 addressing types of joint activities among airlines that would be entitled to "block" exemptions from the anticompetition provisions of the Treaty of Rome. The first regulation concerns CRS's and would extend into 1997 the current block exemption that is scheduled to expire on June 30, 1993.[12] The draft regulation contains a new

[5] The regulation's provisions in this regard are essentially the same as those of the proposed regulation, which are described in the Fourth Followup Report. USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 9-5.

[6] *Council Regulation (EEC) No. 2407/92 of 23 July 1992 on Licensing of Air Carriers, OJ* No. L 240 (Aug. 24, 1992).

[7] USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 9-6.

[8] *Council Regulation (EEC) No. 2410/92 of 23 July 1992 Amending Regulation (EEC) No. 3975/87 Laying Down the Procedure for the Application of the Rules on Competition to Undertakings in the Air Transport Sector, OJ* No. L 240 (Aug. 24, 1992).

[9] *Council Regulation (EEC) No. 2411/92 of 23 July 1992 Amending Regulation (EEC) No. 3976/87 on the Application of Article 85(3) of the Treaty to Certain Categories of Agreements and Concerted Practices in the Air Transport Sector, OJ* No. L 240 (Aug. 24, 1992).

[10] *Proposal for a Council Regulation (EEC) Amending Regulation (EEC) No. 2299/89 on a Code of Conduct for Computerized Reservation Systems*, COM (92) 404 (Sept. 23, 1992).

[11] USITC, *The Effects of Greater Economic Integration Within the European Community on the United States—First Follow-Up Report* (investigation No. 332-267), USITC publication 2268, Mar. 1990, p. 8-8.

[12] *Draft Commission Regulation (EEC) Amending 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. C 253 (Sept. 30, 1992). The effective date of the existing block exemption was extended from December 31, 1992, until June 30, 1993, pursuant to *Commission Regulation (EEC) No. 3618/92 of 15 December 1992 on the Application of Article 85(3) of the Treaty to Certain Categories of Agreements, Decisions, and Concerted Practices in the Air Transport Sector, OJ* No. L 367 (Dec. 16, 1992).

provision—similar to that in the proposed amendment to the code of conduct discussed above—that would require a carrier to provide to competing CRS's the same information concerning schedules and fares that it provides to a CRS in which it owns an interest.

Four other types of joint activities are addressed in the second proposed regulation.[13] First, block exemptions are available for joint activity concerning planning and coordination of schedules, which is intended to ensure a satisfactory supply of service to less busy times of day, less busy routes, or to facilitate interline connections. Exempted activity cannot operate to restrict capacity or preclude introduction of new services. Second, exemptions concerning joint operations are available only to establish new routes and may be effective for a maximum of 2 years. Third, agreements concerning consultations on passenger and cargo tariffs qualify for a block exemption if they are voluntary, nonbinding, and open to any carrier that desires to participate. Agreements resulting from such consultations cannot include fares that discriminate on grounds of nationality or country of origin of traffic, or concern capacity limitation or travel agent compensation. Fourth, a block exemption is available to joint activities concerning slot allocation if they are open to all interested carriers; any rules resulting from such activities must be nondiscriminatory and must provide "new entrants" with priority in allocation of 50 percent of newly created, unused, or surrendered slots.[14] These two proposed regulations must be approved by the EC Council before they can become effective.

Technical Harmonization

Air-Traffic Control

The EC Commission issued a draft directive seeking to harmonize air-traffic control within the EC. The 54 air-traffic control centers within the EC currently use 31 different and incompatible technical systems and 70 different computer languages.[15] Under the proposal, however, all EC air-traffic control centers would be required to use technical standards developed by Eurocontrol, which is currently a 14-country advisory air-traffic control organization. Additionally, under the proposal, if Eurocontrol does not develop standards by established deadlines, the EC Commission will retain the authority to impose standards by itself.[16]

The proposal must be approved by the EC Council and then implemented by the member states before it will become effective. The EC Council agreed at its December 1992 meeting promptly to adopt the proposal in final form.[17]

Aircraft Noise

The EC Council adopted a directive to harmonize noise emission standards for civil subsonic aircraft operating at EC airports.[18] The EC Commission proposal that served as the basis for this directive was described in detail in the Fourth Followup Report.[19]

The Surface-Transport Sector

Overview

During 1992, the EC Council adopted a number of significant initiatives concerning economic regulation of motor carriers. Two regulations concerned carriage of passengers by coach or bus, an issue on which the EC Council's previous lack of action had engendered public criticism from the EC Commission.[20] One of these regulations addresses the conditions under which motor carriers can operate passenger services between member states; the other specifies when cabotage operations are permitted. The EC Council additionally adopted a regulation providing a permanent means for controlling access to the market of international carriage of goods by road. Each of these regulations became effective on January 1, 1993. An EC Commission proposal sought to relax border controls pertaining to surface transport.

The EC Commission also issued during 1992 a number of significant policy statements concerning surface transport. In a report concerning the impact of transport on the environment, the EC Commission recommends that the EC Council develop policies to promote railway, ocean, and barge transport and intermodal transport. The EC Commission asserts that use of these modes of transportation would decrease

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[13] *Draft Commission Regulation (EEC) on the Application of Article 85(3) of the Treaty to Certain Categories of Agreements, Decisions and Concerted Practices Concerning Joint Planning and Coordination of Schedules, Joint Operations, Consultations on Passenger and Cargo Tariffs on Scheduled Air Services and Slot Allocation on Airports, OJ* No. C 253 (Sept. 30, 1992).

[14] The proposed regulation defines a "new entrant" as a carrier with less than four slots at the airport, or less than 5 percent of the available slots that seeks additional slots to commence nonstop service between two airports where at most two other carriers provide direct service.

[15] Andrew Hill, "Brussels Moves on Air Control," *Financial Times*, July 23, 1992, p. 2.

[16] "First Steps Towards Single Air Traffic Control System," *European Report*, No. 1528 (July 25, 1992), Internal Market, pp. 9-10. The proposal was not published in the *Official Journal*.

[17] "Transport Ministers Agree on Allocating Slots at Airports," *European Report*, No. 1619 (Dec. 9, 1992), Internal Market, p. 14.

[18] *Council Directive 92/14/EEC of 2 March 1992 on the Limitation of the Operation of Aeroplanes Covered by Part II, Chapter 2, Volume 1 of Annex 16 to the Convention on International Civil Aviation, Second Edition (1988), OJ* No. L 76 (Mar. 23, 1992).

[19] USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 9-6.

[20] Ibid., p. 9-3.

[21] EC Commission, *Green Paper on the Impact of Transport on the Environment*, COM 92 (46), Feb. 20, 1992, pp. 53-54.

pollution caused by road vehicles.[21] In the report, the EC Commission also endorses structural projects to improve the EC's rail and waterway networks and promote these modes as alternatives to road transport.[22]

In a second report, the EC Commission recommends limiting the types of services that member states can reserve for their national postal authorities. Specifically, the report recommends that member states be precluded from requiring that parcels and express mail be delivered by postal authorities.[23] The report also endorses limiting weight requirements that some states impose on mail to permit private delivery of small packages.[24] The EC Commission's recommendations, should they ultimately be adopted by the EC Council, would expand the range of services that express companies and private delivery firms could offer.

Common Carriage of Passengers by Road

Carriage Between Member States

The EC Council's regulation concerning intra-EC services between member states for carriage of passengers by coach and bus generally permits carriers to engage in such transport services for hire if they can satisfy three conditions[25]—(1) the carrier must be licensed in its state of establishment to undertake bus or carriage passenger transport services; (2) the carrier must satisfy EC standards on licensing of drivers; and (3) the carrier must satisfy legal requirements on road safety with respect to drivers and vehicles.

Carriers that desire to operate "regular services" or certain types of "shuttle services" must additionally receive authorization for their operations. The regulation defines "regular services" to be scheduled services where passengers may board and alight at predetermined intermediate stops. The shuttle services subject to the authorization requirement are services in which groups of passengers assembled in advance travel point-to-point and no accommodations are provided to the passengers.

To receive an authorization, the carrier must apply to the regulatory authority of the member state of the point where a trip originates. That state must then circulate the application for concurrence in all member states in which passengers will board or alight. Applications may be denied on the grounds that the applicant is unable to provide the service or has not complied with regulatory requirements in the past. Applications may also be denied on the grounds that a proposed service could threaten the viability of existing competitive services or rail service on the same route. Applications may not be denied, however, merely on the basis that the applicant will offer lower fares. Disagreements among member states concerning whether to grant an authorization are to be resolved by the EC Commission.

Cabotage

The EC Council's regulation specifying when EC bus and coach operators may engage in operations solely within a member state other than the one in which they are registered permits a very limited variety of cabotage operations.[26] The only type of cabotage operations permitted until December 31, 1995, are bus tours carrying a single group of passengers over a common route. After that date, cabotage operations will also be permitted for "special regular services," which are defined to encompass services available only to specified categories of passengers, such as students to or from school, or workers of a particular enterprise to or from their place of employment. "Special regular services" cabotage operations are permitted only in those parts of the member state within 25 kilometers of the border of the member state in which the carrier is registered. The regulation does not permit cabotage operations for regularly scheduled bus or coach services.

Access to Market in Carriage of Goods by Road

The EC Council's regulation for controlling access to the market of international carriage of goods by road supersedes the quota system that had previously been in use.[27] The regulation requires that all international carriage of goods by road between two different countries that originates or terminates in or passes

[22] Ibid., p. 54. Additionally, during 1992 the EC Commission submitted a number of proposals identifying specific waterway projects and combined rail/inland waterway projects that it recommended member states complete to permit effective functioning of the single market and to promote intermodal rail/water transport. *Proposal for a Council Decision on the Creation of a European Inland Waterway Network*, COM(92) 231, *OJ* No. C 236 (Sept. 15, 1992); *Proposal for a Council Decision Concerning the Establishment of a Combined Transport Network in the Community*, COM(92) 230, *OJ* No. C 282 (Oct. 30, 1992).

[23] EC Commission, *Green Paper on the Development of the Single Market for Postal Services*, COM 91 (476), June 11, 1992, p. 189. The report discloses that three member states currently restrict private participation in the express mail market, although it notes that these restrictions are not always strictly enforced. Ibid., pp. 41, 173.

[24] Ibid., pp. 203, 208.

[25] *Council Regulation (EEC) No. 684/92 of 16 March 1992 on Common Rules for the International Carriage of Passengers by Coach and Bus*, *OJ* No. L 74 (Mar. 20, 1992). The EC Commission also issued a regulation specifying the form of transit documents that carriers are to use for their operations pursuant to this regulation. *Commission Regulation (EEC) No. 1839/92 of 1 July 1992 Laying Down Detailed Rules for the Application of Council Regulation No. 684/92 as Regards Documents for the International Carriage of Passengers*, *OJ* No. L 187 (July 1, 1992).

[26] *Council Regulation (EEC) No. 2454/92 of 23 July 1992 Laying Down the Conditions Under Which Non-resident Carriers May Operate National Road Passenger Transport Services Within a Member State*, *OJ* No. L 251 (Aug. 29, 1992).

[27] *Council Regulation (EEC) No. 881/92 of 26 March 1992 on Access to the Market in the Carriage of Goods by Road Within the Community to or From the Territory of a Member State or Passing Across the Territory of One or More Member States*, *OJ* No. L 95 (Mar. 26, 1992). Under

through the EC be conducted pursuant to a "Community authorization." A carrier that desires to obtain such authorization must be established in an EC member state and must be authorized by that state to engage in the international carriage of goods by road. The authorization is issued by the member state in which the carrier is established and is valid for a period of 5 years.

Border Controls

The EC Commission proposed a regulation concerning border controls for road or inland waterway transport that either originates outside the EC or utilizes a transport conveyance not registered within the EC.[28] Under the proposal, border control checks for such transport would take place only when the conveyance enters the EC, and would not be conducted when the conveyance crosses borders between EC member states.

The Ocean-Transport Sector

The EC Council in late 1992 adopted a regulation on cabotage in ocean transport.[29] Proposals from the EC Commission on this issue had been presented as long ago as 1986, but had never previously been acted on because of disagreements within both the EC Council and member states.[30]

The regulation accords all "Community shipowners" the right to engage in cabotage operations within the EC. The term "Community shipowners" is defined to include nationals of a member state that pursue shipping activities, shipping corporations organized under, and whose principal place of business is situated in, a member state, and shipping corporations organized outside the EC that are controlled by EC nationals and operate vessels under the flag of a EC member state. Effective December 31, 1996, vessels that desire to conduct cabotage operations in any member state must additionally be authorized to conduct cabotage operations in the member state in which they are registered.

Although the regulation became effective on January 1, 1993, it does not authorize cabotage operations in numerous geographical areas until later dates. Cabotage operations are not authorized between mainland points along the Mediterranean coast, and in Spain, Portugal and France, until January 1, 1995, for cruise services, and until January 1, 1999, for regular passenger and ferry services. Cabotage operations are not authorized until January 1, 1999, between mainland and island points along the Mediterranean and in Spain and France and until January 1, 2004, between mainland and island points in Greece.

Additionally, the EC Council issued a regulation granting the EC Commission authority to grant "block" exemptions from the anticompetition provisions of the Treaty of Rome to joint operation and capacity-limitation agreements among liner shipping companies.[31] The regulation specifies the procedures that the EC Commission must follow in promulgating such regulations, but does not indicate the content of such regulations.

1993 and Beyond

Progress to Date

The EC has largely accomplished the goals for creating a unified market in transport services that it articulated in its 1985 White Paper. A few objectives have yet to be achieved in the surface- and ocean-transport sectors, however.

Air Transport

In its 1985 White Paper, the EC Commission identified its major goal for the air-transport sector as that of increasing competition. To achieve this goal, the White Paper advocated measures to change the system for the establishment and approval of tariffs and to limit the rights of government bodies to restrict capacity and access to the market.[32] These objectives have been addressed in the three "liberalization packages" that the EC Council has adopted. The first package, implemented in 1987, restricted the scope of capacity-sharing agreements between airlines that were then in effect on most passenger routes between points in different EC member states. The second package, adopted in 1990, restricted member states' ability to regulate changes in passenger fares, liberalized the conditions under which new carriers could enter the market, and further restricted the scope of capacity-sharing agreements. The EC Council in 1990 additionally adopted an initiative that permitted EC-based carriers greater flexibility in route and price decisions for air-cargo services.

27—*Continued*

the previous quota system, individual member states granted a specific number of authorizations to their trucking companies. The number of available authorizations had increased sharply in recent years to facilitate the abolition of the quota system. USITC, *The Effects of Greater Economic Integration Within the European Community on the United States: Third Followup Report* (investigation No. 332-267), USITC publication 2368, Mar. 1991, p. 8-8.

[28] *Proposal for a Council Regulation (EEC) on the Transfer of Controls in the Field of Road and Inland Waterway Transport to the Community's External Frontiers*, COM (92) 105, *OJ* No. C 103 (Apr. 23, 1992).

[29] *Council Regulation (EEC) No. 3577/92 of 7 December 1992 Applying the Principle of Freedom to Provide Services to Maritime Transport Within Member States (Marine Cabotage)*, *OJ* No. L 364 (Dec. 12, 1992).

[30] USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 9-4; USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, p. 8-4.

[31] *Council Regulation (EEC) No. 479/92 of 25 February 1992 on the Application of Article 85(3) of the Treaty to Certain Categories of Agreements, Decisions, and Concerted Practices Between Liner Shipping Companies (Consortia)*, *OJ* No. L 55 (Feb. 29, 1992).

[32] EC Commission, *Completing the Internal Market: White Paper From the Commission of the European Communities to the European Council (White Paper)*, June 1985, pp. 29-30.

The third package, which was adopted in 1992 and described in full above, further limits member states' ability to regulate fares, eliminates most capacity restrictions and barriers to entry for EC-based carriers that desire access to routes between member states, and grants limited cabotage rights. As noted above, however, the scope of liberalization effected by the regulations adopted by the EC Council is in some respects less ambitious than that proposed by the EC Commission. The third package grants member states greater ability to disapprove new fares, and accords carriers fewer cabotage rights, than the EC Commission had proposed.

Surface Transport

In surface transport the White Paper described two priorities: (1) eliminating frontier checks in carriage by road and (2) easing capacity and entry restrictions pertaining to motor transport.[33] To help achieve the first objective, the EC Council eliminated in 1989 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. The EC additionally adopted numerous initiatives to reduce the scope and number of border checks for surface transport operations.

A number of the initiatives adopted in 1992 that were discussed above address the second objective. These include the regulation abolishing the quota system that controlled access to the market for international carriage of goods by road, the regulation governing bus and coach transport between member states, and the regulation granting limited cabotage rights for road-passenger-transport systems. Additionally, in 1991 the EC Council adopted a regulation eliminating most cabotage restrictions in inland waterway transport.

The single White Paper objective pertaining to surface transport that the EC Commission states has not yet been addressed concerns cabotage rights for motor carriage of goods. The EC Commission proposed a regulation on this issue in 1991.[34] The EC Commission states that the EC Council has not yet addressed this proposal because of disputes over taxation issues.[35]

Ocean Transport

The principal objectives of the White Paper in the ocean-transport sector have been to permit the freedom to offer ocean-transport services between member states and to set rules of competition.[36] The EC adopted regulations in 1986 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. In 1992, the EC Council adopted the regulations discussed above addressing cabotage in ocean transport.

The White Paper objective that the EC Commission states has not yet been adopted concerns creation of an EC-flag shipping register called EUROS.[37] Proposals for creation of EUROS have been pending for at least 3 years but have not been adopted by the EC Council because of continuing opposition from some member states.[38]

Implications for the United States

Many of the EC's initiatives pertaining to creation of a single market in transport services deal only with EC-based carriers or with operations within the EC. Because they do not address third-country issues, most of the initiatives concerning economic regulation of transportation services do not have a direct impact upon U.S. firms. However, insofar as these initiatives achieve their stated objectives of reducing barriers to entry among transport service providers, enhancing competition and promoting efficient operation, they should benefit U.S. enterprises that ship goods to or within the EC by effecting improved and more economical transport services. For this reason, U.S. industry has reacted positively to the EC initiatives seeking to reduce economic regulation of transport services.[39]

The principal U.S.-based enterprises that perform transport services within the EC are airlines.[40] The EC initiatives that appear to have the greatest current impact on U.S. airlines' operations are not the "liberalization packages," whose regulations generally affect only EC-based carriers, but those involving the rules of competition and joint activities. The U.S. Government has expressed concern that some of these initiatives may adversely affect U.S. airlines'

[33] Ibid., pp. 29-30.

[34] USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 9-8.

[35] EC Commission, *Seventh 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 (92) 383, Sept. 2, 1992, pp. 3, 31.

[36] *White Paper*, p. 30.

[37] EC Commission, *Seventh Report*, p. 31.

[38] "Last Chance for Road Cabotage," *European Report*, No. 1818 (Dec. 5, 1992), Internal Market, pp. 16-17; "Ministers Debate Whether or Not to Hoist the Community Flag," *European Report*, No. 1807 (Oct. 27, 1992), Internal Market, p. 17.

[39] EC Committee of the American Chamber of Commerce in Belgium, *Business Guide to EC Initiatives*, (winter/spring 1993), pp. 132-138.

[40] U.S. companies also provide courier and express services in Europe. After the withdrawal of Federal Express from the European market in March 1992, the only major U.S.-based express and courier firm that operates within the EC is United Parcel Service. Mark B. Solomon, "Losses in Europe Left Carrier With Little Choice but To Leave," *Journal of Commerce*, Mar. 18, 1992, p. 1A. The UPS operations in the EC are not extensions of the U.S. operations; instead, they were established by acquiring existing EC-based carriers and function as EC-based companies. USITC, *EC Integration: Fourth Followup Report*, USITC publication 2501, Apr. 1992, p. 9-9.

operations in the EC. During informal consultations with representatives of the EC Commission in January 1993, U.S. government representatives expressed their concern that the EC Commission's proposals on slot allocation, insofar as they reserve new "slots" for certain types of intra-EC services, could restrict U.S. airlines' ability to obtain additional slots at EC airports for EC-U.S. services. The U.S. Government representatives also expressed concerns that the CRS code of conduct being proposed by the EC Commission could be construed in a manner to impose excessive requirements on U.S. airlines that operate CRS's within the EC.[41]

There are additionally outstanding EC Commission proposals concerning air-transport relations with third countries that, if adopted, could have significant long-term impact for U.S. airlines operating in the EC. In a 1992 "White Paper" report providing proposals for future developments in EC transportation policy, the EC Commission asserts that it should be provided authority to negotiate EC-wide air-traffic agreements with third countries such as the United States, and is highly critical of member states that continue to negotiate such agreements individually:

> *Member States have resisted the exercise of Community competence in this area and continued to negotiate new and modified agreements in violation of Community law. . . . By continuing to act separately, they have not merely failed to exploit the bargaining power of the Community but have allowed situations to develop in which some third countries have been allowed to divide and rule. This is best exemplified by the route maps in Annex II indicating the different ways that the US and Community air carriers have been allowed to develop traffic-generating networks on either side of the Atlantic.*[42]

In a similar vein, the EC Commission issued an amended version of a proposal it first submitted to the EC Council in 1990 that would provide the EC Commission with the authority to conduct EC-wide air-transport negotiations with third countries. The EC Commission's proposal also cites alleged disparities between EC carriers' traffic rights in the United States and U.S. airlines' traffic rights in the EC as justification for granting it the authority to conduct EC-wide negotiations.[43]

The outlook for adoption of the EC Commission's proposals is unclear. As the EC Commission itself acknowledged in the "White Paper" excerpt quoted above, its previous attempts to obtain general authority to negotiate air-traffic agreements have not been received warmly by the EC Council.[44] Its most recent proposal has garnered a mixed reaction and rapid approval by the EC Council is not anticipated.[45]

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[41] U.S. Department of Transportation and Department of State officials, meeting with industry officials and USITC staff, Jan. 21, 1993.

[42] EC Commission, *The Future Development of a Common Transport Policy*, COM (92) 494, Dec. 2, 1992, p. 93. The referenced maps purport to indicate that EC carriers have 13 "fifth-freedom" rights to carry traffic between the United States and countries other than the ones in which they are registered, while U.S. airlines have approximately 30 "fifth-freedom" rights to carry traffic between countries in the EC and countries other than the United States. Ibid., pp. 117-118.

[43] EC Commission, *Air Traffic Regulations With Third Countries—Communication to the Council*, Oct. 21, 1992.

[44] The EC Council did, however, authorize EC-wide negotiations for an agreement extending a number of EC regulations and directives concerning air transport to Norway and Sweden. *Council Decision of 22 June 1992 Concerning the Conclusion of an Agreement Between the European Economic Community, the Kingdom of Norway, and the Kingdom of Sweden on Civil Aviation*, *OJ* No. L 200 (July 18, 1992).

[45] "Exact Definition of 'New Entrant' to EC Airports," *European Report*, No. 1820 (Dec. 12, 1992), Internal Market, pp. 2-3; DOT/DOS meeting.

CHAPTER 9
COMPETITION POLICY AND COMPANY LAW

In accordance with its goals for the internal market to reduce local protectionism and anticompetitive behavior, the European Community has adopted all of the necessary instruments to enforce its competition policy. Because the EC Commission, in the views of many commentators, has been aggressively enforcing its competition policy, at least with respect to merger control, both U.S. and EC companies have been generally satisfied with its application. The main criticism by U.S. and EC companies with regard to EC competition policy is that the EC Commission has not taken more control in enforcement due to the staffing limitations of the Directorate General for Competition and the reluctance of the European Community to wrest too much control from the member states.

On the other hand, company law is an area where the European Community has made some of the least progress.[1] One of the goals for the internal market was the adoption of the European Company Statute, which is still locked in controversy over the worker participation debate. Several other proposed directives are also being held up due to worker participation concerns.

Developments During 1992

Competition Policy

EC Legislation

During 1992 and early 1993 there were two noteworthy developments in the area of competition policy: the EC Commission set forth guidelines with respect to cooperative joint ventures and the EC Council adopted amendments expanding certain block exemption regulations.

Under EC law, joint ventures are covered by either articles 85 and 86 of the Treaty of Rome or by the Merger Regulation. Those joint ventures covered by articles 85 and 86 are designated "cooperative" joint ventures, whereas those covered by the Merger Regulation are designated "concentrative" joint ventures.[2] In January 1993, the EC Commission established new guidelines for cooperative joint ventures. Under the new guidelines, the EC Commission must conditionally accept or reject the cooperative joint venture within 2 months of being notified of the joint venture by informing the parties in writing of whether the joint venture raises serious doubts about its compatibility with the competition rules.[3] If the EC Commission has serious doubts about the joint venture, it then has an additional 18 months to make an ultimate decision on whether the joint venture will be approved.[4] The new guidelines place cooperative joint ventures on a more equal footing with concentrative joint ventures, since the latter already benefit from the EC Commission's quick consideration and turnaround under the Merger Regulation.[5]

In addition, in 1992 an EC regulation amended four block exemption regulations.[6] The EC grants block exemptions from the EC's competition rules in areas that it finds otherwise anticompetitive behavior to be acceptable. The 1992 regulation amended the following types of agreements: specialization agreements; research and development agreements; patent licensing agreements; and know-how licensing agreements.[7]

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[1] EC Commission, *Seventh 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 (92) 383, Sept. 2, 1992 (*Seventh Report*), p. 34.

[2] In very general terms, a concentrative joint venture is defined as performing all functions of an autonomous economic entity on a lasting basis without any coordination of competitive behavior. A cooperative joint venture, on the other hand, has as its aim the coordination of competitive activities. The distinction between concentrative and cooperative joint ventures is viewed as being very ambiguous and one of the failures of EC competition policy.

2—*Continued*

EC Committee of the American Chamber of Commerce in Belgium (AmCham), Business Guide to EC Initiatives (Brussels: EC Committee, AmCham, winter/spring 1993), p. 50; Attorney, Skadden Arps, interview by USITC staff, Brussels, Jan. 12, 1993 (Skadden Arps interview).

[3] Seminar, "Recent Developments in European Community Competition Law and Policy," Washington, DC, Feb. 10, 1993.

[4] UNICE official, interview by USITC staff, Brussels, Jan. 12, 1993 (UNICE interview).

[5] The Merger Regulation gives the EC Commission the authority to approve or disapprove large-scale proposed mergers and acquisitions (including concentrative joint ventures). The EC Commission's Merger Task Force (DG IV) has 1 month to determine whether the merger is compatible with the single market or whether it should be investigated further. If it decides to investigate further, then it has only 4 additional months to approve or disapprove of the merger. Competition Policy Coordinator, American Chamber of Commerce, interview by USITC staff, Brussels, Jan. 11, 1993 (Competition Policy Coordinator interview); AmCham, Business Guide to EC Initiatives, p. 49. For more detailed information regarding the Merger Regulation, see U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States—First Follow-Up Report* (investigation No. 332-267), USITC publication 2268, Mar. 1990, pp. 9-4 to 9-9.

[6] *Regulation 151/93, Official Journal of the European Communities (OJ)*, No. L 21/8 (1993).

[7] OJ No. C 207 (Aug. 14, 1992), amending Commission Regulations 417/85/EEC, 418/85/EEC, 2349/84/EEC, and 556/89/EEC; AmCham, *Business Guide to EC Initiatives*, p. 46. In addition to the four block exemptions noted, the EC Commission has adopted other block exemption regulations in the areas of motor vehicle distribution, franchise agreements, air and land transport, and insurance. Commission of the European Communities (EC Commission), *XXth Report on Competition Policy*, (1991), pp. 44-49; AmCham, *Business Guide to EC Initiatives*, pp. 46-48.

The 1992 regulation extends agreements relating to specialization in existing products to allow joint sales even if there are more than two parties and if the parties' aggregate market share does not exceed 10 percent.[8] The aggregate turnover (revenue) threshold has doubled to ECU 1 billion; anything below that threshold is entitled to the block exemption.[9]

The 1992 regulation affects research and development agreements by allowing parties to such agreements to arrange for joint sales or distribution by only one party as long as the parties are not competitors.[10] If the parties do compete, the block exemption will only apply if the aggregate market share of the parties to the agreement does not exceed 20 percent within the European Community.[11]

The block exemptions for patent and know-how agreements have been amended to allow an exemption when one party to a joint venture grants a license to the joint venture if the party competes with the other party to the joint venture. In addition, the product subject to the contract must not exceed 20 percent of the market for such products in the European Community, or more than 10 percent when the license covers production and distribution.[12] The exemption applies when the parent organization grants a joint venture a patent license. Similarly, the regulation would extend the block exemption for agreements for know-how licensing.

Policy Considerations

Under the direction of Sir Leon Brittan, Director General of Competition (DG IV), the EC Commission took what is regarded as an aggressive stance in the area of competition policy. During his tenure Sir Leon Brittan announced a goal to make competition policy an integral part of multilateral trade under the auspices of the General Agreement on Tariffs and Trade (GATT).[13] Thus, the European Community is planning to focus on extending competition policy to its trading partners through both multilateral forums and bilateral accords.[14] The European Community has established bilateral cooperation agreements with the European Free Trade Association countries, the United States, Canada, and Japan.[15] In addition, "Association" agreements concluded with Czechoslovakia, Hungary, and Poland contain competition policy clauses.[16]

In January 1993 Karel Van Miert replaced Sir Leon Brittan as the new competition director.[17] This change fueled speculation on whether EC competition policy would continue to be as aggressively enforced in the future.[18] Prior to being appointed competition director, Van Miert was the director of transportation and reportedly was procompetition in that sector.[19] Van Miert has stated that competition policy will focus on social factors and not just pure economic factors.[20] The general view is that Van Miert will not significantly change the focus of DG IV's application of articles 85 and 86 of the Treaty of Rome or the Merger Regulation. On the other hand, there is some apprehension that he may be more submissive in the area of state aids and deregulation.[21] Article 90 of the Treaty of Rome, which has been used by the EC Commission to deregulate public enterprises, is seen as a powerful tool since it allows the EC Commission to operate without the approval of the Council of Ministers. Van Miert reportedly does not believe in using article 90 for such purposes, lending some to question how aggressive he will be with regard to deregulation.[22]

In addition, the EC Commission's enforcement of competition policy may be more restrained in the future due to the revival of the issue of subsidiarity,[23] which says that the EC "shall take action, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member states . . . ."[24] The Maastricht Treaty confirms that subsidiarity is one of the basic principles of EC law.[25] Accordingly, DG IV wants to encourage the member states to use their authority more in areas covered by articles 85 and 86. Thus, DG IV will refer competition decisions to the member states, who will then apply EC law in their national courts.[26] In addition, in December 1992 the

[8] Seminar, "Recent Developments in European Community Competition Law and Policy," Washington, DC, Feb. 10, 1993.

[9] Ibid.

[10] Ibid.

[11] Ibid.

[12] Ibid.; AmCham, *Business Guide to EC Initiatives*, p. 46.

[13] "Brittan Recommends GATT Role in Competition Policy," *EC Reports* (Mar. 1, 1992), p. 4. Now that Sir Leon Brittan has been made director of trade policy, it is very likely that this goal will be a priority of the European Community in the next GATT trade round. Officials of DG IV, interview by USITC staff, Brussels, Jan. 11, 1993 (DG IV interview).

[14] EC Vice President Sir Leon Brittan, speech to the Centre for European Policy Studies on the future of competition policy, Dec. 7, 1992 (Brittan speech); EC Commission, *XXth Report on Competition Policy*, p. 13.

[15] Ibid., pp. 13-14.

[16] EC Commission, *XXIst Report on Competition Policy*, (1992), p. 4.

[17] U.S. Department of State, "EC Competition Policy: Commissioner Van Miert Looks To Make a Mark," message reference No. 92 USEC 15696, prepared by U.S. Mission to the European Community (USEC), Brussels, Jan. 1993.

[18] Competition Policy Coordinator interview.

[19] U.S. Department of State, "EC Competition Policy."

[20] Seminar, "Recent Development in European Community Competition Law and Policy," Washington, DC, Feb. 10, 1993; U.S. Department of State, "EC Competition Policy."

[21] U.S. Department of State, "EC Competition Policy."

[22] Skadden Arps interview; UNICE interview.

[23] DG IV interview; UNICE interview.

[24] Council of the European Communities and Commission of the European Communities, Treaty on European Union (Luxembourg: Office for Official Publications of the European Communities, 1992) art. 3b.

[25] Brittan speech.

[26] DG IV interview; Brittan speech.

EC Commission made a declaration stating that companies should use national courts more frequently.[27] Another reason given for decentralizing the application of the competition rules is that the EC Commission does not have the administrative resources, nor the desire, to intervene in every competition case.[28]

Company Law

Since the USITC's *Fourth Followup Report*,[29] the EC Council has adopted amendments to the Second Company Law Directive regarding the rules on company takeovers.[30] The amendments extend the Second Company Law Directive's provisions, which restrict companies from buying their own shares as a defensive move against takeover bids, to subsidiaries who are now also restricted from buying shares of a parent company under such circumstances.[31]

In April 1992 the EC Commission proposed three new directives annexed to three regulations involving the European statutes for associations, cooperatives, and mutual societies.[32] These new European organizational forms are to encourage cross-border cooperation by eliminating legal and administrative barriers.

The regulations governing the European Association (EA), the European Cooperative Society (ECS), and the European Mutual Society (EMS) are similarly structured and provide rules governing: formation of an EA, ECS or EMS; convening, organizing, and conducting a general meeting; the functions of the executive committee; annual and consolidated accounts; financing; winding up; liquidation; and insolvency. In addition, an EA would have the power to conclude contracts and perform other legal acts; acquire property; receive donations and legacies; employ staff; and be a party to legal proceedings.[33] Each of the organizational units also would be subject to a directive on the involvement of employees. An EA, ECS, or EMS could not be registered until one of the enumerated employee participation models has been chosen, or in the absence thereof, an employee information and consultation system.

1993 And Beyond

Progress to Date

Competition Policy

Since the beginning of the common market, long before the EC Commission issued its 1985 White Paper report on completing the internal market,[34] fostering an open competitive environment among the member states has been an important Community goal.[35] Competition policy was then given increased importance in the 1992 program.[36] According to the White Paper, a strong competition policy was important to strengthen the internal market by preventing local protectionism based on anticompetitive behavior. In the EC Commission's most recent report on the completion of the internal market, it reiterated the importance of competition policy. Specifically, the EC Commission stated that—

> *Member States must not be allowed to replace forms of protectionism abolished in the market integration process by State aids or exclusive rights accorded to monopolies. Companies must not be allowed to thwart integration (e.g. to create cartels to split up markets, to block exports and imports, to abuse local dominant positions, to block new entrants or to create new dominant positions through anti-competitive mergers). In all these areas where anti-competitive measures threaten the market integration process the Commission will reinforce its policy.*[37]

The new Article 130 to be inserted into the EEC Treaty pursuant to the Maastricht Treaty on European Union confirms the importance of competition policy. It states that the objective of ensuring that the conditions necessary for the competitiveness of the Community's industry exist must not lead to the

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[27] UNICE interview; EC Commission, *XXIst Report on Competition Policy*, pp. 1-2.

[28] EC Commission, *XXth Report on Competition Policy*, p. 16.

[29] USITC, *The Effects of Greater Economic Integration Within the European Community on the United States—Fourth Follow-Up Report* (investigation No. 332-267), USITC publication 2501, Apr. 1992.

[30] *Second Council Directive 77/91*, *OJ* No. L 26/1 (Jan. 31, 1977).

[31] "Company Law: Hopes for Second Directive at Internal Market Council," *European Report*, No. 1768 (May 13, 1992), Business Brief, p. 4.

[32] *Proposal for a Council Regulation on the Statute for a European Association*, COM (91) 273, *OJ* No. C 99 (Apr. 21, 1992), p. 1, and *Proposal for a Council Directive Supplementing the Statute for a European Association With Regard to the Involvement of Employees*, COM (91) 273, *OJ* No. C 99 (Apr. 21, 1992), p. 14; *Proposal for a Council Regulation on the Statute for a European Cooperative Society*, COM (91) 273, *OJ* No. C 99 (Apr. 21, 1992), p. 17, and *Proposal for a Council Directive Supplementing the Statute for a European Cooperative Society With Regard to the Involvement of Employees*, COM (91) 273, *OJ* No. C 99 (Apr. 21, 1992), p. 37; *Proposal for a Council Regulation on the Statute for a European Mutual Society*, COM (91) 273, *OJ* No. C 99 (Apr. 21, 1992), p. 40, and *Proposal for a Council Directive Supplementing the Statute for a European Mutual Society With Regard to the Involvement of Employees*, COM (91) 273, *OJ* No. C 99 (Apr. 21, 1992), p. 57.

[33] *Proposal for a Council Regulation on the Statute for a European Association*, COM (91) 273, *OJ* No. C 99 (Apr. 21, 1992), p. 1, art. 2.

[34] EC Commission, *Completing the Internal Market, White Paper From the Commission to the European Council*, p. 39.

[35] EC Commission, *XXth Report on Competition Policy*, p. 11.

[36] Ibid.

[37] EC Commission, *Seventh Report*, p. 9.

introduction of any measure which could lead to a distortion of competition.[38]

EC competition policy is broader than U.S. antitrust regulation. EC competition policy includes the control of state aids, deregulation, and antitrust issues. State aids are covered by article 92 of the Treaty of Rome, which prohibits state aids that distort competition. Deregulation is governed by article 90 of the Treaty of Rome, which applies the rules of articles 85 and 86 to facilitate the deregulation of public enterprises. In the area of antitrust EC policy is governed by the Merger Regulation and by articles 85 and 86 of the Treaty of Rome.[39]

To facilitate its competition policy, in September 1990 the EC Commission adopted the Merger Regulation (initially proposed in 1973), thereby completing the range of instruments with which to combat anticompetitive behavior.[40] Since the Merger Regulation went into effect, the EC has taken approximately 153 merger decisions.[41] Only 10 of these cases were challenged, and only 1 was rejected by the EC Commission (the De Havilland merger).[42] At the end of 1993 the Merger Regulation will be up for review.[43] The EC Commission will reevaluate the level of the thresholds and decide whether to lower them.[44] In addition, the EC Commission will review Article 9 of the Merger Regulation relating to referring merger cases back to the member states.[45]

In the area of deregulation, the EC Commission has attempted to eliminate the anticompetitive effects of state-owned or state-regulated enterprises. Deregulation has accelerated in the last 5 years.[46] The EC Commission has focused its attention on deregulating the following sectors: energy (gas and electricity); telecommunications; transportation (air and maritime); banking and insurance; and audiovisual.[47] Under the direction of Sir Leon Brittan there was fairly good progress in liberalizing the air transport sector and some progress in the telecommunications sector.[48] However, there was not much progress in the area of energy.[49]

As for state aids, in the White Paper the EC Commission determined that it was particularly important to control the grant of state aids to uncompetitive industries and enterprises. The EC Commission continues to view state aids as distorting competition and endangering the unity of the common market.[50] In its latest competition report, the EC Commission stated that strict control of state aid is essential in ensuring the effectiveness of efforts to eliminate protectionism in the form of physical, technical, and tax barriers to intra-Community trade.[51] Whereas the EC Commission previously focused almost exclusively on new notifications of state aid, it will now focus its attention on existing aid systems as well.[52] To increase the transparency of the EC Commission's increased focus on state aids, it publishes a survey of all aids, publishes the decisions it takes with respect to state aids, and holds multilateral meetings with officials of the member states.[53]

Company Law

The goals of the EC Commission in the area of company law, as set forth in the White Paper, were to create a framework that would facilitate the cooperation between enterprises in different member states. The EC Commission set out to create a new type of association, known as the European Economic Interest Grouping (EEIG). It also wanted to create the European Company Statute (ECS) and stated in the White Paper that "[a] decision on the proposed statute will clearly be needed by 1992." Another goal was the adoption of the Tenth Directive to allow enterprises to

[38] EC Commission, *XXIst Report on Competition Policy*, p. 1.

[39] EC Commission, *XXth Report on Competition Policy*, p. 51; DG IV interview; Skadden Arps interview.

[40] DG IV interview.; EC Commission, *XXth Report on Competition Policy*, p. 12.

[41] For statistics on mergers and acquisitions, see chapter 1 of this report.

[42] DG IV interview. The main issues that arise under the application of the Merger Regulation are (1) if involving a joint venture, whether it is a concentrative or cooperative joint venture; (2) calculation of turnover; and (3) the definition of the geographical market. EC Commission, *XXth Report on Competition Policy*, pp. 39-40.

[43] DG IV interview.

[44] The current threshold level is an aggregate worldwide turnover of all undertakings involved of at least ECU 5 billion, or an aggregate Communitywide turnover of each of at least two of the undertakings involved of at least ECU 250 million. *Council Regulation 4064/89/EEC on the Control of Concentrations Between Undertakings (Merger Regulation)*, *OJ* No. L 257 (Sept. 21, 1990); DG IV interview; AmCham, Business Guide to EC Initiatives, p. 49.

[45] DG IV interview.

[46] Skadden Arps interview.

[47] EC Commission, *XXIst Report on Competition Policy*, p. 20-42; EC Commission, *Seventh Report*, p. 9; DG IV interview, 1993. For more specific information regarding these areas, see AmCham, *Business Guide to EC Initiatives*, pp. 51-52 (air transport), 54 (postal services), 89-101 (telecommunications) and 103-123 (banking and insurance).

[48] For more detail regarding EC air transportation policy, see chapter 8. For more detail regarding EC telecommunication policy, see chapter 4.

[49] UNICE interview. For more detail regarding EC energy policy, see chapter 5.

[50] The EC Commission, however, takes a positive view regarding certain regional development aids and aids to small and medium-size enterprises to assist their competitiveness. EC Commission, *XXIst Report on Competition Policy*, pp. 17-18. As such, the EC Commission has stated that it will not object to state aid schemes of "minor importance"—i.e., to those enterprises employing less than 150 persons and having an annual turnover of under ECU 15 million as long as the aid does not exceed 7.5 percent or amount to more than ECU 200,000. EC Commission, *XXth Report on Competition Policy*, p. 31.

[51] EC Commission, *XXIst Report on Competition Policy*, p. 14.

[52] Ibid. pp. 17-18; EC Commission, *XXth Report on Competition Policy*, p. 15.

[53] EC Commission, *XXIst Report on Competition Policy*, pp. 15-16; EC Commission, *XXth Report on Competition Policy*, p. 15.

engage in cross-border mergers. Finally, the EC Commission set out to: improve the procedures involving share offerings to the public; reshape the pattern of share ownership in enterprises; coordinate member states' laws governing limited companies; harmonize member states' laws governing branches of companies; and improve cooperation in the field of consolidated accounts.[54]

Some of these goals were realized by the target date of 1992. The directive on the EEIG was adopted in 1985[55] and has reportedly been used successfully.[56] The EEIG is an organizational option that allows companies to cooperate without requiring merger or joint subsidiaries. An EEIG has the legal authority to conclude contracts or other legal acts.[57] Progress was also made with regard to harmonization of the accounting and bookkeeping procedures of companies. The Second Company Law Directive (concerning the formation and capital of public limited companies),[58] the Fourth Directive (concerning coordination of annual accounts),[59] the Seventh Directive (concerning consolidated accounts),[60] and the Eighth Directive (concerning qualification of auditors)[61] were all adopted prior to the White Paper. In addition, the Eleventh Directive (concerning the disclosure and accounting requirements of branches)[62] and the Twelfth Directive (concerning single-member private limited-liability companies)[63] were adopted in December 1989. Despite this progress, there are considerable delays in the transposition of the company law directives by member states, with the exception of the EEIG, which is in force in all member states.[64]

Other progress in the area of company law, however, has been slow and has failed to meet the 1992 goals outlined in the White Paper. Much of the reason for this slow progress revolves around the debate over the harmonization of worker participation rights.[65] The United Kingdom and Ireland are opposed to any of the proposed worker participation alternatives listed in the directives, whereas both the EC Commission and Germany are against passing any regulations without worker participation provisions. This is the major stumbling block for the ECS, the Fifth Directive, and the Tenth Directive. The ECS creates an organizational structure for companies on the basis of EC laws, which is independent from the legal systems of the member states.[66] The Fifth Directive concerns the organization and structure of public limited companies and their boards,[67] and the Tenth Directive concerns cross-border mergers.[68]

Similarly, the proposed European Association, European Mutual Society, and European Cooperative Society are modeled after the ECS, with each having both a regulation covering the format of the organization's structure and an attached directive

[54] EC Commission, *Completing the Internal Market, White Paper From the Commission to the European Council*, pp. 35-37.

[55] Council Regulation on the European Economic Interest Grouping, *OJ* No. L 199 (July 15, 1985), p. 1.

[56] Approximately 275 EEIGs were formed by the second half of 1992. EXXON Chemical International, Inc., official, interview by USITC staff, Brussels, Jan. 11, 1993 (EXXON interview); UNICE interview.

[57] U.S. Department of Commerce, Business America, Feb. 25, 1991, p. 13. For more detailed coverage on the EEIG, see USITC, *The Effects of Greater Economic Integration Within the European Community on the United States* (investigation No. 332-267), USITC publication 2204, July 1989, pp. 9-23 to 9-24.

[58] Second Council Directive 77/91, *OJ* No. L 26 (Jan. 31, 1977), p. 1.

[59] Fourth Council Directive 78/660, *OJ* No. L 222 (Aug. 14, 1978), p. 111, amended, *OJ* No. L 317 (Nov. 16, 1990), pp. 57 and 60.

[60] Seventh Council Directive 83/349, *OJ* No. L 193 (July 18, 1983), p. 1, amended, *OJ* No. L 317 (Nov. 16, 1990), pp. 57 and 60.

[61] Eighth Council Directive 84/253, *OJ* No. L 126 (Dec. 5, 1985), p. 20.

[62] *Eleventh Council Directive Concerning Disclosure Requirements in Respect of Branches Opened in a Member State by Certain Types of Companies Governed by the Law of Another State, OJ* No. L 395 (Dec. 21, 1989), p. 36. For more detailed coverage on the Eleventh Directive, see USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, pp. 9-25 to 9-28, and USITC, *The Effects of EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, p. 9-9.

[63] *OJ* No. L 395 (Dec. 30, 1989).

[64] EC Commission, Seventh Report, p. 34.

[65] "Internal Market Council: Busy Schedule for June 18-19," European Report, No. 1777 (June 17, 1992), Internal Market, p. 7.

[66] The ECS is split into two instruments: a regulation covering the framework/establishment of the ECS (based on article 100a of the Treaty of Rome) and a directive covering the worker participation aspects of the ECS (based on article 54(3)g of the Treaty of Rome). A European Company can only be set up in a member state that has transposed the proposed directive into national law. *Proposal for a Council Regulation on the Statute for a European Company and 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), pp. 41 and 69, amended *OJ* No. C 138 (May 29, 1991). For more detailed information regarding the ECS, see USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, pp. 9-9 to 9-13.

[67] *Proposal for a Fifth Directive Based on Article 54(3)(g) of the EEC Treaty Concerning the Structure of Public Limited Companies and the Powers and Obligations of Their Organs, OJ* No. C 131 (Dec. 13, 1972), amended *OJ* No. C 240 (Sept. 9, 1983), amended *OJ* No. C 7 (Jan. 10, 1991), amended *OJ* No. C 321 (Dec. 12, 1991). The Fifth Directive was the first directive to have worker participation provisions. This directive requires worker participation for all public limited companies with a staff of over 1,000 persons. EC Commission company law official, interview by USITC staff, Brussels, Jan. 11, 1993; AmCham, *Business Guide to EC Initiatives*, p. 124. For more detailed coverage on the Fifth Directive, see USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, pp. 9-25 to 9-27.

[68] COM (84) 727. EXXON interview; UNICE interview; Associate Partner at Arthur Anderson and Chairman of the Company Law Working Group of the American Chamber of Commerce, meeting with USITC staff, Brussels, Jan. 12, 1993 (Arthur Anderson/AmCham interview).

covering worker participation in the organization. One source predicted that these proposals would not get very far, due to the worker involvement directives that are associated with them.[69] Another source, however, felt that the proposals may have a greater chance of being adopted given that the mutuals and cooperatives are in favor of them and have lobbied for the ECS.[70]

Currently, the ECS is before the EC Council of Ministers. Thereafter, it will go back to the Parliament for a second reading.[71] According to one source, the ECS is not important enough to obtain priority by the Council, especially now that the influence of EC unions, which advocate compulsory worker participation, is decreasing.[72] Another possible contributing factor to the standstill of the ECS is the problems with the passage of the Maastricht Treaty and the recently revived focus on the principle of "subsidiarity."[73] Thus, the ECS may be seen as taking too much control from the member states and, therefore, the EC Commission is proceeding cautiously, especially in areas involving social provisions.[74] Nonetheless, the only issue on the agenda of the current Danish Presidency of the EC in the area of company law is to obtain the adoption of the ECS.[75] According to several sources, the other directives will not be considered until the worker participation provisions of the ECS are first resolved.[76] The EC Commission stated in September 1992 that "[i]n view of the priority accorded to adoption of [the ECS], examination of the revised proposal for a fifth Directive has been suspended pending a solution to the problem of worker participation."[77]

The Fifth Company Law Directive is currently before the Council of Ministers awaiting a common position.[78] There are many similarities between the Fifth Directive and the ECS; the Fifth Directive governs companies organized under member-state law, whereas the ECS governs companies organized under EC law. Thus, if the worker provisions of the ECS can be agreed on, then the Fifth Directive may also be revived.[79]

[69] UNICE interview.
[70] Arthur Anderson/AmCham interview.
[71] AmCham, *Business Guide to EC Initiatives*, p. 130.
[72] EXXON interview.
[73] Ibid.
[74] U.S. Council for International Business official, interview by USITC staff, New York, Oct. 27, 1992.
[75] Arthur Anderson/AmCham interview.
[76] UNICE interview; EC company law official, interview by USITC staff, Brussels, Jan. 11, 1993.
[77] EC Commission, *Seventh Report*, p. 33.
[78] AmCham, *Business Guide to EC Initiatives*, p. 124.
[79] EC Commission company law official, interview by USITC staff, Brussels, Jan. 11, 1993; AmCham, *Business Guide to EC Initiatives*, pp. 124-125. UNICE is advocating withdrawal of the Fifth Directive since it is based on an agenda of 20 years ago and it believes that there is no real current need for it. UNICE interview. This view was shared by an Associate Partner at Arthur Anderson, who believed that there is no need for the Fifth Directive, and that, therefore, it probably will not be adopted. Arthur Anderson/AmCham interview.

The Tenth Company Law Directive is blocked in Parliament because workers are not guaranteed rights to information and consultation.[80] Apparently Parliament refuses to address the Tenth Directive because it would prefer to have mergers take place through the ECS, since the ECS would require much greater worker involvement than would the Tenth Directive.[81]

The Thirteenth Directive (concerning standardized procedures for tenders and takeover bids) is relatively noncontroversial,[82] but it also is held up by the Council, which must reach a common position before it can adopt the directive.[83] The Thirteenth Directive was suspended in April 1991 because the Council decided to focus on the ECS worker participation provisions first.[84] The EC Commission had originally proposed a package of directives aimed at liberalizing the EC rules on company takeovers. The Thirteenth Company Law Directive was the key directive in this area, involving takeover bids and public exchange offers, but prospects for its passage do not look good.[85]

Implications for the United States

Competition Policy

Although the EC Commission has been fairly aggressive in prohibiting anticompetitive behavior, U.S. companies want the EC to take even more control over competition policy.[86] U.S. companies thrive under EC competition policy because it fosters a more competitive environment by leveling the playing field and keeping companies in the member states from forming monopolies or price fixing.[87] For example, there is more access for U.S. companies to EC

[80] An opinion of Parliament is required before the directive may proceed to the Council. EC company law official, interview by USITC staff, Brussels, Jan. 11, 1993. For more detailed coverage on the Tenth Directive, see USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, pp. 9-25 to 9-27.
[81] UNICE interview.
[82] *Proposal for a 13th Council Directive on Company Law Concerning Takeover and Other General Bids*, COM (88) 823, *OJ* No. C 64 (Mar. 3, 1989), p. 11, proposed amendment, *OJ* No. C 240 (Sept. 27, 1990), p. 7. For more detailed information regarding the Thirteenth Directive, see USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, pp. 9-16 to 9-20.
[83] Arthur Anderson/AmCham interview.
[84] EC company law official interview.
[85] Ibid.
[86] Skadden Arps interview; American Express official, interview by USITC staff, Brussels, Jan. 12, 1993 (American Express interview). For example, U.S. banks have been hoping that EC competition policy would aid them in breaking into banking cartels in certain member states, e.g., France, that can be very restrictive for nonnational banks. Official of J.P. Morgan, interview by USITC staff, Paris, Jan. 7, 1993 (J.P. Morgan interview); American Express interview. The National Association of Manufacturers (NAM) would prefer the EC to take stricter control over subsidies. Member of NAM, telephone conversation with USITC staff, Washington, DC, Oct. 15, 1992 (NAM conversation).
[87] Skadden Arps interview; EXXON interview.

telecommunications due to privatization and deregulation.[88] Thus, most U.S. companies operating in Europe are not in favor of the EC Commission's subsidiarity principle that would grant more control to the member states in the area of competition policy.[89]

Overall, U.S. companies have been pleased with the application of the EC Merger Regulation.[90] The Merger Regulation does not discriminate against non-EC companies as long as a foreign company sets up a subsidiary in one of the member states. It is now easier than in the past for both EC and U.S. companies to conclude a deal (e.g., merger, transfer of assets, or divisions of companies) under the Merger Regulation.[91] In the past U.S. subsidiaries incorporated in one member state conducted business in only that one member state. Now, however, they can operate throughout the EC without having to incorporate in each member state.[92]

Moreover, U.S. companies that want to merge prefer to meet the EC threshold that will place the merger under the jurisdiction of the EC Merger Regulation rather than under the jurisdiction of a member state, because the EC's administration of mergers is both quicker and easier than in most member states.[93] The EC's Merger Task Force, which is responsible for investigating mergers that fall under EC jurisdiction, has adhered to its strict time deadlines in all cases.[94] Officials on the Merger Task Force are also very accessible and amenable to working out mutually acceptable solutions to deals rather than rejecting mergers outright.[95] There also have been no problems with confidentiality leaks, which were an initial concern.[96]

The main problem in the area of competition policy concerns those transactions that do not fall within the scope of the Merger Regulation and therefore do not benefit from the timely deadlines.[97] The EC's administrative body governing competition has limited staff and resources to follow through on all types of anticompetitive behavior.[98] For example, as noted above, cooperative joint ventures are not within the scope of the Merger Regulation and therefore do not benefit from the quick turnaround. However, with the promulgation of the new joint venture guidelines this situation may be ameliorated.[99]

The "Agreement Between the Government of the United States of America and the Commission of the European Communities Regarding the Application of Their Competition Laws" (hereinafter "U.S.-EC Antitrust Agreement") covers the EC Merger Regulation as well as application of articles 85 and 86 of the Treaty of Rome.[100] It is primarily an administrative tool designed to prevent problems from arising in cases where both the European Community and the United States may have jurisdiction.[101] The agreement allows the government officials of both parties to discuss confidential information and facilitates a "cross-fertilization of ideas."[102] According to the EC competition policy officials, DG IV relations with the U.S. Federal Trade Commission and Department of Justice are "phenomenal," since the agreement has been very positive in fostering cooperation and information exchange.[103] The EC would like to see this agreement lead to a more detailed framework, e.g., harmonization of notification schemes and convergence of the two systems to relieve the costs to companies that would be affected by both systems.[104]

The French Government challenged the U.S.-EC Antitrust Agreement in the European Court of Justice on December 16, 1991, primarily on procedural grounds.[105] France also has a few substantive

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[88] Skadden Arps interview.

[89] Procter & Gamble official, interview by USITC staff, Brussels, Jan. 11, 1993 (Procter & Gamble interview); Arthur Anderson/AmCham interview.

[90] NAM conversation; Competition Policy Coordinator interview. There have been a total of 79 competition cases involving U.S. companies dealt with by DG IV (as of January 8, 1993). Director, Merger Task Force (DG IV), interview by USITC staff, Brussels, Jan. 11, 1993.

[91] Another reported benefit of the Merger Regulation is that it is possible to merge a U.S. subsidiary incorporated in a member state without tax consequences. Partner of Peat Marwick, interview by USITC staff, Paris, Jan. 7, 1993 (Peat Marwick interview).

[92] Ibid. These officials do feel, however, that the U.S. tax laws put U.S. companies operating abroad at a disadvantage due to the extraterritoriality of U.S. corporate income tax laws. U.S. companies operating in Europe are taxed both in Europe and by the United States. On the other hand, European companies that operate in the United States are taxed by the United States but not also by the EC.

[93] Competition Policy Coordinator interview; Procter & Gamble interview; Peat Marwick interview.

[94] Competition Policy Coordinator interview; AmCham, *Business Guide to EC Initiatives*, p. 49.

[95] Ibid., p. 50.

[96] Competition Policy Coordinator interview; EC Commission, *XXth Report on Competition Policy*, p. 38.

[97] There is always the possibility of referring a merger back to a member state, even if it does meet the EC threshold, if the effect on competition is confined primarily to a particular member state's market. AmCham, *Business Guide to EC Initiatives*, p. 49.

[98] American Express interview.

[99] Competition Policy Coordinator interview.

[100] DG IV interview. For more detailed information regarding the U.S.-EC Antitrust Agreement, see USITC, The *Effects of Greater Economic Integration Within the European Community on the United States—Fourth Follow-Up Report* (investigation No. 332-267), USITC publication 2501, Apr. 1992, pp. 10-5 to 10-6.

[101] American Express interview.

[102] Reportedly, the number of contacts between U.S. and EC government officials since the inception of the agreement has increased tenfold to twentyfold. DG IV interview.

[103] Ibid.

[104] Ibid.; EC Commission, *XXth Report on Competition Policy*, p. 30.

[105] France is of the opinion that the EC should have first consulted with the European Parliament and obtained the approval of the Council of Ministers pursuant to article 228 of the Treaty of Rome before proceeding to enter into the agreement. *Recours Introduit le 16 Decembre 1991 par la République Française Contre la Commission des Communautés Européennes, OJ* No. C 28 (Feb. 5, 1992), p. 4.

criticisms about the agreement. For example, France has expressed concern that the U.S. legal criteria may be disadvantageous to EC companies, and France does not feel that the accord is too vague. Furthermore, France does not want the EC Commission to take too much power but wants it to be controlled by the Council of Ministers, which is composed of representatives from the member states.[106] Others, including the EC Commission, have opined that since the agreement is simply a cooperative agreement and does not bind the EC Commission to any formal action, adoption by the Council is unnecessary.[107]

Company Law

U.S. businesses with operations in Europe generally are in favor of harmonizing EC company law but are against compulsory labor involvement, which they feel would impede the corporate decisionmaking process and thereby interfere with productivity and efficiency.[108] Although many U.S. companies with subsidiaries in Europe see the potential usefulness of forming under a European entity such as the ECS,[109] companies of both U.S. and member-state parentage view the ECS as a hollow instrument with the added disadvantage of the compulsory worker participation requirements.[110] Furthermore, as it currently stands, the ECS does not greatly simplify operations in multiple member states.[111] The original intention of the ECS was for Community law to apply and thereby harmonize the rules of companies. Now, however, the ECS has been changed to allow member states' laws to apply in many circumstances, which defeats the original intent.[112]

In addition, companies complain that the tax aspects of the ECS are insufficient and do not confer any real advantages.[113] A company organized under the ECS would be subject to the tax law of the member state in which it is established. Losses suffered by a branch of the company established in another member state could be offset by the European company's profits for tax purposes, but any subsequent profits made by the branch would have to be added to the profits of the European company up to the amount of any loss previously deducted. However, the Council of Ministers, which is now reviewing the ECS, has indicated a desire to eliminate some of the offsetting of losses for tax purposes.

For the above reasons, there is currently very little interest on the part of U.S. companies to form a European Company, if the ECS were ever to be adopted. The European Company, therefore, is seen primarily as a beneficial marketing device that may also confer some simplification of recordkeeping.[114] On the other hand, most member states already require companies to have some form of labor involvement (e.g., collective bargaining or worker councils). Since many U.S. companies have incorporated under many member states' laws and already have to comply with the various worker participation systems, harmonization of such rules could be beneficial.[115]

With regard to the proposed regulations and associated directives on the European association, cooperatives, and mutual societies, most U.S. businesses in Europe are more affected by the ECS and would not opt for these other forms. Thus, for lack of interest the American Chamber of Commerce did not take a position on them.[116] UNICE, although in favor of the principle of these statutes as set forth in the three regulations, is opposed to the annexed directives involving worker participation. UNICE also finds that these proposals lack flexibility and are largely unusable.[117]

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[106] Ibid.

[107] "Recours de la France Contre la Commission Qui, A Son Avis, ne Pouvait pas Conclure l'Accord Avec les Etats-Unis sur la Concurrence," *Europe*, No. 5644, Jan. 11, 1992; American Express interview; "France Challenges U.S.-EC Antitrust Agreement," *EC Reports* (Feb. 1, 1992), pp. 6-7.

[108] AmCham, *Business Guide to EC Initiatives*, p. 124; Member of the EC Committee of the U.S. Council for International Business, telephone conversation with USITC staff, New York, Oct. 15, 1992; Peat Marwick interview; Procter & Gamble interview. This viewpoint is not limited to U.S. companies with operations in Europe. The federation of employers of European companies, UNICE, is also against compulsory labor involvement. UNICE interview.

[109] AmCham, *Business Guide to EC Initiatives*, p. 130; Procter & Gamble interview.

[110] J.P. Morgan interview; EuroDisney official, interview by USITC staff, Paris, Jan. 8, 1993; EXXON interview; Arthur Anderson/AmCham interview.

[111] J.P. Morgan interview. Most U.S. companies that have operations in the EC have incorporated under the laws of each of the member states in which they have significant business operations.

[112] Arthur Anderson/AmCham interview.

[113] EXXON interview; Arthur Anderson/AmCham; AmCham, *Business Guide to EC Initiatives*, pp. 129-130.

[114] EXXON interview; UNICE interview.

[115] Procter & Gamble interview.

[116] Arthur Anderson/AmCham interview.

[117] "Company Law: UNICE and ESC Differ on Social Economy Statutes," *European Report*, No. 1773 (June 3, 1992), Business Brief, p. 11.

CHAPTER 10
TAXATION

The 1985 White Paper that set out the goals of the 1992 program called for the harmonization of indirect taxes (value-added and excise taxes) so that the removal of frontier controls on January 1, 1993, would not result in economic distortion. The White Paper also called for the adoption of three tax-related intracompany transfer directives dating back to 1969 and 1976 and for the liberalization of capital markets, which raised tax evasion implications with respect to the reporting of interest on savings.

Actions on taxation require unanimous member-state approval, and this requirement has made progress on tax issues difficult. Directives providing for the approximation and harmonization of value-added tax (VAT) and excise duty rates and structures were adopted in October 1992, but only after the United Kingdom dropped its opposition to a mandatory minimum VAT rate of indefinite duration and agreed to a compromise under which a minimum VAT rate would be set through 1996. The member states, unable to reach agreement on a definitive system for the administration of VAT, agreed to a transitional system, which will be in effect through 1996. Nevertheless, by January 1, 1993, all member states had aligned their VAT and excise duty rates in the manner called for in the directives.

The three company tax directives, adopted in 1990, have not been implemented by most member states. Two additional company tax directives proposed by the EC Commission in late 1990 have not yet been adopted by the Council. A directive providing for a withholding tax on savings proposed by the EC Commission in 1989 was rejected and little further progress has been made on the issue.

Developments During 1992

Indirect Taxation

The last remaining taxation-related obstacles to the elimination of frontier controls on December 31, 1992, were removed on October 19, 1992, with the adoption by the EC Council of the eight remaining directives relating to VAT and excise duty rates and structure. As a result, frontier controls were removed effective January 1, 1993, and the new transitional VAT system and definitive excise duty system are now in place. Restrictions on what travelers could carry across member-state borders have been removed. Two additional directives were adopted in December 1992 simplifying the VAT and excise duty systems. In October and November 1992, the EC Commission issued two proposed directives relating to VAT and gold and VAT and passenger transport.

Background

Harmonization of indirect taxes was viewed as necessary if frontier controls were to be removed and goods and services were to move freely between member states without resulting in economic distortion. Although VAT was, with certain derogations, being levied on a common base pursuant to the rules set forth in the Sixth VAT Directive, adopted in 1977, rates and structures continued to vary widely from one member state to another. As a result, goods moving from one state to another within the Community continued to be treated much the same as imports, with VAT rebated on exports and reimposed on imports at the border, even though the customs union had been achieved in 1968. The resulting delay and paperwork added an estimated 1.5 percent to the cost of goods that crossed internal borders.[1] Similarly in the case of goods covered by excise duties, while some progress had been made through a 1972 directive to harmonize structures of excise duty on cigarettes, little progress had been made in the case of alcoholic beverages or petroleum products.[2]

Achieving agreement proved difficult for two main reasons. First, because such taxes represent a significant source of revenue, their rate structures reflect national social policies. The White Paper recognized that such changes could pose "considerable problems" for some member states and would involve areas of "considerable political sensitivity."[3] Second, reflecting these national sensitivities, the Single European Act continued the requirement that actions involving taxation receive unanimous approval. This permits individual member states to block actions even when there is broad agreement.

In 1987, the EC Commission introduced a series of proposals, within the framework of the White Paper, providing for an approximation of VAT and excise tax rates and a clearing mechanism to adjust member-state revenues (since VAT would continue to be paid to the state in which the good is produced, but would be owed to the state in which the good is consumed).[4] The proposals called for, among other things, the establishment of rate bands, which, in the case of VAT, would have required member states to establish a "standard" rate for most goods and services within a rate band of 14 to 20 percent and a "reduced" rate for certain enumerated basic goods and services (e.g.,

[1] P. Cecchini, *The European Challenge 1992: The Benefits of a Single Market* (1988), p. 9.

[2] See generally, EC Commission, *Completing the Internal Market: White Paper From the Commission to the European Council*, June 1985, pars. 165-166.

[3] Ibid., par. 218.

[4] The package consisted of nine documents: a Global Communication summarizing the package, seven proposed directives relating to VAT and excise duties, and a working paper on a proposed VAT clearing mechanism. For an overview, see EC Commission, *Completion of the Internal Market: Approximation of Indirect Tax Rates and Harmonization of Indirect Tax Structure*, Global Communication from the Commission, COM (87) 320, Aug. 5, 1987.

foodstuffs) within a 4 to 9 percent rate band. The proposals met with considerable opposition. Member states with higher rates feared an adverse revenue effect of having to reduce rates; and others that zero-rated food and certain other goods opposed having to increase rates to a "reduced" rate on such goods. Some found the proposed clearing mechanism to be too complicated. Southern wine-producing states feared that imposition of an EC-wide excise duty on wine would adversely affect local wine consumption and production.

By late 1990, a broad agreement had been reached to follow a more flexible approach on rates and rate structure and to adopt a transitional system for the administration of VAT, rather than the clearing mechanism proposed by the EC Commission. In December 1991, the Council adopted a directive providing for a transitional system to function between January 1993 and January 1997.[5] Under the transitional system, VAT will no longer be paid at importation, but will be paid as part of an accounting exercise to be administered by the member states, involving VAT numbers, new accounting software, and electronic exchange of data. It was agreed that a definitive system similar in concept to that proposed by the EC Commission in 1987 would be negotiated before 1996 and would take effect in 1997.[6] To help avoid tax evasion, the Council in January 1992 adopted a regulation providing for cooperation between member-state tax authorities on VAT.[7] Agreement on a regime for administering excise duties proved less difficult, and political agreement on a definitive system was reached in late 1991. A directive providing for such a system was adopted in February 1992.[8] Under this system, goods subject to excise duties would move through a unified system of authorized warehouses, regulated by the member states, with the tax to be paid in the destination country and to become chargeable when the goods are released from the warehouse for consumption.

By late 1991, political agreement had been reached on a rate system under which member states would maintain a minimum standard VAT of 15 percent and one or two reduced rates of 5 percent or more; there would be no ceiling on the standard rate, and member states that currently zero-rated certain goods could continue to do so. A convergence process toward such a rate structure was already well under way. However, notwithstanding political agreement on most issues, agreement had not been reached on several key issues, including certain VAT and excise duty rates and structures and whether agreed-to minimum VAT rates would be binding.

Developments

While political agreement on the eight directives had been reached at a Council meeting in late July 1992, final adoption of the package was held up pending the removal in October of French and Spanish reservations relating to wine and sherry. France had sought a minimum "control duty" on wine, and Spain was contesting the British excise rate applied to Spanish sherry. France subsequently withdrew its reservation, and the United Kingdom and Spain reached agreement on the sherry issue.

Value-Added Tax

The first of the eight directives resolved the remaining outstanding VAT issues.[9] It provides for a minimum "standard" rate of 15 percent and permits member states to apply either one or two "reduced" rates of no less than 5 percent on certain listed basic goods and services, such as foodstuffs, pharmaceuticals, medical and dental services and equipment, transportation services, and hotel accommodations.[10] The minimum standard rate of 15 percent is mandatory; the establishment of one or two reduced rates is optional. The directive also provides for a number of exceptions and transition provisions to accommodate the needs of individual member states. For example, such states as Ireland and the United Kingdom that zero-rated certain goods prior to 1991 would be permitted to continue to do so, and the two states required to raise their standard rate the most, Spain and Luxembourg, were permitted to establish a "super-reduced" rate of 3 percent for certain essential goods.[11] However, the rate structure agreed to in the directive is only for the 4-year period, January 1, 1993-December 31, 1996,[12] and continuation beyond 1996 of the rates agreed upon will require a unanimous agreement of all member states. By the close of 1992, all member states had taken such actions as might be necessary to insure that their VAT rates would conform with the directive on January 1, 1993.[13]

[5] *Council Directive 91/680/EEC of 16 December 1991 Supplementing the Common System of Value Added Tax and Amending Directive 77/338/EEC With a View to the Abolition of Fiscal Frontiers, OJ* No. 376 (Dec. 31, 1991), p. 1.

[6] The EC Commission favors adoption of a system under which VAT would continue to be paid in the member state in which the good is produced and revenues would be adjusted via a central clearing mechanism to reflect relative balances of trade and differing member-state rates.

[7] *Council Regulation (EEC) No. 218/92 of 27 January 1992 on Administrative Cooperation in the Field of Indirect Taxation (VAT), OJ* No. L 24 (Feb. 1, 1992), p. 1.

[8] *Council Directive 92/12/EEC of 25 February 1992 on the General Arrangements for Products Subject to Excise Duty and on the Holding, Movement and Monitoring of Such Products, OJ* No. L 76 (Mar. 23, 1992), p. 1.

[9] *Council Directive 92/77/EEC of 19 October 1992 Supplementing the Common System of Value Added Tax and amending Directive 77/388/EEC (Approximation of VAT Rates), OJ* No. L 316 (Oct. 31, 1992), p. 1.

[10] Ibid., art. 1, amending art. 12 (3) of Directive 77/388/EEC. The goods and services eligible for the reduced rates are listed in new Annex H to Directive 77/388/EEC.

[11] Ibid.

[12] Ibid.

[13] As of Jan. 1, 1993, the standard rates of the 12 member states ranged from 15 percent in Germany, Luxembourg, and Spain to 21 percent in Ireland and

The 4-year period of application of a minimum rate reflected a compromise. The United Kingdom had opposed adoption of a directive that made a minimum rate mandatory, preferring instead to let market forces regulate tax rates.[14] Thus, unless a unanimous agreement is reached before 1997 either on an extension of the agreed-to rates or on new minimum rates, there will be no minimum required rate thereafter.[15] Reportedly, a second consideration in the United Kingdom's willingness to compromise on the minimum rate issue was the success in obtaining agreement on the directive covering excise duty rates on whiskey, an important British export. The United Kingdom sought and obtained agreement on a directive that would set minimum rates for whiskey at variable levels based on existing rates and would not require other member states, with the exception of Greece, to raise their rates.[16]

There was considerable debate during 1992 with respect to the VAT rates to be applied to transportation services, secondhand goods and works of art, and gold; agreement was reached on only one of the three, transportation services, and it was agreed that member states for the most part could continue their present practices. Member-state VAT rates on transportation services varied widely not only from one member state to another but also within states by mode of travel (e.g., land vs. air); in addition, rates for a given mode sometimes varied depending on whether the travel was within the member state, between member states, or international. It was agreed that member states would be permitted for the most part to continue their present practices, including zero rating, during a transitional period and that they could make such services subject to a reduced rate;[17] in November 1992, the EC Commission issued a proposed directive defining certain terms and calling for the Council to adopt, by the end of 1995, definitive arrangements for passenger transport.[18]

13—*Continued*

25 percent in Denmark. The standard rate in the United Kingdom, which had opposed a binding directive that set a minimum rate, was 17.5 percent.

[14] See, e.g., *European Report*, No. 1771 (May 23, 1992), sec. II, p. 2.

[15] According to British Chancellor of the Exchequer Norman Lamont, "if there is no unanimous agreement, there will be no legally binding minimum rate after this date [Dec. 31, 1996], which will then allow us total freedom," as quoted in *European Report*, No. 1789 (July 29, 1992), sec. II, p. 4.

[16] The United Kingdom, which exports 85 percent of its whiskey production, was concerned about loss of sales in other EC countries if rates were raised substantially. The United Kingdom actually imposes the highest rates in the EC on whiskey. For further discussion, see *European Report*, No. 1789 (July 29, 1992), sec. II, pp. 4-5.

[17] For additional information, see *European Report*, No. 1800 (Oct. 3, 1992), sec. II, pp. 2-3.

[18] *Proposal for a Council Directive Amending Directive 77/388/EEC as Regards the Value Added Tax Arrangements Applicable to Passenger Transport*, COM (92) 406, *OJ* No. C 307 (Nov. 25, 1992), p. 11.

Taxation of secondhand property and works of art was the subject of the Seventh VAT Directive, proposed in 1977 and modified by the EC Commission in 1988.[19] Under the modified proposal, such goods would be eligible for a reduced rate of VAT. The United Kingdom, which is a major world art market and which currently zero-rates works of art, is concerned that an imposition of a 5-percent VAT could shift sales to Geneva and other markets outside the EC. Italy and Greece continue to have problems with provisions covering the sale of used cars.[20] The EC Commission issued a proposed directive on October 28, 1992, on gold, which would exempt gold used for financial purposes ("investment gold"), but would subject gold to be used for industrial purposes to the standard VAT rate.[21]

Excise Duties

The remaining seven directives in the October package concerned the approximation of rates and harmonization of structures for excise duties on tobacco, mineral oils, and alcoholic beverages. Three of the seven pertained to tobacco. The first amended definitions in two earlier directives,[22] and the two others established minimum excise duty rates for cigarettes and manufactured tobacco products other than cigarettes.[23] Under a compromise agreement reached in June 1992, the minimum excise duty on cigarettes was set at 57 percent (specific duty plus ad valorem duty, but not including VAT) of the retail selling price (inclusive of all taxes) of the most popular brand of cigarettes.[24] The minimum excise duties on other manufactured tobacco (cigars and cigarillos, fine-cut tobacco intended for the rolling of cigarettes, and other smoking tobacco) were set either as a percentage of retail selling price (ranging from 5 to 30 percent, depending on the good) or as an amount per kilogram (ECU 7 to 20, depending on the good).[25]

Two of the directives pertained to mineral oils, including gasoline, home heating oil, natural gas, and kerosene. The first provided for the harmonization of

[19] COM (88) 486.

[20] See, e.g., *European Report*, No. 1804 (Oct. 17, 1992), sec. II, p. 6.

[21] *Proposal for a Council Directive Supplementing the Common System of Value Added Tax and Amending Directive 77/388/EEC—Special Scheme for Gold*, COM (92) 441, *OJ* No. C 302 (Nov. 19, 1992), p. 9.

[22] *Council Directive 92/78/EEC of 19 October 1992 Amending Directives 72/464/EEC and 79/32/EEC on Taxes* Other Than Turnover Taxes Which Are Levied on the Consumption of Manufactured Tobacco, OJ No. L 316 (Oct. 19, 1992), p. 5.

[23] *Council Directive 92/79/EEC of 19 October 1992 on the Approximation of Taxes on Cigarettes, OJ* No. L 316 (Oct. 19, 1992), p. 8; and *Council Directive 92/80/EEC of 19 October 1992 on the Approximation of Taxes on Manufactured Tobacco Other Than Cigarettes, OJ* No. L 316 (Oct. 19, 1992), p. 10.

[24] *Council Directive 92/79/EEC*, art. 2.

[25] *Council Directive 92/80/EEC*, art. 3.

structures of duties and certain definitions,[26] and the second set out the minimum excise rates on such products.[27] At the same time that it adopted the two directives, the Council also issued a decision pursuant to the directives permitting the 12 member states to continue to exempt certain products from duty or to apply reduced rates to such products (e.g., to petroleum products used in public transport vehicles); the list of products varies from state to state.[28]

The remaining two directives related to alcohol and alcoholic beverages, including beer, wine, other fermented beverages, intermediate products, and ethyl alcohol. The first of the two provided for the harmonization of structures of duties and certain definitions,[29] and the second set out the minimum excise rates on such products.[30] As indicated above, reaching agreement on certain of these rates proved difficult and reflected a compromise based on varying member-state considerations. The agreed minimum rate for distilled spirits (including whiskey) was set in terms of existing rates so as not to require member states (except Greece) to raise their rates and possibly adversely affect sales of British whiskey in other member states. Because the rates existing in 1992 varied widely among the member states, the applicable minimum rate is higher in high-rate states than in low-rate states. The minimum excise duty on wine was set at zero, reflecting the result sought by southern wine-producing member states, which historically had not imposed an excise duty on wine. However, as noted above, France, with the support of the domestic wine industry, had sought a "control levy" of 3 ECUs per hectoliter as a way of monitoring trade flows. France dropped its reservation after the Council agreed to keep the control issue open and to require the EC Commission to prepare a report on the effectiveness of current controls on the movement of wine before the end of 1995.[31] The dispute between the United Kingdom and Spain on sherry was resolved through an agreement between the two states, which was published along with the eight directives, under which the United Kingdom agreed to reduce its rates on Spanish sherry over a 4-year period.[32]

On December 14, 1992, the Council adopted two additional directives simplifying the VAT and excise duty systems scheduled to take effect January 1, 1993. The VAT directive, among other things, simplified VAT payment procedures in the case of intra-EC triangular trade (e.g., when a company in Germany buys equipment in France and ships it to a customer in Belgium).[33] The excise duty directive, among other things, amended the February 1992 excise system directive to clarify certain definitions concerning member-state territory for tax purposes and simplify administrative procedures.[34]

Company Taxation

During 1992, little additional progress was made either in implementing the three intracompany transfer measures identified in the 1985 White Paper and adopted by the Council in 1990 or in resolving differences that would allow Council adoption of the two directives relating to company taxation proposed by the EC Commission in late 1990. Released in March 1992, the Ruding Committee report reexamining company taxation issues was the subject of considerable discussion, including a July 1992 analysis by the EC Commission.

The three measures adopted by the Council in 1990 included a parent companies-subsidiaries directive, a mergers directive, and an arbitration convention.[35] The two directives entered into force on January 1, 1992. As of September 1992, the parent-subsidiaries

[26] *Council Directive 92/81/EEC of 19 October 1992 on the Harmonization of the Structures of Excise Duties on Mineral Oils, OJ* No. L 316 (Oct. 19, 1992), p. 12.

[27] *Council Directive 92/82/EEC of 19 October 1992 on the Approximation of the Rates of Excise Duties on Mineral Oils, OJ* No. L 316 (Oct. 19, 1992), p. 19.

[28] *Council Decision of 19 October 1992 Authorizing Member States to Continue to Apply to Certain Mineral Oils When Used for Specific Purposes, Existing Reduced Rates of Excise Duty or Exemptions from Excise Duty, in Accordance with the Procedure Provided for in Article 8 (4) of Directive 92/81/EEC, OJ* No. L 316 (Oct. 19, 1992), p. 16.

[29] *Council Directive 92/83/EEC of 19 October 1992 on the Harmonization of the Structures of Excise Duties on Alcohol and Alcoholic Beverages, OJ* No. L 316 (Oct. 19, 1992), p. 21.

[30] *Council Directive 92/84/EEC of 19 October 1992 on the Approximation of the Rates of Excise Duties on Alcohol and Alcoholic Beverages, OJ* No. L 316 (Oct. 19, 1992), p. 29.

[31] *European Report*, No. 1805 (Oct. 21, 1992), sec. II, pp. 4-5.

[32] *Agreement Between the United Kingdom and the Kingdom of Spain and Related Statement, OJ* No. L 316 (Oct. 19, 1992), p. 28. The United Kingdom applied a significantly higher excise duty to alcoholic beverages of over 15 percent alcohol by volume (abv). Spanish sherry, a naturally fermented product, exceeded the 15 percent threshold. British sherry, however, was an artificially fermented product, which could be produced at an abv of under 15 percent.

[33] *Council Directive 92/111/EEC of 14 December 1992 Amending Directive 77/388/EEC and Introducing Simplification Measures With Regard to Value Added Tax, OJ* No. L 384 (Dec. 30, 1992), p. 47.

[34] *Council Directive 92/108/EEC of 14 December 1992 Amending Directive 92/12/EEC on the General Arrangements for Products Subject to Excise Duty and on the Holding, Movement and Monitoring of Such Products and Amending Directive 92/81/EEC, OJ* No. L 390 (Dec. 31, 1992), p. 124.

[35] The three measures, (1) Council Directive 90/434/EEC of July 23, 1990, on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member states; (2) Council Directive 90/435/EEC of July 23, 1990, on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states; and (3) a convention, document 90/436/EEC, on the elimination of double taxation in connection with adjustment of profits of associated enterprises, are published in *OJ* No. L 225 (Aug. 20, 1990), p. 1.

directive had been transposed in nine member states, and the mergers directive, in five. The arbitration convention had been ratified in only two.[36]

The two directives proposed by the EC Commission in late 1990, which are designed to eliminate double taxation in the case of interest and royalty payments and losses from permanent establishments and subsidiaries in other member states,[37] have the support of the European Parliament but lack the support of some member states.[38] To be adopted, the Council vote must be unanimous.

The Ruding Committee, chaired by former Dutch Finance minister Onno Ruding, issued its report, "Conclusions and Recommendations of the Committee of Independent Experts on Company Taxation," in mid-March 1992. The Committee's mandate, which had been set out in a letter from EC Tax Commissioner Scrivener dated October 25, 1990, was to evaluate the need for greater harmonization of business taxation within the EC. In carrying out its work, the Committee considered three questions: (1) whether differences in taxation among member states cause major distortions in the internal market, particularly with respect to investment decisions and competition; (2) whether such distortions are likely to be eliminated through the interplay of market forces and tax competition between member states, or action is required at the Community level; and (3) what specific measures are required at the Community level to remove or mitigate such distortions.[39]

The report identified the following as the principal tax-related sources of bias against inward and outward direct investment: (1) withholding taxes levied by source countries on cross-border dividend payments between related companies, (2) differences among member states in the methods of providing relief for double taxation cross-border income flows, (3) differences in corporation tax rates between countries, and (4) the discriminatory effect of unrelieved imputation taxes related to distributions by parent companies from profits earned abroad.[40] The Committee found that there had been some convergence of tax regimes over the prior decade, but that wide differences remained.[41] It concluded that it was unlikely that these differences would be reduced significantly through independent action by member states and that action at the Community level would therefore be needed.[42]

The Committee recommended that action at the Community level be concentrated on the following priorities:

a. Removing those discriminatory and distortionary features of countries' tax arrangements that impede cross-border business investment and shareholding;

b. Setting a minimum level for the statutory corporation tax rate and common rules for minimum tax base, so as to limit excessive tax competition between member states intended to attract mobile investment or taxable profits of multinational firms, either of which tends to erode the tax base in the Community as a whole; and

c. Encouraging the maximum transparency of any tax incentives granted by member states to promote investment.[43]

The Committee made a number of recommendations to be implemented in three phases. For Phase I, which would be implemented by the end of 1994, the Committee recommended, among other things, adoption of the two company tax directives proposed in late 1990 as well as ratification of the Arbitration Convention. For Phase II, which would be implemented during the second phase of economic and monetary union, the Committee proposed, among other things, that all member states adopt a minimum corporation tax rate of 30 percent and a maximum rate of 40 percent and that member states set minimum standards for the tax base for such items as depreciation. For Phase III, which would be concurrent with full economic and monetary union, the Committee proposed adoption of a common corporation tax system.[44]

In response to the Ruding report, the EC Commission, in June 1992, issued a communication setting out new guidelines on company taxation. The EC Commission indicated that it would, by yearend 1992, issue proposed directives that would broaden the scope of the mergers and parent companies directives adopted by the Council in 1990, propose a joint approach to the definition and treatment of thin capitalization and possible double taxation, and initiate discussions with respect to common rules of headquarters costs and foreign source dividends. The EC Commission also indicated that it thought that the minimum 30-percent rate suggested by the Ruding Committee was too high and questioned the need for a maximum corporate tax rate.[45]

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[36] EC Commission, *Seventh 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 (92) 383, Sep. 2, 1992, p. 34.

[37] *Proposal for a Council Directive on a Common System of Taxation Applicable to Interest and Royalty Payments Made Between Parent Companies and Subsidiaries in Different Member States*, COM (90) 571, *OJ* No. C 53 (Feb. 28, 1991), p. 26; and *Proposal for a Council Directive Concerning Arrangements for the Taking Into Account by Enterprises of the Losses of Their Permanent Establishments and Subsidiaries Situated in Other Member States*, COM (90) 595, *OJ* No. C 53 (Feb. 28, 1991), p. 30.

[38] *Seventh Report of the Commission*, p. 34.

[39] EC Commission, *Conclusions and Recommendations of the Committee of Independent Experts on Company Taxation*, 1992, p. 9.

[40] Ibid., p. 10.

[41] Ibid., pp. 10-11.

[42] Ibid., p. 11.

[43] Ibid., pp. 27-28.

[44] Ibid., pp. 28-44.

[45] See discussion in *European Report*, No. 1780 (June 27, 1992), sec. II, pp. 5-6.

Taxation of Savings Interest

There were no significant developments with respect to the EC Commission's February 1989 proposals for a minimum withholding tax on savings interest and for strengthening cooperation between tax administrations. Nor were there any with respect to the political agreement reached in December 1989 by 11 members of the Economic and Financial Council of Ministers regarding cooperation between tax authorities of member states.

1993 and Beyond

Progress to Date

As called for in the 1985 White Paper, the Community succeeded, albeit with difficulty and after much compromise, in achieving agreement on the approximation of VAT and excise duty rates and the harmonization of rate structures in time for the removal of frontier controls on January 1, 1993. However, the member states were unable to agree on a definitive system for the administration of VAT. Also, to reach agreement, the member states compromised on a schedule of rates that provides numerous exceptions for individual member states which provides the potential for economic distortion with the removal of frontier controls regarding goods and services for which wide variations in rates continue to exist.

The Community has committed itself to reaching agreement on a definitive system for VAT by 1997, although continued resistance on the part of some member-state governments to movement in this direction is considered likely.[46] The Community will in all likelihood revisit the issue of a mandatory minimum rate of VAT as the expiration date of the present 4-year agreement on minimum rates approaches. Proposed directives relating to VAT on passenger transport, gold, and secondhand goods are still outstanding. Numerous derogations and exceptions on rates for individual member states continue to exist, including zero-rating for certain goods and services in the United Kingdom, Ireland, and other member states, which will also in all likelihood be revisited. As ambiguities or omissions are discovered in the rates, structures, and administrative systems, they too will need to be addressed.

With respect to company taxation, the three measures adopted by the Council in 1990 still need to be implemented. The two directives proposed by the EC Commission in 1990, while not specifically called for in the White Paper, are consistent with its goals and still require Council adoption.

Implications for the United States

In general, U.S. firms selling to or operating in the EC view the EC 1992 program tax changes positively. They particularly view positively the proposed changes in company taxation that will reduce or eliminate double taxation in the case of companies with multi-member state operations. While the changes in indirect taxation rates and structures are also viewed positively as helping to facilitate cross-border trade, it is also recognized that they will not eliminate special recordkeeping for cross-border transactions, but will instead substitute one form for another, albeit a form that is intended to be simpler. There is some concern that the removal of frontier controls will, in some instances, give rise to fraud.[47]

[46] See e.g., A. Hill, "Progress of the EC's new VAT system: First months are critical," *Financial Times* (Feb. 18, 1993), p. 10.

[47] See, for example, EC Committee of the American Chamber of Commerce in Belgium, *Business Guide to EC Initiatives*, Winter/Spring 1993, pp. 144-50.

CHAPTER 11
RESIDUAL QUANTITATIVE RESTRICTIONS

One key component of the EC 1992 single market program was the elimination of intraborder customs controls ("physical barriers"), which was implemented on January 1, 1993. Member states had used such controls to enforce such national quantitative restrictions (QRs) as quotas and voluntary restraint agreements to protect European producers against sudden surges in imports from non-EC countries. Intraborder controls prevented restricted imports from entering indirectly through other EC members. The elimination of intra-Community borders and physical border controls means that EC member states no longer are able to enforce national QRs without violating the principle of a single internal Community market.

The EC Commission has worked for many years to eliminate remaining, or residual, QRs or to transform them into EC-wide quotas or other protective measures that could be enforced at the Community level. A small number of national QRs remained in effect, however, even after the single market deadline. Generally, the EC sought to gradually eliminate national QRs through a variety of tactics, including: (1) the phased reduction of residual QRs leading to their eventual elimination; (2) the elimination of article 115 measures used to enforce national QRs; and (3) the replacement of national QRs with a common EC regime of Community quotas and tariffs. Although the new EC-wide quotas are directed more at imports from Asia (motor vehicles and textiles and apparel), Africa, and Latin America (bananas) rather than at imports from the United States, new EC-wide barriers could intensify trade-diversionary effects, increase competition facing U.S. exporters in certain member-state markets, or increase competition for U.S. subsidiaries already located in the EC.

Developments During 1992

Article 115 Restrictions on Intra-Community Trade

Background

Effective enforcement of national QRs traditionally has been safeguarded by article 115 of the Treaty of Rome. Article 115 permits member states, with the consent of the EC Commission,[1] to take measures to prevent circumvention of their national QRs otherwise possible through the transshipment of the restricted product through other member states that do not maintain the same QRs (so-called trade deflection). Article 115 measures include authorization for member states to monitor (by issuing import licenses after the EC Commission determines that imports are a threat to domestic producers) and restrict at their own internal EC borders certain non-EC imports.[2] Some of these measures actually predated EC membership but were grandfathered by article 115, such as restrictions on intra-Community trade in bananas. Other measures were implemented by the EC Commission, such as restrictions on intra-Community trade in Japanese motor vehicles.

For years the EC Commission has worked to gradually reduce the number of Article 115 restrictions on intra-Community trade. Table 11-1 shows the sharp decline in EC Commission approvals for Article 115 surveillance measures (national import licensing regimes) and restrictive measures (national quota regimes) since 1988.

[1] Article 115 of the Treaty of Rome states that "the Commission shall authorize member states to take the necessary protective measures, the conditions and details of which it shall determine." Article 115 also provides that "[i]n case of urgency during the transitional period, member states may themselves take the necessary measures and shall notify them to the other member states and to the Commission, which may decide that the states concerned shall amend or abolish such measures."

[2] Such restrictions are to be "only for a limited period and where the gravity of the situation so warrants." Commission Decision 87/433.

Table 11-1
Article 115 restrictive measures on intra-Community trade in force

Year	No. of surveillance measures	No. of restrictive measures
1988	800	128
1989	355	119
1990	184	79
1991	33	4
1992 (July)	3	3
1993	0	1

Source: "Single Market: Decisive Step Towards Border-Free Community," *European Report*, No. 1782 (July 4, 1992), Internal Market, p. 9, and GATT, *Trade Policy Review: The European Communities, 1991*, vol. 1, p. 55.

Developments

A total of 33 surveillance measures and four restrictive measures were in force as of January 1, 1992. Effective July 1, 1992, 30 surveillance measures and one restrictive measure expired and were not renewed by the EC Commission.[3] These expired measures were—

- **Spain.**—Surveillance of textile products from China, Pakistan, Hong King, India, South Korea, and Taiwan (7 product categories); footwear from China (2 categories); motor vehicles (3 categories) and motorcycles (2 categories) from Japan.
- **France.**—Surveillance of textiles from Pakistan and China (4 categories); potassium salts and potassium chloride from the former USSR; radio broadcast receivers used in motor vehicles from China and South Korea; and color television receivers from South Korea and Taiwan. Quotas on televisions and radios from Japan.
- **Ireland.**—Surveillance of textiles from Hong Kong (2 categories).
- **Italy.**—Surveillance of textiles from China, India, and Pakistan (2 categories); woven silk fabrics from China; and motor vehicles from Japan (2 categories) and motor cycles from Japan (1 category).
- **Portugal.**—Surveillance of motorcycles from Japan.

The three remaining surveillance measures and their scheduled expiration timetables were—

- **Japanese automobiles less than 5 tons entering Italy:** expired on December 31, 1992, under the 1991 EC-Japan automobile agreement;
- **Four-wheel-drive vehicles from the Commonwealth of Independent States entering Spain:** in force pending EC Commission determination of Community safeguards such as antidumping procedures; and
- **Canvas shoes from China entering Spain:** in force pending EC Commission action on a proposed Community quota on imports of footwear from China.[4]

The three remaining article 115 restrictive measures and their scheduled expiration timetables were—

- **Japanese automobiles entering Italy and Spain:** expired on December 31, 1992, under the 1991 EC-Japan automobile agreement;
- **Japanese motorcycles entering Italy and Spain:** expired on December 31, 1992; and
- **"Dollar bananas" entering France, Greece, Italy, Portugal, and the United Kingdom:** scheduled to expire upon implementation of a new EC banana import regime (originally December 31, 1992, currently extended until July 1, 1993).[5]

Residual National QRs

Even after joining the EC, a number of member states continued to apply national QRs despite the Community's goal of establishing a common commercial policy.[6] Member states applied three broad categories of national QRs. First, a large number of QRs were grandfathered in when new member states acceded to the Community. These residual restrictions generally were scheduled to be phased out during a transitional period as members adapted to the EC's common commercial policy,[7] although some QRs remained in effect on products for which the Community did not have a common policy, such as for motor vehicles, footwear, bananas, and for a limited number of textile and apparel products. Second, some QRs were linked to certain Communitywide restrictions approved by the EC Commission, but applied only to certain member states or apportioned

[3] Pursuant to *Commission Decision of December 18, 1991 Authorizing Certain Member States To Apply Intra-Community Surveillance to Imports Originating in Third Countries Which Have Been Put Into Free Circulation in the Community and Which May Be the Subject of Protective Measures Pursuant to Article 115 of the EEC Treaty, 92/15/EEC, Official Journal of the European Communities, (OJ),* No. L 8 (Jan. 14, 1992), p. 17.

[4] EC Commission, *Seventh 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 (92) 383 final, Sept. 2, 1992, pp. 16-17, and "Single Market: Decisive Step Towards Border-Free Community," European Report, No. 1782 (July 4, 1992), Internal Market, p. 9.

[5] Ibid. For further information, see the discussion of bananas below.

[6] The common commercial policy is outlined in articles 110-113 of the Treaty of Rome.

[7] Pursuant to Article 111 of the Treaty of Rome. For a more detailed discussion on QRs grandfathered by Spain and Portugal when they joined the EC on January 1, 1986, but that were scheduled to be phased out, 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. 11-5, and General Agreement on Tariffs and Trade (GATT), *Trade Policy Review: The European Communities, 1991*, vol. II (Geneva: GATT, June 1991), p. 72.

among member states under EC Council regulations 288/82 and 1023/70.[8] This group of QRs included restrictions on imports invoked under article XIX of the GATT[9] as well as restrictions applied under trade agreements negotiated by the EC (e.g., quotas for member states established under the EC's Multifibre Arrangement (MFA), national restrictions on imports of bananas from Latin America,[10] and quotas for member states for imports under the EC's Generalized System of Preferences (GSP) program). Third, member states applied QRs to certain products of nonmarket countries including the ex-Soviet Union Republics, China, Cuba, North Korea, and Vietnam.

There were four major national QR regimes still in effect as of January 1, 1992. These QR regimes applied to MFA textiles and apparel, bananas, certain aspects of the Community's GSP program, and a variety of products of nonmarket countries including footwear from China. In addition, national QRs remained in effect on Japanese automobiles pending their scheduled December 31, 1992 abolition under a 1991 EC-Japan agreement.

Textiles and Apparel

Background

Imports of textiles and apparel subject to national QRs were governed by several trade regimes during 1992.[11] First, most textile and apparel imports were subject to comprehensive bilateral quota agreements negotiated between the EC and 21 textile and apparel-exporting countries[12] under the Multifibre Arrangement (MFA).[13] Most MFA import quotas were negotiated for the EC as a whole, although Community quotas generally were allocated to individual member states according to traditional trade patterns and application of a "burden sharing" formula based on a range of economic data.[14] The EC extended these agreements through December 31, 1992, to bridge the gap between the scheduled expiration of the MFA regime and the implementation of a GATT Uruguay Round agreement on textiles.[15] Second, the EC also maintained bilateral agreements, some of which contained national QRs, on imports of textiles and apparel from non-MFA participants—including the former Soviet Union, Bulgaria, Romania, and Mongolia. Textile and apparel products of Czechoslovakia, Hungary, and Poland received liberalized access to the EC under their association agreements.[16] In addition, some EC member states applied national QRs on non-MFA products from a variety of sources.

Developments

On May 27, 1992, the EC Commission drafted a proposal to commit the Community to develop a uniform trade policy for textile and apparel imports and to eliminate national QRs as of January 1, 1993. Two key elements of this proposal were provisions to allow member states to issue import authorizations valid throughout the EC and to develop a computerized system to monitor Community textile and apparel imports.[17] Following a June 1992 EC Council resolution calling for action to open the Community's textile and apparel market,[18] the EC Council approved

[8] Regulation 288/82 establishes Community rules for imports and provides the legal basis for introducing surveillance measures (providing for the issuance of import documents) or for imposing QRs on imports from non-EC countries. Regulation 1023/70 establishes procedures for the administration of quotas and the distribution of Community quotas among member states. For a more detailed discussion of these regulations, see General Agreement on Tariffs and Trade (GATT), *Trade Policy Review: The European Communities, 1991*, vol. I (Geneva: GATT, June 1991), pp. 46-49.

[9] GATT article XIX, the so-called GATT escape clause, permits signatories to temporarily restrict imports or suspend tariff concessions on products when increased imports cause or threaten to cause serious injury to domestic producers of a like or directly competitive product. For a more detailed discussion about the application of Communitywide QRs under GATT article XIX, see Audrey Winter, Robert D. Sloan, George A. Lehner, and Vanessa Ruiz, *Europe Without Frontiers: A Lawyer's Guide* (Washington, DC: The Bureau of National Affairs, Inc., 1989), pp. 98-99, and General Agreement on Tariffs and Trade (GATT), Trade Policy Review: The European Communities, 1991, vol. I (Geneva: GATT, June 1991), pp. 47 and 99-100.

[10] Although national QRs on bananas predate the Treaty of Rome, they subsequently were incorporated as an exception to the Treaty based on EC Council Regulation 288/82.

[11] For additional background on the EC's trade regimes for textile and apparel imports, see USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, p. 11-3, and USITC, *The Effects of Greater Economic Integration Within the European Community on the United States: Fourth Followup Report* (investigation No. 332-267), USITC publication 2501, Apr. 1992, p. 12-7.

[12] The countries were Argentina, Bangladesh, Brazil, China, Colombia, Guatemala, Hong Kong, India, Indonesia, Korea, Macao, Malaysia, Mexico, Pakistan, Peru, Philippines, Singapore, Sri Lanka, Thailand, Uruguay, and the former Yugoslavia.

[13] The MFA, an exception to GATT rules, provides that bilateral agreements may be negotiated between textile exporting countries and the major importing countries or regions, such as the EC. Since 1974, when it first took effect, the MFA has been renewed or renegotiated several times.

[14] GATT, *Trade Policy Review: The European Communities, 1991*, vol. I (Geneva: GATT, June 1991), p. 193.

[15] "Textiles: EEC Concludes Negotiations To Extend Bilateral Agreements," *European Report*, No. 1737 (Jan. 22, 1992), External Relations, p. 1.

[16] For further discussion, see the section "Non-Market Countries" below.

[17] "Textiles: EC To Harmonize Trade Policy," *European Report*, No. 1772 (May 28, 1992), Internal Market, p. 19.

[18] *Council Resolution of June 17, 1992 on the Textile and Clothing Industries, OJ*, No. C 178 (July 15, 1992), p. 3.

the EC Commission proposal.[19] By October 1992, delays in the conclusion of Uruguay Round negotiations led the EC Commission to seek approval from member states to extend again the EC's MFA agreements.[20]

On December 22, 1992, the EC Commission announced a new MFA trade regime. MFA agreements with twenty countries[21] were extended for another 2 years (through December 31, 1994) and may be renewed for an additional 12 months, with the provision that the agreements would expire automatically upon the conclusion of a GATT Uruguay Round agreement.[22] The key change under the new MFA regime is the abolition of national quotas on MFA textiles and apparel as of January 1, 1993.[23] Under the unified EC-wide quota system, a Community computer system is scheduled to become fully operational in 1993 to monitor textile and apparel imports.[24] The new MFA regime also permits textile and apparel exports to the EC to increase by 3 percent (except exports from the more competitive suppliers such as China, Hong Kong, and Macao).[25]

In addition to the renewal of MFA agreements, the EC signed several bilateral agreements with non-MFA countries. In April 1992, the EC Council agreed to establish negotiating frameworks for agreements on imports of textile and apparel from Albania, Estonia, Latvia, Lithuania.[26] The EC finalized textile protocols with Bulgaria and Romania and signed a first-time 5-year agreement with Vietnam.[27]

[19] EC Council of Ministers, "Completion of the Internal Market for Commercial Policy in the Textile and Clothing Sector," press release 7460/92 (press 132-G), June 29, 1992, and "Textiles: Council Approves Community Quota," *European Report*, No. 1781 (July 1, 1992), Internal Market, p. 5.

[20] "Textiles: Commission Seeks Negotiating Brief To Extend MFA," *European Report*, No. 1800 (Oct. 3, 1992), External Relations, p. 14.

[21] The countries are Argentina, Bangladesh, Brazil, China, Colombia, Guatemala, Hong Kong, India, Indonesia, Korea, Macao, Malaysia, Mexico, Pakistan, Peru, Philippines, Singapore, Sri Lanka, Thailand and Uruguay.

[22] "Textiles: Renewal of Bilateral Agreements," *European Report*, No. 1823 (Dec. 24, 1992), External Relations, p. 7.

[23] EC Commission, "The European Community Has Successfully Completed Negotiations for the Extension of Bilateral Textile Agreements," press release, IP (92) 1071, Dec. 22, 1992.

[24] EC official, telephone conversation with USITC staff, Brussels, Jan. 12, 1993.

[25] "Textiles: Commission Empowered To Negotiate 3 Percent Quota Increase," *European Report*, No. 1802 (Oct. 10, 1992), p. 13.

[26] "Textiles: Accords Agreed With Brazil, Albania, Baltic States," *European Report*, No. 1759 (Apr. 8, 1992), External Relations, p. 4.

[27] "Renewal of Bilateral Agreements," *European Report*, No. 1823, (Dec. 24, 1992), External Relations, p. 7.

Background

EC member states long maintained different policies and regimes of QRs toward imports of bananas. France, Greece, Italy, Portugal, Spain, and the United Kingdom protected their markets under EC Council regulation 288/82 and article 115 restrictions on intra-Community trade. France, Italy, and the United Kingdom used strict quotas to ensure a market for bananas produced by their former colonies in Africa, the Caribbean, and the Pacific (ACP countries).[28] EC banana producers, Greece, Portugal, Spain, and France (i.e., the French overseas departments Guadeloupe and Martinique), also restricted banana imports to help protect markets and prices for their own domestically grown bananas. Belgium, the Netherlands, Luxembourg, Denmark, and Ireland did not restrict banana imports but did levy a 20-percent GATT-bound duty on bananas from countries other than EC overseas territories or ACP countries. Germany, the EC's largest banana consumer, imported bananas duty free subject to a quota that was adjusted annually to satisfy domestic demand.[29]

These import regimes significantly restricted or applied discriminatory tariffs to the EC's imports of bananas from Central and South America (so-called "dollar bananas"). EC countries with banana QRs and the ACP producers have long maintained that ACP bananas cannot compete on an open market against the less expensive, better-quality fruit grown in "dollar banana" countries.[30]

Developments

On March 12, 1992, the European Parliament adopted a resolution to keep bananas off the list of agricultural products proposed by GATT director-general Arthur Dunkel[31] to be subject to tariffication,[32] therein maintaining the various national banana import regimes and preferential treatment for

[28] The actual market shares guaranteed for ACP-origin bananas varies. Recent estimates of the shares of these protected markets for bananas are France, 90 percent; Italy, less than 20 percent; and United Kingdom, 75 percent. GATT, *Trade Policy Review: The European Communities, 1991*, vol. I (Geneva: GATT, June 1991), p. 76.

[29] GATT, *Trade Policy Review: The European Communities, 1991*, vol. I (Geneva: GATT, June 1991), p. 76.

[30] For a more detailed discussion of the EC banana regime and the concerns of ACP producers, see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, p. 12-6.

[31] For a more detailed discussion of the proposals in the "Dunkel text," see USITC, *The Year in Trade: Operation of the Trade Agreements Program, 1991*, USITC publication 2554, Aug. 1992, p. 8.

[32] Tariffication refers to the conversion of nontariff barriers such as quotas into tariffs or customs duties.

ACP banana producers.[33] The EC Commission approved a similar decision on April 7, 1992. At the same time, the EC Commission discussed a draft proposal to create a single internal market for EC and ACP bananas effective January 1, 1993, providing a guaranteed market for these producers and subjecting all other bananas to a 20-percent duty and a GATT-bound quota based on current levels of EC consumption. In the draft proposal, the EC Commission stated that "[b]eyond this quota, the Community would make no undertakings on tariffication but . . . would be prepared to review the tariff question in due course."[34] Reflecting the view that "full tariffication is at this stage not an appropriate means to transform various member states of the Community into a common external protection in the form of a tariff,"[35] this draft proposal was submitted to the EC Agriculture Ministers to prepare a final version. The United States subsequently expressed the view that "[t]he EC Commission proposal . . . violates the principle of tariffication contained in the Dunkel draft text on agriculture, and also transgresses current EC GATT obligations."[36] (The United States was unable to intervene directly in the GATT on this issue because it is not a banana producer.[37]) The proposed EC banana regime was also criticized in a World Bank report as inefficient, costly to consumers, and arbitrary in assigning quota levels.[38]

Latin American banana producers expressed the concern that the EC's efforts to protect EC and ACP banana producers would restrict access to the Community market for "dollar bananas," and indeed would extend restrictions to EC member states that did not already limit banana imports.[39] These concerns precipitated a May 1992 EC-Latin American summit on the proposed regime[40] followed by an EC Parliament factfinding mission to Central America.[41] The Latin American banana producers subsequently invoked article XXII of the GATT,[42] leading to a series of formal consultations between the banana producers and the EC during June and July 1992.[43] On June 25, 1992 the EC Commission extended article 115 restrictions on intra-Community trade in bananas for France, Italy, and the United Kingdom through December 31, 1992.[44]

On July 31, 1992, the EC Commission issued a proposal for a Council Regulation for a new banana regime for the post-1992 market.[45] The main features of the proposed new regime were—

- duty-free entry for licensed imports from traditional ACP suppliers;
- a 20-percent ad valorem tariff and a Community banana quota (2 million metric tons in 1993 and scheduled to increase in subsequent years as Community demand increases) applied to licensed imports from nontraditional ACP suppliers and Latin American "dollar banana" producers, with higher duties applicable to imports in excess of the quota;
- compensation to EC producers if the market price for bananas falls below a level yet to be determined; and
- aid to ACP banana producers.[46]

A number of GATT contracting parties registered concern about the effectiveness of the proposed regime to liberalize the EC's banana market and noted that the proposed quota arrangement was not GATT-consistent

[33] "EEC/ACP: GATT Must Not Be Involved in Banana Issue, Says Euro-MPs," *European Report*, No. 1752 (Mar. 14, 1992), External Relations, p. 1.

[34] EC Commission, "Internal Community Market in Bananas," press release, IP (92) 281, Apr. 8, 1992.

[35] U.S. Department of State, "Andriessen and MacSharry Response to Demarche on Banana Regime," message reference No. 08211, prepared by U.S. Embassy, Brussels, June 19, 1992.

[36] U.S. Department of State, "Alternative to Commission Proposal for EC Banana Regime," message reference No. 320808, prepared by U.S. Department of State, Washington, DC, Oct. 1, 1992.

[37] U.S. Department of State, "U.S. Government Position on New EC Banana Proposal," message reference No. 017006, prepared by U.S. Secretary of State, Washington, DC, Jan. 18, 1993.

[38] Brent Borrell and Maw-Cheng Yang, "EC Bananarama 1992: The Sequel," World Bank Working Paper, International Economics Department (Washington, DC: World Bank, 1992), cited in David Dodwell, "EC Banana Plan 'Grossly Inefficient' Says World Bank," *Financial Times*, Sept. 29, 1992, p. 31.

[39] "Director-General Asked To Help Settle Banana Dispute," *GATT Focus*, Oct. 1992, p. 3.

[40] "EC/Bananas: French Meeting," *European Report*, No. 1771 (May 23, 1992), External Relations, p. 11.

[41] "EC/Latin America: MEPs in Mission to Five Central American Countries," *European Report*, No. 1774 (June 6, 1992), External Relations, p. 3.

[42] Article XXII, the first step in the GATT dispute-settlement procedure, requires the disputing parties to consult with each other.

[43] As the EC Commission had made no formal proposal for the new banana regime at the time, consultations were used to exchange information on the banana trade. "Bananas: EC Commission in GATT Talks With Latin American Producers," *European Report*, No. 1784 (July 11, 1992), External Relations, p. 3.

[44] *Commission Decision on June 25, 1992 Authorizing the United Kingdom To Extend Intra-Community Surveillance in Respect to Bananas Originating in Certain Third Countries and Put Into Free Circulation in the Other Member States*, EEC (92) 338, *OJ* No. L 187 (July 7, 1992), p. 46; *Commission Decision of June 25, 1992 Authorizing the Italian Republic To Apply Intra-Community Surveillance in Respect to Bananas Originating in Certain Third Countries and Put Into Free Circulation in the Other Member States*, EEC (92) 397, *OJ* No. L 220 (Aug. 5, 1992), p. 33; and *Commission Communication Pursuant to Article 115 of the EEC Treaty*, C(92), *OJ* No. C 178 (July 15, 1992), p. 16.

[45] *Proposal for a Council Regulation (EEC) on the Common Organization of the Market in Bananas*, COM (92) 359, *OJ* No. C 232 (Sept. 10, 1992), p. 3.

[46] For additional information, see EC Commission, "Development Cooperation: The Commission Proposes a Special Assistance System for Traditional Banana Suppliers in ACP Countries," information memo, P (60), Nov. 11, 1992.

and would require a waiver.[47] Following a new round of EC-Latin American consultations in September 1992 that failed to resolve the banana producers' concerns, Costa Rica, Colombia, Guatemala, Nicaragua, and Venezuela invoked GATT article XXIII and requested that the GATT Director-General[48] help settle the dispute.[49]

During this period, a threefold split on the proposed new banana regime emerged among the EC Agriculture Ministers. France, Greece, Spain, and Portugal supported the proposal. Belgium, Denmark, Germany, Luxembourg, and the Netherlands opposed the proposal and argued that it would be difficult to obtain a GATT waiver for the planned tighter restrictions on "dollar banana" imports. Ireland, Italy, and the United Kingdom had no clear preference.[50]

In an effort to end the disagreement among EC member states, the EC Commission proposed in November 1992 that the new banana scheme provide economic assistance to "dollar banana" producers totaling ECU 110 million annually over 10 years—an amount roughly equal to the sum the Community projected it will receive through the proposed 20-percent tariff.[51] In addition, the proposal was amended so that quotas could be fixed on a semi-annual rather than annual basis, compensatory aid would be given to EC banana producers to cover any losses incurred from the new regime, and transitional arrangements extending into 1993 would be implemented pending final approval and full implementation of the new regime. Thus enhanced, the proposed new banana regime was approved by the European Parliament on December 15, 1992, but it was not approved by the EC Agriculture Ministers.[52]

On December 17, 1992, the EC Agriculture Ministers agreed in principle on a modified version of the proposed single market banana regime to become effective July 1, 1993 (intraregional trade in bananas would remain restricted until then). The modified regime provides EC-wide duty-free access for ACP bananas subject to a ceiling of their highest level of EC imports in the best of a 3-year period through 1990 (so-called "traditional ACP" imports); imports in excess of this amount ("non-traditional ACP" imports) would be subject to a duty of ECU 750 per metric ton. Non-ACP bananas would be subject to a tariff rate-quota—

- a duty of ECU 100 per metric ton (approximately 20 percent ad valorem—the current EC GATT-bound maximum tariff) applicable to imports up to 2 million metric tons, and
- a duty of ECU 850 per metric ton (approximately 170 percent ad valorem) applicable to imports in excess of 2 million metric tons.

An import-licensing system would govern the 2 million metric ton tariff-rate quota for non-ACP bananas. Under this system, 66.5 percent of the licenses would go to companies that historically have imported only "non-traditional ACP" or "dollar" bananas; 30.0 percent, to importers who market EC and/or "traditional ACP" bananas; and 3.5 percent, to new importers in the Community who started marketing "non-traditional ACP" or "dollar" bananas after 1992.[53] The 2 million metric ton quota is significantly lower than that of the current "dollar banana" imports in the EC market in 1991 and 1992 (approximately 2.5 million metric tons and 2.7 million metric tons respectively).[54] Moreover, the new quota could mean a loss of as much as 600,000 to 700,000 metric tons for "dollar banana" producers because of the provision earmarking only 66.5 percent of import licenses for "dollar banana" importers."[55]

Banana imports into the EC during the period January 1, 1993, through July 1, 1993, are to be governed by transitional import licensing arrangements. In January 1993, the EC Commission issued new article 115 measures permitting members to continue to apply restrictions on intraregional trade in bananas until the new regime becomes effective.[56] The EC Agriculture Ministers formally approved the new banana regime on February 12, 1993 (Germany,

[47] "Bananas: Agriculture Ministers To Debate New Regime and GATT Waiver," *European Report*, No. 1806 (Oct. 24, 1992), Internal Market, p. 3. A waiver is a sanctioned departure from otherwise accepted GATT rules, granted under GATT art. XXV:5, so that signatories can remain in compliance with their obligations in the General Agreement.

[48] Pursuant to the GATT Decision of April 5, 1966, regarding article XXIII procedures, less developed contracting parties involved in a dispute with a developed contracting party may refer the matter to the Director-General "so that, acting in an ex officio capacity, he may use his good offices with a view to facilitating a solution."

[49] "Director-General Asked To Help Settle Banana Dispute," *GATT Focus*, Oct. 1992, p. 3.

[50] "Bananas: Agriculture Ministers To Debate New Regime and GATT Waiver," *European Report*, No. 1806 (Oct. 24, 1992), Internal Market, p. 3.

[51] "Bananas: EC Commission Proposes Aid for Latin American Producers," *European Report*, No. 1816 (Nov. 3, 1992), External Relations, p. 2.

[52] "Bananas: European Parliament Approves Proposals for New Regime," *European Report*, No. 1822 (Dec. 19, 1992), Internal Market, p. 2.

[53] U.S. Department of State, "U.S. Government Position on New EC Banana Proposal," message reference No. 17006, prepared by U.S. Secretary of State, Washington, DC, Jan. 18, 1993 and U.S. Department of State, "EC Council Regulation (EEC) No. 404/93 on the Common Organization of the Market in Bananas," message reference No. 02683, prepared by U.S. Embassy, Brussels, March 2, 1993.

[54] Ibid.

[55] Based on USITC staff estimates.

[56] "Commission Proposes Transitional Arrangements for Bananas," *European Report*, No. 1823 (Dec. 24, 1992), Internal Market, p. 14, and "Compromise CAP Package Published: Temporary Banana Trade Regime," *European Report*, No. 1825 (Jan. 9, 1993), Internal Market, p. 2.

Belgium, and the Netherlands voted against), although implementing regulations had not been drafted.[57]

"Dollar banana" producers continued to complain that the Community's banana market would not be made significantly more open even under the proposed new regime.[58] In February 1993, GATT Director-General Dunkel reported that, after consulting with banana producers and the EC, his office could find "no mutually satisfactory solution to propose" to address the "dollar banana" producers' concerns.[59]

The U.S. Government stated that while the proposed new EC tariff-rate quota arrangement for bananas "in principle is consistent with tariffication in the context of the Uruguay Round," the proposal may not be consistent either with the Dunkel text or with existing provisions of the GATT. Specifically, the United States expressed the concern that, although the 2 million metric ton quota for non-ACP bananas exceeds the average base level of imports during 1986-1988 (the base period covered under the terms of the Dunkel text), this quota is significantly lower than the level of 1991 and 1992 imports; thus, the proposed new regime effectively freezes "dollar banana" access to the Community market at 1990 levels. The United States also was concerned that the calculated tariff equivalent for imports above 2 million metric tons not be "excessive" and that the proposed licensing system for bananas be consistent with GATT rules.[60]

The United States does not produce bananas in commercial quantities. However, three major U.S. companies, Chiquita Brands International, Inc., Dole Food Co., Inc., and Del Monte Foods, own and operate banana plantations in Central and South America and export to the EC market. These three companies could be adversely affected by the new EC provisions. In the short term, the new EC banana regime could help the U.S. companies by strengthening global banana prices. In the longer term, however, the new banana regime could limit the companies' market growth in Europe.[61]

[57] "Bananas: Adoption of New Legislation Attacked by Member States," *European Report*, No. 1838 (Feb. 24, 1993), Internal Market, p. 6 and U.S. Department of State, "EC Agriculture Council Adopts Banana Regime," message reference No. 02071, prepared by U.S. Embassy, Brussels, Feb. 16, 1993.

[58] "EC/Latin America: New EC Banana Regime Savagely Attacked," *European Report*, No. 1823 (Dec. 24, 1992), External Relations, p. 1.

[59] GATT Document DS32/6 cited in U.S. Department of State, "EC Reply to Dollar Banana Exporters Article XXIII:1 Request," message reference No. 01538, prepared by U.S. Embassy, Brussels, Feb. 17, 1993.

[60] U.S. Department of State, "U.S. Government Position on New EC Banana Proposal," message reference No. 17006, prepared by U.S. Secretary of State, Washington, DC, Jan. 18, 1993.

[61] Jose de Cordoba, "Two Banana Empires, Latin and Caribbean, Battle Over Europe," *Wall Street Journal*, Jan. 15, 1993, p. A1.

Background

Benefits accorded to developing countries and access to the Community's markets under the EC's GSP scheme for preferential tariff treatment vary according to product. A number of products eligible for GSP preferential tariff treatment remained subject to national QRs during 1992. Products whose access to the Community is restricted by national QRs include iron and steel products under the European Coal and Steel Community Treaty (for certain products, fixed shares of Community tariff-rate quotas are allocated to and administered by member states); certain sensitive industrial products[62] (may be subject to national tariff-rate quotas administered by member states); and textile categories subject to the MFA or other agreements with the EC (shares of Community tariff-rate quotas are allocated to and administered by member states[63].[64] Products receiving unrestricted access to the Community (no national QRs applied by member states) include: eligible agricultural products; nonsensitive industrial products; and 41 non-MFA textile categories.

Developments

The EC Commission has opted for a gradual process of adjustment of the GSP to ensure that the least developed and poorest developing countries will not be penalized because national quotas are replaced by Community quotas.[65] On October 15, 1992, the EC Commission proposed extending the existing GSP scheme through 1993.[66] This was proposed because of the EC's intention to link its new GSP scheme to the conclusion of the GATT Uruguay Round negotiations (specifically, to modify the treatment of textiles under the EC's GSP scheme to conform with an anticipated GATT Uruguay Round agreement superseding the MFA[67]). The EC Commission also stated the desire to add 12 ex-Soviet Union Republics—Russia, Ukraine, Georgia, Belarus, Moldova, Armenia, Azerbaijan,

[62] Products include certain basic chemicals, plastic products, tires, televisions, video recorders, leather products, and footwear.

[63] For further discussion of tariff-rate quotas for MFA textile products, see the discussion of textiles above.

[64] GATT, *Trade Policy Review: The European Communities, 1991*, vol. II (Geneva: GATT, June 1991), pp. 63-67.

[65] For a discussion of developments before 1992, see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, p. 12-7.

[66] The EC's current GSP scheme was scheduled to cover the 10-year period 1981-90. This scheme remained in force because of annual extensions pending the Community's adoption of a new 10-year scheme.

[67] National QRs on textile and apparel products subject to the MFA were eliminated effective Jan. 1, 1993, under the EC's new MFA regime. For additional information, see the discussion of textiles and apparel above.

Kazakhstan, Turkmenistan, Uzbekistan, Tajikistan, and Kirghistan—to the list of GSP beneficiaries.[68]

Non-market Countries

Background

The EC has historically applied national QRs to products of non-market state-trading countries including the ex-Soviet Union Republics,[69] Albania, China,[70] Cuba, Mongolia, North Korea, and Vietnam. These restrictions, like the QRs enacted under regulations 288/82 and 1023/70, were enacted to protect Community producers from sudden surges of imports from state-run economies that do not use market criteria to set prices. For several years the EC has negotiated the gradual elimination of these national QRs as non-market countries introduce market-oriented economic reforms. However, a number of QRs remained in effect during 1992.

Developments

The EC began lifting national QRs on Central and Eastern European countries as early as 1990.[71] The EC signed association agreements with Poland, Hungary, and Czechoslovakia (the so-called Visegrad countries) in December 1991 that acknowledged the goal of eventual EC membership for the three countries. The association agreements were provisionally implemented on March 1, 1992 through interim agreements. The interim agreements commit the EC, on an accelerated basis, to reduce tariffs and dismantle national QRs on products from the Visegrad countries. Residual QRs on coal, steel, and textiles and apparel are handled under separate protocols to the agreements; these QRs will be transformed into Community restrictions by 1998.[72] The interim agreements originally were scheduled to remain in force only until December 31, 1992, by which time the negotiating parties assumed that formal ratification of the association agreements by EC member states and by the three Visegrad countries would have occurred.

Two issues delayed ratification of the association agreements. First was the Visegrad countries' desire to conclude their EC agreements without waiting for an EC agreement with Bulgaria and Romania.[73] Second, were the complications caused by the runup to the January 1, 1993, split of Czechoslovakia into two independent republics and the future application of the agreement to both republics.[74] The latter issue was further complicated by the EC Commission's finding that imports of steel from Czechoslovakia were causing "substantial market disruption" and its August 1992 decision to restrict Czechoslovakian steel imports into France, Germany, and Italy through the end of the year.[75] The EC Council was forced to extend the interim agreements into 1993 because of the slow ratification process in Poland, Hungary, and Czechoslovakia.[76] Poland and Hungary had both ratified their agreements by mid-November 1992.[77] Negotiations for agreements with the Czech and Slovak Republics continued into 1993.[78]

In May 1992, the EC initiated formal negotiations with Bulgaria and Romania for association agreements similar to those negotiated with the Visegrad countries. An association agreement was signed with Romania on November 4, 1992,[79] and with Bulgaria on December 22, 1992.[80] The EC also signed trade agreements with Albania and with the Baltic States (Estonia, Latvia, and Lithuania) on May 11, 1992.[81] While not as far-reaching as the association agreements with the

[68] "GSP: Commission Proposes Roll-Over of 1992 GSP Scheme," *European Report*, No. 1804 (Oct. 17, 1992), External Relations, p. 11.

[69] EC Council regulation 1765/82 established Community rules for products enumerated on a "common liberalization list" (not subject to national QRs) imported from state-trading countries. Products not liberalized at the Community level were subject to national QRs and were treated under regulation 3420/83.

[70] National QRs were administered under Council regulation 1766/82.

[71] For more detailed discussions, see USITC, *The Effects of Greater Economic Integration Within the European Community on the United States: Third Followup Report* (investigation No. 332-267), USITC publication 2368, Mar. 1991, p. 11-4, and USITC, *EC Integration: Fourth Followup*, USITC publication 2501, p. 12-8.

[72] For specific provisions in the association agreement with Poland, which are similar to the agreements with Hungary and Czechoslovakia, see *Council Decision of February 25, 1992 on the Conclusion by the European Economic Community of the Interim Agreement Between the European Economic Community and the European Coal and Steel Community, of the One Part, and the Republic of Poland, of the Other Part, on Trade and Trade-Related Matters*, 92/288/EEC, *OJ*, No. L 114 (Apr. 4, 1992), p. 1; *Protocol 1 on Textile and Clothing Products to the Interim Agreement*, p. 45; and *Protocol 2 on ECSC Products to the Interim Agreement*, p. 47. For a more detailed discussion of

[72]—*Continued*

developments in the association agreements before 1992, see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, p. 12-8.

[73] "EC/Eastern Europe: Visegrad Group May Block Progress on Association Accords," *European Report*, No. 1800 (Oct. 3, 1992), External Relations, p. 7.

[74] "EC/East Europe: Membership Fever Takes Hold at EC/Visegrad Ministerial," *European Report*, No. 1801 (Oct. 7, 1992), External Relations, p. 3.

[75] "Steel: Czechoslovakia Contests EC Import Curbs," *European Report*, No. 1796 (Sept. 19, 1992), External Relations, p. 2.

[76] "Council Agrees to Extension of Interim Agreements," *European Report*, No. 1807 (Oct. 27, 1992), External Relations, p. 15.

[77] "Hungary Ratifies Association Accord," *European Report*, No. 1814 (Nov. 21, 1992), External Relations, p. 9.

[78] "Czech and Slovak Draft Mandates Agreed," *European Report*, No. 1838 (Feb. 24, 1993), External Relations, p. 7.

[79] "In Brief," *European Report*, No. 1814 (Nov. 21, 1992), External Relations, p. 8.

[80] "EC/Bulgaria Association Agreement Initialed," *European Report*, No. 1823 (Dec. 24, 1992), External Relations, p. 9.

[81] "EEC/Albania: Problems With 40 Million ECUs AID," *European Report*, No. 1767 (May 9, 1992), External Relations, p. 1, and "EEC/Baltic States: Trade Agreements Signed," *European Report*, No. 1768 (May 13, 1992), External Relations, p. 1.

Visegrad countries, these agreements provide for the mutual granting of most-favored-nation status and the removal of EC quantitative restrictions (except coal, steel, and textiles and apparel).[82]

During 1992, member states continued to apply a variety of national QRs on products from China, North Korea, Vietnam, Albania, Monogolia, and the ex-Soviet Union Republics. All member states, except France and Greece, applied national QRs on imports of Chinese footwear.[83] In late 1992, the EC Commission proposed that national QRs on products from these countries be abolished but that EC-wide restrictions be applied to a list of products from China, North Korea, and Vietnam. The products included chloramphenicol, footwear, leather gloves, tableware and kitchenware of porcelain or china, ceramic tableware, kitchenware and other household articles, certain glassware, radio-broadcast receivers, and bicycles and toys.[84]

Automobiles

In July 1991, the EC and Japan entered into an agreement to replace member-state quotas with an EC-wide voluntary restraint agreement for Japanese automobiles. Under the agreement, effective December 31, 1992, Japan agreed to limit total direct exports of automobiles to the EC to 1.23 million vehicles annually during the 7-year period 1993-2000. The agreement also established specific ceilings on imports of Japanese automobiles in France, Italy, Portugal, Spain, and the United Kingdom. The agreement did not establish limits on so-called Japanese transplants—Japanese automobiles produced in the EC or in third countries such as the United States.[85]

The EC and Japan also agreed to meet biannually to discuss such unexpected circumstances as EC sales declines, thus permitting the agreement to be modified. During 1992, the two sides failed to agree on an estimate for EC demand and EC auto imports from Japan for 1993.[86] Some analysts have suggested that disagreements over market projections may be a constant point of contention between the EC and Japan.[87] On April 1, 1993, the EC and Japan agreed to reduce Japanese automobile and light commercial vehicle exports to the EC during 1993 by 9.4 percent from the 1992 level. Thus, exports of Japanese vehicles to the EC are scheduled to decline from 1,202,000 in 1992 to 1,089,000 vehicles in 1993. This agreement does not establish restrictions for Japanese transplant sales in the EC, which are projected to increase by 150,000 to 200,000 vehicles in 1993 over the 320,000 vehicles sold in 1992.[88]

U.S. automobile firms, particularly General Motors and Ford, which have an extensive European production base, will likely be affected by the outcome of the ongoing EC-Japanese consultations.[89] In general, under current arrangements, U.S. auto producers are expected to benefit from the elimination of member state quotas and the subsequent protection afforded by an EC-wide restraint on Japanese auto imports.[90]

Quota Management

During 1992, the EC continued to explore new approaches to the establishment of a Community quota management system. EC Council regulation 1023/70 provided procedures for the establishment and administration of Community quotas that are distributed among the member states. Several years ago, however, the European Court of Justice ruled that, while the breakdown of a Community quota by member states could be justified during the transition to a single market, such distribution of Community quotas is not compatible with the principle of free competition in the single market (the ruling, while specifically applied to the EC tariff quota applied under the GSP scheme,[91] has general implications for other EC quota-sharing arrangements).[92] During 1992, the EC Commission considered a new quota management regime that, like the new regime for MFA textiles and apparel, would include a system to admit imports based on exchanges of information between national authorities and a single import license issued by member states valid throughout the EC rather than on the creation of a centralized Community import-licensing office.[93]

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[82] Lori Cooper, "New European Agreements: Strengthening European Ties While Straining U.S. Ties?" *Europe Now*, July-Aug. 1992, p. 6 and "Cooperation Agreements With Baltic States Approved," *Eurowatch*, Jan. 11, 1993, p. 4.

[83] "Footwear: European Industry Calls for Quotas on Chinese Shoes," *European Report*, No. 1773 (June 3, 1992), Business Brief, p. 6. For a discussion of QRs on footwear, see USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, p. 11-12.

[84] U.S. Department of State, "Proposed Amendments to EC Common Rules for Imports," message reference No. 15918, prepared by U.S. Embassy Brussels, Dec. 18, 1992.

[85] For a more detailed discussion of the EC-Japan automobile agreement, see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, pp. 12-4 to 12-6.

[86] "Japan and EC Fail To Agree on Car Demand," *Financial Times*, Dec. 2, 1992; "EC, Japan Argue Quota," *Ward's Automotive International*, Dec. 1992, p. 7; and "EC, Japan to Open Talks on Key Trade Issues," *Journal of Commerce*, Jan. 14, 1993, p. 3A.

[87] "EC, Japan Argue Quota," *Ward's Automotive International*, Dec. 1992, p. 7.

[88] "EC Carmakers Disappointed by Japanese Cut in Exports," *Financial Times*, April 2, 1993, p. 14.

[89] The U.S. share in automobile production and marketing in the EC is discussed in USITC, *EC Integration: Fourth Followup*, USITC publication 2501, p. 12-4.

[90] U.S. industry executives, interviews by USITC staff, Jan. 1993.

[91] Case 51/87: Commission of the European Communities v. Council of the European Communities, Sept. 27, 1988.

[92] For additional discussion, see USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, p. 11-6.

[93] "New Regulation for Community Quota Management System," *European Report*, No. 1788 (July 25, 1992), Internal Market, p. 12.

1993 and Beyond

Progress to Date

In addressing the issue of lifting intra-Community customs barriers prior to the December 31, 1992, single market deadline, the EC Commission did not attempt to abolish national QRs per se. Similarly, the EC did not move to strike article 115 from the Treaty of Rome (although the EC Commission intentionally took steps to reduce the number of article 115 restrictions on intra-Community trade in force (table 11-1) as part of its efforts to establish a uniform internal market); moreover, article 115 provisions were maintained in the Maastrict Treaty. Rather, as stated in the 1985 White Paper, the EC Commission emphasized the need to find "ways and means other than controls at the internal frontiers to achieve comparable levels of protection and/or information [on border-crossing activities]" once the single internal market becomes effective. The EC Commission also stated in the White Paper that its goal was to require "national policies either to be progressively relaxed and ultimately abandoned where they are no longer justified, or replaced by truly common policies applicable to the Community as a whole."[94] The White Paper did not list specific directives or regulations to be passed in this area; rather, the EC has approached the removal of national QRs by sector.

Pressed by the December 31, 1992, deadline for the single market, the EC significantly reduced the number of residual national QRs to achieve uniformity of its trade regime and curtailed recourse to article 115 restrictions on intra-Community trade. A few QRs and article 115 measures were not lifted in time for the single market deadline or were extended past the deadline. National QRs on bananas and article 115 safeguards restricting intra-Community trade in bananas will remain in effect until a new banana regime becomes effective. A few QRs implemented under the Community's GSP scheme remain in force pending an Uruguay Round agreement. QRs remain on products of non-Eastern European nonmarket economies (China, North Korea, Vietnam) affecting such products as footwear pending the adoption of EC-wide restrictions.[95] Regarding the enforcement of these national QRs in the single market, EC Commission officials reportedly stated that they were unsure how these post-single market residual QRs would be applied in the absence of internal border controls.[96]

Implications for the United States

Because EC restrictions on bananas, textiles and apparel, products of non-market countries, and GSP products are not directed against U.S.-origin products, the new EC-wide quotas will not significantly directly affect the United States by either creating or restricting trade. Although the United States does not produce bananas in commercial quantities, EC-wide quotas under the new banana regime could limit the market growth for the three U.S. multinational companies that market bananas in the EC. Concerning textiles and apparel, the analysis conducted in the first report in this series concluded that a shift to EC-wide quotas could cause controlled suppliers to redirect shipments to member states' markets where they have the greatest competitive advantage but that had been previously limited by a national QR. Thus competition facing U.S. exports, which never faced a member-state QR, could increase in these markets. The analysis suggested that in a few "ultrasensitive" categories, U.S. exports could lose to products of Germany, the United Kingdom, and Italy whereas the United States would have the potential to gain exports to France and the Benelux countries.[97]

Over the years, U.S. concern about EC-wide QRs has focused primarily on EC import quotas on Japanese automobiles, since production of automobiles at Japanese-owned plants in the United States could be directly affected. Analysis in the Fourth Followup Report concluded that an EC-wide quota on imports of Japanese automobiles during a transitional period could create increased marketing opportunities for U.S. exports. However, if Japanese producers continue to shift more production facilities to the EC to increase sales, U.S.-owned automakers may face a loss of market share in the long term. Also, the analysis cautioned that, if the EC institutes local-content requirements that apply to Japanese-owned automobile plants in both the EC and other nations, Japanese-owned automakers in the United States could face barriers in exporting to the EC.[98]

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[94] The EC Commission subsequently stated that "national protective measures may have to be replaced by appropriate measures at the Community level." EC Commission, "Europe-World Partner, Questions and Answers," Oct. 19, 1988.

[95] U.S. Department of State, "Still No Agreement on Common Rules for Imports at EC General Affairs Council," message reference No. 01473, prepared by U.S. Embassy Brussels, Feb. 2, 1993.

[96] Andrew Hill, "Import Curbs May Threaten EC Harmony," *Financial Times*, Jan. 5, 1993, p. 7.

[97] USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, pp. 11-14 to 11-15.

[98] USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 12-16.

CHAPTER 12
INTELLECTUAL PROPERTY

Intellectual property protection in the European Community is important for U.S. businesses. Inadequate protection and nonuniform treatment of intellectual property—patents, copyrights, trademarks, and mask works—in the EC discourages U.S. trade and risks the loss of considerable U.S. investment, particularly with respect to high-technology products. The White Paper concluded that differences in intellectual property laws among the EC member-states hurt trade among the EC countries as well as the ability of foreign enterprises to treat the common market as a single economic environment. The White Paper proposed several measures to achieve a harmonized intellectual property regime by December 31, 1992. While significant progress was made in 1992, work continues.

Developments During 1992

Copyright

Background

The EC's goals in the copyright field are briefly outlined in the White Paper and are fully discussed in a consultative document, the "Green Paper on Copyright and the Challenge of Technology—Copyright Issues Requiring Immediate Action."[1] The Green Paper highlights the issues of piracy, audiovisual home copying, distribution and rental rights, and computer program and data base protection. A 1990 followup to the Green Paper[2] also addresses the issues of copyright term harmonization, member-state accession to the Berne and Rome Conventions[3], and copyright and "neighboring rights" applicable to satellite and cable broadcasting. Neighboring rights generally refer to the rights of fixation, reproduction, broadcasting, and distribution. These rights are granted to performers, producers, and broadcasters.

Before 1992, the EC Council succeeded in adopting only one measure in the copyright field—Directive 91/250 on the legal protection of computer programs[4]—despite the proposal of several additional measures. These measures included a directive (91/276) coordinating copyright and related rules applicable to satellite broadcasting and cable retransmission; a directive (90/586) on rental rights, lending rights, and certain rights related to copyright; and a decision (90/582) concerning member-state accession to the Berne and Rome Conventions.

In 1992, however, the EC made greater progress in the copyright field, adopting one resolution entitled "Increased Protection for Copyright and Neighbouring Rights," as well as a directive (92/100) on rental and lending rights. In addition, the EC Commission proposed two directives, the first (92/33) harmonizing the term of copyright protection and related rights, and the second (92/24) protecting computer data bases.

Developments

Rental, Lending, and Neighboring Rights

On November 19, 1992, the Council adopted Directive 92/100 on "Rental Right and Lending Right and on Certain Rights Related to Copyright in the Field of Intellectual Property."[5] Directive 92/100 harmonizes rental rights, lending rights, and neighboring rights in copyrighted works throughout the European Community. The directive grants authors, performers, and producers the right to authorize—or to prohibit—the rental or lending of their copyrighted works. The directive also grants authors rental remuneration rights even if their works have been transferred or assigned.

Accession to the Berne And Rome Conventions

Background

The Berne Convention, as revised by the Paris Act, focuses on the rights of authors and performers. The Rome Convention focuses on the neighboring rights of producers and broadcasters. Combined, the Berne and Rome Conventions provide minimum copyright and neighboring rights protection to authors, performers, producers, and broadcasters. Although all EC member- states are signatories to the Berne Convention, not all have ratified the Paris Act revision to that convention. Similarly, only 7 of the 12 member states have ratified the Rome Convention.[6]

In 1990 the EC Commission proposed a Council decision (90/582) regarding EC member-states' accession to the Berne Convention, as revised by the Paris Act, and to the Rome Convention.[7] The EC

[1] COM (88) 172 (June 7, 1988).
[2] COM (90) 584 (Jan. 17, 1991).
[3] The Berne Convention for the Protection of Literary and Artistic Works as revised by the Paris Act of July 24, 1974, and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (the Rome Convention) of Oct. 26, 1961.
[4] *Official Journal of the European Communities* (*OJ*), No. L 122 (May 17, 1991), p. 42. The original proposal (88/816) was discussed 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, Mar. 1990, pp. 12-4 to 12-7.
[5] *OJ* No. L 346 (Nov. 27, 1992), p. 61. Proposed Directive 90/586, which was later amended and adopted as Directive 92/100, was analyzed in USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, pp. 13-6 to 13-8.
[6] "Copyrights: EEC Ready To Ratify Rome and Berne Conventions in 1995," *European Report*, No. 1767 (May 9, 1992), Internal Market, p. 3.
[7] This proposal was discussed in USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, pp. 13-6, 13-9 to 13-10.

Commission reasoned that this measure would provide a common basis for future harmonization of copyright and neighboring rights within the Community. Due to strong opposition, however, the proposed decision, which would bind all member states, was dropped in favor of a resolution, which would not bind the member states. A majority of the member states opposed the proposed decision believing that the EC Commission cannot compel ratification of an international convention.[8]

The proposed resolution was adopted on May 14, 1992.[9] It invites all member states to sign onto the Rome Convention and the Paris Act of the Berne Convention by January 1, 1995, and to introduce legislation ensuring national compliance with these conventions. The resolution also invites the EC Commission, when negotiating agreements with non-EC countries, to consider the status of these countries as signatories to the Berne and Rome Conventions. The United States is a signatory to the Berne Convention but not the Rome Convention.

Possible Effects

Copyright and neighboring rights in the EC account for approximately ECU 150 to 250 billion ($186 to $310 billion) per year.[10] The value of copyrighted publications exported from the United States to the EC was estimated at $714 million in 1991, while the value of total exports of printed publications—newspapers, periodicals, books, and commercial printing—was estimated at $3.6 billion.[11]

The EC member states' accession to the Rome Convention and the Paris Act of the Berne Convention should strengthen copyright and associated rights within the EC and result in a more consistent application of these rights. Thus, accession is expected to accelerate the growth of U.S. printed matter exports to the EC. Additionally, when member states adopt national legislation ensuring compliance with the Berne and Rome Conventions, U.S. sound recording and broadcasting industries will benefit because many member states currently offer no comparable protection.

Finally, the resolution is expected to promote further harmonization of the EC's copyright laws and improve the Community's ability to negotiate copyright matters with non-EC countries.

[8] "Copyrights: EEC Ready To Ratify," p 3.

[9] *Resolution on Increased Protection for Copyright and Neighbouring Rights*, *OJ* No. C 138 (May 28, 1992), p. 1.

[10] Bureau of National Affairs, Inc. (BNA), European Community, "Parliament Okays Incorporation of Berne, Rome Convention Into EC Law," *World Intellectual Property Report* (Jan. 1992), p. 7.

[11] U.S. Department of Commerce, International Trade Administration, *U.S. Industrial Outlook, 1993*, Jan. 1993.

Harmonization of the Term of Copyright Protection

Background

On March 23, 1992, the EC Commission proposed a directive (92/33) harmonizing and lengthening the term of copyright protection and related rights in the EC.[12] The proposed directive sets the term of copyright for literary and artistic works at the life of the author plus 70 years, and the protection of performers' and producers' related rights at 50 years after the work is performed or fixed in the case of cinematographic works.[13] The proposed directive applies to all copyrights and related rights in force on December 31, 1994. In no event may the directive shorten a term of protection already in force in a member state.

For a literary or artistic work created outside the EC by a non-Community national, protection under the proposed directive expires concurrently with that extended to the work in its country of origin. However, in no circumstance may EC protection exceed the term, life of the author plus 70 years. With regard to performers' and producers' related rights, the member states may grant protection to non-Community nationals; EC protection must expire before or concurrent with the protection offered in the rightholder's country.

On July 1, 1992, the EC's Economic and Social Committee adopted a generally favorable opinion regarding the proposed directive.[14] Although lauding the overall goal of copyright term harmonization, the Committee suggested amending the proposed term for literary works to the life of the author plus 50 years. They viewed this change as being consistent with the present laws of the majority of the member states.

On November 19, 1992, the European Parliament gave initial approval to the proposed directive, but opposition arose over the possibility that producer's audiovisual works would not be protected.[15] The measure must next gain approval from the EC Council.

Possible Effects

In the last several years U.S. copyright industries have increasingly exported their products, achieving

[12] COM (92) 33, *OJ* No. C 92 (Apr. 11, 1992), p. 6.

[13] Most member states have copyright laws that protect literary and artistic works for the life of the author plus 50 years. This is the term stipulated under the Berne Convention. In Spain and Germany protection runs for the life of the author plus 60 and 70 years, respectively. In France the term is 50 years; 70 years for musical works. With regard to neighboring rights, most member states offer no protection; a few offer protection for a term of 20-25 years. The Rome Convention provides at least 20 years protection.

[14] *OJ* No. C 287 (Nov. 4, 1992), p. 53.

[15] BNA European Community, "Parliament Split Over Proposal for Harmonization of Copyright Period," *World Intellectual Property Report*, Jan. 1993, pp. 6-7.

foreign sales of $34 billion in 1991.[16] The share of these exports to the EC is not known but is believed to be significant. Harmonization and lengthening of the term of copyright and neighboring rights should contribute to the growth of U.S. exports to the EC. The proposed directive will also create a more uniform environment for U.S. companies doing business in the EC and may provide greater incentive for U.S. investment there.

U.S. Industry Response

U.S. industry sources criticize the proposed directive, asserting that it does not give national treatment to foreign nationals and firms, thus disadvantaging them against their EC counterparts. Industry sources also complain that the proposed directive may conflict with the U.S. works-for-hire practice by giving artists and performers an inalienable right to remuneration, even if there are contractual provisions to the contrary.

Harmonization of Legal Protection for Data Bases

Background

On April 15, 1992, the EC Commission proposed a directive (92/24) to harmonize data base protection within the European Community.[17] Specifically, the proposal seeks to extend copyright protection to collections and compilations of literary, artistic, and musical works whose arrangement, storage, and access is performed by electronic, electromagnetic, electro-optical, or analogous processes—a data base. In addition, the proposal grants to the data base maker the right to prevent unauthorized extraction or reutilization of the data base contents for commercial purposes. Eligibility for protection is based solely on the author's originality in selecting or arranging the data base contents. The proposed directive affords these data bases the same protection granted collections under article 2(5) of the Berne Convention. The directive does not affect any rights that may exist in the underlying works or materials.

The proposed directive defines the term data base as a collection of works or materials that are arranged, stored, and accessed by electronic means and the electronic materials necessary to operate the data base, such as a thesaurus, index, or other system for obtaining or presenting the information that makes up the data base. The term data base does not encompass the computer program used to make or operate the data base.

Under the proposed directive the member states will grant the data base maker the right to prevent unauthorized extraction or reutilization of the data base or its contents, so long as the data base or its contents are not already protected by copyright or neighboring rights.

With regard to the issue of authorship, the author and rightholder of a data base is defined as the natural person or persons who created the data base. Alternatively, the rightholder may be a legal entity if a member state's laws permit. The author has the exclusive right to select or arrange the data base contents, including the electronic material used to create or operate the data base. The author also has the right to authorize the reproduction, translation, adaptation, arrangement, alteration, distribution, and rental of the data base.

The proposed term of data base protection is the same as the term provided literary works, that is, the life of the author plus 50 years. This term may be changed in view of future Community harmonization.[18]

Data bases are protected from unfair extraction if their makers are nationals of a member state or have their habitual residence "on the territory of the Community." When data bases are owned by a company, the company has the right to prevent unfair extraction if the company was formed under the laws of a member state, and its registered office or principal place of business is within the Community. If the company meets only the first criterion, its operations must possess an effective and continuous link with the economy of one of the member states to have its data base protected. Agreements extending the right to prevent unfair extraction to data bases produced in non-Community countries will be concluded by the Council in response to an EC Commission proposal.

The proposal also includes a reciprocity provision that applies the unfair extraction clause to non-EC data base suppliers only if their home countries similary protect EC data bases.

The proposed term of protection for the right to prevent unfair extraction is 10 years from the date the data base was lawfully made available to the public.

Possible Effects

The world information data base market was estimated at $9.35 billion in 1990. This market is dominated by the United States, which holds a 56-percent market share.[19] The European Community holds a 24-percent market share, two-thirds of which is held by the United Kingdom, Germany, and France. The remaining 20-percent market share is divided among various countries. U.S. data bases, particularly those providing legal, financial, and current affairs information, are much larger than those in the EC. The private sector accounts for 83 percent of the data base production in the United States, compared with 44 percent in the EC.

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[16] *U.S. Copyright Industries in the U.S. Economy: 1977-1990*, Sept. 1992, prepared for the International Intellectual Property Alliance by Economist Inc., p. v.

[17] COM (92) 24, *OJ* No. C 156 (June 23, 1992), p. 4. This proposal is now before the Parliament for a first reading.

[18] See Proposed Council Directive 92/33 discussed above.

[19] BNA European Community, *World Intellectual Property Report*, Mar. 1992, pp. 63-64.

Although the proposed directive on data base protection introduces a legal regime that is substantially different from that in the United States, it will protect U.S. data bases and benefit U.S. data base industries because of U.S. dominance in the world data base market. However, dissimilarities in the treatment of data base makers and authors—such as reciprocity versus national treatment—may be problematic and dissatisfy U.S. data base makers. For instance, data bases, including those of U.S. origin, may be protected by the proposed copyright law but not by the right of unfair extraction when their authors qualify for protection but their makers do not.[20]

U.S. Industry Response

U.S. industry sources agree that the proposed directive will benefit the growth of U.S. data base industries, but they also voice concerns. One concern, for example, relates to the reciprocity provision of the proposed legislation. Since U.S. copyright laws do not provide a right of unfair extraction, absent an international treaty or national treatment conferring such rights, the reciprocity provision will hurt U.S. interests.

Satellite Broadcasting and Cable Retransmission

A proposed directive (91/276) relating to satellite broadcasting and cable retransmission was approved by the European Parliament on its first reading, October 29, 1992, subject to amendment.[21] The proposal provides certain rights to authors, performers, and broadcasters with respect to programs broadcast by satellite. The proposal also addresses the application of copyright and neighboring rights to cable retransmissions. An amended proposal (92/526), which has yet to be published, is now before the Council awaiting a common position.

Patents

Background

The White Paper outlined two areas for action in the patent field—ratification of the Community Patent Convention and protection for biotechnological inventions. A third area of action, the legal protection of industrial designs, was discussed in the 1991 "Green Paper on the Legal Protection of Industrial Designs."

Prior to 1992 the EC Council adopted no legislation in the patent field, although the EC Commission had submitted two proposals, one on the protection of biotechnological inventions (88/496), and a second offering Communitywide plant variety protection (90/347). In 1992 the EC Council adopted one regulation, 1768/92, extending the term of patent protection on pharmaceutical products.

[20] Ibid., p. 77.

[21] The proposed directive was analyzed in USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, pp. 13-6, 13-8 to 13-9.

Developments

Supplementary Protection Certificate

On June 18, 1992, the Council adopted Regulation 1768/92 creating a supplementary protection certificate, or SPC, for patented medicinal products.[22] In summary, an SPC extends the term of patent protection on pharmaceutical products patented under the national laws of a member state or under the European Patent Convention. Patent term extension under an SPC is only available, however, if the product's marketing was delayed by an EC administrative authorization procedure.[23]

The regulation became effective in January 1993 and applies to patented products receiving market authorization after January 1, 1985—the maximum retroactive authorization date. In Denmark and Germany, this date is January 1, 1988, whereas the maximum retroactive date in Belgium and Italy is January 1, 1982. Greece, Portugal, and Spain are permitted to postpone implementation of the regulation for 5 years.[24]

On September 4, 1992, Spain sought to annul this regulation in the Court of Justice.[25] Spain argues that the EC has no authority over patent matters and it is thus inappropriate for the EC to adopt patent-related legislation. According to an EC Commission official, it is unlikely that the case will be heard before the fall of 1993.[26]

Biotechnology

A proposed directive (88/496) on the protection of biotechnological inventions was approved by the European Parliament on its first reading on October 29, 1992, subject to certain amendments.[27] Although the

[22] *Council Regulation No. 1768/92 Concerning the Creation of a Supplementary Protection Certificate for Medicinal Products, OJ* No. L 182 (July 2, 1992), p. 1. The proposed regulation (90/101) was discussed in USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, pp. 12-4 to 12-5.

[23] See, e.g., Council Directive 65/65, OJ No. L 22 (Dec. 9, 1965), p. 369, and Council Directive 81/851, OJ No. L 317 (Nov. 6, 1981), p. 1.

[24] BNA, "Parliament Gives Final Approval to Supplementary Patent Measure," *World Pharmaceutical Report*, June 8, 1992, p. 3.

[25] European Court of Justice, *Case C-350/92, OJ* C 260 (Oct. 9, 1992), pp. 2-3.

[26] BNA, "Spain Asks Court To Annul EC Supplementary Patent Rule," *World Pharmaceutical Report*, Oct. 19, 1992, p. 7.

[27] *Commission Proposal for a Council Directive on the Legal Protection of Biotechnological Inventions, OJ* No. C 10 (Jan. 13, 1989), p. 3; BNA, "Parliament Gives First Approval to Biotech Patents Proposal," *World Pharmaceutical Report*, Nov. 30, 1992, p. 9. This proposal was analyzed in 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. 12-10 to 12-11.

text of the amended proposal is not yet available, one amendment said to have the EC Commission's backing reportedly prohibits patents on the human body or human body parts.[28] A second proposed amendment is reported to prohibit patents on inventions that involve "unnatural processes for the production and modification of animals or that cause unnecessary suffering or physical harm to the animals concerned." A third amendment allows farmers to use second-generation patented seed and livestock without paying royalties.[29] The amended directive is now before the Council of Ministers awaiting a common position.

Plant Variety Protection

A proposed regulation (90/347) providing Communitywide, patent-like protection for new plant varieties, exclusive of national regimes, was approved by the EC Parliament in November 1992, subject to certain amendments.[30] The EC Commission's amended proposal is awaited.

Community Patent Convention

In December 1989 the EC adopted an agreement providing that the Community Patent Convention (CPC) would come into operation in the EC when it had been ratified by all member states.[31] The agreement also provided that if ratification was not complete by the end of 1991, a further intergovernmental conference would be convened to address the issue. In February 1992 the EC Presidency proposed to modify the conditions of entry into force of the CPC. The proposal postpones ratification of the CPC until 1996 and suggests that the CPC could come into force without the ratification of all member states. This proposal is pending. As of December 31, 1992, 7 of the 12 member states had ratified the Convention; 3 others had signed compromise agreements regarding ratification.[32]

[28] BNA, "Parliament, Commission Agree on Biotech Patent Proposal," *World Pharmaceutical Report*, Nov. 30, 1992, p. 9.

[29] Ibid.; "Biotechnology: European Parliament Wants To Maintain Breeder's Privilege," *European Report*, No. 1809 (Nov. 4, 1992), Internal Market, p. 2.

[30] *Commission Proposal for a Council Regulation on Community Plant Variety Rights, OJ* No. C 244 (Sept. 28, 1990), p. 1; "Intellectual Property," Eurobases, Info92, EC Commission, Nov. 11, 1992, file No. 77334, par. 3.12. The proposed regulation was discussed in USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, pp. 12-10 to 12-11, and U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: Third Followup Report*, USITC publication 2368, Mar. 1991, pp. 12-5 to 12-6.

[31] The CPC is discussed in USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, p. 12-5. Council Decision 89/695, *OJ* No. L 401 (Dec. 30, 1989).

[32] Denmark and Ireland have not ratified the CPC; Greece, Spain, and Portugal have signed a compromise agreement. "Intellectual Property," *European Update*, Westlaw, July 16, 1992, secs. 2.2.1-2.2.4.

Semiconductor Mask Works

Background

Mask works are a unique form of intellectual property first recognized by the United States in the Semiconductor Chip Protection Act of 1984 (SPCA). The EC White Paper discussed the need to protect such new technologies, specifically outlining a measure to protect microcircuits. In 1987 the Council adopted Directive 87/54, "The Legal Protection of Topographies of Semiconductor Products."[33]

Developments

Directive 87/54 required member states to adopt implementing legislation by November 7, 1987. In 1992 Greece was sued in the European Court of Justice for allegedly failing to meet this deadline.[34]

Supplemental to the Mask Works Directive is Council Decision 87/532, which obligates the member states to extend mask work protection to certain countries including the United States that provide protection to EC mask works. At present the EC and the United States provide one another interim protection. Since the last followup report, this interim protection has been extended until December 1994.[35] Permanent protection should eventually be granted.[36]

Trademarks

Background

The White Paper outlined one goal in the trademark field—the creation of a Community trademark regime. To achieve this goal, six measures were proposed. Whereas most measures relate to Community trademark office operation, one measure requires the member states to approximate their trademark laws.

Prior to 1992 the Council successfully adopted a directive (89/104) approximating the member states' trademark laws. In addition, the EC Commission proposed legislation establishing a Community trademark, a CTM, and setting procedural requirements to operate a Community trademark office.[37]

[33] *OJ* No. L 24 (Jan. 27, 1987), p. 36. Directive 87/54 was analyzed in USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, pp. 12-5 to 12-7.

[34] Action No. C-375/90.

[35] Semiconductor Chip Protection Act of 1984 (SPCA), 17 U.S.C. 914; 57 F.R. 56327-56328 (Nov. 27, 1992); BNA European Community, "EC Extends Protection for Semiconductors From U.S.," *World Intellectual Property Report*, Feb. 1993, pp. 35-36.

[36] See Council Decisions 90/510 and 90/511; Commission Decision 90/541.

[37] Proposed Regulations 84/470, 85/844, and 86/731. These measures are analyzed in USITC, *Effects of EC Integration*, USITC publication 2204, July 1989, pp. 12-7 to 12-8.

In 1992 the European Community made little concrete progress in the trademark area either formulating or adopting the measures outlined in the White Paper. The Community trademark regulation (84/470), which was discussed in the Fourth Followup Report, remains under consideration, as does the proposed implementing legislation. Although it is not, strictly speaking, a trademark law, the Council adopted one regulation on protected geographical indications and designations of origin (PGIs and PDOs, respectively) with regard to agricultural products in 1992.[38]

Developments

Protected Designations of Origin and Geographical Indications

The Council adopted Regulation 2081/92, concerning PGIs and PDOs, on July 14, 1992.[39] This regulation, which was analyzed in the Fourth Followup Report,[40] becomes effective on July 24, 1993. In summary, the regulation protects certain agricultural products and foodstuffs whose characteristics such as quality and reputation are linked to their geographic origin. Although the EC's use of some geographical designations differs from that in the United States, most notably in the alcoholic beverage market, U.S. alcoholic beverage companies that have faced rules similar to EC Regulation 2081/92 in the past have not experienced significant export losses.[41]

According to the terms of the regulation, member states must adopt implementing legislation, administrative provisions, and inspection structures necessary to comply with the regulation. The inspection structures called for in the regulation must be in place no later than January 24, 1994.

1993 and Beyond

Progress to Date

The June 1985 EC Commission White Paper, "Completing the Internal Market," outlined a program and timetable for completing unification of the internal market by December 31, 1992. To achieve this goal, the White Paper outlined 11 measures requiring action in the area of intellectual and industrial property. These measures included the creation of a Community Trademark, ratification of the Community Patent Convention, and protection of biotechnological inventions, microcircuits, and computer programs. Additional measures were later proposed.

In 1988, for example, a measure affording protection to computer programs was proposed in the "Green Paper on Copyright and the Challenge of Technology." The Green Paper also discussed data base protection and distribution and rental rights in copyrighted works. Additional measures were proposed in the 1990 "Copyright Follow-Up Paper," and the 1991 "Green Paper on the Legal Protection of Industrial Design."

On December 31, 1992, the target deadline for completing the internal market, the EC had not met its goals in the area of intellectual property. Of the three major areas—trademark, patent, and copyright—the EC had the most success passing legislation in the copyright field. Here the EC has adopted legislation protecting computer programs and granting rental rights, lending rights, and neighboring rights. Legislation is pending on data base protection, copyright term harmonization, and satellite broadcasting and cable retransmission rights.

In the trademark field, CTM legislation was still pending, although an amended proposal was awaiting a common position. However, the Council successfully adopted legislation requiring approximation of the member states' trademark laws as well as legislation affording trademark-like protection for designations of origin and geographical indications relating to agricultural products and foodstuffs.

In the patent and patent-related fields, ratification of the Community Patent Convention was not completed by December 31, 1992. Additionally, measures were pending to protect biotechnological inventions and plant varieties, to approximate national industrial design laws, and to create a Community industrial design regime. In contrast, the EC successfully adopted legislation providing protection for semiconductor mask works and supplementary protection for pharmaceutical products.

Implications for the United States

Even prior to the 1992 program, fairly well-developed intellectual property protection was offered by the EC member states for most intellectual property protected in the United States. The 1992 program generally sought to harmonize these national laws and, where Communitywide regimes were viewed as necessary to the goals of the internal market, to create such regimes. Additionally, legislation was proposed to protect rapidly developing technologies in the computer and biotechnology fields.

Generally, harmonization and strengthening of the copyright, trademark, patent, and related laws in the European Community should benefit U.S. business interests. For example, the creation and administration of a CTM is expected to simplify the acquisition of trademark protection, enhance the protection afforded trademarks, and discourage counterfeiting and other

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[38] A geographical indication or designation of origin refers to a specific geographical area where a product was produced.

[39] *Council Regulation No. 2081/92 on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, OJ* No. L 208 (July 24, 1992), p. 1.

[40] USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, pp. 5-38 to 5-39.

[41] For more information, see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, pp. 5-38 to 5-39.

trademark violations in the European Community. Likewise, it is anticipated that the adopted and proposed patent legislation will liberalize trade, particularly for U.S. producers of biotechnological products. Moreover, the Community Patent Convention, if ratified, will offer a simplified method for procuring Communitywide patent protection. In the copyright field, measures under the White Paper are expected to reduce piracy, particularly with respect to audio and video recordings and computer software, thereby increasing the market for legitimate products.

CHAPTER 13
THE SOCIAL DIMENSION

The "social dimension" of EC 1992 refers to the efforts to harmonize different EC member-state policies on labor markets, industrial relations systems, occupational safety and health regulations, social welfare, and social security systems. Although the White Paper did not call for legislative action in this area, in 1989 the EC Commission presented a package of 47 social dimension initiatives. The EC Commission has drafted proposals for virtually all of these initiatives, but less than half of the measures have been adopted. The social dimension measures will apply to all companies located in the EC, regardless of parentage. Accordingly, these measures have been followed closely by U.S. business associations, which are particularly concerned with assuring that labor relations requirements for their EC-based facilities do not reach extra-territorially to company headquarters and other U.S. facilities.

At the Maastricht Summit in December 1991, all member states except the United Kingdom agreed to form their own "European Social Community." Under the agreement the new Treaty of European Union would contain only the original social chapter of the Treaty of Rome, which covers mainly health and safety and free movement of workers.[1] By a separate but legally binding protocol, the 11 other member states agreed that qualified-majority voting would apply to measures concerning worker health and safety measures, working conditions, information and consultation of workers, equality between men and women in labor matters, and the integration of excluded people into the labor market. Unanimous voting will be maintained in the areas of social security and social protection of workers, employment contract matters, employee representation and collective employee interests, working conditions for non-EC nationals, and financial contributions for promoting employment and job creation.

Developments During 1992

Collective Redundancies

The term "collective redundancies" refers to company actions requiring layoffs or reductions in the workforce. Under a 1975 EC directive governing collective redundancies, an employer must send a written explanation to workers' representatives and must consult with them prior to making a redundancy.[2]

Because creation of the single market has increased cross-border restructuring of companies, the EC Commission expects a growing number of redundancies that may not be adequately covered by the 1975 directive.[3] In this regard, the EC Commission was concerned that the 1975 directive does not require employers to consult with employees about layoff decisions when such decisions are made outside the country in which the workers are employed. To address these concerns, the EC Council on June 24, 1992, adopted a directive amending the 1975 directive.[4] The amending directive must be implemented by August 26, 1994.

As explained in the description of the original EC Commission proposal contained in the previous USITC report on EC 92,[5] the consultation procedures set out in the existing (as of 1975) directive would apply whether the layoff decision were made at a local or headquarters level, regardless of the location of the headquarters. Any collective redundancy would be declared null and void if it were made without consultation and negotiation with workers in the member state where the affected workers are based.

Under the new directive as adopted, the term "collective redundancies" is extended to include not only "dismissals effected by an employer for one or more reasons not related to the individual workers concerned," but "all instances in which employment contracts are terminated on the employer's initiative for one or more reasons not related to the individual workers concerned."[6] The European Court of Justice held that the 1975 directive does not cover circumstances in which employees terminate their contract of employment after the employer has announced that payment of wage and other debts is being suspended. The changed language of the amended directive clarifies that such circumstances are covered.

Termination of individual workers' contracts will be covered as redundancies if at least five workers are terminated.[7] In adopting the directive, the Council also added a provision that employers who are contemplating collective redundancies begin consultations "in good time with a view toward reaching an agreement," and seek to mitigate the consequences by taking measures to redeploy or retrain workers.[8]

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[1] Safety and health directives could be approved by a qualified majority of all 12 member states, whereas other labor measures required unanimous approval. For a complete discussion, see USITC, *The Effects of Greater Economic Integration Within the European Community on the United States: First Follow-Up Report* (investigation No. 332-267), USITC publication 2268, Mar. 1990, p. 18-4.

[2] *Directive 75/129/EEC, Official Journal of the European Communities (OJ)*, No. L 48 (Feb. 22, 1975), p. 29.

[3] *European Update*, West Publishing Co., 1991 WL 11753 (D.R.T.), Oct. 1992, pp. 164-165.

[4] *Directive 92/56/EEC, OJ* No. L 245 (Aug. 26, 1992), p. 3.

[5] U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States: Fourth Followup Report* (investigation No. 332-267), USITC publication 2501, Apr. 1992, p. 14-5.

[6] *Amended Proposal for a Council Directive Amending Directive 75/129/EEC on the Approximation of the Laws of the Member States Relating to Collective Redundancies, OJ* No. C 117 (May 8, 1992) p. 10.

[7] *OJ* No. L 245 (Aug. 26, 1992), p. 4.

[8] Ibid.

During consultations employers must notify the workers' representatives in writing, with copies to the competent public authority, of—

- The reasons for the projected redundancies;
- The number of categories of workers to be made redundant;
- The number and categories of workers normally employed;
- The period over which the projected redundancies are to be effected;
- The criteria proposed for the selection of workers to be made redundant; and
- The method for calculating redundancy payments.[9]

Member states do not have to transpose all the requirements of the directive directly into national legislation; they may instead ensure that the requirements are included in collective bargaining agreements applying to workers in that member state. The following eight member states have already adopted mandatory consultation and negotiation provisions: Germany, Greece, Italy, France, Luxembourg, the Netherlands, Portugal, and Spain.[10]

Although when the amended directive was first proposed, there were some concerns that it might have extraterritorial effects, the EC Commission explained in the explanatory memorandum preceding the amended proposal adopted by the Council that the directive was drafted so as to avoid problems of extraterritoriality.[11] The EC Committee of the American Chamber of Commerce (AmCham) has indicated that it does not envision this directive as being a major problem for business.[12] Likewise, both the employer's European-level organization, the Union of Industrial and Employers' Confederations of Europe (UNICE), and the French employers' association agree with the changes made in the final directive.[13] The amendment does not contain provisions, as originally proposed in related directives, allowing employees to consult with the undertaking's central administration or with the management of a controlling undertaking.

European Works Council

The EC Council has just recently taken up the proposed directive on worker information and consultation.[14] The proposed directive calls for the establishment of a European Works Council (EWC) for the purposes of informing and consulting with employees within every "Community-scale undertaking or group of undertakings." "Community-scale undertaking" is defined as a company with at least 1,000 employees within the European Community and which employs 100 employees in at least each of two member states.[15] The European employers' trade association, UNICE, opposes the proposed directive because UNICE believes the directive, which would impose centralized (i.e., European- level) information and consultation on all EC companies, fails to take into account the different structures of individual companies.[16] At present, companies operating in the EC generally fall into one of three categories with respect to worker information and consultation:

- Some have already created centralized forums with their workers;
- A second group has instituted decentralized consultation measures with their workers (i.e., at the local level); and
- Some, including many companies of U.S. parentage, oppose worker consultation altogether.

In UNICE's view companies should be free to choose which approach they should take. Having this right would allow companies to rely on methods that best take into account their individual characteristics. For example, it may make sense for a company such as Volkswagen, which produces only cars, to have a centralized forum to discuss reducing the workforce in one member state while creating more jobs in another member state or elsewhere in the world. On the other hand, it may be impractical for a more diversified company to consult with workers on a Europewide basis.

Similarly, differences in consultation approaches may depend on the nature of the workforce. In this regard the chemical industry in Europe has tended to use EWCs more than various other industry sectors have because the labor relations in that industry are not particularly conflictive.[17]

UNICE has proposed an alternative to the EWC directive. This alternative favors a recommendation rather than a binding directive. The recommendation would recognize as legitimate the diversity in approaches and would allow each company to use the approach that works best for it.

The EWC directive faces further obstacles, because of disagreements about its contents among the member states. French employers oppose the proposed directive because they disagree with the directive's consultation requirement.[18] Under French law "consultation"

[9] Ibid.
[10] *European Update*, p. 163.
[11] EC Committee of the American Chamber of Commerce in Belgium (AmCham), *Business Guide to EC Initiatives* (Brussels: EC Committee, AmCham, winter/spring 1993), p. 8.
[12] Ibid.
[13] Official of CNPF, French Employers' Association, interview by USITC staff, Paris, Jan. 8, 1993 (CNPF interview).
[14] UNICE official, interview by USITC staff, Brussels, Jan. 12, 1993 (UNICE interview).
[15] USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 14-4.
[16] UNICE interview.
[17] Ibid.
[18] CNPF interview.

means that the employer must ask and receive the workers' opinions *before* acting, and the French employers do not want a directive that will require France to adopt a law imposing such requirements on them. They agree, however, with the adoption of an instrument calling for uniform information for workers.

The authority for the proposed directive is article 100 of the Treaty of Rome, which requires unanimity. Because several member states oppose the directive, its adoption currently is blocked.

Organization of Working Time

As discussed in previous USITC reports, the EC Commission in July 1990 proposed and in April 1991 revised a directive on the organization of working time that sets requirements for night work and shift work. The revised proposal is based on article 118a of the treaty, requiring only a qualified majority for passage, and is aimed at regulating working hours on the basis of health and safety concerns.[19] As revised, the directive provides for a minimum daily rest period of 12 consecutive hours and a minimum period of 4 weeks' annual paid vacation. The revised directive specifies groups of workers who would be exempt from the directive's provisions, including security guards, hospital workers, media employees, and employees in transport fields.

In April 1992 France introduced a provision limiting the work week to no more than 48 hours. Although the United Kingdom originally opposed passage of the directive with this provision in it, an agreement was reached under which the United Kingdom would be allowed to wait 7 years, or until 2003 at the latest, before imposing a 48-hour work week. Nonetheless, due largely to differences between the French and German delegations, the Social Affairs Council has been unable to reach a common position.[20] The area of disagreement concerns the "reference period" for calculating the duration of the 48-hour work week limitation.[21] France would like to impose a shorter reference period, of about 3 to 4 months, whereas Germany would like a longer working period, of about 12 months.[22]

In many ways this dispute reflects a basic philosophical difference between France and other member states concerning matters such as wages, working time, and leave.[23] Because France already has high labor standards, French employers and unions generally believe that other member states should meet France's standards to ensure fair competition.[24]

[19] *OJ* No. C 124 (May 14, 1991), p. 8.
[20] *European Update*, p.25; UNICE interview.
[21] Ibid.
[22] *European Update*, p. 25.
[23] U.S. Department of State, U.S. Mission to the EC (USEC) official, interview by USITC staff, Brussels, Jan. 11, 1993 (USEC interview); CNPF interview.
[24] Ibid. Also, Official of EuroDisney, interview by USITC staff, Paris, Jan. 8, 1993.

The Danish EC Presidency has cited the working time directive among the directives it hopes to see adopted during its term.[25] However, in light of the controversy between France and Germany, some who are following the directive are more doubtful about its imminent adoption, at least in the form of a binding instrument.[26]

Transfer of Undertakings

In late 1992 the EC Commission proposed a draft directive amending an earlier directive, from 1977, that aimed to secure the rights of workers if their company was acquired.[27] The draft redefines representatives of employees, so that the term no longer incorporates administrative, governing, or supervisory bodies who represent employees of their member states. The proposed directive applies to businesses that employ less than 50 people, but it does not cover public bodies or sea vessels.

Under the proposal the old employer and new employer will be jointly liable for any obligations resulting from the employment contract, depending on the date of the contract and the date of the transfer. The draft is based on article 100 of the treaty, and requires adoption by unanimity.

Both UNICE and AmCham are following a pending court case that they fear could decide that subcontracting falls within the scope of the 1977 directive.[28] Accordingly, the employers' associations are urging the EC Commission to explicitly exclude subcontracting from the amended directive.[29] These organizations have explained that there is an important and pertinent distinction between business transfers and subcontracting: transferees are normally abandoning the business in question, whereas companies employing subcontractor services are only attempting to use more cost-effective and competitive approaches to remain in business.[30]

Subcontracting

As described in previous USITC reports,[31] the EC Commission proposed in 1991 a directive addressing the wages, benefits, and work conditions applicable to workers from one member state who are sent to work on a project in another member state.[32] Generally, for

[25] USEC conversation; UNICE conversation.
[26] For example, UNICE conversation.
[27] *Draft Proposal for a Council Directive Amending Directive 77/187/EEC Relating to the Safeguarding of Employees Rights in the Event of Transfers of Undertakings, Businesses or Parts of Businesses.*
[28] USEC conversation; AmCham, *Business Guide to EC Initiatives*, p. 10.
[29] Ibid.
[30] Ibid.
[31] USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, pp. 15-6 to 15-7, and USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 14-5.
[32] *Proposal for a Council Directive Concerning the Posting of Workers in the Framework of the Provision of Services, OJ* No. C 225 (Aug. 30. 1991), p. 6.

long-term, fixed-duration subcontracts, the rules of the country in which the work takes place apply.[33]

The proposed directive has undergone a first reading by the European Parliament. It currently is being reviewed by the Council. There is a split in the Council between the high-wage northern countries and the low-wage southern countries.[34] The high-wage countries are afraid of competition in the form of "social dumping" from the low-wage countries. However, a representative of UNICE has pointed out that the countries on the periphery (Greece, Spain, Portugal) would not be able to compete in middle Europe without the benefit of lower wages.[35] According to this representative, it makes no sense to put millions of ECUs into the social fund and then impose measures that the southern countries cannot meet or that hinder the competitiveness of those countries.

Under the current proposed subcontracting directive, the conditions on specified labor matters (e.g., wages, vacations) of the host country must be applied, unless the wages, etc., of the host country are higher than those of the country that the worker comes from. The proposal as originally drafted by the EC Commission would have allowed it to be implemented either through national legislation or through collective bargaining agreements. The European Parliament has proposed an amendment that would apply local working conditions. UNICE sees this amendment as problematic because within some countries local working conditions may vary from region to region.[36] For example, Germany's working conditions are governed by region, but under German law the wages of the region from which the worker comes would apply. It is therefore difficult to know just what are the local working conditions that would apply.

For this reason UNICE opposes the directive and believes that it is sufficient instead to ratify the 1980 Convention of Rome to apply to cross-border subcontracting.[37] That convention is essentially a conflict-of-laws agreement which includes international labor laws. Under the convention, the signatories have the freedom to choose which law to apply but cannot deny their employees rights that would be part of the "Ordre Publique" in the country of destination. "Ordre Publique," in turn, is defined by the individual countries. For example, in Germany it includes worker safety and health; in France it includes minimum wages.

A subcontracting directive is not particularly disturbing, however, to EC firms of U.S. parentage.[38] As it is, most (anywhere from two-thirds to three-fourths of) U.S.-owned EC firms employ local nationals to ensure that they comply with local laws.[39] AmCham does recommend, however, that the directive be clearly defined so that training, developmental assignments, and other related activities are excluded.[40]

UNICE does not expect the Danish Presidency to reach a common position on subcontracting. The next Presidency will be held by Belgium, which may make some progress on this issue.[41]

Worker Safety and Health Directives

Protection of Pregnant Women at Work

On October 19, 1992, the Council adopted the directive on the protection of women workers who have recently given birth and those who are breast feeding.[42] As explained in the Fourth Followup Report,[43] the directive is aimed towards worker safety and health concerns and therefore is based on article 118a of the treaty. The EC Commission's original proposal has been considerably watered down in the adopted text.[44] The adopted directive calls for minimum provisions and contains a "non-regression clause" prohibiting member states from using the minimum provisions of the directive to reduce the level of protection currently afforded the workers concerned. Likewise, the directive allows member states to adopt more favorable arrangements.

The minimum requirements set out in the directive include—

- Informing workers of the EC Commission guidelines for assessing workplace health and safety risks;
- Advance assessment of risks to the women concerned, and any adjustments of working conditions or hours necessary to avoid risks, with maintenance of employment rights and adequate compensation for any loss of pay;
- Entitlement to undergo prenatal medical exams during working hours without loss of pay; and
- Allowable maternity leave of at least 14 weeks, 2 of which are mandatory.

In addition, employers may not dismiss pregnant women for reasons connected with their condition.

The directive provides for revision in 5 years, on the basis of reports submitted by the member states, an overall evaluation, and, if appropriate, a proposal by the EC Commission. This provision was included in response to comments by the European Parliament and the main European employees' union, European Trade Unions Confederation (ETUC), which has

[33] Ibid.
[34] UNICE conversation.
[35] Ibid.
[36] Ibid.
[37] AmCham, *Business Guide to EC Initiatives*, p. 7; UNICE conversation.
[38] USEC conversation.
[39] Ibid.
[40] AmCham, *Business Guide to EC Initiatives*, p. 7.
[41] UNICE conversation.
[42] *OJ* No. L 348 (Nov. 28, 1992), p. 1.
[43] USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992, p. 14-5.
[44] AmCham, *Business Guide to EC Initiatives*, p. 5.

voiced disapproval of the adopted text.[45] The new measures are expected to lead to significant improvement only in Ireland, the United Kingdom, and Greece.[46] Italy abstained from the vote because it believed the directive did not provide enough protection.[47]

Other Worker Safety and Health Directives

In 1992 the Council also adopted several other, less controversial worker safety and health directives. These directives cover medical treatment on board vessels (to be implemented by December 31, 1994),[48] safety and health requirements at temporary or mobile construction sites (to be implemented by December 31, 1993),[49] the provision of safety and health signs at work (to be implemented by June 24, 1994),[50] and the protection of workers in the mineral-extracting (drilling) industries (to be implemented by November 3, 1994).[51]

Other proposed directives discussed in the previous USITC reports are still under negotiation. In June a common position was reached concerning the proposed directive for the implementation of minimum health and safety requirements for workers in the mineral exploration and exploitation extractive industries. The EC Commission thereafter issued an amended proposal, which requires worker information, training, and instruction.[52] The proposal for a regulation establishing a European Agency for Safety and Health at Work[53] remains controversial. Some member states, such as France, oppose the creation of a new structure that has no defined authority or policy.[54] These countries are particularly concerned that all member states will not be able to provide adequate enforcement.

In July the EC proposed a directive amending the existing 1990 directive on the protection of workers from risks related to exposure to biological agents at work.[55] The proposed amendment supplements the annex of the existing directive by adding a list of covered biological agents. If adopted, the amended directive must be implemented by April 30, 1994.

[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] *Council Directive 92/29/EEC, OJ* No. L 113 (Mar. 31, 1992), p. 19.
[49] *Council Directive 92/57/EEC, OJ* No. L 245 (June 24, 1992), p. 6.
[50] *Council Directive 92/58/EEC, OJ* No. L 245 (June 24, 1992), p. 23.
[51] *Council Directive 92/91/EEC, OJ* No. L 348 (Nov. 3, 1992), p. 9.
[52] *OJ* No. C 171 (July 7, 1992), p. 8.
[53] *OJ* No. C 271 (Oct. 16, 1991), p. 3.
[54] French Government official, meeting with USITC staff, Paris, Jan. 8, 1993.
[55] *OJ* No. C 217 (Aug. 24, 1992), p. 32; See USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, p. 7-13.

1993 and Beyond

Progress to Date

The "social dimension" aspect of EC integration was set in motion in 1985 with the EC Commission's initiation of an ongoing social dialog (the "Val Duchesse dialogue") between management and labor. Article 118b of the treaty, as amended by the Single European Act (SEA), endorsed a continuation of dialog on a Community level between management and labor. The Maastricht Social Protocol calls for a new social dialog between unions and employers, with semilegislative potential.[56]

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. However, if a similar measure is proposed pursuant to the Maastricht Protocol, passage would require only a qualified majority.

Of the 47 initiatives included in the Social Dimension Action Program, all but one have been acted on in some form.[57] This one measure yet to be addressed concerns the inclusion of a social clause in public works contracts. One of the original 47 initiatives—that addressing atypical work—has been broken down into three separate proposals.[58] Nineteen measures, including the atypical work directive addressing worker safety and health, have been adopted. A good majority of these measures concern worker safety and health and were adopted under the qualified-majority provisions of article 118a. The

[56] Council of the European Communities (EC Council) and Commission of the European Communities (EC Commission), *Treaty on European Union* (Luxembourg: Office for Official Publications of the European Communities, 1992) ("Maastricht Treaty").
[57] CNPF conversation.
[58] USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990, p. 15-5.

remaining social dimension measures are in negotiation, many of them in the advanced stages. As discussed in this and previous USITC reports, some of the proposed directives are very controversial, e.g., European Works Councils, working time, subcontracting, and the remaining atypical work proposals. These directives are of most concern to U.S. and EC companies, because they could affect management policy and may raise concerns about extra-territoriality. The prospects for adoption of these directives are uncertain.

Two broad developments in the past several years have changed the focus of action in the social dimension area. First, because of the high levels of unemployment in Europe, there is a consensus among employers, unions, and government officials that this issue must be a priority. The new Social Council Minister, Mr. Padrigh Flynn, has indicated that he intends to put his energies into addressing unemployment issues.[59] In 1993 the EC Commission will seek to add a new dimension to Community action to promote employment and combat marginalization.[60]

In addition, the Maastricht Treaty brought increased attention to subsidiarity issues, which have long been at the heart of employers' concerns about EC-wide labor regulation.[61] As such, the controversies surrounding Maastricht have lessened the force behind the social dimension program.

Finally, the EC Commission has indicated that the development of the Maastricht social dialog will be its first 1993 priority in the social dimension arena.[62] In somewhat of a full circle, it seems likely that many of the labor-related issues will again be addressed in the context of the social dialog.

Implications for the United States

One general issue that has concerned all EC companies and received early attention from those with U.S. parentage concerns the subsidiarity principle. The Maastricht Treaty in general—and its Social Protocol specifically—place added emphasis on the adherence to this principle, i.e., that the Community shall act "only and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member states . . . ."[63] However, in specifying 20 examples of specific measures that will be withdrawn or modified in accordance with the subsidiarity principle, the EC Council has not cited the controversial social dimension proposals.[64]

Particularly, from the U.S. perspective the most crucial parts of the EC social policy agenda are the worker consultation and information rules, especially as manifested in the proposed EWC directive.[65] Once the Maastricht agreement is ratified, the British Government will no longer be able to block the adoption of the directive by the other 11 member states, because under that agreement, the United Kingdom gave up its veto right in return for exemption from EC social affairs and labor policies adopted by qualified-majority voting.[66] In addition, opposition by any other member states will have lessened weight, because the qualified majority necessary for passage of social dimension measures under the Maastricht Protocol (44 out of 66 votes) is somewhat less than the qualified majority necessary for passage under the Treaty of Rome (54 out of 76 votes).[67]

In light of the possible implications that the changed voting procedures under Maastricht could have, employers' organizations, representing both U.S.- and European-owned companies, are making extra efforts to resolve the issues surrounding the proposal.[68] It is likely that the EWC directive will be taken up under articles 3 and 4 of the Maastricht Social Policy Protocol, which provide for management-labor consultations that may lead to contractual agreements subject to adoption by the 11 signatory countries.[69]

For the most part the adoption of the social dimension measures do not to any great extent place U.S.-owned companies at a competitive disadvantage relative to their EC-owned competitors. The high labor standards imposed may, however, place all companies manufacturing in the EC at a competitive disadvantage in relation to companies producing products in other parts of the world.

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[59] USEC conversation.

[60] EC Commission, "The Commission's Programme 1993-94," press release, IP (93) 1, Feb. 2, 1993, par. 13.

[61] USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990, p. 18-5.

[62] *European Report*, No. 1826 (Jan. 13, 1993), Internal Market, p. 6.

[63] Maastricht Treaty, art. 3b.

[64] UNICE conversation. U.S. Department of State, "EC Edinburgh Summit Success: Community 'Back on Track,'" message reference No. 0177, prepared by U.S. Embassy, Edinburgh, Scotland, Dec. 1992.

[65] National Association of Manufacturers (NAM), *The Europe of 1992: An American Business Perspective*, by Stephen Cooney, Director, International Investment and Finance, May 1992, p. 52.

[66] Ibid., p. 9.

[67] Ibid.; UNICE conversation.

[68] Ibid.; NAM, *The Europe of 1992*, p. 52.

[69] Ibid., pp. 49, 52.

PART III
EC INTEGRATION AND COMMITMENTS IN THE URUGUAY ROUND AND OECD

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Introduction

EC Internal Market and GATT Uruguay Round

The EC single market effort was launched by the 1985 EC Commission White Paper. The planners aimed at further economic integration among the 12 member states. At about the same time, international trade negotiations known as the Uruguay Round began with the Punta del Este declaration in September 1986 under the direction of the General Agreement on Tariffs and Trade (GATT). Both undertakings sought chiefly the economic and trade liberalization that could sponsor growth among their member countries.

Both efforts shared the goal of increasing business and consumer prosperity through economic and trade liberalization. Some observers, however, voiced concerns at the outset that the two programs might overlap in subject matter so that they could distract attention from one another and possibly lead to real conflicts of interest. Analysts argued that extending the EC 1992 liberalization opportunities to non-EC trading partners would only compound the adjustment burden of EC industries. The analysts feared that the EC might concentrate more on the inward focus of single market integration than on the Uruguay Round, with its external, outward focus.[1] In addition, the Uruguay Round trade talks were scheduled to end in December 1990, 2 years before the December 31, 1992, deadline for completion of the EC internal market. This disparity in time served only to heighten worries that EC interest in the Round might concern people less than internal EC liberalization.

Four Areas of U.S. Concern

Although greeting the prospect of a more fully integrated Europe favorably, the U.S. Government began to track four areas where business in the EC might be tempted to seek protection from external competition. Identified in 1989,[2] these areas of concern were more recently echoed in 1992.[3]

Reciprocity

The first major concern of the United States is "reciprocity," which hinges on "equivalent access" for foreign goods and investors. Trade preferences are typically offered on a reciprocal bilateral basis. Such a basis for trade preferences runs counter to the multilateral basis for trade and investment embodied in the "most-favored-nation" (MFN) concept built up since the Second World War in the multilateral institutions such as the GATT.

The national treatment principle under these multilateral rules is meant to extend to foreign goods and investments the same treatment given to national ones, in much the same way as the nondiscrimination principle of the multilateral trade regime under the GATT seeks to prevent domestic industries from restricting imported goods simply because they are produced abroad rather than domestically.[4] Unlike the national treatment principle, the idea of reciprocal bilateral access through "equivalent access" is a difficult concept to define and thus is open to abuse through protectionist measures.

EC freedom to demand reciprocal access to another country's market is limited in areas where GATT or other multilateral rules already exist. However, where no multilateral rules have yet been agreed, the EC has wide latitude to insist upon reciprocal access on negotiated terms agreeable to the Community.[5] As a consequence, the EC has sought to negotiate reciprocal access rights to others' markets in exchange for the benefits expected to arise from the removal of trade and investment barriers under the EC 1992 program. Some of the key areas where the Community has sought reciprocity include trade in services, government procurement not yet covered under the GATT Agreement on Government Procurement, product standards not yet agreed, and the mutual recognition agreements regarding testing and certification of traded goods.[6]

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[1] See U.S. House, "The Single Market and the Uruguay Round: Implications for the Structure of World Trade," *Europe and the United States: Competition and Cooperation in the 1990s*, prepared by Jeffrey Schott, Subcommittee on International Economic Policy and Trade and Subcommittee on Europe and the Middle East, Committee on Foreign Relations, June 1992, pp. 399; and André Sapir, "Europe 1992: The External Trade Implications," *International Economic Journal*, vol. 6, No. 1 (spring 1992), p. 11.

[2] Eugene McAllister, "U.S.-E.C. Relations/Trade," *Europe*, Washington, DC, Sept. 1989, pp. 16-17.

[3] Testimony before the joint hearing of the subcommittee on International Economic Policy and Trade and the subcommittee on Europe and the Middle East, U.S. House of Representatives, LEGI-SLATE transcript, "Ramifications for US Trade and the Formation of a Single Market in the European Community at the end of 1992," June 9, 1992.

[4] The national treatment concept seeks to pass on the economic benefit derived from common rules of competition to abiding members in an analogous fashion to the most-favored-nation (MFN) principle agreed under the General Agreement on Tariffs and Trade (GATT), whereby the lowest tariff rate agreed between the lowest cost traders is then granted to all other members as a stimulus to trade.

[5] Sapir, "Europe 1992," p. 7.

[6] Provisions of the 1989 Second Banking Directive represented the first major instance of "reciprocal access" under the EC 1992 program. Here, the strict concept of "mirror reciprocity" drafted initially (where exactly equal conditions must apply) gave way, following persistent U.S. efforts, to redrafted language that was more in line with the "national treatment" concept already agreed internationally.

Rules of Origin

Rules of origin were a second U.S. concern about the EC 1992 program. This concern focused on the use of origin rules that could lead to trade diversion and "forced" investment in Europe. "Forced" investment would occur where non-EC companies feel compelled to invest in the Community rather than export to it so as to avoid becoming entangled in tariff or non-tariff barrier cases. The United States and the EC worked together in the Uruguay Round to address this issue, agreeing to undertake a joint study through the GATT and the Brussels-based Customs Cooperation Council following the Round conclusion. Aspects of this issue are treated in the "anticircumvention" provisions of the antidumping section written in the compromise text tabled by GATT Director-General Arthur Dunkel in December 1991.[7] In recent testimony reviewing progress in the EC 1992 program, U.S. officials observed that American businesses have invested heavily already in Europe and will continue to do so because it is desirable, not because they are forced to do so.[8]

Quotas

A third broad area of concern for the United States was the EC system of quotas and local-content requirements. The EC single market program aims to end quantitative restrictions at the national level in some cases by substituting a single EC-wide quota. While customs unions and free-trade areas are allowed under the GATT,[9] provided that such tariff and quota barriers are no greater after forming such a regional group than before, the transferring of national barriers to a single regional basis is still difficult to achieve successfully without creating disputes with trading partners outside the new economic arrangement.

The barriers-to-trade presented by local-content requirements have been a similar concern for the United States because they amount in effect to internal quotas that discriminate against trading partners outside the EC. The preferential treatment of goods containing at least 50 percent EC content for certain sectors is a current example, targeted by the United States for trade retaliation starting in 1993 because of its discrimination against U.S. business. The local-content quota embodied in the EC Broadcast Directive also discriminates against U.S. industry by setting aside a reserved percentage of EC broadcast air time solely for EC producers. Finally, the United States remains concerned about the possibility of EC local-content rules regarding trade in automobiles, which might then be used to justify limits on imports of Japanese-nameplate autos from the United States.[10]

From a broader perspective, the United States is likely to explore to what extent or under what terms the GATT multilateral trading system will approve or disapprove such VERs or "grey area" measures that purposely are taken outside of GATT rules so as to avoid the constraints the world trade system would otherwise place on such quotas. Under the Dunkel text, such VERs would be phased out over a period of time and their future use prohibited.

Standards

Perhaps the most critical and widespread area of concern for the United States regarding the EC 1992 program and possible conflicts with multilateral liberalization efforts in the Round was in the area of standards and product certification and testing procedures. U.S. business and Government representatives were troubled by the potential for disruption of U.S. exports and business involving the Community, should the EC adopt product standards that differed from international ones. The primary hindrance was the exclusion of U.S. business from representation on and therefore presentation of its views to the European regional standardization bodies that set these standards. These European bodies are composed exclusively of the national standards institutes of EC and European Free-Trade Association (EFTA) member countries.

In the Uruguay Round discussions over revisions to the GATT Agreement on Technical Barriers to Trade, otherwise known as the Standards Code, a principle area of disagreement has been whether or not to extend the agreement to state and local governments. Whereas the EC and Nordic countries favor such an extension, the United States, Canada and others oppose it because it would increase the administrative burden on these noncentral governments.

A concerted attempt was made starting in 1989 to get observer status for American companies in European standards bodies, both through government-to-government discussions as well as talks between the American National Standards Institute (ANSI), the U.S. private-sector standards organization, and its European private-sector counterparts.[11] Although this effort did not actually result in U.S. observership in these European bodies, it did bring the issue to the attention of the European standards groups. As a result, the Europeans have agreed to share work with the international standards bodies such as the International Standards Organization (ISO), where the United States and other non-European governments are full members, and to accept ISO observers on

[7] These provisions address cases that have already occurred in the EC of nominal direct investment in assembly operations ("screwdriver plants") within the EC borders by non-EC companies seeking to avoid imminent antidumping duties on their export sales at prices below home market values.

[8] U.S. House, LEGI-SLATE transcript, "Ramifications for US Trade and the Formation of a Single Market in the European Community at the end of 1992," joint hearing of the International Economic Policy and Trade and the Europe and the Middle East Subcommittees of the House of Foreign Affairs Committee, June 9, 1992, p. 19.

[9] Under GATT article XXIV on Customs Unions and Free-Trade Areas.

[10] For a discussion of the 1991 arrangement for exports of Japanese motor vehicles to the EC market, see chapter 11 of this report.

[11] U.S. House, LEGI-SLATE transcript, p. 22.

specific technical committees in some cases. In addition, the private-sector standards groups on both sides of the Atlantic have come to a series of agreements, over earlier access to information on the work programs of the standardization bodies.[12] Although the compromises reached are not precisely what the United States aimed for initially, they nonetheless represent considerable progress over the situation in 1989 when U.S. companies were excluded from presenting their views.

U.S. Focus on Multilateral Negotiations

The U.S. response to concerns that EC 1992 might turn European policy in these four areas and others toward a more preferential, "inward looking" EC, away from the multilateral approach embracing the principles of nondiscrimination, most-favored-nation and national treatment, was to redouble efforts to address these issues in the multilateral context of the Uruguay Round. This strategy was particularly appropriate for the "new areas" under discussion in the Round—services, investment, and intellectual property rights—where no previous GATT rules existed. Forming multilateral rules in these areas could thus help lessen the pressures in the EC for "reciprocity" when it came to third-country access to a liberalized EC single market.

Director-General of the GATT Arthur Dunkel has observed[13] that EC efforts at internal economic integration have often coincided with efforts by the world trade community to expand multilateral trade commitments, the latter aiming in part to bolster elements within the EC supporting an outward trade and economic orientation. The 1963-67 Kennedy Round, for example, came as the EC-6 was negotiating for the first time as a single entity. Dunkel links the beginning of the 1973-79 Tokyo Round with efforts to harness the Community enlargement to nine members (EC-9) for the benefit of the world multilateral trade system. Finally, the 1986 Uruguay Round has served to ensure that the envisioned expansion of trade from the EC 1992 program (rather than a literal expansion of EC-12 member states) would also be directed toward a more outward stance rather than securing liberalization benefits only for the good of EC member states.

In this way, the GATT director-general finds that "At each step, there has been an ever-present preoccupation that the consolidation of the EEC should not make it inward looking. And at each step, the EEC has made its contribution to the strengthening of the multilateral trading system." Representing one of the major trading partners that has helped press the EC to do this and prevent EC development from turning inward, the U.S. Assistant Secretary of State Eugene McAllister has pointed out that "The [U.S.] Administration has aggressively raised all significant EC-92 related problems in the Uruguay Round and in bilateral negotiations."[14]

[12] Ibid. p. 22.

[13] Arthur Dunkel, "The Relationship Between an Evolving GATT and an Evolving European Economic Community," *Atlantic Economic Journal*, vol. 18, No. 3 (Sept. 1990), p. 9.

1992 Developments

Procurement

Negotiations with the EC over public-sector procurement provide a good illustration of the broad U.S. concern over EC "reciprocity." Because government procurement was not included under the original General Agreement, a group of countries have been negotiating since the Tokyo Round a separate code on procurement under GATT auspices.[15] These negotiations have continued in an effort to cover sectors not yet included, such as the utilities sector in particular.[16]

EC Procurement Reciprocity

Following changes in EC legislation on utilities procurement stemming from the single market effort, U.S. and EC negotiators have focused their attention on trying to extend the GATT Agreement on Government Procurement to cover the utilities not included at present. One stumbling block in these negotiations is article 29 of the EC Utilities Directive, which calls for a mandatory 3-percent price preference in favor of EC products as well as an optional provision allowing bids to be rejected where more than half the content of the item in question is foreign (non-EC). These discriminatory provisions can be waived, however, for countries that negotiate a market access agreement with the EC, thus providing "reciprocal access" for EC companies.

U.S. Title VII Procurement Review

The Omnibus Trade and Competitiveness Act of 1988[17] included provisions concerning government procurement under title VII, the Buy American Act of 1988.[18] Under title VII, the Office of the United States Trade Representative (USTR) must report to the Congress annually on the extent to which foreign countries discriminate against U.S. products and services in government procurement. In its April 1991 review, the USTR said it would submit an early review in 1992 of procurement practices in France, Germany,

[14] U.S. House, LEGI-SLATE transcript, p. 12.

[15] GATT, *Agreement on Government Procurement*, Geneva, 1979. Also called the GATT Government Procurement Code. A revised text was published in 1988 reflecting changes negotiated concerning lower minimum values for procurement contracts, extended code coverage, and tighter disciplines. The negotiations on government procurement have proceeded in tandem with, but not officially part of, the Uruguay Round negotiations.

[16] Comprising energy (gas and electricity), telecommunications, transportation, and water utilities.

[17] Pub. L. No. 100-418, 102 Stat. 1107.

[18] Pub. L. No. 100-418, Title VII, 102 Stat. 1545, amending title III of the Buy American Act and section 305 of the Trade Agreements Act of 1979.

Italy, and the EC as a whole, if its concerns in this area remained unaddressed. This early review, issued February 21, 1992, identified a persistent pattern of discrimination against U.S. goods and services in procurement not covered by the GATT Agreement on Government Procurement that results in harm to U.S. business.[19] The review cited in particular discrimination in the heavy electrical equipment and the telecommunications equipment sectors in France, Germany, and Italy, as well as the overall discriminatory effect in the EC of article 29 of the Utilities Directive.[20]

On April 22, 1992, pursuant to section 305(g)(1)(a) of the Trade Agreements Act of 1979, as amended (codified at 19 U.S.C. 2515(g)(1)(a)), the President identified the EC as a country that maintains, in government procurement, a significant and persistent pattern or practice of discrimination against U.S. products or services that results in identifiable harm to U.S. businesses. As provided for under title VII, the President modified the imposition of sanctions so as to take effect by January 1993, subject to EC implementation of the Utilities Directive.[21] The sanctions will prohibit the awarding of contracts with respect to U.S. issuances of solicitation published on or after March 22, 1993, by U.S. Federal agencies not already covered under the GATT Agreement on Government Procurement[22] for products and services from EC member states.[23]

On February 1, 1993, the USTR announced the U.S. intention to proceed with these sanctions following the January 1, 1993 entry into force of the directive and its discriminatory article 29 provisions.[24] A U.S. Government study was also initiated as part of this action to assess the costs and benefits of continued U.S. participation in the GATT Agreement on Government Procurement, as a gauge to the feasibility of U.S. withdrawal from it.

In technical-level negotiations on February 16-17, 1993, the EC reportedly agreed to apply national treatment principles to procurement in the fields of airport construction, electrical equipment, telecommunications, and urban transport, although how to do so remains to be worked out.[25] However, the United States continues to treat the provisions of article 29 as explicit discrimination against U.S. business whereas the EC considers the Utilities Directive to be a vast improvement over the formal and informal national barriers that existed prior to the directive.[26] Following a number of meetings between both sides to resolve this issue, the United States announced on April 21, 1993, an agreement with the EC on government procurement that would remove the discrimination against U.S. suppliers of heavy electrical equipment, but not for telecommunications equipment. Consequently, the United States announced it would proceed with title VII sanctions commensurate with the remaining discrimination, while also agreeing to continue negotiations on remaining procurement issues such as telecommunications.[27]

Regarding EC firms seeking procurement opportunities in the United States, EC negotiators object to a whole range of U.S. procurement restrictions derived from the Buy American Act.[28] "Buy American" restrictions encountered by European firms include a local content requirement of more than 50-percent in cost terms for items mined, produced, or manufactured for public procurement by U.S. Federal agencies, where American goods receive a price preference of 6 percent or 12 percent (depending on the size of the U.S. business bidding on the contract).[29] EC officials also maintain that large U.S. private-sector telecommunications operators such as AT&T, MCI, Sprint, GTE, or the regional Bell operating companies (RBOCs) or "baby Bells" continue to operate as de facto monopolies that should be covered under the disciplines of the GATT Agreement on Government Procurement.[30]

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[19] This review is described in 58 F.R. 7163, with additional detail provided in USTR press release, "Fact Sheet - Title VII Announcement," Feb. 1, 1993, appendix.

[20] See 58 F.R. 7163, 7164 (Feb. 4, 1993).

[21] Ibid., p. 7164.

[22] Procurement by EC firms will be prohibited for contracts not already covered by the GATT Agreement on Government Procurement, that is, EC procurement will be banned for (1) all service contracts, including construction contracts; (2) all contracts valued at less than $176,000; and (3) all contracts procured by Federal agencies not covered by the GATT Government Procurement Code. USTR, "Fact Sheet - Title VII Announcement," Feb. 1, 1993, appendix.

[23] See 41 U.S.C. sec. 10b-1(a).

[24] USTR, "Statement of Ambassador Michael Kantor, Title VII Action With Respect to the EC," Feb. 1, 1993, and USTR, "Fact Sheet - Title VII Announcement," Feb. 1, 1993.

[25] "Some Progress, but Long Way To Go in US/EC Telecom Talks," *Washington Trade Daily*, Feb. 18, 1993, pp. 2-3; and U.S. Department of State, "EC Commission Says

[25—*Continued*] EC and U.S. Still Divided on Telecoms, Public Procurement," message reference No. 02215, Brussels, Feb. 18, 1993. Other reports indicate that differences arising over private-sector U.S. and public-sector EC telecommunications firms may have been bridged based on language to provide "comparable, effective and lasting access" to each other's markets as well as equal treatment to one another's exporters. See David Dodwell, "Mood Lifts in EC-US Public Procurement Row," *Financial Times*, Feb. 19, 1993, p. 3.

[26] EC Delegation, "EC Commission Responds to U.S. Trade Measures in Telecommunications and Procurement," *European Community News*, No. 4/93, Feb. 1, 1993, Washington, DC.

[27] USTR, "Statement by Ambassador Mickey Kantor, " press release No. 93-26, April 21, 1993; and Office of the USTR, LEGI-SLATE transcript, "Press conference with United States Trade Representative Mickey Kantor re: Trade agreement with European Community, " Apr. 21, 1993.

[28] Pub. L. No. 72-428 47 Stat. 1520, as codified at 41 U.S.C. sec. 10a-10c., as amended by the Buy American Act of 1988 (Pub. L. 100-418 Title VII, Sec. 7005(b), 102 Stat. 1553).

[29] 41 U.S.C. Sec. 10a; 48 C.F.R. ch.1, subpt. 25.1 (1992); and Services of the Commission of the European Communities, "Public Procurement," *Report on United States Trade and Investment Barriers - 1993: Problems of Doing Business With the US*, pp. 31-34.

[30] "Some Progress, but Long Way To Go in US/EC Telecom Talks," *Washington Trade Daily*, Feb. 18, 1993, pp. 2-3. The head of the EC negotiating delegation at the February 16-17, 1993, meeting characterizes the situation thus:

GATT Procurement Negotiations

The current negotiations to revise the GATT Agreement on Government Procurement have been viewed as a means to avoid both the discriminatory effect of the EC reciprocity clause and retaliation under U.S. trade laws against such discrimination. The drafting of both article 29[31] and title VII sanctions occurred just as multilateral procurement talks were gearing up parallel with the Uruguay Round. This raises the possibility that they could function as bargaining chips in reaching a compromise in these negotiations.

The aim of the procurement talks is (1) to extend coverage of the agreement to procurement of goods by central government agencies not yet covered under the agreement; (2) to extend coverage of the agreement to procurement of goods by subcentral governments, such as U.S. State Governments or EC regional entities; (3) to extend coverage of the agreement to central government procurement[32] of service contracts, including construction contracts; and (4) to establish a bid-protest system in each signatory to settle disputes over contested awards.[33] During 1992, differences remained about extending coverage of the agreement to private firms, particularly in the telecommunications sector; coverage beyond the central government level, such as to State, Provincial, regional, and municipal governments; and coverage of contracts below the value currently set out in the agreement.

Private vs. Public Firms

On December 20, 1991, a draft text was issued under the chairman's own authority that represented the progress to date in these talks, with both the EC and the United States agreeing that the text could provide the basis for an agreement.[34] However, key differences remain between the United States and the EC, most notably over the coverage under the Agreement on Government Procurement of privately owned companies such as in the U.S. telecommunications sector or certain investor-owned electric utilities.[35] The EC has offered comprehensive coverage of its utilities sector because the EC Utilities Directive already covers both central and subcentral government as well as private and public firms.[36] In contrast, the United States has argued that an agreement that covers procurement by the Federal Government cannot be used to cover procurement by private U.S. firms in the telecommunications field, such as AT&T, GTE, and the RBOCs that arose following the divesture of the AT&T monopoly in the 1980s. Nonetheless, both sides are attempting to extend coverage of the agreement to as much procurement as possible, whether public or private, at as many levels of government as is possible, whether at central or at subcentral government level.

Subcentral Governments

Another difference involves the extent to which subcentral governments can be obligated under the agreement's provisions. The EC wants as many subcentral governments as possible covered under the agreement, such as U.S. State and local governments, to balance the comprehensive coverage of the EC offer. The United States maintains, however, that its jurisdiction over Federal agencies allows it to obligate them to follow the provisions of the agreement, but that it cannot extend Federal obligations to subcentral governments because of rights retained by U.S. States under the Constitution. Instead, U.S. negotiators have offered to include procurement information volunteered by U.S. State and local governments without such notification being mandatory.

Threshold Level

Other differences remain over the value of contracts covered under the agreement both in general and in particular for telecommunications firms. All contracts valued at or above special drawing rights (SDR) 130,000[37] (roughly $178,000 on average for 1991) are covered under the present agreement. The EC seeks to keep this as the threshold whereas the United States would like to lower it. For procurement contracts in the utilities fields currently excluded, the EC has offered to cover telecommunications contracts worth at least $600,000 and electrical equipment contracts worth $450,000, approximating the threshold levels established by the EC in its Utilities Directive. Alternatively, the United States has proposed that meaningful coverage would be accomplished with a

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We don't care whether a company is private or not. What really counts is not ownership, but government regulation, and whether a company has special or exclusive rights. When you look at AT&T, you see they are operating under special privileges, under monopoly conditions. We need to look at their procurement behaviour because it is not what you would expect in a free market.

Dodwell, p. 3.

31 "EEC/United States: Warning on GATT Public Procurement Code," *European Report*, No. 1747 (Feb. 26, 1992), External Relations, p. 6.

32 And to subcentral government procurement as well, if possible.

33 President of the United States, *Report to the Congress*, annex pp. 26-27.

34 USTR, "Fact Sheet - Title VII Early Review," Feb. 21, 1992, pp. 3.

35 President, *Report to the Congress*, annex p. 27.

36 Stephen Woolcock, *Trading Partners or Trading Blows?*, (New York: Council of Foreign Relations Press, 1992), p. 75.

37 Special Drawing Rights (SDR) are a monetary unit of account calculated by the International Monetary Fund based on a basket of currencies. The value of the SDR in terms of the U.S. dollar is determined as the sum of the dollar values based on market exchange rates, of specified quantities of the German mark, French franc, Japanese yen, British pound, and the U.S. dollar.

threshold of SDR 50,000 (roughly $68,000 on average for 1991) for all contracts except construction.[38]

Telecommunications Goods Negotiations

Telecommunications are thus a central point of contention in the procurement negotiations underway. In February 1992, the United States offered to give the EC an analysis of procurement practices of the U.S. telecommunications industry to demonstrate the openness of the U.S. market, which would then obviate the need for additional market access commitments.[39] The RBOCs have asserted that they do not discriminate in their procurement practices, but the EC has identified them as enjoying special rights that confer a virtual monopoly status.[40]

In November 1992, the EC proposed that U.S. telecommunications firms pledge through an exchange of letters not to discriminate in procurement decisions on the basis of national origin, that is, against foreign producers such as the EC.[41] The EC approach appeared to be seeking assurances similar to those set out in the original court order that broke up the AT&T monopoly (the "Modified Final Judgment")[42] where the RBOCs were ordered not to favor AT&T over other suppliers in procuring telecommunications equipment. U.S. negotiators rejected the EC proposal because it also called for Federal Government oversight of private industry procurement practices. The U.S. side said further that it is unclear what more is wanted by the EC than the declaration already made by these U.S. firms that they do not discriminate against foreign manufacturers.

Services

Whereas negotiations involving procurement of telecommunications equipment fall to the Government Procurement Committee, telecommunications services comes under the Group of Negotiations on Services (GNS), a separate group in the Uruguay Round. Participants in the GNS have drafted a General Agreement on Trade in Services (GATS), or generalized rules covering all services, plus more specific annexes for particular service sectors. These include annexes on financial services, air-transport services, as well as telecommunications.

Progress has been slow as trade in services is an area never before covered under the GATT, where the carryover of the MFN principle so central to traditional trade-in-goods negotiations has proved a major point of contention for trade in services.[43] In December 1990, the United States announced that other countries would need to commit to substantial market opening measures in their services markets before the United States could agree to grant MFN status for trade in services. Many participants considered such a "conditional MFN" approach to violate the spirit of the GATT where MFN treatment is considered a given. The U.S. response, however, pointed out that a GATS based on the MFN principle without such market opening commitments would merely fix in place the current state of market access for services, with relatively open markets for services like the United States obligated to remain open while those markets that were relatively closed would have no incentive to open further.

Telecommunications Services

The U.S. market for telecommunications services was one such prime example where granting unconditional MFN would be likely to fix in place the relatively open U.S. market while taking away any incentive for other governments to open their relatively closed markets for telecommunications services.[44] With this in mind, the United States announced in December 1990 that it would seek a derogation from the services agreement over basic telecommunications services, such as long distance telephone service. Unlike other derogations, however, this announcement was understood to be subject to negotiation, intended rather to spur other countries into making market opening commitments in the services negotiations.

In December 1991, the United States advanced an offer aimed at breaking the impasse over telecommunications in the Uruguay Round services talks, announcing that it would be willing to extend MFN treatment to both domestic and international long distance telecommunications services. However, this U.S. offer was still conditioned on the agreement of major U.S. trading partners to open their own long distance telephone services markets to international competition.[45] As of early 1993, the United States and the EC were reported to be divided still over a number of issues involving telecommunications and public procurement.[46]

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[38] President, *Report to the Congress*, annex pp. 26-27.

[39] "U.S. Floats Proposal To Break Deadlock in Telecom Talks With EC," *Inside U.S. Trade*, vol. 10, No. 9 (Feb. 28, 1992), pp. 1, 14-15.

[40] For example, under the Utilities Directive, all EC entities enjoying such rights are subject to the rules on the premise that such a market position permits firms to procure on a non-competitive basis.

[41] "U.S. Rejects Latest EC Offer To Unblock Government Procurement Talks," *Inside U.S. Trade*, vol. 10, No. 47 (Nov. 20, 1992), pp. 6-7.

[42] *United States v. American Tel. and Tel. Co.* 552 F. Supp. 131 (D.D.C. 1982).

[43] GATT, *FOCUS - GATT Newsletter*, No. 89, Apr. 1992, p. 8. See also USTR, "Opening Statement by United States Trade Representative Carla A. Hills," meeting of the Trade Negotiations Committee of the GATT at ministerial level, Brussels, Belgium, Dec. 3, 1990; Bureau of National Affairs, "U.S. backs a plan on financial services offered by Canada at GATT trade talks," *International Trade Reporter*, vol. 7, no. 48, Dec. 5, 1990, pp. 1821-1822; and Bureau of National Affairs, "U.S. insistence on dropping automatic MFN from GATT services agreement stalls talks," International Trade Reporter, vol. 7, no. 47, Nov. 28, 1990, pp. 1801-1802.

[44] The President of the United States, Report to the Congress on the Extension of Fast Track Procedures, Mar. 1, 1991, Annex p. 57.

[45] USTR Press Release, "U.S. offers to extend MFN treatment to basic telecommunications services in the Uruguay Round," 91-58, Dec. 18, 1991.

[46] See references, see this chapter, "U.S. Title VII Procurement Review," footnote 25.

Section 1374 Telecommunications Investigation

The Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2515, as amended) called for an investigation of major telecommunications markets under title I, section 1374 of the act. The act directs the administration to seek to eliminate discriminatory practices in government procurement, telecommunications equipment markets, and enhanced telecommunications services markets in those countries that have been identified as denying U.S. firms "mutually advantageous market opportunities."

With the EC identified as one of these markets, negotiations have proceeded since 1989. But whereas progress was made in a number of areas, the issue of nondiscriminatory access for U.S. firms to EC government-owned telecommunications utilities remained unresolved at the end of the negotiation period designated in the act. Failure to achieve the objectives set out in the act to remove such telecommunications barriers required the President to take some form of action, which he cited in his report to Congress in February 1992 as taken under the title VII action of the act addressing the problem of telecommunications government procurement.[47]

Possible Extension of GATT Telecommunications Talks

Based on a Swedish proposal to negotiate the impasse over telecommunications goods procurement on a separate track over the next 3 years,[48] the United States proposed in October 1992 that talks on liberalizing basic telecommunications services be stretched out for 2 years or more to allow EC liberalization of its own internal telecommunications market time to progress.[49] Shortly thereafter on October 21, 1992, the EC Commission publicly unveiled its plan to deregulate intra-EC telephone services.[50] EC negotiators reportedly have been poorly positioned to make binding commitments in the telecommunications services talks in part because EC member states are in the process of liberalizing their own domestic telecommunications industries.[51]

Although Japan is said to oppose such an extension, the United States and the EC[52] tentatively agreed in late 1992 to extend negotiations for 2 years on liberalizing market access in basic telecommunications services.[53] The ground rules for such an extension would likely call for a freeze of the status quo, with no country allowed to take an MFN exemption nor to commit to apply for MFN status during the 2-year extension.[54] While the United States has been willing to make binding commitments based on MFN treatment for enhanced telecommunications services, it has been willing to offer MFN treatment for basic telecommunications services only on the condition that other countries commit to market opening measures in the sector. The key countries in this regard are Japan, Canada, the EC, Hong Kong, and Singapore.[55]

Financial Services

In addition to the procurement issue, negotiations over financial services provide a second example of U.S. concerns with the EC 1992 program over the issue of bilateral reciprocity. These negotiations are also illustrative of U.S. efforts to channel discussion of concern over EC 1992 reciprocity into the multilateral arena not only in the GATT Uruguay Round but also the OECD.

EC Financial Services Reciprocity

A major EC 1992 piece of legislation on financial services was the Second Banking Directive, proposed in February 1988. This directive as originally drafted applied a stringent reciprocity provision based on the language of "reciprocal treatment," which raised concerns both within as well as outside the EC.[56] Such a role for bilateral reciprocity coming from the EC 1992 program seemed incompatible with GATT principles of MFN and national treatment, and would have set an "unfortunate precedent" for the Uruguay Round, according to GATT Director-General Arthur Dunkel.[57]

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[47] See USTR, "Negotiations With the European Community and the Republic of Korea Under Section 1374 of the 1988 Trade Act," Feb. 1992, pp. 1-2; and USTR, "European Community - Telecommunications Market Access," *1993 National Trade Estimate Report on Foreign Trade Barriers*, Mar. 31, 1993, pp. 91-92.

[48] "Hills Says GATT Deal Depends on Agriculture, but Stresses Market Access," *Inside U.S. Trade*, vol. 10, No. 41 (Oct. 9, 1992), p. 14.

[49] "U.S. Drops MFN Derogation in GATT Financial Services Negotiations," *Inside U.S. Trade*, vol. 10, No. 42 (Oct. 16, 1992), p. 14.

[50] "Telecommunications: Plan to Deregulate Intra-EC Telephone Services," *European Report*, No. 1806 (Oct. 24, 1992), Internal Market, p. 12.

[51] See "Developing nations urged to make better services offer," *Journal of Commerce*, Oct. 20, 1992, p. 5A; and "EC Presses Developing Countries To Improve Offers in GATT Financial Services," *Inside U.S. Trade*, vol. 10, No. 43 (Oct. 23, 1992), p. 2.

[52] Even within the EC, France in particular has resisted liberalizing its basic telecommunications services.

[53] "EC Presses Developing Countries," p. 2.

[54] Ibid.; "Services Negotiations Still Stalled Until Agricultural Issues Resolved in GATT," *Inside U.S. Trade*, vol. 10, No. 52, (Dec. 25, 1992), p. 21.

[55] "U.S. Drops," p. 2.

[56] U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States* (investigation No. 332-267), USITC publication 2204, July 1989, pp. 5-10 to 5-12, and followup reports, financial sector chapter in particular. USITC, *EC Integration: First Follow-Up*, USITC publication 2268, Mar. 1990; USITC, *EC Integration: Second Followup*, USITC publication 2318, Sept. 1990; USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991; and USITC, *EC Integration: Fourth Followup*, USITC publication 2501, Apr. 1992.

[57] Dunkel, "The Relationship Between an Evolving GATT and," *Atlantic Economic Journal*, p. 10.

However, in response to both internal and external pressure, the EC Commission offered new language in April 1989. This amended proposal replaced the "mirror" reciprocity provisions in the original draft with language based instead on "effective market access" and "comparable competitive opportunities," which, although still subject to differing interpretations, was considered more in line with national treatment ideas previously negotiated in the GATT and OECD. With the advent of the EC 1992 financial services program for banking on January 1, 1993, and major insurance and investment services reforms adopted or near final approval, the reciprocal national treatment clause contained in the second banking directive is not expected to affect U.S. banks seeking to establish an EC subsidiary because the United States already grants national treatment to all foreign banks operating in the United States as designated under the EC directive.[58]

OECD Codes of Liberalization

Financial services discussions in the OECD have helped reinforce a multilateral stance among its 22 industrialized-country members over bilateral ones since the formation of the OECD codes of liberalization in 1961. The Code of Liberalization of Current Invisible Operations and the Code of Liberalization of Capital Movements have provided a framework for discussions on reducing or abolishing barriers to the exchange of goods and services in the financial area as well as extending the liberalization of capital markets.[59] The OECD Committee on Capital Movements and Invisible Transactions (CMIT) monitors this liberalization through a process of regular surveillance and review.

This process results in recommendations being directed from the governing OECD Council to the member states under review aimed at their continued financial liberalization. Because the codes' progressive liberalization mandate requires signatories not to reintroduce restrictive measures once they have been liberalized,[60] governments seeking to retain such barriers must lodge reservations that then become subject to the regular review process.[61]

In 1984 a major overhaul of these codes began, resulting by 1989 in an expanded set of obligations on liberalization of movements of international capital and associated trade in banking and rules for financial services.[62] Since adoption of these new obligations by May 1989, the focus in the committee has turned to an examination of the reservations lodged by member states.

By early 1992 this examination was completed and approved by the governing OECD Council.[63] The council concluded that a substantial liberalization of capital movements appears to be the result in that only Greece, Ireland, Portugal, and Spain—none of which exert any major influence on international capital flows—have lodged significant reservations about the improvements to the codes. These reservations stem in part from the derogations granted by the EC Commission to Greece[64] and Portugal to implement the Capital Movements Directive, the latter scheduled to go into effect at the end of 1992. Ireland and Spain are reportedly moving ahead to implement the directive as scheduled.[65]

GATT Financial Services Developments

In 1992, negotiations on financial services in the Uruguay Round centered around the U.S. refusal to negotiate financial services on an MFN basis without receiving significant market opening commitments by other participants as part of the agreement. While the United States has emphasized that its derogation in the financial services talks is a tactic aimed at opening markets in other countries, the EC has cautioned that such a U.S. derogation would be more likely to stifle negotiations in the sector, particularly from key developing countries.[66] Consequently, following bilateral U.S.-EC meetings in October 1992, the United States let drop its demand for a derogation for withholding overall MFN treatment to a financial services agreement.[67]

This approach was replaced with a U.S. and an EC reservation that they will both invoke their right to take such a derogation if an insufficient number of

[58] Bob Straetz, "European Community Liberalizes Financial Services Market to Become More Competitive," *Business America*, Washington, Feb. 8, 1993, pp. 2-8. The reciprocity clauses contained in other EC directives concerning financial services — such as the Investment Services, Capital Adequacy, Third Non-Life Insurance, Third Life Insurance, and Motor Vehicle Liability Directives — should not prove a difficulty for U.S. businesses on the same basis that EC firms are already offered the same competitive opportunities as domestic firms under the national treatment principle.

[59] Robert Ley, "Liberating Capital Movements," *OECD Observer*, No. 159 (Aug.-Sept. 1989) p. 25.

[60] Woolcock, *Trading Partners or Trading Blows?*, p. 64.

[61] Ley, "Liberating Capital Movements," p. 25.

[62] The new commitments fall into three types of activity: (1) short-term capital movements (such as money market operations, financial credits and loans, swaps, options, etc.) not previously covered under the Codes; (2) cross-border services (such as payment, banking and investment, and asset-management services) now encompassed under the Current Invisibles Code; and (3) financial-sector establishment now requiring under the Current Invisibles Code that nonresident enterprises should receive "equivalent treatment," that is, the same right to establish a business as domestic financial firms. Pierre Poret, "Liberalising Capital Movements," *OECD Observer*, No. 176 (June-July 1992), p. 5.

[63] Ibid.

[64] Greece was granted a delay in implementation of the directive until June 30, 1994. U.S. Department of State, message reference No. 15692, prepared by U.S. Embassy, Brussels, Dec. 15, 1992, par. 8.

[65] Poret, "Liberalising Capital Movements," p. 6.

[66] "U.S. Drops MFN Derogation," p. 14.

[67] Ibid., p. 1.

market-opening offers are made.[68] The United States and the EC, pursuing similar goals in financial services talks in the Round, are seeking significant concessions from countries such as Argentina, Brazil, Japan, and Korea.[69] On October 19, 1992 the EC sent letters to 13 developing countries[70] to solicit improved offers in the financial services talks, warning that other "more generous" offers might otherwise be withdrawn. Other G-7 countries are expected to send similar letters as negotiations continue.

1993 Ongoing Concerns

Although the single market program's official deadline was December 31, 1992, issues remain pending that will continue to have implications for the outcome of the Uruguay Round. Several of these issues have already been discussed: U.S. sanctions over discriminatory EC procurement practices that are likely to be dropped given successful negotiations in the GATT Government Procurement Code; the EC-Japan automobile quota agreement that the United States will monitor as a "grey area" measure until an Uruguay Round agreement phases out such measures; rules-of-origin concerns, where an agreement in the Round will begin a 3-year study on multilateral harmonization of origin rules; and standards, where a multilateral agreement would bolster standards development in accordance with international standards in the ISO more than in the European standards bodies where non-European representation is excluded. Other U.S. concerns include EC quantitative restrictions, such as the Broadcast Directive and the proposed common regime for bananas. Several EC intellectual property issues—such as directives on rental rights, database protection, and database privacy—will also extend beyond the single market deadline of December 31, 1992 and are likely to fall under the new intellectual property agreement worked out in the Uruguay Round.

Procurement[71]

Public procurement is presently the issue most in the forefront where EC 1992 and Uruguay Round interests continue to overlap. As discussed above, the major goal of ongoing negotiations on the GATT Government Procurement Code is to secure a multilateral agreement that would liberalize the utilities sectors and permit the discriminatory price and content clauses of the EC Utilities Directive to be waived. However, delays in talks led U.S. officials to announce sanctions against the EC when the directive entered into effect. The issue of discrimination in the area of procurement, telecommunications equipment in particular,[72] is clearly an ongoing concern of the United States related to the EC 1992 program.

Broadcast Quota[73]

The 1989 EC Broadcast Directive aims to reserve half of entertainment broadcast time (such as television, movies) for EC producers and works. The United States is pursuing its opposition to this quota in the Uruguay Round services negotiations, but to date the EC has stood firm on retaining some form of "cultural exemption" for the EC broadcasting industry. Moreover, the EC has worked to apply the directive to certain other European countries.[74] In part this has been reported as EC negotiating strategy in the group's talks on audiovisual services where the EC has insisted on retaining a cultural exemption derogation under the Broadcast Directive as leverage against the U.S. derogation on maritime transport.[75] The EC has also pointed out the cultural exemption provisions of the United States-Canada and the North American Free-Trade Areas as justification for its position for a cultural exemption.[76]

Banana Regime

On December 17, 1992, EC Agriculture Ministers approved a Communitywide banana market designed to replace national quotas on banana imports. The regime is scheduled to take effect July 1, 1993.[77] The EC action is contrary to U.S. interest in achieving agricultural market access through "tariffication" (that is, conversion of nontariff barriers to tariff barriers), which is one of the three main planks of the Uruguay Round agriculture negotiations. Central American countries have alleged that the regime discriminates against their banana exports to the EC in favor of more traditional EC suppliers: the African, Caribbean, and Pacific (ACP) countries. The United States is actively encouraging the Community to pursue its overseas development aid policy, such as for the ACP countries, in ways consistent with open market access and the idea of tariffication set out in the Uruguay Round talks.[78]

EC-Japan Automobile Quota

Although a less pressing concern than the issues of procurement and the broadcast and banana quotas, the 1991 EC-Japan auto quota agreement will be closely

[68] Ibid.
[69] Ibid.
[70] Including Brazil, Egypt, India, Indonesia, Malaysia, Mexico, Singapore, Thailand, and Turkey. "EC Presses," p. 1.
[71] For further detail, see chapter 5 of this report.
[72] Peter Allgeier, Assistant United States Trade Representative for Europe and the Mediterranean, testimony before the subcommittee on International Economic Policy and Trade and the subcommittee on Europe and the Middle East, June 9, 1992, p. 3. Heavy electrical equipment is another area of particular interest to the United States.
[73] Implementation of the Broadcast Directive is discussed extensively in USITC, *EC Integration: Fourth Followup*, USITC publication 2501, pp. 3-8 to 3-12.
[74] "GATT: EC Wants Exemption on Services," *European Report*, No. 1812 (Nov. 14, 1992), External Relations, p. 8.
[75] "EC Presses," p. 2.
[76] "U.S. Drops MFN Derogation," p. 15.
[77] See chapter 11 of this report for further information.
[78] Allgeier testimony, p. 6.

monitored by the United States in the years to 1999 as it is implemented.[79] Under the agreement, member states agreed to abolish their national quantitative restrictions on imports of Japanese cars by December 31, 1992. In return, Japan agreed to limit its auto exports to the EC over a 7-year transitional period. The United States has notified both the EC and Japan that it will monitor the situation carefully to ensure that U.S. export interests, U.S.-produced Japanese nameplate cars in particular, are not harmed.

One major factor precipitating bilateral U.S. surveillance of this and other such pacts is that multilateral surveillance of such measures through the GATT have been stymied in the past by a willingness of major trading countries to use VERs or restraint agreements (VRAs) outside of GATT disciplines. Disciplining such "grey area" measures are a central concern of negotiations underway in the Uruguay Round. The draft Dunkel text on possible agreements in the Round would phase out such VRAs over a period of time and prohibit their future use in exchange for the ability to take time-limited discipline safeguard measures against increased imports that seriously injure producers without having to pay compensation.

Standards

Another large issue continuing after the EC 1992 deadline that will be monitored closely by the United States is implementation of EC 1992 standards directives.[80] By and large, the U.S. Government considers that progress has been made in this area over the past several years of discussions with the EC.

The current focus is on conformity assessment, aimed at arranging for the United States to be able to test and certify products as in conformity to mandatory EC standards so as to minimize any adverse adjustments that might be necessary in order for U.S. businesses to comply with new EC standards.[81] The area of most recent activity in this regard is laying the groundwork for negotiation of a U.S.-EC mutual recognition agreement (MRA). The EC Commission and member states have finalized the Community's mandate to negotiate such MRAs, and have begun actual negotiations between the EC and other countries.

In the Uruguay Round negotiations on standards, agreement was reached in 1990 to extend multilateral disciplines in the GATT Standards Code to include the entire range of conformity assessment procedures[82] once the Round concludes.[83] However, other areas such as application of standards rules to subcentral governments and private sector activity continue to provide the impetus for U.S.-EC discussions both bilaterally as well as multilaterally.

Intellectual Property[84]

Several U.S. concerns over EC 1992 legislation on intellectual property rights remain pending following the single market deadline of December 31, 1992.[85] How these issues are resolved is all the more important because no multilateral rules exist as yet for intellectual property. These outstanding issues cover several proposed EC directives, one regarding "rental rights," another on protection of databases, and a third on data privacy.[86] All three contain some form of reciprocity. The first directive allows the author, artist, or other holder of rental rights to control the rental of that person's work within the EC, but will extend this provision to non-EC works only if a similar provision is provided to Europeans for their works in the non-EC country. The second directive on database protection also includes a reciprocity provision in its current draft that the United States feels would be better achieved through the more accepted norm of national treatment. The third directive on database privacy as currently drafted would be likely to hinder business by interfering with the flow of information across borders to countries where the EC considers database privacy protection to be inadequate.[87]

Rules of Origin[88]

Immediate trade concerns over issues involving rules of origin, in particular involving semiconductors and printed circuit boards, have been suspended in large part due to agreement in the Uruguay Round to pursue the 3-year study on harmonization of origin rules.[89] Past tensions over possible strict EC rule-of-origin legislation involving semiconductors, antidumping, and public procurement topics, could arise again, should the proposed study on harmonizing multilateral rules of origin fail to resolve differences in this area. However, the EC gave assurances at that time that the intent of their proposed origin rules was not meant to be restrictive.[90] The assurances suggest that multilateral discussions may prove a more fruitful approach to rules-of-origin issues than the confrontational approaches of the past that led to tension.

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[79] Ibid., p. 5.
[80] For further detail, see chapter 4 of this report.
[81] Allgeier testimony, p. 3.
[82] Such as inspection, laboratory accreditation, or other procedures that determine conformity to technical regulations or standards.
[83] Other key measures provisionally agreed include regional transparency where organizations will publish notice of standards under development to afford comment by interested parties, transparency for bilateral standards agreements where code signatories will be required to notify such agreements, and full coverage of both processes and

82—*Continued*
production methods (PPMs) under the code's definition for standards and technical regulations. President, *Report to the Congress*, annex pp. 23-24.
[84] For further detail, see USITC, *EC Integration: Fourth Followup*, USITC publication 2501, ch. 13.
[85] For further information, see chapter 12 of this report.
[86] Allgeier testimony, pp. 6-7.
[87] Ibid., p. 7.
[88] For further detail, see USITC, *EC Integration: Third Followup*, USITC publication 2368, Mar. 1991, ch. 17.
[89] Allgeier testimony, p. 7.
[90] Ibid., p. 7.

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

LTFV imports of generic cephalexin capsules from Canada. Accordingly, effective October 27, 1988, the Commission instituted preliminary antidumping investigation No. 731-TA-423 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of November 4, 1988 (53 FR 44676). The conference was held in Washington, DC, on November 16, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 12, 1988. The views of the Commission are contained in USITC Publication 2143 (December 1988), entitled "Generic Cephalexin Capsules from Canada: Determination of the Commission in Investigation No. 731-TA-423 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: December 14, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-29293 Filed 12-20-88; 8:45 am]

BILLING CODE 7020-02-M

[332-267]

The Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on October 13, 1988 of a request from the Committee on Ways and Means of the United States House of Representatives and the Committee on Finance of the United States Senate, the Commission instituted investigation No. 332-267 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide objective factual information on the EC single market and a comprehensive analysis of its potential economic consequences for the United States. The Committee requested that the Commission investigation focus in particular on the following:

1. The anticipated changes in laws, regulations, policies, and practices of the EC and individual member states that may affect U.S. exports to the EC and U.S. investment and business operating conditions in Europe, such as changes in customs requirements and procedures, government procurement practices, investment policies, service directives, and tax systems. The Committees requested that the analysis include consideration of the relationship and differences between policies and principles, such as sectoral reciprocity, proposed for the EC single market and current EC or member state obligations and commitments under bilateral or multilateral agreements and codes to which the United States is a party.

2. The likely impact of such changes on major sectors of U.S. exports to the EC, such as agricultural trade and telecommunications.

3. An assessment of whether particular elements of the single market may be trade liberalizing or trade discriminatory with respect to third countries, particularly the United States.

4. The relationship and possible impact of the single market exercise on the Uruguay Round of GATT multilateral trade negotiations.

The Committees requested that the Commission provide the requested information and analysis to the extent feasible in an initial report by July 15, 1989, with follow up reports as necessary.

EFFECTIVE DATE: December 13, 1988.

FOR FURTHER INFORMATION CONTACT: For information on other than the legal aspects of the investigation contact either Mr. John J. Gersic at 202-252-1342, or Mr. David R. Konkel at 202-252-1451.

For information on legal aspects of the investigation contact Mr. William W. Gearhart at 202-252-1091.

PUBLIC HEARING: A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 11, 1989, and continuing as required on April 12, 1989. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than 5:00 p.m., March 28, 1989. Post-hearing briefs may be submitted no later than April 26, 1989.

WRITTEN SUBMISSIONS: In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on April 26, 1989. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202)-252-1810.

By order of the Commission.

Issued: December 15, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-29291 Filed 12-20-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-279]

Certain Plastic Light Duty Screw Anchors; Commission Determination Not To Review Initial Determination and Schedule for Filing of Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) finding a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The parties to the investigation, interested government agencies, and interested members of the public are requested to file written submissions on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Mitchell W. Dale, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1087.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53(h) and 210.58(a) of the Commission's Interim

§ 207.22 of the Commission's rules (19 CFR § 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is November 8, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2)).

Written submissions. Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 20, 1989. In addition, any person who has not entered an appearance as a party to the investigation, may submit a written statement of information pertinent to the subject of the investigation on or before November 20, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than November 24, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: September 15, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-22212 Filed 9-19-89; 8:45 am]

BILLING CODE 7020-02-M

[332-267]

Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: United States International Trade Commission.

ACTION: Scheduling of followup reports.

SUMMARY: Following receipt on October 13, 1988, of a request from the Committee on Ways and Means of the United States House of Representatives and the Committee on Finance of the United States Senate, the Commission instituted investigation No. 332-267 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide objective factual information on the EC single market and a comprehensive analysis of its potential economic consequences for the United States. The Committees requested that the Commission provide the requested information and analysis to the extent feasible in an initial report by July 15, 1989, with followup reports as necessary to complete the investigation. Notice of institution of the investigation and scheduling of a hearing was published in the **Federal Register** of December 21, 1988 (53 DR 51328).

The report on the initial phase of the investigation was sent to the Committees on Monday, July 17, 1989; copies of the report "The Effects of Greater Economic Integration within the European Community on the United States" (Investigation 332-267, USITC Publication 2204, July 1989) may be obtained by calling 202-252-1809 or from the Office of the Secretary, U.S. International Trade Commission, 500 E St. SW., Washington, DC 20436. Requests can also be faxed to 202-252-2186.

Followup reports will be issued approximately every 6 months. Each will summarize the previous report and EC single market directives that become available after the cutoff date of the previous report. The followup reports will have a format similar to the original report.

EFFECTIVE DATE: September 11, 1989.

FOR FURTHER INFORMATION CONTACT: For further information on other than the legal aspects of the investigation contact Mr. John J. Gersic at 202-252-1342. For further information on the legal aspects of the investigation contact Mr. William W. Gearhart at 202-252-1091.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission for the second report should be received by the close of business on November 30, 1989. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: September 13, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-22210 Filed 9-19-89; 8:45 am]

BILLING CODE 7020-02-M

New Steel Rails From Canada (Final); Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is threatened with

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)), as amended, 53 FR 33041 (Aug. 29, 1988)).

[2] Chairman Brunsdale, Vice Chairman Cass, and Commissioner Lodwick dissenting.

(1) A reservation to the United States of a right-of-way for ditches or canals under the Act of August 30, 1890.

(2) Valid existing rights including but not limited to any right-of-way, easement, or lease of record.

(3) Mineral estates will be transferred with the surface on both the non-Federal and Federal lands.

Publication of this notice has the effect of segregating all of the above described Federal land from appropriation under the public land laws and these lands are further segregated from appropriation under the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years from the date of the publication of this notice, whichever occurs first.

Detailed information concerning the exchange is available for review at the Salmon District Office of the Bureau of Land Management, Highway 93 South, Salmon, Idaho 83467.

For a period of 45 days, interested parties may submit comments to the Salmon District Manager at the above address. Any adverse comments will be evaluated by the Idaho State Director, BLM, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: March 23, 1990.

Kathe Rhodes,

Acting District Manager.

[FR Doc 90-7659 Filed 4-3-90; 8:45 am]

BILLING CODE 4310-GG-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-438 (Final)]

Limousines from Canada

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On March 29, 1990, the Commission received a letter from petitioner in the subject investigation (Southampton Coachworks, Ltd., Farmingdale, NY), withdrawing its petition. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping investigation concerning limousines from Canada (investigation No. 731-TA-438 (Final)) is terminated.

EFFECTIVE DATE: March 29, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Trimble (202-252-1193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 30, 1990.

[FR Doc. 90-7808 Filed 4-2-90; 9:20 am]

BILLING CODE 7020-02-1

[Investigation No. 337-TA-309]

Certain Athletic Shoes With Viewing Windows; Decision Not To Review an Initial Determination

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) granting a motion for leave to file an amended complaint in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202)-252-1116. Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436; telephone: (202)-252-1000. Hearing-impaired individuals are advised that infomation on this matter can be obtained by contacting the Commission's TDD terminal at (202)-252-1810.

SUPPLEMENTARY INFORMATION: The Commission voted to institute this investigation on January 16, 1990. The notice of investigation was published in the **Federal Register** on January 23, 1990. (55 FR 2421-2). On February 9, 1990, complainant Autry Industries, Inc., filed a motion (Motion No. 309-1) for leave to file an amended complaint. On Feburary 21, 1990, respondent Reebok International Ltd. filed a repsonse in opposition to the motion, and the Commission investigative attorney filed a response indicating no opposition to the motion. On February 23, 1990, the presiding ALJ issued an ID (Order No. 3) granting complainant's motion. No petitions for review or agency comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rules 210.53-210.55 (19 CFR 210.53-210.55, as amended).

Issued: March 26, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-7711 Filed 4-3-90; 8:45 am]

BILLING CODE 7020-02-M

[332-267]

The Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: United States International Trade Commission.

ACTION: Scheduling of public hearing and deadline for submissions in connection with second follow-up report.

SUMMARY: The Commission has commenced work on the second of a series of follow-up reports updating its initial report issued in July 1989 in connection with investigation No. 332-267, *The Effects of Greater Economic Integration Within the European Community on the United States*. The reports were requested under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) by the House Committee on Ways and Means and the Senate Committee on Finance in a letter received on October 13, 1988. Notice of the institution of the investigation and scheduling of a public hearing was published in the **Federal Register** of December 21, 1988 (53 FR 51328), and notice of the procedure to be followed in follow-up reports was published in the **Federal Register** of September 20, 1989 (54 FR 38751).

The second follow-up report will follow a format similar to that of the earlier reports. However, the second follow-up report will contain, in addition, new chapters on R & D and technology and an analysis of the impact of EC integration efforts on three U.S. industries—automobile, telecommunications, and chemicals/pharmaceuticals. Persons having an interest in these areas or industries in particular, or any of the matters covered by the reports, may be interested in participating in the Commission's June 21, 1990, public hearing and/or in making written submissions in accord with the procedures set forth below.

The report on the initial phase of the investigation was sent to the Committees on Monday, July 17, 1989. The first follow-up report was sent to the Committees on Friday, March 30, 1990. Copies of either the initial report, *The Effects of Greater Economic Integration Within the European Community on the United States* (Investigation 332-267, USITC Publication 2204, July 1989) or the first follow-up report (Investigation 332-267, USITC Publication 2268, March 1990) may be obtained by calling 202-252-1809, or from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Requests can also be faxed to 202-252-2186.

The second follow-up report will be sent to the Committees on September 28, 1990.

EFFECTIVE DATE: March 23, 1990.

FOR FURTHER INFORMATION CONTACT: For further information on other than the legal aspects of the investigation contact Mr. John J. Gersic at 202-252-1342. For information on the legal aspects of the investigation contact Mr. William W. Gearhart at 202-252-1091.

PUBLIC HEARING: A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on June 21, 1990. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than 5 p.m., June 7, 1990. Post-hearing briefs may be submitted no later than July 5, 1990.

WRITTEN SUBMISSIONS: In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission for the second follow-up report should be received by the close of business on July 6, 1990. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing inpaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Issued: March 28, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-7709 Filed 4-3-90; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Modified Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Modified Consent Decree in *United States* v. *City of New Bedford* has been lodged with the United States District Court for the District of Massachusetts. The modified consent decree addresses alleged violations by the City of New Bedford, MA of the 1987 Consent Decree.

The proposed Modified Consent Decree revises various parts of the 1987 Consent Decree, including the facility's planning schedules for the secondary wastewater treatment plant and combined sewer overflow ("CSO") abatement projects. The Modified Consent Decree also requires New Bedford to pay to the United States stipulated penalties in the amount of $60,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Modified Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of New Bedford*, D.J. Ref. 90-5-1-1-2823.

The proposed Modified Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, 1107 John W. McCormack, Post Office and Courthouse, Boston, Massachusetts 02109, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Rm. 2203, Boston, Massachusetts 02203. Copies of the Modified Consent Decree may also be examined at the Environmental Enforcement section, Land and Natural Resources Division, Department of Justice, Room 1647(D), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Modified Consent Decree may be obtained in person or by mail from the Environmental Enforcement section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to the referenced case name and D.J. Ref. number and enclose a check in the amount of $5.00 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

George W. Van Cleve,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-7655 Filed 4-3-90; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. The Gillette Co., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *The Gillette Company, Wilkinson Sword, Inc., Stora Kopparbergs Bergslags AB, and Eemland Management Services BV*, Civil Action No. 90-0053-TFH.

The Complaint of the United States, filed January 10, 1990, alleged that the acquisition by The Gillette Company ("Gillette") of the Wilkinson Sword wet shaving razor blade businesses of Eemland Management Services BV ("Eemland") outside the 12-nation European Community ("E.C.") violated section 7 of the Clayton Act, 15 U.S.C. 18. The non-E.C. businesses included the wet shaving razor blade business of

Bureau of Land Management

[WY-040-01-4111-16]

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 Furson Fence update.
7. Big Piney/LaBarge Coordinated Activity Plan update.
8. Update of Cumberland Grazing Allotment Management Plan.
9. Wild Horse Program update.
10. FY 91 Budget update.
11. Public comment period.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 a.m. and 12 p.m. on November 14, or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager at the preceding address by November 9, 1990. Depending on the number of persons wishing to make oral statements, a time limit per person may be established by the District Manager.

Donald H. Sweep,

District Manager.

[FR Doc. 90-25063 Filed 10-23-90; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-41-5700; WYW72253]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

October 15, 1990.

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW72253 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 [30 U.S.C. 188], and the Bureau of Land Management is proposing to reinstate lease WYW72253 effective June 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Supervisory Land Law Examiner.

[FR Doc. 90-25064 Filed 10-23-90; 8:45 am]

BILLING CODE 4310-22-M

INTERNATIONAL TRADE COMMISSION

The Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: International Trade Commission.

ACTION: Scheduling of deadline for submissions in connection with the third followup report.

SUMMARY: The Commission has commenced work on the third in a series of followup reports updating its initial report issued in July 1989 in connection with investigation No. 332-267, "The effects of Greater Economic Integration Within the European Community on the United States." The reports were requested under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) by the House Committee on Ways and Means and the Senate Committee on Finance in a letter received on October 13, 1988. Notice of the institution of the investigation and scheduling of a public hearing was published in the Federal Register of December 21, 1988 (54 FR 51328), and notice of the procedure to be followed in followup reports was published in the Federal Register of September 20, 1989 (54 FR 38751).

The report on the initial phase of the investigation was sent to the Committees on Monday, July 17, 1989. The first followup report was sent to the Committees on Friday, March 30, 1990, and the second followup report was sent on September 28, 1990. Copies of either the initial report "The Effects of Greater Economic Integration Within the European Community on the United States" (Investigation 332-267, USITC Publication 2204, July 1989), the first followup reports (Investigation 332-267, USITC Publication 2268, March 1990), or the second followup report (Investigation 332-267, USITC Publication 2318, September 1990) may be obtained by calling 202-252-1809, or from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Requests can also be faxed to 202-252-2186.

The third followup report will be sent to the Committees on March 29, 1991.

EFFECTIVE DATE: October 5, 1990.

FOR FURTHER INFORMATION CONTACT: For further information on other than the legal aspects of the investigation contact Mr. John J. Gersic at 202-252-1342. For information on the legal aspects of the investigation contact Mr. William W. Gearhart at 202-252-1091.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission for the third followup report should be received by the close of business on January 11, 1991. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available

for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810

Issued: October 16, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-25106 Filed 10-23-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-462 (Final)]

Benzyl Paraben From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-462 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of benzyl p-hydroxybenzoate (benzyl paraben), provided for in subheading 2918.29.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before December 12, 1990 and the Commission will make its final injury determination by February 5, 1991 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Jeff Doidge, (202-252-1183), Office of Investigations, U.S International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of benzyl paraben from Japan are being sold in the United States at less than fair value within the meaning of seciton 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on June 29, 1990, by ChemDesign Corp., Fitchburg, MA. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that the establishment of an industry in the United States was being materially retarded by reason of imports of the subject merchandise (55 FR 34626, August 23, 1990).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commisison, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addreses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompnay the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that is has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on December 3, 1990, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rule (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on December 18, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 10, 1990. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 13, 1990, at the U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is December 13, 1990. If prehearing briefs contain business proprietary information, a nonbusiness proprietary version is due December 14, 1990. Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to these investigations must be served on all other parties to these investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: May 24, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-12886 Filed 5-29-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-267]

Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: United States International Trade Commission.

ACTION: Deadline for submissions in connection with the fourth followup report.

SUMMARY: The Commission has commenced work on the fourth in a series of followup reports updating its initial report issued in July 1989 in connection with investigation No. 332-287, The Effects of Greater Economic Integration Within the European Community on the United States. The reports were requested under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) by the House Committee on Ways and Means and the Senate Committee on Finance in a letter received on October 13, 1988. Notice of the institution of the investigation and scheduling of a public hearing was published in the **Federal Register** of December 21, 1988 (53 FR 51328), and notice of the procedure to be followed in followup reports was published in the Federal Register of September 20, 1989 (54 FR 38751).

The report on the initial phase of the investigation was sent to the Committees on July 17, 1989. Followup reports were sent to the Committees on March 30, 1990, September 28, 1990, and March 29, 1991. Copies of the reports, The Effects of Greater Economic Integration Within the European Community on the United States, may be obtained by calling 202-252-1809, or from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Requests can also be faxed to 202-252-2186.

The fourth followup report will be sent to the Committees on April 30, 1992.

EFFECTIVE DATE: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: For further information on the investigation contact Ms. Kim Frankena at (202) 252-1265 or Ms. Joanne Guth at 202-252-1264.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission for the fourth followup report should be received by the close of business on December 12, 1991. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: May 20, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-12769 Filed 5-29-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-39 (Sub-No. 16X)]

St. Louis Southwestern Railway Co.—Abandonment Exemption—In Pulaksi, Lonoke, and Jefferson Counties, AR

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by St. Louis Southwestern Railway Company of 35.79 miles of rail line in Pulaski, Lonoke, and Jefferson Counties, AR; subject to standard labor protective conditions and an historic preservation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 1, 1991. Formal expressions of intent to file an offer [1] of financial assistance with 49 CFR 1152.27(c)(2) must be filed by June 10, 1991, petitions to stay must be filed by June 14, 1991, and petitions for reconsideration must be filed by June 24, 1991. Requests for a public use condition must be filed by June 10, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB-39 (Sub-No. 16X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: May 22, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-12749 Filed 5-29-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31874]

South Dakota Railway Co.; Modified Rail Certificate

On April 26, 1991, the South Dakota Railway Company (SDRC) filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150.23 to operate approximately 83.3 miles of line, between milepost 0.0, at a point known as Napa Junction, SD, and milepost 83.3, in Platte, SD, acquired by the State of South Dakota from the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company (MILW) after the line was approved for abandonment

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

Issued: September 30, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-24341 Filed 10-6-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-267]

The Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: United States International Trade Commission.

ACTION: Deadline for submissions in connection with the fifth followup report.

SUMMARY: The Commission has commenced work on the fifth in a series of followup reports updating its initial report issued in July 1989 in connection with investigation No. 332-267, The Effects of Greater Economic Integration Within the European Community on the United States. The reports were requested under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) by the House Committee on Ways and Means and the Senate Committee on Finance in a letter received on October 13, 1988. Notice of the institution of the investigation and scheduling of a public hearing was published in the **Federal Register** of December 21, 1988 (53 FR 51328), and notice of the procedure to be followed in followup reports was published in the **Federal Register** of September 20, 1989 (54 FR 38751).

The report on the initial phase of the investigation was sent to the Committees on July 17, 1989. Followup reports were sent to the Committees on March 30, 1990, September 28, 1990, March 29, 1991, and April 30, 1992. Copies of the reports, The Effects of Greater Economic Integration Within the European Community on the United States, may be obtained by calling 202–205–1807, 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 202–205–2186.

The fifth followup report will be sent to the Committees on April 30, 1993.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: For further information on the investigation contact Ms. Joanne Guth at 202–205–3284.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission for the fifth followup report should be received by the close of business on December 11, 1992. 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 202–205–1810.

Issued: October 1, 1992.

By order of the Commission.

Paul Bardos,

Acting Secretary.

[FR Doc. 92-24339 Filed 10-6-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-548 and 551 (Final)]

Sulfur Dyes from China and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–548 and 551 (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 China and the United Kingdom of sulfur dyes,[1] provided for in subheadings 3204.15, 3204.19.30, 3204.19.40, and 3204.19.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of sulfur dyes from China and the United Kingdom 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 investigations were requested in a petition filed on April 10, 1992, by Sandoz Chemicals Corporation, Charlotte, NC.

Participation in the investigations and public service list. Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an

[1] Sulfur dyes are synthetic organic coloring matter containing sulfur. Sulfur dyes are obtained by high temperature sulfurization of organic material containing hydroxy, nitro, or amino groups, or by reaction of sulfur or alkaline sulfide with aromatic hydrocarbons. For purposes of these investigations, sulfur dyes include, but are not limited to, sulfur vat dyes with the following color index numbers: Vat Blue 42, 43, 44, 45, 47, 48, and 50 and Reduced Vat Blue 42 and 43. Sulfur vat dyes also have the properties described above. All forms of sulfur dyes are covered, including the reduced (leuco) or oxidized state, presscake, paste, powder, concentrate, or so-called "pre-reduced, liquid ready-to-dye" forms.

APPENDIX C
LIST OF EC 1992 INITIATIVES ADDRESSED IN THIS INVESTIGATION

APPENDIX C

LIST OF EC 92 INITIATIVES CONSIDERED IN THIS INVESTIGATION

Key to Abbreviations and Symbols Used in Appendix

EC initiative:

Reg = Regulation (binding and directly applicable throughout the EC without any national implementing measures)
Dir = Directive (binding on member states as to the result to be achieved and requires national implementing measures)
Dec = Decision (binding on and applicable to member states or persons addressed and generally requires no national implementing measures)
Rec = Recommendation (a nonbinding request to member states or individuals)

* = Initiative listed in Seventh 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(92)383 final, Sep. 2, 1992. 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

A = Directly applicable to member states.
I = Implementing measures notified by member state to the EC Commission.
N = Not notified as implemented under or incorporated into national law.
D = Derogation (e.g. exemption from implementation deadline).
F = EC Commission infringement proceeding underway for failure to implement or failure to implement measure correctly.
\- = National implementation measure is not required or applicable.

Note.--The implementation status of adopted initiatives was obtained mostly from the Seventh 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(92)383 final, Sep. 2, 1992. Not all adopted initiatives are listed in these reports and, thus, their status is not readily known (columns in appendix table on member-state implementation are blank). Implementation of the initiatives may not be reflected because the specified deadline for implementation has not arrived, member states may not have completed implementation processes or reported on implementation, or efforts by EC and internal institutions to achieve implementation may be ongoing.

Table C-1.
List of EC initiatives considered in this investigation

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
	Public Procurement													
Enacted:														
88/295-Dir*	Award of public-supply contracts	F	F	I	F	I	F	I	I	N	I	F	I	Implementation 1/1/89.
89/440-Dir*	Award of public-works contracts	I	F	I	F	I	F	I	I	F	I	N	I	Implementation 7/19/90.
89/665-Dir*	Review of public-supply & -works contract awards (remedies)	I	F	I	I	I	F	I	I	F	I	I	I	Implementation 12/21/91.
90/531-Dir*	Procurement procedures of entities in water, energy, transport, and telecommunications (excluded sectors)	N	N	N	D	N	D	N	N	N	N	N	N	Implementation 7/1/92.
92/13-Dir	Remedies in the utilities sector				D		D					D		Implementation 1/1/93.
92/50-Dir	Procedures for the award of public service contracts				D		D					D		Implementation 7/1/93.
93/4-Dir	Amends public works dir. 71/305													Implementation 1/1/93.
Proposed:														
(91)347-Dir	Procurement procedures for utilities services				D		D					D		Implementation 7/1/94.
(91)2360-Dir	Consolidation of public works legislation													
	Internal Energy Market													
Enacted:														
90/377-Dir	Transparency of gas and electricity prices													Implementation 7/1/91.
90/547-Dir	Transit of electricity through transmission grids													Implementation 7/1/91.
91/296-Dir	Transit of natural gas through the major systems													Implementation 1/1/92.
Proposed:														
(90)220-Reg	Investment in petroleum, natural gas, and electricity													Dropped by the EC.
(90)306-Dir	Restriction on use of natural gas in power stations													
(91)548-Dir	Common rules for electricity market (SYN 384)													
(91)548-Dir	Common rules for gas market (SYN 385)													
(92)15-Reg	Declaration of European interest in trans-European networks													
(92)110-Dir	Hydrocarbons													
	Financial Sector													
Enacted:														
85/583-Dir	Collective investment undertakings	I	I	I	I	I	I	I	I	I	I	D	I	Implementation 10/1/89.
85/611-Dir*	Undertakings for collect. investment in securities (UCITS).	I	I	I	I	I	N	I	I	I	I	N	I	Implementation 10/1/89.
86/566-Dir	Liberalization of certain capital movements	I	I	I	D	I	D	I	I	I	I	D	I	Implementation 2/28/87.
86/635-Dir*	Annual accounts for banks and financial institutions	F	I	I	I	I	F	I	I	I	F	I	I	Implementation 12/31/90.
87/62-Rec*	Control of large exposures of credit institutions	-	-	-	-	-	-	-	-	-	-	-	-	Impl. not required.
87/63-Rec*	Deposit-guarantee schemes for financial institutions	-	-	-	-	-	-	-	-	-	-	-	-	Impl. not required.
87/343-Dir*	Credit and suretyship insurance	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/90.
87/344-Dir*	Legal-expenses insurance	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/90.
87/345-Dir	Requirements for official stock exchange listing													Implementation 1/1/90.
87/598-Rec*	European code of conduct for electronic payment	-	-	-	-	-	-	-	-	-	-	-	-	Impl. not required.
88/220-Dir	Undertakings for collective investments	N	N	I	I	I	I	N	I	I	N	I	I	Implementation 10/1/89.
88/357-Dir*	Second non-life insurance directive	I	I	I	I	I	F	I	I	I	I	I	I	Implementation 1/1/90.
88/361-Dir*	Liberalization of all capital movements	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/90.
88/590-Rec	Payment systems - card holders and issuers	-	-	-	-	-	-	-	-	-	-	-	-	

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation												Comment
		B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	
		Financial Sector--Continued												
Enacted--Continued														
88/627-Dir*	Disclosure for changes in major stock holdings	I	F	I	I	I	I	I	I	F	I	I	F	Implementation 1/1/91.
88/1969-Reg	Single facility for medium-term financial assistance													
89/117-Dir*	Annual accounting documents of credit & fin. institutions	F	I	I	I	I	F	I	I	I	F	I	F	Implementation 1/1/91.
89/298-Dir*	Requirements for the public-offer prospectus of securities	N	I	I	I	F	I	I	F	I	I	I	I	Implementation 4/17/91.
89/299-Dir*	Own funds of credit institutions	N	F	I	F	I	I	I	I	F	I	I	I	Implementation 1/1/91.
89/592-Dir*	Coordination of regulations on insider trading	I	N	I	I	I	I	I	I	I	N	I	N	Implementation 6/1/92.
89/646-Dir*	Business of credit institutions (Second Banking directive)			I										Implementation 1/1/93.
89/647-Dir*	Solvency ratio for credit institutions	N	F	I	F	I	I	I	I	F	I	I	I	Implementation 1/1/91.
90/88-Dir	Consumer credit													Implementation 12/31/92.
90/109-Rec*	Transparency of cross-border financial transactions	-	-	-	-	-	-	-	-	-	-	-	-	Impl. not required.
90/211-Dir*	Mutual recognition of public-offer prospectuses	I	I	I	F	I	F	I	F	I	I	I	I	Implementation 4/17/91.
90/232-Dir*	Third directive on motor vehicle liability insurance					I		I						Implementation 12/31/92.
90/348-Dir	Third non-life insurance directive													
90/618-Dir*	Motor vehicle (non-life) liability insurance	N	N	I	N	I	N	N	N	N	N	N	N	Implementation 5/20/92.
90/619-Dir*	Second life insurance directive (services provision)													Implementation 11/20/92.
91/31-Dir	Multilateral development banks	N	F	I	F	I	F	I	I	F	I	I	N	Implementation 12/31/92.
91/188-Dir	Own-funds of credit institutions													Implementation 1/1/91.
91/308-Dir	Money laundering implementation													Implementation 1/1/93.
91/633-Dir	Own funds	I							I					Implementation 3/31/91.
91/675-Dir	Insurance Committee													Implementation 1/1/92.
92/16-Dir	Credit institution's own funds													
92/30-Dir*	Supervision of credit institutions on a consolidated basis													Implementation 1/1/93.
92/48-Rec	Insurance intermediaries													
92/49-Dir	Laws on direct insurance other than life assurance													Implementation 7/1/94.
92/96-Dir	Laws on direct life assurance (third directive)													Implementation 7/1/94.
92/101-Dir	Public limited-liability companies and their capital													
Proposed:														
(80)854-Dir	Insurance contracts													
(87)255-Dir	Mortgage credit													
(88)4-Dir	Reorganization and winding-up of credit institutions													
(88)805-Reg	Guarantees of credit institutions or insurance firms													
(89)394-Dir	Bankruptcy regulations for insurance firms													
(89)474-Dir	Accounting requirements for insurance firms													
(89)629-Dir	Investment services													
(90)141-Dir	Capital adequacy of investment and credit firms													
(90)344-Dir	Setting up an Insurance Committee													
(90)451-Dir	Consolidated supervision of credit institutions													
(90)567-Reg	Securities given by credit or insurance institutions													
(90)593-Dir	Money laundering													
(90)650-Reg	Application of article 85(3) to insurance													
(91)57-Dir	Third life assurance													
(91)68-Dir	Large exposures of credit institutions													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
	Financial Sector--Continued													
Proposed--Continued														
(92)188-Dir....	Deposit guarantee schemes (replaces 87/63-Rec).....													
(92)273-Dir....	Monitoring large exposures of credit institutions.....													
	Customs													
Free movement of goods														
Enacted:														
85/347-Dir*....	Duty-free allowance for fuel in bus tanks.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 10/1/85.
85/1900-Reg*...	Single Administrative Document (import/export forms).....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 1/1/88.
85/1901-Reg*...	Single Administrative Document (external trade).....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 1/1/88.
86/1797-Reg*...	Abolition customs presentation charges (postal fees).....	A	A	A	D	A	A	A	A	A	A	D	A	Applicable 1/1/88.
86/3690-Reg*...	TIR Convention (eliminates customs formalities).....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 7/1/87.
88/2503-Reg....	Customs warehouses.....													Applicable 1/1/92.
88/4283-Reg*...	Introduction of common border posts ("banalisation").....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 7/1/89.
89/526-Dec.....	International Convention on the Harmonization of Frontier Controls of Goods.....													Applicable 9/12/87.
89/604-Dir*....	Exemption for permanent imports of personal property.....	I	I	I	I	I	I	F	I	I	I	I	I	Implementation 7/1/90.
89/617-Dir.....	Units of measurement.....													
89/1292-Reg....	Movement of goods for temporary use in another state.....													Applicable 5/15/89.
89/4046-Reg....	Security to ensure payment of a customs debt.....													Applicable 1/1/91.
90/474-Reg*....	Abolishes lodgement of the transit advice note.....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 7/1/90.
90/504-Dir.....	Release of goods for free circulation.....													Implementation 1/1/93.
90/1715-Reg....	Information from customs on classification of goods.....													Applicable 6/29/90.
90/1716-Reg....	Persons liable for payment of a customs debt.....													Applicable 6/29/90.
90/2561-Reg....	Customs warehouses.....													Applicable 1/1/92.
90/2684-Reg....	German unification.....													Applicable 9/26/90.
90/2726-Reg*...	Community transit.....													Applicable 1/1/93.
90/2920-Reg....	Implements and simplifies EC transit procedure.....													Applicable 3/1/91.
90/3185-Reg....	Outward processing.....													Applicable 11/1/90.
91/341-Dec.....	Vocational training of customs officials (Matthaeus).....													
91/342-Dir.....	Inspection of goods carried between Member States.....													Implementation 7/1/91.
91/456-Reg.....	Common definition of the concept of the origin of goods.....													
91/477-Dir*....	Control of the acquisition and possession of weapons.....													Implementation 1/1/93.
91/664-Reg.....	EEC-EFTA common transit procedure.....													
91/717-Reg.....	Single Administrative Document (internal trade).....													Applicable 1/1/93.
91/718-Reg.....	Movement of goods within the Community.....													Applicable 3/29/91.
91/720-Reg.....	Customs control processing of goods.....													
91/3330-Reg*...	Statistics re: goods trade btw. member states.....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 11/19/91.
91/3648-Reg....	Introduction of common border posts.....													Applicable 1/1/92.
91/3716-Reg....	Transition safeguards for goods movement from Spain and Portugal.....													Applicable 7/1/91.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Customs--Continued												
Free movement of goods--Continued														
Enacted--Continued														
91/3717-Reg....	Goods to be processed by customs before entering circulation.....													Applicable 1/1/92.
92/12-Dir.....	Products subject to excise duty and their monitoring.....												I	Implementation 1/1/93.
92/39-Dec.....	Training customs officials (Matthaeus programme).....													
92/51-Dir.....	Recognition of professional eduction and training.....													Implementation 6/18/94.
92/481-Dec.....	Exchange of officials implementing int. mkt legislation													Applicable 1/1/93.
92/525-Dec.....	Community border inspection posts for veterinary checks													
92/579-Rec.....	Infrastr. to identify dangerous products at the border....													Consultations by 12/22/93.
92/1214-Reg....	Community transit procedure and certain simplifications													Applicable 1/1/93.
92/1823-Reg....	End of baggage control of persons in intra-EC transit.....													Applicable 1/1/93.
92/2434-Reg....	Freedom of movement for workers within the Community.....													Applicable 8/27/92.
92/2453-Reg....	Single Administrative Document.....													Applicable 1/1/93.
92/2560-Reg....	Community transit procedure and certain simplifications													Applicable 9/18/92.
92/2674-Reg....	Info. on goods classification in customs nomenclature.....													Applicable 1/1/93.
92/2713-Reg....	Movement of goods btw. within the Community.....													Applicable 1/1/93.
92/2913-Reg....	Establishing the Community Customs Code.....													Applicable 1/1/94.
92/3001-Reg....	Implement. Council Reg. 2503/88 on customs warehouses.....													Applicable 10/20/92.
92/3046-Reg....	Statistics relating to trade btw. member states.....													Applicable 10/30/92.
92/3269-Reg....	Provisions for goods export/reexport leaving the EC.....													Applicable 1/1/93.
92/3566-Reg....	Verification of the use and destination of goods.....													Applicable 1/1/93.
92/3649-Reg....	Document. of intra-EC goods movements subject to excise													Applicable 1/1/93.
92/3694-Reg....	Concerning the Single Administrative Document.....													Applicable 1/1/93.
92/3904-Reg....	Adapting customs agent to the internal market.....													Applicable 1/1/93 for 1 yr.
Proposed:														
[NB: Many "free movement of goods" measures were repealed in and subsumed under Reg. No. 2913/92, the Community Customs Code, effective 1/1/94.]														
(85)224-Dir....	Easing of border controls on intra-EC borders.....													Under current measures.
(86)383-Dir....	Duty-free admission of fuel in commercial vehicles.....													Reportedly adopted.
(88)297-Dir....	Temporary importation of motor vehicles.....													Adopted under VAT legisl.
(89)384.....	Autonomous suspension of customs duties.....													Reportedly adopted.
(90)71-Reg.....	EC customs code and temporary import arrangements.....													Under current measures.
(90)xx-Reg.....	Statistical classification of economic activities.....													
(90)354-Reg....	Goods sent for temporary use in other member states.....													
(90)423-Reg....	Statistics on intra-EC trade in goods.....													Under current measures.
(91)97-Reg.....	Community Customs Code amending (90)71.....													Under current measures.
(92)97-Reg.....	Transit and storage statistics on intra-EC trade.....													Applicable 1/1/93.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Customs--Continued												
Free movement of persons														
Enacted:														
85/348-Dir.....	Exemption from turnover taxes, as amended by 88/664.....	F	I	I	I	I	I	F	I	-	I	I	I	Implementation 7/1/89.
85/368-Dec*....	Comparability of vocational training qualifications.....	-	-	-	-	-	-	-	-	-	-	-	-	Impl. not required.
85/432-Dir*....	Coordinates provisions in the field of pharmacy.....	F	I	I	I	I	F	F	I	-	I	I	I	Implementation 10/1/87.
85/433-Dir*....	Mutual recognition of diplomas in pharmacy.....	F	F	I	I	I	I	I	I	I	I	I	I	Implementation 10/1/87.
85/434-Dec*....	Advisory committee on pharmaceutical training.....	-	-	-	-	-	-	-	-	-	-	-	-	Impl. not required.
85/584-Dir.....	Mutual recognition of diplomas.....	F	I	I	I	I	I	I	I	I	I	I	I	Implementation 10/1/97.
86/365-Dec*....	Cooperation in training in technology (COMETT).....	-	-	-	-	-	-	-	-	-	-	-	-	Report 4/11/90.
86/457-Dir*....	Specific training in general medical practice.....	I	I	I	I	I	I	I	I	-	I	I	I	Impl. 1/1/88-1/1/90.
86/653-Dir*....	Self-employed commercial agents.....	F	I	I	I	I	I	I	D	F	I	I	D	Implementation 1/1/90.
88/664-Dir*....	Allowances in intra-Community travel.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/89.
89/48-Dir*.....	Mutual recognition of higher education diplomas.....	F	N	I	N	N	F	N	I	N	F	N	I	Implementation 1/1/91.
89/438-Dir.....	Diplomas for goods haulage/road passenger operators.....													Implementation 1/1/90.
89/594-Dir.....	Mutual recognition of diplomas in medicine.....													Implementation by 5/8/91.
89/595-Dir.....	Mutual recognition of diplomas for nurses.....													Implementation by 10/13/91.
89/601-Rec.....	Training of health personnel in the matter of cancer.....													Action program launched.
89/657-Dec.....	Vocational training/technological change (Eurotecnet).....	-	-	-	-	-	-	-	-	-	-	-	-	Applicable 1/1/91.
89/663-Dec.....	Mobility of university students (Erasmus).....	-	-	-	-	-	-	-	-	-	-	-	-	Applicable 1/1/91.
89/684-Dir.....	Vocational training for drivers with dangerous goods.....													Applicable various dates.
89/2332-Reg....	Social security benefits (for persons moving in EC).....													Applicable various dates.
89/3427-Reg....	Social security benefits (residence of families).....													Applicable 1/15/86.
90/233-Dec.....	Trans-European mobility for university studies.....													Applicable 7/1/90.
90/267-Dec.....	Continuing vocational training (FORCE).....													Applies 1/1/91-12/31/94.
90/364-Dir*....	Right of residence - general directive.....	N	D	N	I	N	N	N	N	N	N	N	N	Implementation 6/30/92.
90/365-Dir*....	Right of residence - employees and retired persons.....	N	N	I	I	N	N	N	N	N	N	N	N	Implementation 6/30/92.
90/366-Dir*....	Right of residence - students.....	N	N	I	I	N	N	N	N	N	N	N	N	Implementation 6/30/92.
90/658-Dir.....	Mutual recognition of diplomas.....	F	I	F	I	F	I	I	F	I	F	F	F	Implementation 7/1/91.
90/1360-Reg....	European Training Foundation.....													Appl. upon site choice.
91/2194-Reg....	Freedom of movement of workers from Spain and Portugal.....													
Proposed:														
(89)612-Dec....	Vocational training (Eurotecnet II).....													Reportedly adopted.
(89)640-Dir....	Blood alcohol concentration for vehicle drivers.....													
(90)76-Dir.....	Increase in tax paid allowances for intra-EC travel.....													
(90)108-Reg....	Freedom of movement for workers within the EC.....													Under current measures.
(90)389-Dir....	Recognition of professional education and training.....													Under current measures.
(90)535-Reg....	European Center for Development of Vocational Training.....													Reportedly adopted.
(90)605-Dec....	Training of customs officials (Matthaeus Program).....													Under current measures.
(91)316-Reg....	Freedom of movement for workers.....													Under current measures.
(92)xxx-Res....	Nationals of member states holding 3rd-country diplomas....													Action encouraged.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
	Social Dimension													
Enacted:														
88/364-Dir.....	Protection from certain chemicals and work activity.....													Implementation 1/1/90.
88/383-Dec.....	Information on safety, hygiene, and health at work.....													Applicable 2/24/88.
89/391-Dir.....	Improvements in safety and health of workers at work.....													Implementation 12/31/92.
89/654-Dir.....	Safety and health requirements at work.....						D							Implementation 12/31/92.
89/655-Dir.....	Use of work equipment at work.....													Implementation 12/31/92.
89/656-Dir.....	Use of personal protective equipment at work.....													Implementation 12/31/92.
90/238-Dec.....	"Europe against cancer" program for 1990-94.....													
90/269-Dir.....	Handling heavy loads and risk of back injury.....													Implementation 12/31/92.
90/270-Dir.....	Work with visual display units.....													Implementation 12/31/92.
90/326-Rec.....	European schedule of occupational diseases.....													
90/394-Dir.....	Exposure to carcinogens at work.....													Implementation 12/31/92.
90/641-Dir.....	Protection of workers from ionizing radiation.....													Implementation 12/31/93.
90/679-Dir.....	Exposure to biological agents at work.....											D		Implementation 11/28/93.
91/49-Dec.....	Community actions for the elderly.....													For 1/1/91-12/31/93 period.
91/xxx-Dir.....	Exposure to asbestos at work, amending 83/477.....													Implementation 1/1/93.
91/383-Dir....	To encourage safety and health impr. of temporary workers..													Implementation 12/31/92.
91/533-Dir.....	Proof of work contracts.....													Implementation 6/30/93.
92/29-Dir.....	Minimum safety for medical treatments on board vessels.....													Implementation 12/31/94.
92/56-Dir.....	Laws relating to collective redundancies.....													Implementation 6/24/94.
92/57-Dir.....	Min. safety and health requirements at construction sites..													Implementation 12/31/93.
92/58-Dir.....	Min. requirements for safety or health signs at workplace..													Implementation 6/24/94.
92/85-Dir.....	Safety/health at work of pregnant or breastfeeding workers.													Adopted 10/19/92.
92/91-Dir.....	Safety/health of workers in mineral-extracting industries..													Implementation 11/3/94.
92/131-Rec.....	Protection of dignity of women and men at work.....													
92/442-Rec.....	Convergence of social protection objectives and policies...													Adopted 6/27/92.
Proposed:														
(89)471.....	EC charter of fundamental social rights.....													
(89)568.....	EC charter of basic social rights for workers.....													
(90)228-Dir....	Atypical work (3 separate proposals, one enacted as 91/383)													
(90)317-Dir....	Organization of working time.....													
(90)450-Dec....	Year of Safety, Hygiene, and Health Protection.....													
(90)534-Reg....	European Foundation for the Improvement of Living and Working Conditions.....													
(90)581-Dir....	Establishes a European Works Council.....													
(90)663-Dir....	Worker safety/health rights in extractive industries.....													
(90)692-Dir....	Protection of pregnant women in the workforce.....													
(91)117-Dir....	Amends safety/health rules at temporary/mobile work site...													
(91)228-Rec....	Social protection objectives and policies.....													
(91)493-Dir....	Amends worker safety/health rights in extractive industries													
(92)xxx-Dir....	Protection of worker rights in services subcontracting.....													
(92)xxx-Dir....	Employees rights under transfers of businesses.....													
(92)xxx-Dir....	Worker protection for exposure to biological agents at work													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
	Social Dimension--Continued													
Proposed--Continued														
(xx)xxx-Reg....	European agency for safety and health at work.....													
(xx)xxx-Dir....	Health and safety on fishing vessels.....													
(xx)xxx-Dec....	Maastricht summit protocol on the social dimension.....													
(xx)xxx-Dir....	Protection of worker rights in subcontracting.....													
	Transport													
Enacted:														
86/4055-Reg*...	Maritime transport.....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 1/1/87.
86/4056-Reg*...	Maritime transport.....	I	I	I	F	F	I	I	F	F	I	I	I	Applicable 7/1/87.
86/4057-Reg*...	Maritime transport.....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 7/1/87.
86/4058-Reg*...	Maritime transport.....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 7/1/87.
87/601-Dir.....	Air fares between member states.....	I	I	I	I	I	I	I	I	F	N	N	I	Implementation 12/31/87.
87/602-Dec.....	Passenger capacity rates and access to routes.....	F	I	I	F	F	I	I	I	F	F	F	F	Applicable 1/1/88.
87/1674-Reg*....	Transit procedure simplification.....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 7/1/88.
87/3975-Reg*...	Rules on competition in air transport.....	F	I	I	F	F	I	F	F	F	F	I	I	Applicable 1/1/88.
87/3976-Reg....	Air transport, as amended by 90/2344-Reg.....													Applicable 1/1/88.
88/1841-Reg*...	Market access for carriage of goods by road.....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 7/1/88.
89/463-Dir.....	Air service for passengers, mail, and cargo.....	N	N	N	N	N	N	N	N	N	N	N	N	Implementation 11/1/89.
89/629-Dir.....	Noise emission from civil subsonic jet planes.....													Implementation 9/30/90.
89/684-Dir.....	Vocational training for certain drivers of vehicles.....											D		Implementation 1/1/95.
89/2299-Reg....	Code of conduct for computerized reservation systems.....													Applicable 8/1/89.
89/4058-Reg....	Rates for intra-EC carriage of goods by road.....													Applicable 1/1/90.
89/4059-Reg*...	Non-EC carrier road transport of goods, amended by 91/296..	I	I	I	I	I	I	I	I	I	I	I	I	Applicable 7/1/90.
89/4060-Reg*...	End of controls in road and inland waterway transport.....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 7/1/90.
90/398-Dir.....	Vehicles hired without drivers for carriage of goods.....													Implementation 12/31/90.
90/449-Dec.....	Joint Committee on Civil Aviation.....													Applicable 8/1/90.
90/1053-Reg....	Market access in international carriage of goods.....													Applicable 5/1/90.
90/2342-Reg*...	Fares for scheduled air services.....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 11/1/90.
90/2343-Reg*...	Market access and passenger capacity for air carriers.....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 11/1/90.
90/3914-Reg....	Market access in international carriage of goods.....													Applicable 1/1/91.
90/3915-Reg....	Market access in international carriage of goods.....													Applicable 1/1/91.
90/3916-Reg....	Measures to be taken in crisis in carriage of goods.....													Applicable 1/1/91.
91/11-Dec.....	Research and development in transport (EURET).....													
91/82-Reg.....	Ground handling services.....													Applicable 2/1/91.
91/83-Reg.....	Computer reservation system for air transport service.....													Applicable 2/1/91.
91/84-Reg.....	Passenger and cargo tariffs, airport slot allocation.....													Applicable 2/1/91.
91/232-Dec.....	Non-resident road haulage cabotage.....													
91/294-Reg.....	Operation of air cargo services.....													Applicable 2/11/91.
91/295-Reg.....	Denied-boarding compensation system in air transport.....													Applicable 4/8/91.
91/440-Dir.....	Development of the Community's railways.....													
91/670-Dir*....	Personnel licenses for functions in civil aviation.....	N	N	I	I	N	N	N	N	N	N	N	N	Implementation 6/1/92.
91/719-Reg.....	TIR and ATA carnets as transit documents.....													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
	Transport--Continued													
Enacted--Continued														
91/1284-Reg....	Air transport competition.....													Applicable 5/18/91.
91/1593-Reg....	TIR and ATA carnets.....													
91/1893-Reg....	Public transport by rail, road and inland waterway.....													
91/3921-Reg*...	Inland waterway cabotage for non-EC carriers.....													Applicable 1/1/93.
91/3922-Reg....	Harmonization of technical rules for air transport.....													Applicable 1/1/92.
91/3925-Reg....	Baggage controls on intra-Community air and sea service....													Applicable 1/1/93.
92/8-Dec.....	Compliance of air fares with Art. 3(1) of Reg. 2342/90.....													
92/14-Dir.....	Operation of planes under the Conv. Int. Civil Aviation....													
92/14-Dir.....	Correction: plane operation and Conv. Int. Civil Aviation..													
92/143-Dec.....	Radionavigation systems for Europe.....													
92/138-Dec.....	Dispute btw. the UK and Germany on coach service.....													
92/258-Dec.....	Community cabotage quota for road haulage by non-residents.													
92/384-Dec.....	Agreement btw. the EC, Norway, and Sweden on civil aviation													
92/398-Dec.....	Compliance of certain air fares with Council Reg. 2342/90..													
92/479-Reg.....	Art. 85(3) applicaton liner shipping companies (consortia).													
92/551>555-Reg.	List of vessels over 8 meters used as beam trawls.....													
92/684-Reg*....	Rules for carriage of passengers by coach and bus.....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 6/1/92.
92/881-Reg.....	Access to the market in the carriage of goods by road.....													
92/881-Reg.....	Correction: carriage of goods by road within the Community.													
92/1839-Reg....	Documents for the international carriage of passengers.....													
92/2407-Reg ...	Licensing of air carriers.....													
92/2408-Reg....	Access for Commuity air carriers to intra-EC air routes....													
92/2409-Reg....	Fares and rates for air services.....													
92/2410-Reg....	Rules on competition in the air transport sector.....													
92/2411-Reg....	Concerted practices in the air-transport sector.....													
92/2454-Reg....	Conditions for non-resident road passenger transp. services													
92/3577-Reg....	Principle of freedom to provide maritime cabotage services.													
92/3578-Reg....	Aids for transport by rail, road and inland waterway.....													
92/3618-Reg....	Agreements in the air transport sector.....													
92/3689-Reg....	TIR and ATA carnets as transit doc. on temporary imports...													
92/3690-Reg....	Measues on structural improvement in inland water transport													
92/3691-Reg....	TIR and ATA carnets as transit doc. on temporary imports...													
Proposed:														
(85)90-Reg.....	Rules applicable to maritime transport.....													
(89)238-Reg....	Transport infrastructure and transport market in 1992.....													
(89)266-Reg....	Definition of EC shipowner.....													
(89)417-Reg....	Amends 87/3975-Reg on competition in air transport.....													
(89)417-Reg....	Application of article 85(3) to air transport.....													
(89)564-Dec....	Network of high speed trains.....													
(89)564-Dir....	Combined carriage of goods between states.....													
(90)17-Dec.....	Commercial aviation agreements with third countries.....													
(90)100-Reg....	Consultation between airports and airport users.....													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
	Transport--Continued													
Proposed--Continued														
(90)167-Reg....	Amends 87/3975-Reg on competition in air transport.....													
(90)219-Reg....	Transfer of ships from one register to another.....													
(90)652-Dec....	European system for inland goods transport markets.....													
(90)1864-Dir...	Admission to road haulage/passenger transport field.....													
(91)377-Reg....	Non-resident carriers and domestic road haulage services...													
(92)105-Reg....	Transfer of controls in road and inland waterway transport.													
(92)230-Dec....	European inland waterway network.....													
(92)231-Dec....	Establishment of a combined transport network.....													
(92)404-Reg....	Code of conduct for computer reservation systems.....													
	Company Law													
Enacted:														
77/91-Dir.....	Formation and capital of public limited companies.....													
78/660-Dir.....	Coordination of annual accounts.....													
83/349-Dir.....	Consolidated accounts.....													
84/253-Dir.....	Qualification of auditors.....													
85/2137-Reg*...	Regulation of European Economic Interest Groups.....	I	I	I	I	I	I	I	I	I	I	I	I	Applicable 7/1/89.
89/666-Dir*....	Disclosure requirements for firms (11th Co. Law Dir.).....	F	F	I	I	I	F	F	F	F	F	F	F	Implementation 1/1/92.
89/667-Dir*....	Single-member private companies (12th Co. Law Dir.).....	F	I	I	F	I	F	F	F	F	I	I	N	Implementation 1/1/92.
90/604-Dir*....	Annual and consolidated accounts - exemptions for SMEs....													Implementation 1/1/93.
90/605-Dir*....	Annual and consolidated accounts - exemptions for SMEs....													Implementation 1/1/93.
Proposed:														
(72)887-Dir....	Structure, powers, and obligations of public companies....													
(84)727-Dir....	Cross-border mergers of public limited companies.....													
(88)823-Dir....	Procedures for tender offers and takeover bids.....													
(89)268-Reg....	Statute for a European company.....													
(90)416-Dir....	Company law on takeover and other general bids.....													
(90)629-Dir....	Structure of public limited companies (Fifth Dir).....													
(91)174-Dir....	Statute for a European company concerning employees.....													
(91)273-Reg....	Statute for a European association.....													
(91)273-Dir....	Statute for a European association on employee involvement													
(91)273-Reg....	Statute for a European cooperative society.....													
(91)273-Dir....	Statute for a European cooperative society on emp. involv.													
(91)273-Reg....	Statute for a European mutual society.....													
(91)273-Dir....	Statute for a European mutual society on emp. involvement.													
	Competition Policy													
Enacted:														
89/4064-Reg....	Controls business concentrations (Merger regulation).....													Applicable 9/21/90.
93/151-Reg.....	Certain block exemptions from EC competition rules.....													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
	Tax Systems													
Enacted:														
85/349-Dir.....	Tax relief on small consignment, amended by 88/663.....	I	I	I	I	I	I	N	I	I	I	I	I	Impl., as amended, 7/1/89.
85/362-Dir*....	VAT exemption for temporary imports of goods other than means of transport (17th VAT Dir), amended by 90/237	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/86. Amendment 7/1/90.
86/560-Dir*....	VAT refund to non-EC persons (13th VAT Dir).....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/88.
88/245-Dec*....	Authorizes France to reduce duty on traditional rum.....	-	-	-	-	-	-	-	-	-	-	-	-	Impl. not required.
88/331-Dir*....	VAT exemption on final importation of certain goods.....	I	I	I	I	I	I	F	I	I	I	I	I	Implementation 1/1/89.
88/663-Dir*....	Tax relief for small consignments of non-commercial nature.	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/89.
89/465-Dir*....	VAT scheme abolishing certain derogations (18th VAT Dir)...	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/90.
89/683-Dec.....	Derogation for France regarding turnover taxes.....													
90/237-Dir.....	VAT exemption.....	I	N	I	I	N	N	N	N	N	N	N	N	Implementation 1/7/90.
90/434-Dir*....	Taxation applicable to mergers, divisions, asset transfers.	N	N	I	I	I	N	N	N	I	N	I	I	Implementation 1/1/92.
90/435-Dir*....	Taxation applicable to parent firms and subsidiaries.....	I	I	I	I	I	N	N	I	I	N	I	I	Implementation 1/1/92.
90/463/EEC*....	Convention on elimination of double taxation.....				R	R								Ratification by 1/1/92.
91/453-Dec.....	Advisory Committee on Customs and Indirect Taxation.....													
91/680-Dir*....	Common system of VAT.....												I	Implementation 1/1/93.
92/12-Dir*.....	Products subject to excise duty and their monitoring.....												I	Implementation 1/1/93.
92/77-Dir.....	Common system of value added tax.....													
92/78-Dir.....	Taxes other than turnover taxes on tobacco consumption.....													
92/79-Dir.....	Approximation of taxes on cigarettes.....													
92/80-Dir.....	Taxes on tobacco other than cigarettes.....													
92/81-Dir.....	Structures of excise duties on mineral oils.....													
92/82-Dir.....	Approximation of the rates of excise duties on mineral oils													
92/83-Dir.....	Structures of excise duties on alcoholic beverages.....													
92/84-Dir.....	Rates of excise duty on alcoholic beverages.....													
92/108-Dir.....	Arrangements for holding products subject to excise duty...													
92/111-Dir.....	Simplification measures with regard to value added tax.....													
92/218-Reg*....	Administrative cooperation over indirect taxation (VAT)....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 2/4/92.
92/543>46-Dec..	German/French/Dutch/British derogations on turnover taxes..													
92/3649-Reg....	Intra-Community movement of products subject to excise tax.													
92/xxx-Reg....	Cooperation concerning indirect taxation [(91)115-Reg].....													Enacted Feb. 1992.
Proposed:														
(72)225-XXX....	Excise duties on alcoholic drinks.....													
(79)737-Dir....	Income tax provisions regarding movement of workers.....													
(79)794-Dir....	VAT/excise duty on vessels, aircraft, and trains.....													
(84)84-Dir.....	Common VAT scheme - deduction eligibility.....													
(85)150-Dir....	Indirect taxes and excise duties on alcoholic drinks.....													
(85)151-Dir....	Excise duties on fortified wine and similar products.....													
(85)319-Dir....	Tax arrangements for carryover of undertakings.....													
(86)742-Reg....	Regulates fees payable to the EC trademark office.....													
(87)139-Dir....	Abolishes indirect taxes on securities transactions.....													
(87)315-Dir....	Common VAT scheme - abolition of certain derogations.....													
(87)321-Dir....	Approximates common VAT rates.....													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
	Tax Systems--Continued													
Proposed--Continued														
(87)324-Dir....	Process for converging VAT and excise duty rates.....													
(87)524-Dir....	Common VAT scheme for small and medium-size business.....													
(88)846-Dir....	Completion of common VAT system.....													
(89)60-Dir.....	Mutual assistance on direct taxation and VAT.....													
(89)526-Dir....	Rates of excise taxes on mineral oils.....													
(90)94-Dir.....	Indirect taxes on the raising of capital.....													
(90)182-Dir....	Abolishes fiscal frontiers.....													
(90)183-Reg....	Administrative cooperation in indirect taxation.....													
(90)431-Dir....	Holding/movement of products subject to excise duties.....													
(90)432-Dir....	Taxes on alcoholic beverages and alcohol in products.....													
(90)433-Dir....	Taxes on manufactured tobacco.....													
(90)434-Dir....	Excise duties on mineral oils.....													
(90)2249-Dir...	VAT exemption on final importation of certain goods.....													
	Residual Quantitative Restrictions													
Enacted:														
89/3365-Reg....	Liberalization of national quantitative restrictions.....													
92/4-Dec.....	United Kingdom surveillance of bananas.....													
92/338-Dec.....	UK surveillance of bananas imports for third countries.....													
92/369-Reg.....	Rules for import of textile products from third countries..													
92/397-Dir.....	Authorizing Italy's surveillance of imported bananas.....													
Proposed:														
(89)xxx-XXX....	A single EC motor-vehicle market.....													
(93)404-Reg....	Common market organization for bananas.....													
	Intellectual Property													
Enacted:														
87/54-Dir*.....	Legal protection of semiconductor products (Dir. 90/510)...	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 11/7/87.
87/532-Dec.....	Supplemental semiconductor maskworks (transitional 87/54)..													Annual renewal.
89/104-Dir*....	Harmonizes laws relating to trademarks.....			I	I	I								Implementation 12/31/91.
91/250-Dir*....	Legal protection of computer programs.....													Implementation 1/1/93.
92/100-Dir.....	Rental and lending rights on intellectual property.....													Adopted.
92/1768-Reg....	Supplementary protection certificate.....													Adopted.
92/2081-Reg....	Geog. desig. and indications of origin for agr. products...													
Proposed:														
(84)470-Reg....	EC trademark regulation.....													
(85)844-Reg....	Implements trademark regulations.....													
(86)731-Reg....	Procedural rules for Boards of Appeal on EC trademark.....													
(88)172-Dir....	Green Paper on copyright and challenge of technology.....													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Intellectual Property--Continued												
Proposed--Continued														
(90)347-Reg....	Plant variety rights.....													
(90)509-Dir....	Legal protection of computer programs.....													
(90)582-Dec....	Berne Convention.....													
(90)586-Dir....	Rental rights.....													
(92)24-Dir.....	Harmonization of legal protection for databases.....													
(92)33-Dir.....	Harmonization of the term of copyright protection.....													
(92)526-Dir....	Satellite broadcasting and cable retransmission.....													
(92)xxx-Res....	Accession to Berne and Rome conventions.....													
		Standards												
Agriculture - farm based														
Enacted:														
85/320-Dir*....	Classical swine fever and African swine fever.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/86.
85/321-Dir*....	African swine fever.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/86.
85/322-Dir*....	Classical swine fever and African swine fever.....	I	I	I	I	I	I	F	I	I	I	I	I	Implementation 1/1/86.
85/323-Dir*....	Health inspection of meat-production plants.....	I		I	I		I	I	I			I		Impl. date not yet fixed.
85/324-Dir*....	Health inspection of poultry-production plants.....			I	I		I	I				I		Impl. date not yet fixed.
85/325-Dir*....	Medical certification of people handling fresh meat.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/86.
85/326-Dir*....	Medical certification of people handling poultry meat.....	I	I	I	I	I	I	I	I	I	I	F	I	Implementation 1/1/86.
85/327-Dir*....	Medical certification of people handling fresh meat.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/86.
85/358-Dir*....	Testing for prohibited hormone growth promoters.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/87.
85/397-Dir*....	Production and sale of heat-treated milk.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/89.
85/511-Dir*....	Control of foot-and-mouth disease.....	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.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/87.
86/355-Dir.....	Ethylene oxide as a pesticide, as extended by 89/365.....	I	I	I	I	I	I	-	I	I	I	I	I	Implementation 7/1/87.
86/362-Dir*....	Pesticide residues in cereals/foodstuffs from animals.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 6/30/88.
86/363-Dir*....	Pesticide residues on edible animal products.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 6/30/88.
86/469-Dir*....	Examination of animals/fresh meat for antibiotic residues.	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/31/88.
86/649-Dec*....	African swine fever in Portugal.....	-	-	-	-	-	-	-	-	-	-	I	-	Applicable 12/16/86.
86/650-Dec*....	African swine fever in Spain.....	-	-	-	I	-	-	-	-	-	-	-	-	Applicable 12/16/86.
87/58-Dec*.....	Eradicating brucellosis, tuberculosis, and leukosis.....	-	-	-	I	-	-	-	-	-	-	I	-	Implementation 12/26/86.
87/153-Dir*....	Guidelines to assess additives in animal nutrition.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/31/87.
87/230-Dec*....	Eradicating classical swine fever.....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 1/1/87.
87/231-Dec*....	Measures relating to swine fever.....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 12/31/87.
87/328-Dir*....	Purebred animals of bovine species for breeding.....	I	I	I	F	I	I	I	F	I	F	I	I	Implementation 1/1/89.
87/486-Dir*....	Measures to control classical swine fever.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/31/87.
87/487-Dir*....	Render and keep EC free from classical swine fever.....	I			I	I	I	I		I		I		Impl. 9/22/87 not required.
87/488-Dir*....	Financial means for eradicating classical swine fever.....													Cl. swine flu eradicated.
87/489-Dir*....	Certain measures relating to swine fever.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/31/88.
87/491-Dir*....	Animal health problems in meat product trade (swine fever)..	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/88.
87/519-Dir.....	Pesticide residues on animal feedingstuffs.....													Implementation 12/31/90.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Agriculture - farm based--Continued														
Enacted--Continued														
88/146-Dir*	Prohibits hormone growth promoters in livestock	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/88.
88/288-Dir*	Health problems in intra-Community trade in fresh meat	F	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/89.
88/289-Dir*	Imports of bovine animals, swine, and fresh meat	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/89.
88/298-Dir	Pesticide residues on fruit, vegetables, and cereals	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/89.
88/380-Dir*	Marketing of seeds and catalog of plant species	I	I	I	I	I	I	I	I	F	I	I	I	Implementation 7/1/90.
88/407-Dir*	Imports of frozen bovine semen (amended by 90/120-Dir)	F	I	I	I	I	I	I	F	I	I	I	I	Implementation 1/1/90.
88/572-Dir*	Organisms harmful to plants or plant products (wood)	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/89.
88/657-Dir*	Health rules for minced meat and similar preparation	F	I	I	F	I	I	I	I	I	F	I	I	Implementation 1/1/92.
88/658-Dir*	Health rules for intra-EC trade in meat products	F	I	I	F	I	I	F	F	I	F	I	I	Implementation 7/1/90.
88/661-Dir*	Zootechnical standards for porcine breeding animals	F	I	I	I	I	I	I	F	I	F	D	F	Implementation 1/1/91.
89/145-Dec*	Contagious bovine pleuropneumonia in Portugal	-	-	-	-	-	-	-	-	-	-	I	-	P: plan to eradicate.
89/214-Rec	Inspecting fresh meat establishments	-	-	-	-	-	-	-	-	-	-	-	-	
89/227-Dir*	Health rules for imports of meat products from outside EC	F	I	I	F	I	I	F	I	I	I	I	I	Implementation 6/30/90.
89/361-Dir*	Purebred breeding sheep and goats	F	I	I	I	I	I	I	F	F	F	I	F	Implementation 1/1/91.
89/366-Dir*	Marketing of seed potatoes						I	I						Impl. 3/31/89 not required.
89/437-Dir*	Hygiene and health problems regarding egg products	F	F	F	F	I	I	F	I	F	I	F	F	Implementation 12/31/91.
89/439-Dir*	Protection fr. organisms harmful to plants or plant products	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/90.
89/455-Dec*	Pilot projects for the control of rabies	I	I	I	I	I	I	I	I	I	I	I	I	Submitted by MS for 1991.
89/556-Dir*	Trade in embryos of domestic bovine animals from outside EC	I	I	I	F	I	I	F	F	I	I	I	I	Implemenation 1/1/91.
89/575-Dec	Inspections in third countries on seed-producing crops (amends 85/355, as do 88/322 and 89/532)													
89/608-Dir*	Application of legislation on veterinary matters	I	I	I	F	I	I	F	I	F	I	F	I	Implemenation 7/1/91.
89/610-Dec	Reference methods and list of national reference labs													
89/662-Dir*	Veterinary checks in intra-EC trade	N	N	I	N	N	N	N	N	N	N	N	N	Implementation 7/1/92.
90/113-Dir	Organisms harmful to plants and plant products													
90/208-Dec	Contagious bovine pleuropneumonia in Spain													
90/217-Dec*	Eradication of African swine fever in Sardinia	-	-	-	-	-	-	I	-	-	-	-	-	I: Eradication plan.
90/218-Dec	Administration of Bovine Somatotropin (BST)													
90/242-Dec*	Eradication of brucellosis in sheep and goats	-	-	-	I	I	I	I	-	-	-	I	-	S/FR/GR/IT/P erad. plans.
90/422-Dir	Enzootic bovine leukosis													Impl. 7/1/90 and 10/1/90.
90/423-Dir*	Control of foot-and-mouth disease	F	I	I	F	I	I	I	F	F	I	I	I	Implementation 1/1/92.
90/424-Dec*	Expenditure in the veterinary field													Impl. 6/26/90 not required.
90/425-Dir*	Veterinary and zootechnical checks in intra-EC trade	N	N	I	N	N	N	N	N	N	N	N	N	Implementation 7/1/92.
90/426-Dir*	Animal health - third-country imports of horses	F	I	I	N	F	I	F	F	F	I	F	F	Implementation 1/1/92.
90/427-Dir*	Zootechnical/genealogical rules for trade in horses	F	I	F	F	I	I	I	F	F	F	I	F	Implementation 7/1/91.
90/428-Dir*	Trade in horses intended for competition	F	N	F	F	I	F	F	F	F	F	I	F	Implementation 7/1/91.
90/429-Dir*	Semen of porcine species animals	F	I	F	I	F	I	F	F	I	I	F	F	Implementation 12/31/91.
90/495-Dec*	Eradication of infectious hemopoietic necrosis (IHN)	N	I	I	N	I	I	N	I	N	N	I	I	Adopted 9/24/90.
90/539-Dir*	Trade in poultry and hatching eggs	F	I	I	F	I	I	F	F	F	I	F	F	Implementation 5/1/92.
90/642-Dir*	Pesticide residues for fruit and vegetables	I												Implementation 12/31/92.
90/675-Dir	Principles governing veterinary checks on EC imports													Implementation 12/31/91.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Agriculture - farm based--Continued														
Enacted--Continued														
91/27-Dir.....	Organisms harmful to plants/plant products (10th Dir).....													Implementation 4/1/91.
91/52-Dec.....	Contagious bovine pleuropneumonia in Portugal.....													Implemantation 1/25/91.
91/67-Dir*.....	Health conditions regarding aquaculture animals.....													Implementation 1/1/93.
91/69-Dir*.....	Health conditions of intra-EC trade of ovine/caprine animals													Implementation 12/31/92.
91/107-Dec.....	Derogations concerning U.S. sawn wood of conifers.....													
91/132-Dir*....	Undesireable substances and products in animal nutrition....	I	I	I	F	I	I	I	I	F	I	I	I	Implementation 8/1/91.
91/245-Dec.....	Protection measures for trichinosis.....													
91/266-Dir*....	Health inspection of intra-EC trade in bovine/swine/meat....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/88.
91/344-Dec.....	U.S. establishments approved to import fresh meat to the EC.													
91/357-Dir.....	Labelling of compound feedingstuffs for animals.....													
91/486-Dec.....	Residues of fresh meat.....													
91/487-Dec.....	Import of live animals and fresh meat from third countries..													
91/492-Dir*....	Health conditions regarding molluscs.....													Implementation 1/1/93.
91/493-Dir*....	Health conditions regarding fishery products.....													Implementation 1/1/93.
91/494-Dir*....	Health rules for fresh poultry meat.....	F	I	F	F	F	F	F	F	F	F	I	F	Implementation 5/1/92.
91/495-Dir*....	Game meat and rabbit meat.....													Implementation 1/1/93.
91/497-Dir*....	Health rules for fresh meat.....					I								Implementation 1/1/93.
91/498-Dir*....	Fresh meat: conditions for granting derogations.....					I								Implementation 1/1/93.
91/502-Dec.....	Dismantlement of MCAs on German agricultural products.....													
91/508-Dir.....	Additives in feedingstuffs.....													
91/516-Dec.....	Prohibited ingredients in compound feedingstuffs.....													
91/587-Reg.....	Trade mechanism in beef and veal.....													
91/620-Dir.....	Annexes concerning additives in feedingstuffs.....													
91/628-Dir*....	Protection of animals during transport.....													Implementation 1/1/93.
91/682-Dir*....	Ornamental plant propagating material and plants.....													Implementation 12/31/92.
91/2092-Reg*...	Organic production of foodstuffs.....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 7/22/91.
91/2156-Reg....	Conservation of fishery resources.....													
92/12-Dec.....	Derogations on sawn wood of conifers from the USA.....													
92/14-Dec.....	List of third countries for imports of equidae.....													
92/160-Dec.....	Regionalization of third countries for imports of equidae...													
92/260-Dec.....	Veterinary certification for horses.....													
92/353-Dec.....	Associations which maintain studbooks for registered equidae													
92/354-Dec.....	Coordination of stud-books for registered equidae.....													
92/424-Dec.....	Identity checks on animals from third countries.....													
92/438-Dec.....	Computerization of veterinary import procedures.....													
92/1908-Reg....	Marketing standards for poultrymeat.....													
Proposed:														
(81)504-Dir....	Personnel responsible for inspecting meat products.....													
(82)529-Dir....	Intra-EC trade in cattle and pigs.....													
(82)883-Dir....	Pesticide residues (ethoxyquin and diphenylamine).....													
(83)655-Dir....	Fixes the weight of uncastrated male pigs.....													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Agriculture - farm based--Continued														
Proposed--Continued														
(88)598-Dir....	Zootechnical and pedigree rules for purebred animals.....													
(88)836-Reg....	Trade in dogs and cats (rabies) (see 89/455-Dec).....													
(89)34-Dir.....	Standards for plant protection products.....													
(89)428-Reg....	Fresh fish and fish products (nematodes).....													
(89)490-Reg....	Melted animal fat, greaves, and rendering byproducts.....													
(89)492-Reg....	Products of animal origin not covered by existing law.....													
(89)500-Reg....	Animal health conditions for marketing of rodents.....													
(89)507-Reg....	Fresh poultry meat and fresh meat of reared game bird.....													
(89)509-Reg....	Pathogens in feedstuffs.....													
(89)646-Dir....	Organisms harmful to plants or plant products.....													
(89)647-Dir....	Organisms harmful to plants or plant products.....													
(89)649-Reg....	Marketing of young plants.....													
(89)651-Dir....	Marketing of fruit plants.....													
(89)658-Reg....	Products of animal origin (other species).....													
(89)667-Reg....	Health conditions for milk products.....													
(89)669-Reg....	Health rules for meat products.....													
(89)671-Reg....	Health rules for minced meat and meat preparations.....													
(89)672-Reg....	Health rules for heat-treated milk.....													
(90)134-Dir....	Marketing of seed potatoes (micro-propagated).....													
(90)175-Dir....	Inspection of imports of bovine, swine, and meats.....													
(90)396-Dir....	Amends 88/146-Dir., substances with hormonal action.....													
(90)479-Dec....	Safeguard measures in the veterinary field.....													
(90)492-Dir....	Bovine brucellosis and enzootic bovine leukosis.....													
(91)87-Dir.....	Plant protection products on the market.....													
(91)369-Dir....	Undesirable substances in animal feedingstuffs.....													
(91)435-Dir....	Health conditions governing import of non-EC equidae.....													
Agriculture - processed foods and kindred products														
Enacted:														
85/572-Dir*....	Plastic materials in contact with foodstuffs.....	F	I	I	I	I	I	F	I	I	I	I	F	Implementation 1/1/91.
85/573-Dir*....	Coffee and chicory extracts.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/88.
85/585-Dir*....	Preservatives.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/31/86.
85/591-Dir*....	Sampling and analysis of foodstuffs.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/22/87.
86/102-Dir*....	Emulsifiers for use in foodstuffs.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 3/26/88.
86/197-Dir*....	Labeling alcoholic content and ingredients of beverages.....	I	I	I	I	I	I	I	I	I	I	F	I	Implementation 5/1/89.
88/315-Dir*....	Labeling of prices for food products.....	I	I	I	N	I	I	I	I	I	I	I	I	Implementation 6/7/90.
88/344-Dir*....	Extraction solvents used in the production of foodstuffs...	I	I	I	I	I	I	N	I	I	I	I	F	Implementation 6/12/91
88/388-Dir*....	Flavorings for foodstuffs.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 6/22/91.
88/389-Dec.....	Inventory of source materials for flavorings.....	-	-	-	-	-	-	-	-	-	-	-	-	Applicable 6/21/90.
88/593-Dir*....	Jams, jellies, marmalades, and chestnut puree.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/91.
89/107-Dir*....	Food additives in foodstuffs.....	I	I	I	I	I	I	F	I	I	I	I	F	Implementation 12/28/91.
89/108-Dir*....	Frozen foodstuffs.....	I	I	I	I	I	I	I	F	I	I	I	I	Implementation 1/10/91.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Agriculture - processed foods and kindred products														
Enacted--Continued														
89/109-Dir*	Materials in contact with foodstuffs	I	F	I	I	I	I	I	I	I	I	I	I	Implementation 1/10/92.
89/393-Dir	Emulsifiers for use in foodstuffs													Implementation 1/1/89.
89/394-Dir*	Fruit juices and similar products	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 6/14/91.
89/395-Dir*	Labeling, presentation and advertising of foodstuffs	I	F	I	I	I	I	I	I	F	I	F	I	Implementation 6/20/92.
89/396-Dir	Identifying the lot to which a foodstuff belongs													Implementation 6/20/90.
89/397-Dir*	Official control of foodstuffs	I	N	I	F	I	I	I	I	I	I	F	I	Implementation 6/20/90.
89/398-Dir*	Food for particular nutritional uses	I	F	I	I	I	I	I	I	I	I	I	N	Implementation 5/16/91.
89/622-Dir	Labeling of tobacco products													Implementation 12/31/91.
89/676-Dir	Volume of prepackaged liquids													Implementation 7/1/90.
89/1576-Reg*	Definition and description of spirit drinks	I	I	I	F	I	I	F	F	I	I	I	I	Applicable 12/15/89.
89/3773-Reg	Transitional measures for spirituous beverages													Applicable 12/15/89.
90/44-Dir*	Marketing of compound feedingstuffs	I	I	I	F	I	F	I	I	F	I	I	I	Implementation 1/22/92.
90/128-Dir	Plastic materials in contact with foodstuffs	F	F	F	F	F	F	F	F	I	F	F	F	Implementation 12/31/90.
90/167-Dir*	Production and trade in medicated feedingstuffs	F	F	F	F	F	F	F	F	F	F	I	I	Implementation 10/1/91.
90/168-Dir*	Organisms harmful to plants and plant products	I	I	I	I	I	I	I	I	F	I	I	I	Implementation 1/1/91.
90/214-Dir	Additives in feedingstuff (amends 70/524, as does 88/483, 88/616, 89/23, 89/583, 90/110, and 90/206)													
90/219-Dir	Contained use of genetically modified micro-organism													Implementation 10/23/91.
90/220-Dir	Deliberate release of genetically modified organisms													Implementation 10/23/91.
90/239-Dir	Maximum tar yield of cigarettes													Implementation 11/17/91.
90/496-Dir*	Nutrition labeling for foodstuffs	I	F	I	F	F	I	F	I	I	F	F	F	Implementation 4/1/92.
91/71-Dir	Completes 88/388-Dir. on flavorings for foodstuffs	N	N	N	N	N	N	N	N	N	N	N	N	Implementation 1/1/94.
91/238-Dir	Indications identifying foodstuff lots													
91/704-Reg	Inward processing relief arrangements													
91/1180-Reg	Definition of spirit drinks													
91/3664-Reg	Measures for aromatized wines and drinks													
92/1-Dec	Monitoring temperatures for foodstuff transport/storage													
92/2-Dir	Sampling procedure and analysis of quick-frozen foodstuffs													
92/4-Dir	Criteria of purity for thickening agents for foodstuffs													
92/11-Dir	Indications or marks identifying foodstuff lots													
92/15-Dir	Regenerated cellulose film in contact with foodstuffs													
92/33-Dir*	Marketing of vegetable propagating and planting material													Implementation 12/31/92.
92/34-Dir*	Marketing fruit plant propagating material													Implementation 12/31/92.
92/39-Dir	Plastics materials in contact with foodstuffs													
92/41-Dir	Labelling of tobacco products													
92/48-Dir	Min. hygiene rules for fishery products caught on vessels													
92/52-Dir	Infant formulae for export to third countries													
92/65-Dir	Animal health req. for imports of animals, semen, embryos													
92/67-Dir	Veterinary checks in intra-Community trade													Implementation 7/1/92.
92/60-Dir	Veterinary checks in intra-Community trade in live animals													
92/71-Dir	EC consignments subject to phytosanitary inspection													
92/87-Dir	Ingredients for feedingstuffs for animals other than pets													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Agriculture - processed foods and kindred products--Continued														
Enacted--Continued														
92/153-Reg.....	Description and presentation of wine.....													
92/163-Dec.....	Art. 86 proceeding over Tetra Pak II.....													
92/182-Dec.....	EEC and third-state cooperation on food science.....													
92/238-Dec.....	Netherlands postpones labelling of emulsified fats.....													
92/471-Dec.....	Veterinary cert. of non-EC bovine embryo imports.....													
92/1914-Reg....	Transitional measures for aromatized wines.....													
92/2009-Reg....	Analysis methods of ethyl alcohol for aromatized wines.....													
92/2333-Reg....	Rules for description of sparkling wines.....													
92/3279-Reg....	Rules on the definition of aromatized wines and products...													
92/3280-Reg....	Rules on the definition of spirit drinks.....													
92/xxx-XXX.....	Undesirable substances and products in animal nutrition....													
92/xxx-XXX.....	Additives in feedingstuffs.....													
92/xxx-XXX.....	Standards institutions annexed to Council directive 89/189.													
Proposed:														
(81)712-Dir....	Authorized preservatives in foodstuffs.....													
(82)626-Dir....	Labeling of beer (partially adopted; see 86/197-Dir).....													
(88)489-Dir....	Compulsory nutrition labeling.....													
(89)217-Dir....	Coloring matters authorized for use in foodstuffs.....													
(89)576-Dir....	Foods and ingredients treated with ionizing radiation.....													
(90)147-Dir....	Advertising of tobacco products.....													
(90)321-Dir....	Undesirable substances and products in feedingstuffs.....													
(90)381-Dir....	Sweeteners for use in foodstuffs.....													
(90)538-Dir....	Laws on labelling of tobacco products.....													
(90)2414-Reg...	Certificates of specific character for foodstuffs.....													Implementation 1/1/92.
(90)2415-Reg...	Geographical indication of agricultural products.....													Implementation 1/1/92.
(91)03-Reg.....	Market in processed fruit and vegetable products.....													Implementation 3/28/91.
(91)16-Dir.....	Scientific examination of questions on food.....													
(91)111-Dir....	Advertising for tobacco products.....													Implementation 1/1/93.
(91)195-Dir....	Sweeteners for use in foodstuffs.....													
(91)336-Dir....	Labelling of tobacco products for oral use.....													
(91)374-Reg....	Health rules for production of minced meat.....													
Chemicals														
Enacted:														
85/467-Dir*....	Labeling of materials containing PCBs and PCTs.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 6/30/86.
85/xxx-Dec.....	Membership of the European Agreement on Detergents.....	-	-	-	-	-	-	-	-	-	-	-	-	Adopted 12/12/85.
85/610-Dir*....	Asbestos.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/31/87.
86/94-Dir.....	Minimum biodegradability of detergents.....	I	I	I	I	I	I	F	I	I	I	I	I	Implementation 12/31/89.
88/183-Dir*....	Definition of liquid fertilizers.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 3/25/89.
88/320-Dir*....	Good laboratory practices; amended by 90/18-Dir.....	I	I	I	F	I	I	I	I	I	I	I	I	Implementation 1/1/89.
88/379-Dir*....	Dangerous preparations; amended by 89/178 and 90/492.....	F	F	I	F	I	I	I	F	F	I	I	F	Implementation 6/8/91.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Chemicals--Continued														
Enacted--Continued														
88/667-Dir*	Cosmetic products (amends Dir 76/768)	I	I	I	I	I	I	I	F	I	I	I	I	Implementation 12/31/89.
89/174-Dir	Cosmetic products (amends annexes to Dir 76/768)	F	I	I	I	I	I	I	I	I	I	F	I	Implementation 12/31/89.
89/178-Dir	Dangerous preparations (amends 88/379)	F	I	I	F	I	I	I	F	F	I	I	F	Implementation 12/1/90.
89/284-Dir*	Calcium, magnesium, sodium and sulphur content of fertilizer	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 4/16/90.
89/428-Dir	Titanium dioxide waste	N	N	N	N	N	N	N	N	N	N	N	N	Annulled 3/13/91.
89/530-Dir*	Trace (oligo) elements in fertilizer (boron, cobalt, copper)	I	I	I	I	I	I	F	I	I	I	I	I	Implementation 3/18/91.
89/542-Rec	Labeling of detergents and cleaning products	-	-	-	-	-	-	-	-	-	-	-	-	Adopted 10/15/89.
89/677-Dir	Dangerous substances and preparations	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 6/20/91.
89/678-Dir	Dangerous substances and preparations	-	-	-	-	-	-	-	-	-	-	-	-	Adopted 2/21/89.
89/679-Dir	Cosmetic products (amends Dir 76/768 for fifth time)	-	-	-	-	-	-	-	-	-	-	-	-	Adopted 12/21/89.
90/18-Dir	Good laboratory practice (amends 88/320-Dir)	I	I	N	I	N	F	F	I	I	N	N	I	Implementation 7/1/90.
90/121-Dir	Cosmetic products (adapts annexes to Dir 76/768, 89/174)	F	I	I	I	I	I	I	N	I	I	F	I	Implementation 12/31/90.
90/207-Dir	Checking the composition of cosmetic products	F	I	I	I	I	F	I	N	I	I	F	I	Implementation 12/31/90.
90/492-Dir	Dangerous preparations (amends 88/379 for second time)	F	F	I	F	I	I	F	F	F	I	I	F	Implementation 6/1/91.
90/517-Dir	Classification and packaging of dichloromethane	N	I	I	N	N	N	N	N	I	N	N	N	Implementation 12/7/91.
90/642-Dir	Pesticide residues on fruits and vegetables	I	N	N	N	N	N	N	N	N	N	N	N	Implementation 12/31/92.
91/155-Dir	System of information for dangerous preparations	F	F	F	F	F	I	I	F	F	I	F	F	Implementation 6/8/91.
91/157-Dir	Batteries and accumulators containing dangerous substances													Implementation 9/18/92.
91/173-Dir	Marketing of certain dangerous substances (pentachlorophenol)													Implementation 7/1/92.
91/184-Dir	Definitions for certain cosmetic products													Implementation 12/31/91.
91/325-Dir	Laws on labelling dangerous substances													Implementation 6/8/91.
91/326-Dir	Laws on labelling notified dangerous substances													Implementation 7/1/92.
91/338-Dir	Laws on marketing dangerous substances (cadmium)													Implementation 12/31/92.
91/339-Dir	Laws on marketing dangerous substances (halogenated bitoluenes)													Implementation 6/18/92.
91/410-Dir	Laws on packaging of dangerous substances													Implementation 8/1/92.
91/414-Dir	Marketing of plant protection products													Implementation 7/26/93.
91/632-Dir	Laws on labelling of dangerous substances													Implementation 7/1/93.
92/3-Dec	Chemical substances on the former East German market	-	-	-	-	-	-	-	-	-	-	-	-	Adopted 12/9/91.
92/8-Dir	Laws adapting member states laws' on cosmetic products													Implementation 6/30/92.
92/32-Dir	Classification and labeling of substances dangerous for the environment													Implementation 10/31/93.
92/37-Dir	Laws on labelling of dangerous substances													Implementation 11/1/93.
92/214-Rec	Confidentiality of chemical name under 91/155-Dir	-	-	-	-	-	-	-	-	-	-	-	-	Adopted 3/3/92.
92/2455-Reg	Export and import of certain dangerous chemicals	-	-	-	-	-	-	-	-	-	-	-	-	Applicable 11/29/92.
Proposed:														
(90)456-Rec	Standardization in chemical products and services													
(90)566-Dir	Classification and packaging of dangerous substances													
(90)1985-Dir	Consolidates Dir 76/768 and amendments on cosmetics													
(91)7-Dir	Restrictions on polybromobiphenyl ethers													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Chemicals--Continued														
Proposed--Continued														
(91)87-Dir.....	Marketing of EC-accepted plant protection products.....													
(92)195-Dir....	Restrictions on creosote, certain chlorinated solvents, carcinogens, mutagens, and teratogens.....													
Pharmaceuticals and medical devices														
Enacted:														
87/19-Dir*.....	Approximates laws on the testing of proprietary medicines..	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/87.
87/20-Dir*.....	Testing of veterinary medicines.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/87.
87/21-Dir*.....	Testing of proprietary medicines.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/87.
87/22-Dir*.....	Marketing of high-technology and biotechnology medicines...	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/87.
87/xxx.....	Membership of the European Pharmacopeia.....	-	-	-	-	-	-	-	-	-	-	-	-	Adopted 5/26/87.
87/176-Rec*....	Test guidelines for marketing of proprietary medicines.....	-	-	-	-	-	-	-	-	-	-	-	-	Impl. not required.
89/105-Dir*....	Transparency in medicines pricing & social security refunds	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/31/89.
89/341-Dir*....	Approximates provisions for proprietary medicines.....	F	I	I	F	F	I	I	I	I	F	I	N	Implementation 1/1/92.
89/342-Dir*....	Immunological medicine of vaccines, toxins or serums.....	F	I	I	I	F	I	I	I	I	F	I	N	Implementation 1/1/92.
89/343-Dir*....	Radio-pharmaceuticals.....	F	I	I	F	F	I	I	I	I	F	I	N	Implementation 1/1/92.
89/381-Dir*....	Proprietary medicine derived from human blood or plasma....	F	I	I	F	F	I	I	I	I	I	I	N	Implementation 1/1/92.
90/385-Dir*....	Active implantable medical devices.....	N	N	N	N	N	N	N	N	N	N	N	N	Implementation 7/1/92.
90/676-Dir*....	Veterinary medicines.....	F	I	I	F	F	F	I	F	F	F	F	F	Implementation 1/1/92.
90/677-Dir.....	Immunological veterinary medicines.....													Implementation 1/1/92.
90/2377-Reg*...	Residue limits for veterinary medicines in foodstuffs.....	A	A	A	A	A	A	A	A	A	A	A	A	Applicable 1/1/92.
91/184-Dir.....	Laws for cosmetic products.....													
91/356-Dir.....	Manufacturing practice for human medicinal products.....													Implementation 1/1/92.
91/507-Dir.....	Laws on standards testing of medicinal products.....													
92/18-Dir.....	Pharmacotoxicological testing of veterinary medicine.....													
92/25-Dir*.....	Wholesale distribution of medicinal products for human use.													Implementation 1/1/93.
92/26-Dir*.....	Classification of medicinal products for human use.....													Implementation 1/1/93.
92/27-Dir*.....	Labeling of medicinal products for human use (leaflets)...													Implementation 1/1/93.
92/28-Dir*.....	Advertising of medicinal products for human use.....													Implementation 1/1/93.
92/74-Dir.....	Provisions on homeopathic veterinary medicinal products....													
92/78-Dir.....	Provisions on homeopathic medicinal products.....													
92/86-Dir.....	Laws relating to cosmetic products.....													
92/183-Dec.....	Import of raw materials for pharmaceutical processing.....													
92/187-Dec.....	Import of raw materials for the pharmaceutical processing..													
92/1768-Reg....	Supplementary protections certificate for med. products....													Adopted.
Proposed:														
(89)302-Dec....	European Convention for protection of vertebrates.....													
(89)607-Dir....	Distribution, legal status, and labeling of medicine.....													
(90)72-Dir.....	Medicines and homeopathic medicines.....													
(90)72-Dir.....	Veterinary medicines and homeopathic medicines.....													
(90)101-Dir....	Supplementary protection certificate for medicines.....													

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Pharmaceuticals and medical devices--Continued														
Proposed--Continued														
(90)212-Dir....	Advertising of medicines.....													
(90)283-Reg....	European Agency for Evaluation of Medicinal Products.....													
(90)283-Dir....	Repeals 87/22. on high-technology medicines.....													
(90)283-Dir....	Medicines.....													
(90)283-Dir....	Veterinary medicines.....													
(90)597-Dir....	Substances for illicit manufacture of narcotic drugs.....													
(91)313-Dir....	Laws on medicinal and homeopathic products.....													
(91)313-Dir....	Veterinary medicinal and homeopathic products.....													
(91)382-Reg....	European Agency for the Evaluation of Medicinal Products...													
(91)382-Dir....	Amendment on laws concerning veterinary medicinal products.													
(91)382-Dir....	Amendment on laws concerning medicinal products.....													
Motor vehicles														
Enacted:														
87/358-Dir*....	Type approval procedures for vehicles and trailers.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 10/1/88.
88/76-Dir*.....	Gaseous emissions from passenger car engines.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/88.
88/77-Dir*.....	Gaseous emissions from diesel engines.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/88.
88/194-Dir.....	Braking devices of vehicles and their trailers.....	I	I	I	I	I	F	F	I	I	I	I	I	Implementation 10/1/88.
88/195-Dir.....	Engine power of motor vehicles.....	I	I	I	I	I	F	I	I	I	I	I	I	Implementation 4/1/88.
88/218-Dir.....	Weights, dimensions for refrigerated road vehicles.....													Implementation 1/1/89.
88/321-Dir.....	Rear view mirrors of motor vehicles.....													Implementation 1/1/89.
88/366-Dir.....	Driver field of vision.....	I	I	I	I	I	F	F	I	I	I	I	I	Implementation 10/1/88.
88/436-Dir*....	Emission of particle pollutants from diesel engines.....	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 10/1/88.
88/449-Dir.....	Road worthiness tests (see (89)6-Dir below).....													Implementation 7/27/90.
89/235-Dir*....	Sound level and exhaust systems of motorcycles.....	I	I	I	I	I	F	I	I	I	I	I	I	Implementation 10/1/89.
89/277-Dir.....	Direction indicator lamps.....	N	I	I	N	I	N	I	I	N	I	I	I	Implementation 9/30/89.
89/278-Dir.....	Installation of lighting and light-signaling devices.....	N	I	I	N	I	N	I	I	N	I	I	I	Implementation 9/30/89.
89/297-Dir*....	Lateral protection of certain vehicles and their trailers..	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 10/30/89.
89/458-Dir*....	Gaseous emissions from motor vehicles below 1,400 cc.....	I	N	I	I	I	I	I	N	N	I	I	N	Implementation 1/1/90.
89/459-Dir.....	Tread depth of tires of vehicles and their trailers.....													Implementation 1/1/92.
89/460-Dir.....	Derogation for IR and UK regarding vehicle size.....	-	-	-	-	-	-	-	D	-	-	-	D	Derogation to 12/31/98.
89/461-Dir.....	Authorized dimensions for articulated vehicles.....													Implementation 1/1/91.
89/491-Dir.....	Vehicles' use of leaded or unleaded gasoline.....													Implementation 1/1/90.
89/516-Dir.....	End-outline marker lamps and front, rear, stop lamps.....	N	I	I	N	I	N	N	I	N	N	N	I	Implementation 12/31/89.
89/517-Dir.....	Headlamps and incandescent electric filament lamps.....	N	I	I	N	I	N	N	I	N	N	N	I	Implementation 12/31/89.
89/518-Dir.....	Rear fog lamps.....	N	I	I	N	I	N	N	I	N	N	N	I	Implementation 12/31/89.
91/60-Dir.....	Maximum authorized dimensions for road trains.....													Implementation 10/1/91.
91/225-Dir.....	Motor vehicle roadworthiness tests.....													Implementation 1/1/92.
91/226-Dir.....	Motor vehicle spray-suppression systems.....													
91/328-Dir.....	Roadworthiness tests for motor vehicles.....													Implementation 7/1/93.
91/422-Dir.....	Laws on braking devices of motor vehicles.....													Implementation 10/1/91.
91/441-Dir.....	Laws against air pollution by motor vehicles.....													Implementation 1/1/92.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Motor vehicles--Continued														
Enacted--Continued														
91/516-Dir.....	Equipment and protective systems in explosive atmospheres..													Implementation 7/1/93.
91/542-Dir.....	Laws against gaseous pollutants from diesel engines.....													
92/6-Dir.....	Speed limitation devices of motor vehicles.....													
92/7-Dir.....	Weights and dimensions of road vehicles.....													
92/21-Dir*.....	Masses and dimensions of category M1 motor vehicles.....	N	N	I	N	N	N	I	N	N	N	N	N	Implementation 7/1/92.
92/22-Dir*.....	Safety glass for motor vehicles and trailers.....	N	N	N	N	N	N	I	N	N	N	N	N	Implementation 7/1/92.
92/23-Dir*.....	Tyres and their fitting for motor vehicles and trailers....	N	N	N	N	N	N	I	N	N	N	N	N	Implementation 7/1/92.
92/24-Dir.....	Speed limitation devices of motor vehicles.....													
92/53-Dir*.....	Laws on type-approval of motor vehicles.....													Implementation 12/31/92.
92/54-Dir.....	Roadworthiness tests for motor vehicles (brakes).....													
92/55-Dir.....	Roadworthiness tests for motor vehicles (exhaust emissions)													
92/56-XXX.....	Laws on type-approval of two or three-wheel motor vehicles.													
92/61-Dir.....	Type approval of two or three-wheel motor vehicles.....													
92/62-Dir.....	Steering equipment for motor vehicles and their trailers...													
Proposed:														
(89)6-Dir.....	Amends 88/449-Dir regarding road worthiness tests.....													
(90)174-Dir....	Gaseous pollutants from diesel engines (amends 88/77-Dir)..													
(90)293-Dir....	Spray-suppression devices for vehicles and trailers.....													
(90)493-Dir....	Air pollution by emissions from vehicles.....													
(90)524-Dir....	Safety belts in vehicles of less than 3.5 tons.....													
(91)51-Dir.....	Permissible sound level of motor vehicle exhausts.....													
(91)89-Dir.....	Laws against gaseous pollutants from diesel engines.....													
(91)230-Dir....	Masses and dimensions of motor vehicles.....													Implementation 10/1/92.
(91)279-Dir....	Type-approval for motor vehicles.....													
(91)496-Reg....	Braking of two or three wheel motor vehicles.....													
(91)497-Reg....	Max. design speed, torque, of 2 or 3 wheel motor vehicles..													
(91)498-Reg....	Lighting and signal devices of 2 or 3 wheel motor vehicles.													
(91)547-Dir....	Amends 89/392 on machinery.....													
(92)35-Dir.....	Lifts.....													
(92)42-Reg.....	Type-approval of two or three wheel motor vehicles.....													
(92)64-Dir.....	Amends 70/220 on limiting air pollution from motor vehicles													
(92)78-Dir.....	Amends speedlimiting devices for certain motor vehicles....													
(92)108-Dir....	Mechanical coupling devices of motor vehicles and trailers.													
(92)120-Dir....	Amends 70/156 on type approval of motor vehicles, trailers.													
(92)141-Dir....	Recreational craft.....													
(92)201-Dir....	Burning of materials used in interior vehicle construction.													
(92)363-Dir....	Amends 89/392 on machinery.....													
(92)final/2-Dir	Amends 79/157 on sound level and exhaust of motor vehicles.													
Other machinery														
Enacted:														

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Other machinery--Continued														
Enacted--Continued														
86/217-Dir*	Requirements for tyre-pressure gauges	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 11/30/87.
86/594-Dir*	Labeling household appliances for airborne noise emissions.	-	I	I	I	I	I	I	I	I	-	I	I	Impl. 12/3/89 not required.
86/662-Dir*	Noise from hydraulic diggers	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/24/88.
87/402-Dir*	Rollover protection structures, as amended by 89/681	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 6/25/89.
87/404-Dir*	Simple pressure vessels, as amended by 90/488	I	I	I	I	I	I	I	I	I	F	I	I	Implementation 1/1/90.
87/405-Dir*	Permissible sound-power level of tower cranes	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 6/25/89.
88/180-Dir*	Permissible sound-power level of lawnmovers	F	I	I	I	I	I	I	I	I	I	I	I	Implementation 7/1/91.
88/181-Dir*	Permissible sound-power level of lawnmovers	F	I	I	I	F	I	I	I	I	I	I	I	Implementation 7/1/91.
88/297-Dir*	Type-approval of wheeled tractors	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/31/88.
88/465-Dir	Driver's seat on wheeled tractors	I	I	I	I	I	F	N	I	I	I	N	I	Implementation 9/10/88.
89/173-Dir*	Certain weight and dimension standards for tractors	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/31/89.
89/240-Dir	Self-propelled industrial trucks	F	I	F	I	I	F	F	F	F	F	N	I	Implementation 1/1/89.
89/392-Dir*	Safety requirements for machines	I	I	F	F	I	F	F	F	I	I	F	F	Implementation 1/1/92.
89/680-Dir	Roll-over protection structures													Implementation 1/2/91.
89/682-Dir	Rear-mounted roll-over protection													Implementation 1/2/91.
89/686-Dir*	Personal protective equipment	F	I	F	F	I	F	F	F	F	I	F	F	Implementation 12/31/91.
90/396-Dir*	Gas appliances	F	I	I	F	I	I	I	F	I	I	I	I	Implementation 7/1/91.
90/486-Dir	Electrically operated lifts													Implementation 3/24/91.
90/487-Dir	Electrical equipment used in explosive atmospheres													Implementation 7/1/92.
91/368-Dir*	Amends machinery safety Dir. 89/392	I	I	F	F	I	F	F	F	I	I	F	F	Implementation 1/1/92.
92/42-Dir	Efficiency rules for hot-water boilers using liquid fuels													Implementation 1/1/94.
92/75-Dir	Labeling of energy consumption of household appliances													Implementation 12/31/93.
Proposed:														
(89)454-Dir	Batteries and accumulators with dangerous substances													
(90)442-Dir	Civil aircraft													
(90)3561-Dir	Pressure equipment and safety accessories													
Telecommunications														
Enacted:														
86/361-Dir	Telecommunications terminal equipment	F	I	F	N	F	F	I	F	F	F	N	F	Implementation 7/26/87.
86/659-Rec	Integrated Services Digital Network (ISDN)	-	-	-	-	-	-	-	-	-	-	-	-	
87/95-Dec	Information technology and telecommunications													Applicable 2/7/88.
87/371-Rec*	Cellular digital land-based mobile communications													Gradual impl. from 1987.
87/372-Dir*	Frequency bands for pan-European mobile telephones	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 12/25/88.
88/301-Dir	Competition in telecommunications terminal equipment	N	I	N	I	N	I	I	I	I	I	I	N	Implementation by 6/30/90.
88/524-Dec*	Development of information services market	-	-	-	-	-	-	-	-	-	-	-	-	Impl. 7/26/88 not required.
89/336-Dir*	Electromagnetic compatibility (radio interferences)	N	N	I	N	I	N	N	N	N	N	I	N	Implementation 7/1/91.
89/552-Dir*	Pursuit of television broadcasting activities	F	F	F	F	F	I	F	F	F	F	F	F	Implementation 10/3/91.
90/387-Dir*	Open network provisions (ONP) for leased lines	I	I	I	I	I	F	F	I	I	I	I	I	Implementation 1/1/91.
90/388-Dir	Competition in markets for telecommunication services													Adopted 6/28/90.
90/450-Dec	Joint Committee on Telecommunications Services													Applicable 8/1/90.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Telecommunications--Continued														
Enacted--Continued														
90/685-Dec.....	Promotes European audiovisual industry (Media).....													Applicable 1/1/91.
91/263-Dir*....	Type-approval of telecommunications terminal equipment.....													Implementation 11/6/92.
91/287-Dir.....	Frequency band for digital cordless telecomm. (DECT).....													Implementation 1/1/92.
91/288-Rec.....	Introduction of digital cordless telecomm. (DECT).....													
92/31-Dir.....	Laws on electromagnetic compatibility.....	N	N	N	N	N	N	N	N	N	N	N	N	Implementation 7/28/92.
92/38-Dir.....	Standards for satellite broadcasting of television signals.													
92/44-Dir.....	Application of open network provision to leased lines.....													
92/126-Dir.....	Laws on electromagnetic compatibility.....													
92/139-Dec.....	Action plan for advanced television services in Europe.....													
92/165-Dir.....	Application of open network provision to leased lines.....													
92/242-Dec.....	Security of information systems.....													
92/244-Dir.....	Standards for air traffic equipment and systems procurement													
92/248-Dir.....	Recognition of licences to operate telecom. services.....													
92/263-Dir.....	Application of open network provision to voice telephony...													
92/264-Dec.....	Standard int. telephone access code in the Community.....													
92/295-Rec.....	Protection of consumers of distance selling contracts.....													
92/382-Rec.....	Packet-switched data services and ONP principles.....													
92/383-Rec.....	Integrated services digital network and ONP principles.....													
Proposed:														
(88)588-Dec....	Advanced informatics in medicine (AIM).....													
(90)32-Rec.....	Pan-European land-based public radio paging.....													
(90)32-Dir.....	Frequency bands for land-based public radio paging.....													
(90)139-Dir....	Frequency bands for the DECT.....													
(90)263-Dir....	Terminal equipment; mutual recognition of conformity.....													
(90)314-Dir....	Protection of personal data.....													
(90)314-Dec....	Information security.....													
(90)314-Dir....	Data protection in telecommunications networks.....													
(90)426-Dec....	Standard Europe-wide emergency call number.....													
(90)570-Dec....	Programme for an information services market.....													
(90)611-Dec....	Dissemination of EC R&D program knowledge.....													
(90)677-Rec....	Digital European cordless telecommunications (DECT).....													
(91)30-Dir.....	Open network provision for leased lines.....													
(91)165-Dec....	EC international telephone access code.....													
(91)215-Dir....	Digital short-range radio (DSRR).....													
(91)242-Dir....	Standards for satellite and television broadcasting.....													Common position 2/10/92.
(92)422-Dir....	Data protection (amended proposal).....													
Environment														
Enacted:														
86/279-Dir.....	Transfrontier shipment of hazardous waste.....	I	N	I	N	I	I	I	I	I	I	I	I	Implementation 1/1/87.
89/369-Dir.....	Pollution from new municipal waste incineration plant.....													Implementation 12/1/90.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Environment--Continued														
Enacted--Continued														
89/427-Dir.....	Air quality limits for sulphur dioxide/particulates.....													Implementation 1/10/91.
90/313-Dir.....	Access to information on the environment.....													Implementation 12/31/92.
90/415-Dir.....	Limits on discharges of dangerous substances.....													Implementation 1/31/92.
90/533-Dir*....	Marketing of plant protection products of active substances	I	I	-	I	I	I	I	I	I	I	I	I	Implementation 12/30/90.
90/1210-Reg....	Establishes the European Environment Agency.....													Appl. upon site choice.
91/156-Dir.....	Amendment on waste.....													
91/594-Reg.....	Substances that deplete the ozone layer.....													
91/598-Dec.....	Convention on Protection of the Elbe.....	-	-	-	-	-	-	-	-	-	-	-	-	Adopted 11/18/91.
92/3-Dec.....	Radioactive waste shipments to/from the EC (92/3/EURATOM)..													
92/43-Dir.....	Conservation of natural habitats and wild fauna and flora..													
92/72-Dir.....	Air pollution by ozone.....													
92/880-Reg.....	Community eco-label award scheme.....													
92/1970-Reg....	Convention on international trade in endangered species....													
92/2157-Reg....	Protection of EC forests against atmospheric pollution.....													
92/xxx-XXX.....	Fifth EC program of policy and action for environment.....													EC press rel. 12/16/92.
Proposed:														
(89)282-Dir....	Civil liability for damage caused by waste.....													
(89)478-Dir....	Drinking, bathing, and surface water.....													
(89)559-Dir....	Shipment of radioactive waste.....													
(89)560-Dir....	Amended proposals on waste and hazardous waste.....													
(90)85-Dir.....	Sewage sludge in agriculture - limits for chromium.....													
(90)227-Reg....	Control of environmental risks of existing substances.....													
(90)319-Dec....	Regular official statistics of the environment.....													
(90)415-Reg....	Supervision and control of shipments of waste.....													
(90)452-Dir....	Vessels carrying dangerous or polluting goods.....													
(90)522-Dir....	Municipal waste water treatment.....													
(91)28-Reg.....	Financial instrument for the environment (LIFE).....													
(91)37-Reg.....	Scheme for an Eco-label.....													
(91)220-Dir....	Air pollution by ozone.....													
(91)459-Reg....	Voluntary participation in Eco-Audit.....													
(92)246-Dir....	EC strategy to reduce carbon dioxide emissions.....													
(92)278-Dir....	Packaging and packaging waste.....													
(92)508-Dec....	Framework convention on climate change.....													
(92)xxx-Dir....	Integrated pollution prevention and control.....													
Miscellaneous:														
Enacted:														
86/665-Rec.....	Standardized information in existing hotels.....	-	-	-	-	-	-	-	-	-	-	-	-	Impl. urged by 12/21/88.
86/666-Rec*....	Protection of hotels against fire.....	-	I	I	I	I	-	-	I	-	I	I	I	Impl. not required.
88/378-Dir*....	Safety of toys.....	F	I	I	I	I	I	I	I	I	I	F	I	Implementation 6/30/89.
89/106-Dir*....	Construction products.....	F	I	I	F	I	F	F	F	F	I	F	I	Implementation 6/27/91.

Table C-1.
List of EC initiatives considered in this investigation--Continued

Initiative	Description	Member state implementation B	G	DK	S	FR	GR	IT	IR	L	NL	P	UK	Comment
		Standards--Continued												
Miscellaneous--Continued														
Enacted--Continued														
90/314-Dir.....	Package travel, package holidays, and tours.....													Implementation 12/31/92.
Proposed:														
(90)35-Dir.....	Child-resistant fastenings.....													
(91)147-Dir....	Comparative and misleading advertising.....													
Generic														
Enacted:														
85/374-Dir.....	Liability for defective products.....	F	F	I	N	F	I	I	F	N	F	I	I	Implementation 7/30/88.
87/357-Dir*....	Mislabeled products that endanger health and safety.....	I	I	I	I	F	I	I	I	I	I	I	I	Implementation 6/26/89.
88/182-Dir*....	Information procedures for technical standards/regulations.	I	I	I	I	I	I	I	I	I	I	I	I	Implementation 1/1/89.
88/314-Dir*....	Labeling of prices for nonfood products.....	I	I	I	N	I	I	I	I	I	I	I	I	Implementation 6/7/90.
90/352-Dec.....	Exchange of information on dangers of consumer goods.....													
90/683-Dec*....	Modules for conformity assessment procedures.....													Impl. not required.
91/561-Rec.....	Standardization of notices.....													
92/59-Dir.....	General product safety.....													
92/247-Dec.....	Program in the field of measurements and testing (1990-94).													
Proposed:														
(90)55-Dec.....	Consumers' Consultative Council.....													
(90)259-Dir....	General product safety.....													
(90)322-Dir....	Unfair terms in consumer contracts.....													
(90)4656.....	Development of European standardization.....													
(90)482-Dir....	Liability of suppliers of services.....													
(91)126-Dir....	Laws on electromagnetic compatibility.....													
(91)145-Reg....	CE mark of conformity on industrial products.....													
(91)322-Dir....	Award of public service contracts.....													
(91)383-Dir....	Safety and/or health sign requirements.....													
(91)1047-Dir...	Laws on units of measurement.....													