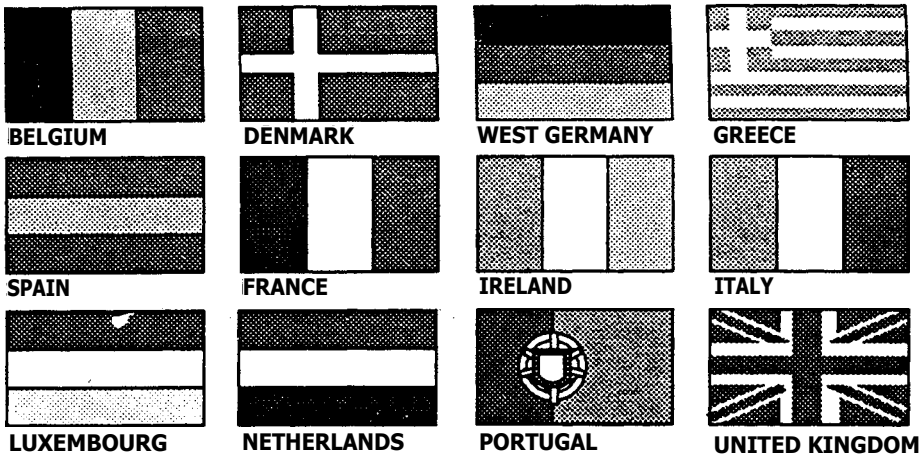

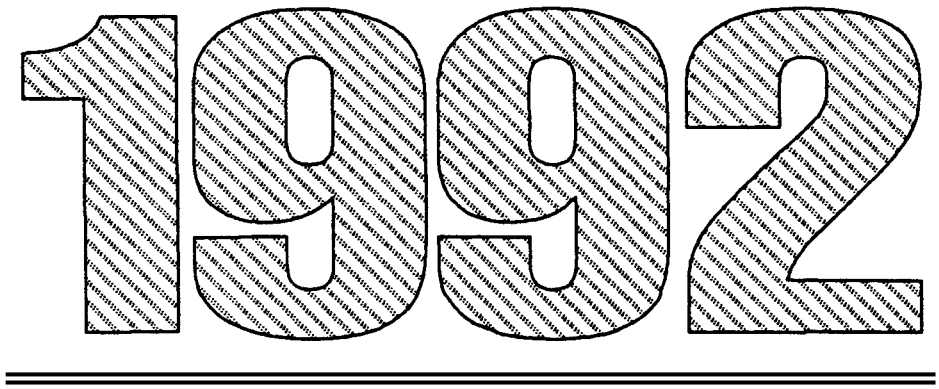

THE EFFECTS OF GREATER ECONOMIC INTEGRATION WITHIN THE EUROPEAN COMMUNITY ON THE UNITED STATES: FIRST FOLLOW-UP REPORT

Investigation No. 332-267

USITC Publication 2268

March 1990

UNITED STATES INTERNATIONAL TRADE COMMISSION

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PREFACE

On October 13, 1988, the United States International Trade Commission (USITC) received a letter from the House Committee on Ways and Means and the Senate Committee on Finance (presented as appendix A) requesting advice pursuant to section 332(g) of the Tariff Act of 1930, with respect to the greater economic integration of the European Community (EC) scheduled to be in place by the end of 1992 and its possible impact on U.S. trade and investment and on U.S. business activities in Europe. In response to the request, the Commission instituted investigation No. 332-267 on December 15, 1988. The report was issued in July 1989.

The committees noted that the form and content of the policies, laws, and directives that remove economic barriers and restrictions and harmonize practices among the EC member states may have a significant impact on U.S. business activities within Europe overall and in particular sectors. Further, the process of creating a single market may also affect progress and results in the ongoing Uruguay Round of GATT multilateral trade negotiations. Therefore, the committees requested that the Commission study focus particularly on the following aspects of the EC's 1992 program:

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

The committees also noted that "Given the great diversity of topics which these directives address, and the fact that the remaining directives will become available on a piecemeal basis, the Commission should provide the requested information and analysis to the extent feasible in an initial report by July 15, 1989, with follow-up reports as necessary to complete the investigation as soon as possible thereafter." This first follow-up report essentially follows the format of the initial report, with summaries of each of the initial report's chapters and discussions of developments since December 31, 1988. This report includes expanded coverage of local-content requirements, rules of origin, directive implementation by member states, and the social dimension of integration.

Copies of the notice of the scheduling of follow-up reports were posted at the Office of the Secretary, U.S. International Trade Commission, Washington, DC. The notice was published in the *Federal Register* (54 F.R. 38751) on September 20, 1989, and is included as appendix B of this report

CONTENTS

EXECUTIVE SUMMARY

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

Although the EC has had no internal customs duties and has had common external duties, internal as well as external trade has encountered numerous nontariff obstacles. These barriers principally developed over time as EC countries attempted, from time to time, to insulate particular industries and/or products after internal duties were eliminated. These measures were usually effective for the purposes devised, but they did have costs. Whereas the costs were tolerable in the 1950s and 1960s, they became more onerous in the late 1970s as most European economies slowed and a general "Eurosclerosis" developed that also reduced the competitiveness of the EC nations in the world market

A recognition of these costs and the desire to complete the internal market, begun with the formation of the EC and the elimination of internal duties, were at least partially responsible for the White Paper issued by the EC Commission in June 1985. This White Paper contained broad goals for the integration program and set a date of 1992 for the complete elimination of physical, fiscal, and technical barriers to trade. An entirely free-trade European market was to be accomplished through the issuance of approximately 280 directives dismantling barriers.

The initial report issued in July 1989 contained three sections. The first section addressed (1) the genesis of and prospects forthe 1992 program, (2) the institutional framework and procedures for implementation of the 1992 rogram, (3) the descriptive and definitional aspects of the 1992 , and (4) U.S. trade with the EC. The second section analyzed the changes expected m the implementation of each of the 261 measures issued or proposed prior to January 1, 1989, grouped into key categories.

The third section contained information on and analysis of the implications of the 1992 program for GATT, the Uruguay Round, and other EC member-state obligations and commitments under bilateral or multilateral agreements and codes to which the United States is a party.

This first follow-up report follows the same format as the initial report A brief summary of each of the initial report's chapters is followed by a discussion of new developments in the chapter area primarily for the period January 1, 1989, through December 31, 1989. This report also contains expanded coverage of the social dimension of integration, local-content requirements, rules of origin, and directive implementation by member states. A list of EC 92 initiatives addressed in this investigation is presented as appendix C, and an index of industry/commodity analyses contained in chapters 4 through 12 is presented as appendix D.

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

Introduction and Background

Introduction to the 1992 Program

- ***The EC made significant*** **progress in 1989** ***toward issuing the internal market measures necessary to effectuate the 1992 integration program, although many of the basic decisions have yet to be made.***

Of the 279 measures set out in the White Paper, the EC Commission had presented 261 ***as*** **of January 1, 1990. Also as of that date, the EC Council had formally adopted 142 of these measures, or about 60 percent of the program. As of January 17, 1990, only 14 of the single-market directives had been fully transposed into national law by all member states.**

- ***The EC's quest to create a single internal market has implications on the Community's external r***ela***tions.***

Non-EC European nations are seeking membership in the Community in order to take full advantage of the benefits of the single market. The six European Free Trade Association nations, concerned that their special relationship with the EC is being challenged, agreed with EC leaders to begin formal negotiations to create a European Economic Space and realize the free movement of goods, services, people, and capital between the two blocs. **Further, the recent renegotiation of the Lome Convention with developing countries guarantees that these countries will continue to receive the same or expanded preferential access to the post-1992 EC market. Finally, the trade and economic cooperation agreements being negotiated with the European Council for Mutual Economic Assistance countries provide for the elimination of national quotas that would be unenforceable in the single market.**

- *The prevailing opinion in the EC is that changes in Eastern Europe will accelerate the integration process among the 12 member states.*

Changes in Eastern Europe have added momentum to calls from some fora "widening" of the EC integration process by bringing in new members, including Eastern European countries. However, most argue that for European integration to succeed, the current emphasis should be placed on "deepening" rather than enlarging the EC and on intensifying cooperation among the existing 12 members in all spheres political, social, monetary, and defense, as well as economic.

- *Most of the internal market measures that are* part *of the 1992 integration program are directives that need to be transposed into the laws of member states in order to be fully effective.*

The EC Commission is the institution that monitors compliance with EC law and passage of measures that implement directives in member states. In 1989, the EC Commission, the EC Council, and the European Parliament took steps to improve the monitoring of implementation and to speed the implementation process.

- *Member states do not always fulfill their treaty obligations to transpose directives promptly; the EC Commission has expressed concern at the slow pace of implementation.*

According to the EC Commission, Italy and Greece have been the slowest at implementing directives Italy has a slow parliamentary process for transposing directives into national law. Italy is attempting to improve its implementation process under the recently passed "la Pergola" law, which provides for cooperation between Government ministries and Parliament. Greece's difficulties include a slow bureaucratic process. Other member states, such as Belgium, have problems with implementation stemming from decentralized or federal constitutional structures. Member states such as Spain, which joined the EC recently, face the challenge of implementing both 1992 directives and directives issued before they joined.

Review of Customs Union Theory and Research on the 1992 Program

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

Reduction of internal trade barriers under the 1992 integration program will create trade among EC member countries at the expense of less efficient domestic producers. The internal trade liberalization, however, will also tend to increase trade among EC countries at the expense of existing trade with more efficient producers in the United States and other nonmember countries. Producers in nonmember countries will benefit if the EC 1992 program boosts growth in the EC.

- *Available research on the EC 1992 program suggests significant structural change within the EC and encourages continued trade hberalizatton.*

Recent studies of the EC 1992 program suggests, among other things, (1) that not only should barriers to intra-EC trade be eliminated, but also subsidies to national firms; (2) that the harmonization of VAT rates is desirable but not strictly necessary, but that the unification of excise duties must be pursued with vigor, (3) that the removal of the remaining barriers within the EC is likely to lead to substantial structural change in employment and that there will be both winners and losers; (4) that it is necessary to resist the temptation to create a

system designed to defend intra-EC trade at the expense of progress for world free trade; and (5) that while some gains can be derived from moving the EC closer to being a full customs union, more significant welfare gains may be obtained from the creation of a genuinely unified European market.

Trade and Investment in the EC

- ***The European Community constituted one of the largest trading partners of the United States during 1984-88.***

The EC consistently accounted for between 18 and 20 percent of total U.S. **imports during 1984-88 and between 22 and 23 percent of total U.S. exports. The EC member states imported about 950 billion dollars' worth of goods in 1987. EC exports were at a level of $951 billion in 1987.**

- EC *imports* from ***Eastern*** Europe ***were virtually unchanged between 1984 and 1987. EC exports to Eastern Europe increased steadily, at an average rate of 9 percent per year.***

EC imports from these countries amounted to $28 billion in 1987, a decline of 1 percent from the 1984 figure. Imports were lower than 1984 and 1987 in 1985 and 1986. EC exports to Eastern Europe amounted to $22 billion in 1987, an increase of 27 percent over the 1984 figure. Exports to the Soviet Union in 1987 reached $10.6 billion — 48 percent of all EC exports to Eastern Europe, whereas imports from the Soviet Union amounted to about $15 billion, or about 53 percent of total EC imports from Eastern Europe.

- ***U.S. investment in the EC increased in 1988, the latest year for which data are available.***

U.S. investment in the 12 EC member states totaled $126.5 billiOn at the end of 1988. This represented an increase of 5 percent in **overall cumulative investment from 1987. U.S. investment in The EC made up 47 percent of total U.S. foreign investment in 1988.**

- ***The EC investment in the United States in 1988 totaled $193.9 billion.***

The EC 12 member states had direct investment in the United States totaling $193.9 billion in 1988, about 59 percent of the total investment of $328.9 billion **investedin the United States by foriegn countries.**

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

Government Proctrement andthe Internal Energy Market

- ***As of yearend 1989, the EC had adopted three directives and proposed one additional directive related to the opening of public sector markets.***

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

A directive coordinating procedures for the award of public supply contracts entered into effect for most member states on January 1, 1989. Two directives—one on public works contracts and another that facilitates appeals against discrimination in the award of public contracts—were adopted by the EC Council during 1989. Two proposed directives that extended procUrement rules to the so-called "excluded sectors" of water, energy, transport, and telecommunications were combined into a single directive. The EC Commission is also preparing proposals for two directives covering services and appeals procedures for contracts covered by the excluded-sectors directive, respectively.

- ***Although U.S. suppliers believe that the EC's public sector markets eventually will open, they are concerned that a 50-percent EC value-added rule in the proposed excluded-sectors directive will hamper their ability to take increased advantage of more open procurement.***

U.S. suppliers claim that a 50-percent EC value-added rule would result in an unpredictable bidding situation and could have the effect of requiring U.S. firms to invest in the EC in order to win procurement contracts. Such value-added rules are among the issues in ongoing negotiations to revise the GATT Code on Government Procurement

- *In addition to proposals to extend coverage of government procurement rules to* ***energy under*** *the excluded-sectors directive, the EC's energy sector is now the subject ofseparate* ***initiatives*** *designed to create an EC-wide energy* market.

In July 1989 the EC Commission proposed directives to (1) improve the transparency of natural gas and electricity prices; (2) coordinate investment projects in the oil, **natural gas, and electricity sectors; and (3) improve guarantees for the right of transit on the major grids for electricity and natural gas. These directives are intended not only to eliminate existing obstacles to a unified energy market but also to take into account the EC's overall energy objectives of guaranteeing a secure supply of energy, reducing costs, and producing environmentally harmless energy.**

- *Because energy— like other public sector markets— is currently one of the EC's more tightly protected industries at the national level, efforts to complete the internal energy market will likely be long and arduous.*

Ultimately, companies operating in the EC should benefit from the greater freedom to choose among the types of energy consumed as well as suppliers. As the energy sector restructures and procuring entities are pressured to lower costs, marketing opportunities for U.S. suppliers of coal and energy equipment and technology should increase. However, U.S. energy firms will continue to face restrictions if more open government procurement procedures in the energy sector are not implemented.

Financial Sector

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

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

- *The adoption of the Second Banking Directive in December 1989 has set in place a regulatory regime that, over time, should facilitate the creation of the world's single largest banking market.*

Rapid legislative progress in the banking area is seen by the EC as symbolic of their commitment to economic integration, to mutual cooperation, and to market forces. U.S. banking firms that have established subsidiaries in the EC prior to January 1, 1993, will be able to obtain a single banking license and sell their services freely throughout the Community.

- *The granting of a single banking license after January 1,1993, will, however, be subject to the Community's reciprocity policy, which is based on 'national treatment and effective market access."*

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

- *The* **1992 program** *for investment firms follows the same regulatory philosophy that has been used in the banking area, although legislative progress has been much slower.*

The proposed Investment Services Directive contains a reciprocity provision that may restrict the future market access of U.S. investment firms. If the single license for investment firms is not available at the same time that the single banking license is available, then universal banks will have a head start in exploiting the potential benefits of the single market by undertaking investment banking activities throughout the Community with a single banking license. This development could hurt U.S. investment firms that operate as investment firms in the EC and do not have the option of restructuring themselves to meet the requirements of the Second Banking Directive.

- *To date, the 1992 program for insurance firms has not sought to introduce a single insurance license.*

The main life and nonlife insurance directives remove barriers that have prevented insurance firms from selling their policies on a cross-border basis. In December 1989 the EC Council reached a common agreement on the proposed life insurance directive. The common agreement adds group coverage to the directive, defines the role of brokers, and incorporates the more flexible reciprocity provision from the Second Banking Directives. Nevertheless, the reciprocity provision could restrict the market access of U.S. firms. It should be noted that the EC intends to introduce two new framework directives in 1990 that would provide for a single insurance license, thereby enabling insurance firms to sell their services freely throughout the Community.

Standards, Testing, and Certification

- *The 1992 standards agenda represents a virtual revolution in regulatory philosophy in the EC.*

Member states are placing new confidence in the private sector, ceding much remaining authority to Brussels, creating new enforcement bodies, and using common standards to boost the competitiveness of EC industry. A $4.6 trillion market, operating by one set of rules, will eventually emerge — a market representing major opportunities for all suppliers. Although many U.S. firms expect to benefit, the process is not without risks. Some producers fear that the program could lead the EC to "harmonize up" from existing member-state regulatory requirements, thus making future U.S. access to the entire EC market more difficult

- *The EC's July 1989 proposal on testing and certification is a major concern for U.S. business.*

Despite EC assurances of nondiscrimination, U.S. suppliers fear that they may be forced to undergo more costly and time-consuming approval procedures than will their EC-based competitors. U.S. testing laboratories complain that the proposed EC policy would effectively lock them out of the EC market Although some U.S. firms appeared to be planning for a "worst case" scenario, initial analysis suggests that if the EC provides reasonable opportunities for acceptance of U.S. tests, the proposal could represent an improvement over the present, fragmented regime. Some U.S. concerns remain, however, and resolving them could be a difficult and slow process.

- *Mechanisms put in place in 1989 have increased the transparency of the EC's standards-drafting process.*

A number of transparency-enhancing improvements were made in 1989, and some U.S. firms were using the new channels to advance their interests. Among other things, the EC began to issue a monthly update on standardization work, agreed to accept comments on draft standards from third country suppliers, and renewed its pledge to base its own standards on internationally developed ones. Several factors suggest that it still may be difficult to preempt technical bathers in the EC through existing mechanisms.

- *Most U.S.* suppliers—particularly *larger multinationals—expect to gain from the EC's standards agenda. However, some U.S. exporters, particularly smaller ones, appear vulnerable to* harm.

The EC's move towards more uniform standards and testing procedures is seen as likely to make possible gains in administrative and productive efficiency. However, some smaller exporters report that they are ill equipped to obtain needed information and could have difficulty dealing with new technical requirements and conformity-assessment procedures. On the other hand, movement to a single set of regulations and one-stop regulatory approval may make the EC market a more viable opportunity for other smaller U.S. exporters. Small and medium-sized producers account for a large share of U.S. exports of farm-based agricultural products, processed foods, and machinery.

- *The challenge posed by 1992 led some in 1989 to question certain aspects of the privately funded and highly decentralized U.S. standards system.*

Some believe that the U.S. standards system is ill equipped to deal with the EC's well organized and far reaching standards agenda. The 250 active U.S. private sector standards-drafting bodies and nearly 40,000 labs have thus far been wary of U.S. Government "help." But with the EC member states and other major U.S. competitors

actively promoting their standards overseas, the need for a more coherent and forward-looking U.S. response has become acute. Some analysts believe greater U.S. private-public cooperation may be needed.

- *The EC made considerable* progress on *its standards agenda during 1989.*

A total of 137 enacted or proposed directives and regulations were examined in this phase of the investigation; 67 standards-related measures were finally adopted during the year, and another 70 were formally proposed by the EC Commission. Among other things, the EC moved to centralize approval of new food additives, drugs, and chemicals; agreed to stringent new auto emission standards; adopted common food labeling requirements; and set in motion harmonization of standards pertaining to machinery, telecommunications equipment, medical devices, and construction products.

- *Some $41 billion in U.S. exports and $65 billion in U.S. direct investment could be affected.*

U.S. firms in the processed-food, pharmaceutical, chemical, auto, and telecommunications industries appear set to benefit by the 1989 standards developments; those in the machinery, building product, and agricultural sectors could be at risk. The yet-to-be-finalized content of European standards and conformity-assessment procedures in these areas will ultimately determine whether U.S. access will be improved or threatened.

Customs Controls

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

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

- *During 1989, several measures were adopted and others proposed to advance significantly the abolition of internal EC frontiers.*

Whereas the work called for in the White Paper continued, additional progress in abolishing internal EC frontiers continues to await adoption of measures on taxation, a major area of responsibility for customs officers at border crossings. Whether member states will ultimately implement all customs-related measures in the integration program is uncertain because of the importance of controlling trade and setting trade policy. Non-EC reaction to these efforts remains positive.

- *Progress was made during 1989 toward achieving free movement of persons in the EC and dealing with variations in professional qualifications and social benefits.*

Agreement was at last attained on a package of measures relating to the right of residence for workers and for other persons, and on associated directives setting criteria for applying social benefit schemes to EC nationals living in member states other than their own. Other directives were enacted to provide mutual recognition for qualifications of road-transport operators and of several categories of medical personnel. Proposals to expand use of the mutual recognition principle were presented, along with new vocational training provisions.

- *The EC's directives governing worker safety and health will create some added costs but will not significantly affect U.S.-owned companies that already comply with the standards set by the U.S. Occupational Safety and Health Administration.*

U.S. businesses believe that harmonization of EC worker safety and health standards will be beneficial. Many companies already apply U.S. OSHA standards to all their facilities worldwide; they will be in general compliance with EC rules based on OSHA standards. The

proposed EC directives on biological agents and carcinogens, however, are expected to increase recordkeeping costs. These two proposals, as well as the adopted directive on personal protective equipment, may benefit U.S. exporters of engineering controls and protective devices.

Transport

- *Thirty years after the Treaty of Rome, the EC still maintains a system of road-transport quotas, restrictions, and limits on access to transport markets.*

Border and customs regulations serve to slow down the delivery of merchandise, thus creating inefficiencies and delays. Border crossing delays accounting for 40 percent of truck delivery schedules are commonplace in the EC.

- *The second EC package of airline deregulation introduced a system of airline fares that requires double disapproval by the carriers serving EC bilateral routes.*

Under the new system, member states cannot disapprove a proposed fare strictly because the fare is lower than that offered by another airline serving the same route. The existing single-disapproval system gives national airlines serving bilateral routes the opportunity to veto low-fare proposals offered by other carriers serving these routes.

- *Major concerns of the U.S. transport industry include the possible reintroduction of the "genuine Community link" provision, which would discriminate against non-EC* firms.

Under the "genuine Community link" provision, haulage firms in the EC that are not EC majority owned would not be permitted to make stops other than at their final destination after they have crossed the border of a member state. Non-EC package-delivery firms and other foreign multimodal firms could be severely disadvantaged if this requirement becomes a force of law.

- *Under previous EC rules, the lodgement of a transit advice note was required to be filed with customs at the borders of member states through which consignments are transported.*

The lodgement of a transit advice note has been abolished to streamline the procedures for efficient movement of goods within the Community. Under the new rules, when a consignment does not reach its final destination and proof cannot be furnished to show where the irregularity occurred, duties will be levied in the member state of departure with certain exceptions. More than 10 million transit forms are filled out each year in the EC. Although the lodgement of the transit note will no longer be required in 10 member states, the formality will be preserved at the borders of Spain and Portugal during their transition period as specified in the Act of Accession.

Competition and Corporate Structure

- *The Merger Regulation, discussed in the initial report, was adopted by the Council on December 21, 1989.*

The Merger Regulation vests in the EC Commission the exclusive authority to vet mergers with a Community dimension (i.e., aggregate worldwide profits over $6 billion, two of the companies each have EC-wide profits over $3 million, and not more than two-thirds of each company's profits are generated in the same member state.) Although the Commission will evaluate mergers primarily under traditional competition criteria, the Regulation leaves room for consideration of non competition concerns. Small mergers will continue to be subject to multiple national antitrust authorities.

- On *December 2*/, *1989, the Council passed the Twelfth Company Law Directive, discussed in the initial report.*

This directive permits branches of non resident companies to publish the annual accounts of the company as a whole rather than the accounts of the individual branch.

- *In its attempt to create a single market or business, the EC Commission has submitted a proposal for a European Company to be on European, not national, law.*

Although doing business as a European Company would result in tax advantages, such as offsetting losses in other member states against gains in the home country, the mandatory

requirement for worker participation in management decisions may be a significant disincentive for some firms.

- *The EC Commission's latest step in the harmonization of member states' company laws is a directive to standardize takeover bids.*

The underlying goal of the **takeover bid directive is to equalize treatment of all shareholders. The proposal increases disclosure requirements but requires a mandatory bid for all of the shares when an offeror has purchased 33.3 percent of a company's stock.**

Taxation

- ***The 1985 White Paper identified both direct and indirect taxes as requiring common action in the completing of the internal market.***

The 1985 White Paper recognized that indirect taxes in the form of value added taxes (VAT) and excise taxes required harmonization if frontier controls are to be removed without causing significant distortions. The White Paper also called for a paper on the taxation of enterprises in the EC and proposed action on three preexisting proposals relating to the removal of obstacles to cooperation between companies in different member states. In August 1987 the EC Commission introduced a comprehensive fiscal package addressing indirect tax issues. In January 1989 the EC Commission, in conjunction with the planned liberalization of capital markets by July 1, 1990, introduced a proposal to establish a minimum withholding tax. The EC has not adopted any of the three proposals relating to obstacles to cooperation between companies, and the EC Commission has not introduced its paper on taxation of enterprises.

- ***During 1989 the EC came closer to resolving differences between members states in the area of VAT, excise taxes, and taxation saving.***

In December 1989 agreement was reached on a compromise proposal that may provide the basis for a final agreement on harmonizing VAT rates. At the same time, agreement was also reached (with the exception of Luxembourg) on a compromise on the saving tax issue that may lead to greater sharing of confidential financial information when tax evasion is suspected. Also in December, the EC Commission issued three amended proposed directives relating to excise taxes. In addition, the EC Commission laid the groundwork for issuing a communication early in 1990 on corporate taxation.

Residual Quantitative Restrictions

- ***The EC Commission intends to eliminate existing, or residual, national quantitative restrictions (QRs) by the end of 1992 because they will be unenforceable in the single, integrated market. However, certain "sensitive" sectors may be the subject of continued protection.***

In December 1989 the EC Commission announced that it would seek an EC-wide voluntary restraint arrangement with Japanese automobile producers for an undetermined transition period after January 1, 1993. According to the EC Commission, three other "sensitive sectors" — textiles and apparel, shoes, and consumer electronics — may also be subject to some form of protection after 1992.

- ***The proposed EC-wide restraint on imports of Japanese automobiles that would replace existing national quotas is not likely to adversely affect U.S. automobile producers.***

Both U.S. automobile exporters and U.S. automakers with production facilities in the EC could benefit from the dismantling of member-state quotas and the subsequent protection afforded by an EC-wide restraint on Japanese automobile imports. U.S. automobile producers located in both the United States and the Community may be presented with increased marketing opportunities in the EC and, because of their reputation for quality, should compete effectively as the EC's national automakers restructure. Although Japanese producers may continue to shift production facilities to the EC to avoid the threat of external trade barriers, U.S. firms are well positioned to meet the competition.

Intellectual Property

- ***The major event in 1989 in intellectual property is issuance of the proposed directive on the legal protection of computer programs.***

There is wide agreement with the approach of the proposed directive to protect computer programs as literary works under national copyright laws. Some controversy remains with respect to the subject matter to be protected and whether, and to what extent, "reverse engineering" should be permitted. The effect of the proposed directive on innovation, investment, and competition depends on whether the current controversies result in amendments to the proposed directive.

Implications of EC Market Integration for GATT, Other International Commitments, and Other Interest Areas

Reciprocity

- *In 1989 the EC Commission completed the reciprocity provision of the Second Banking Directive.*

The European Community has clarified that it seeks reciprocity in the form of de facto national treatment. The directive provides that the EC Council will have ultimate authority for implementing the Community's reciprocity policy. Council control would limit the discretion of the EC Commission, thereby ensuring that a balanced political consensus is reached on the implementation of the reciprocity policy. U.S. reaction has been largely positive.

- *The EC has reportedly incorporated substantially similar reciprocity language into an amended proposed Second Life Insurance Directive.*

French insurers for example are concerned that the EC needs to present a strong position with regard to the Japanese in negotiating third-country access to European insurance markets.

- *A draft merger control regulation was adopted with a French-proposed reciprocity clause.*

Although no provision is made for denying mergers on the basis of nonreciprocal treatment, the introduction of another reciprocity clause, albeit seemingly innocuous, will not assist in putting to rest the idea of "fortress Europe."

Rules of Origin and Local-content Requirements

- *The related issues of EC rules of origin and local content requirements have frequently been cited as having a significant negative impact on U.S. manufacturers and exporters.*

While these measures are not the sole subject of directives involved in the integration process — and according to EC officials, will not be used to restrict trade and investment after 1992—they are of great importance to non-EC countries and their firms.

- *Rules of origin are used to determine the source of all shipments of goods not wholly produced or obtained in one country.*

The EC's basic regulation relies on the principle of "last substantial processing." This standard may be applied through secondary measures, which may contain process-based or value-content criteria or require changes of tariff classification. The complexity of these rules, their pervasive importance, and the procedures for their adoption and amendment make them confusing and permit varying interpretations; importer involvement in their development is limited. cause these rules are not covered by the GATT, and because they underlie most trade-related policies, it is also difficult for other governments to influence their terms or administration. Efforts to achieve international discipline, and potentially a harmonized origin scheme, have begun in the Uruguay Round of the GATT.

- *Local-content requirements —which have been cited as conflicting with provisions of the GATT—are used by the EC to implement origin rules or other country-specific trade measures by demanding a ,fixed minimum percentage of EC added value or components (or by limiting the content attributable to particular countries).*

The EC has employed such requirements in the administration of antidumping duties, its "screwdriver assembly" regulation, quantitative restrictions, government procurement activities, and similar programs. It is often alleged that the effect of these criteria is to compel

the relocation of production or sourcing to the EC. A frequent target of such standards is Japan, especially in the context of antidumping cases. U.S. suppliers to Japanese firms have already reported lost sales, some manufacturers have begun European production, and other U.S. firms fear they will be forced to invest in EC production (and end or reduce U.S. operations) to be able to sell in the EC market on a competitive basis.

EC Integration and the GATT

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

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

- ***The United States has initiated only one complaint under the new streamlined GATT dispute-settlement procedures.***

As one of the first agreements reached in the Uruguay Round of multilateral trade negotiations, the new dispute-settlement procedures established time limits for the resolution of a dispute. If bilateral consultations do not settle the dispute, a panel is automatically established. This is an improvement over the prior procedures, whereby the establishment of a panel could be blocked indefinitely or bilateral consultations could drag on for years.

- ***Under the new Trade Policy Review Mechanism, the EC will undergo a comprehensive review of its trade policies and practices.***

The new trade policy mechanism, implemented in early May 1989, is designed to increase the transparency of the world trading system. Each country will be required to submit a report on its trade policies and other issues effecting trade.

EC Integration and the Uruguay Round

- ***Integration topics covered in the initial report that have been identified as having a relationship to or impact on the EC's Uruguay Round positions are agriculture, safeguards, nontariff measures, standards, government procurement, intellectual property rights, investment, and services.***

The single market exercise is likely to have varying effects on the EC's Uruguay Round initiatives. Some EC directives, such as those on government procurement, may reinforce or dictate EC positions in the trade talks. In standards discussions, the EC has argued that the internal process needs to be completed before it can fully engage in multilateral negotiations. In the new areas of services, intellectual property, and investment, it is not yet clear whether the European exercise will reinforce or conflict with Uruguay Round initiatives.

- ***As the EC integration process progresses, the relationship between the internal market process and the EC's Uruguay Round stance becomes more discernible.***

In several areas a distinct relationship emerged during 1989 between the EC 1992 program and the current talks in Geneva. Complementary positions in Brussels and Geneva are evident in the services, government procurement, phytosanitary standards, and textiles areas. Differing policies appear as to intellectual property, subsidies, standards, antidumping, local-content requirements, and rules of origin.

EC Integration and Other EC Commitments

- ***The U.S. Government has argued that the Broadcast Directive conflicts with principles embodied in several international agreements designed to safeguard the free flow of information.***

The EC's "Television Without Frontiers" directive, adopted on October 3, 1989, provides that when practicable, broadcasters should reserve a majority of broadcasting time for programming with EC content This local-content provision may conflict with specific

provisions, and the spirit, of the Universal Declaration_ of Human Rights, as well as the Helsinki Final Act and'related documents of the Conference on Security and Cooperation in Europe ("CSCE").

- *The reciprocity* provision *of the EC's Second Banking. Directive; although amended to address criticisms about, its , effects, may continue to he inconsistent with principles embodied in provisions of the„OECD's Capital Movements Code.*

The OECD Capital Movements Code sets forth the goal of dismantling barriers to capital movements among its'contracting parties, which include the United States and all 12 **member states of the EC. To help achieve this goal, the code requires that its signatories adhere to the twin principles of nondiscrimination and standstill/rollback of restrictive practices. To the extent that the revised Second Banking Directive embodies the concept that the EC will restrict foreign-owned banks to the same scope of operations to which EC banks operating in the foreign country are limited, rather than granting national treatment, it appears to be inconsistent with the principle of nondiscrimination embodied in the code. By mandating that EC member states that currently do not have reciprocity requirements in their financial sectors now adopt them, the directive further appears to run afoul of the principles of standstill and rollback of restrictive measures by code signatories.**

- *Both the EC Commission and Council have indicated that the proposed "Global Approach to Certification and Testing" will affect certain bilateral agreements between testing, and certification bodies in the EC member states and corresponding entities in the United States.*

As a part of its proposed certification and testing program, the EC has stated that any existing bilateral agreements between EC member-state testing and certification bodies and third country bodies will have to be renegotiated as EC-wide bilateral agreements when EC directives covering those products are implemented. Because the EC's approach is not yet fully developed, its effect on existing as well as future agreements between the United States and EC member states is difficult to predict

The Social Dimension

- *European labor seeks the inclusion of a social dimension in the EC 92 program to assure that economic integration does not erode worker rights.*

The completion of the single market is expected to cause substantial relocation of and readjustment in the labor market Workers are concerned about the prospect of "social dumping," i.e., that with integration, companies will relocate to countries where there are weaker unions and lower wages. The social dimension is intended to protect employees by easing worker mobility, providing for training and education, assuring equal employment opportunities, and harmonizing social security systems and worker safety and health rules.

- *Both the European employer's organization and representatives of U.S. business have indicated support for EC-wide action in some social areas but insist upon deference to the principle of "subsidiarity" respecting industrial relations issues.*

U.S. industry representatives support the implementation of a social dimension program that harmonizes laws regarding worker mobility, education and training, worker safety **and health, and social security. They oppose EC-wide action on worker participation, wages and other remuneration, and other labor relations topics that, under the principle of "subsidiarity," are best left to national or local legislation or to collective bargaining.**

- *In 1989 the EC Commission progressed in its efforts to implement a social dimension program.*

In 1989 the EC Commission drafted a Community Charter of Fundamental Social Rights. This charter was adopted by 11 member states, with the United Kingdom refusing to endorse it. The EC Commission also presented an action program delineating specific initiatives that it intends to take in the social dimension area.

- *The EC Parliament has expressed dissatisfaction with the Social Charter and Action Program.*

The EC Parliament has criticized the EC Commission for weakening the Social Charter in order to appease some member states. The Parliament expects the EC Commission to take stronger action in the social dimension area.

- *The area of most concern to U.S. business involves efforts to impose EC-wide requirements for worker participation in management decisions.*

European and U.S. businesses are concerned about the potential revival of the aVredeling proposal,' a proposal for a directive that would require large companies to consult with employee representatives prior to making management decisions that could affect workers. U.S. business is especially concerned that a directive of this type will have extraterritorial effect, by requiring worker participation even in decisions made by companies headquartered outside the EC. U.S. trade organizations have coordinated their efforts to prevent imposition of worker participation requirements. A U.S. business group representing these organizations has engaged in informal dialog with the EC Commission on this subject.

- *The U.S. administration has vowed to actively oppose any EC legislation that might fora U.S. companies doing business in the EC to modify their industrial relations practices outside the C.*

PART I
INTRODUCTION AND BACKGROUND

CHAPTER 1
INTRODUCTION TO THE 1992 PROGRAM

CONTENTS

CHAPTER 1
INTRODUCTION TO THE 1992 PROGRAM

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

Developments Covered in the Initial Report

Background and Outlook for EC 1992

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

In June 1985, the EC Commission issued a White Paper entitled "Completing the Internal Marker that outlined a detailed plan including some 300 specific measures for the removal of all obstacles to the free movement of goods, services, and capital by December 31, 1992. leaders recognize that not all sensitive issues are likely to be resolved by 1992 and that a barrier-free Europe, therefore, is unlikely to be fully realized by that date. Certain measures—such as those in the area of tax harmonization — have prompted strong member-state resistance.

In general, support for the 1992 exercise remains strong within the EC. EC industries believe the program will significantly improve Europe's competitive position in the world. A flurry of merger and acquisition activity by EC firms indicates that they have already begun to position themselves to take full advantage of the benefits of the 1992 process. Consumers anticipate greater product choice and, through competition, lower prices after 1992. Certain groups lend more qualified support for 1992, however. Trade unions condition their support on progress in the area of social issues, such as workers' rights. Small business remains concerned that an integrated market will benefit large corporations at their expense.

The EC Commission argues that the external effects of integration will be positive. However, third countries, .including the United States, are concerned that increased competition among the 12 member states could induce certain sectors of EC industry to seek protection against imports, thus forming a "Fortress Europe." Acting on these fears, certain third-country firms — most notably Japanese and U.S. companies — have begun to establish plants in the EC to avoid potential barriers to direct imports after 1992.

Institutional Mechanism for the 1992 Program

The EC acts through four principal institutions: the EC Commission, the Council of Ministers, the European Parliament, and the European Court of Justice.

The Single European Act set forth the functions of the EC institutions with respect to the 1992 integration program. The voting procedures for issuing measures were changed and Parliament's role in the legislative process was broadened.

Internal market measures can be issued as regulations, decisions, opinions, or recommendations, but most are issued as directives. The Council acts on a proposal from the EC Commission, usually voting usmg a weighted, "qualified majority" system, with the participation of Parliament

Directives are binding on member states only as to the result to be achieved but leave to the member states the choice of the form and methods of implementation. The EC Commission may bring suit in the European Court of Justice against a member state for failure to properly implement a directive. Regulations are binding in their entirety, generally and directly applicable in member states, and need no implementing legislation to ensure effectiveness. Decisions are binding in their entirety but unlike regulations are individual in scope, providing legal consequences for only those member states or individuals specifically addressed. Recommendations and opinions are nonbinding.

Private parties may sue in a national tribunal, which can then refer questions of EC law to the Court of Justice. If a directive is sufficiently precise and unconditional, an individual may rely on provisions of the directive in court when a member state has failed to correctly interpret the directive in implementing legislation.

Developments During 1989

Introduction

Under the French presidency of the EC Council of Ministers during the second half of 1989, the EC made substantial progress toward passing the legislation needed to effectuate the 1992 integration program. As set out in the White Paper, 279 internal

market measures will form the integration program. Of these, the EC Commission had tabled 261 as of January 1, 1990. Also as of that date, the EC Council had formally adopted 142 of these measures, or about 60 percent of the program. '

Within the EC Council, the presidency changed hands according to treaty provisions, with Ireland assuming the chair for the first half of 1990. The Irish Government announced that environmental policy would be a priority during' its presidency; this announcement is important for the institutional framework of the EC because of a recent proposal for the creation of a European Environment Agency. The proposed agency would collect and disseminate information on environmental matters and make scientific assessments and forecasts concerning threats to the environment.[2] The EC has not yet reached agreement on the form and functions of such an agency. The European Parliament wants a more operational than scientific body, whereas the EC Commission does not propose to give the agency management tasks but sees the agency's role as primarily data collection?

With respect to the functioning of the EC's institutional framework, the EC Commission opined that the Single European Act has led to significant improvement This is noticeable particularly in the increased use of qualified majority voting, which can result in faster and easier decisionmaking than the traditional unanimous voting procedure, and the more active and effective role played by the European Parliament in the lislative process. The EC Commission expressed dissatisfaction, however, with how restrictive the Council has been in its delegation of executive powers to the EC Commission to carry out EC law, and is seeking to expand that authority.[4] Within the EC's judiciary, the Court of First Instance of the European Communities, newly created to take some of an increasing caseload from the Court of Justice, held its first plenary session in Luxembourg on December 14, 1989.[5]

The remainder of chapter 1 is devoted to two issues of increasing importance to EC integration. First, the recent changes in Eastern Europe have focused attention on the foreign policy of the EC. Second, the fact that the vast majority of integration measures being issued by the EC are directives that member states need to implement by transposition into national law is bringing the issue of implementation into increasing prominence.

External Relations

Completion of the European Community's internal market by 1992 has ramifications that extend well beyond the borders of the 12 member nations. Countries from around the world are responding with interest and apprehension to the challenges posed by the EC's quest to create a single, integrated market. At the same time, the EC is facing challenges—not only the challenge of implementing the Single European Act, but "the challenge of its international responsibilities in the East and elsewhere in Europe, in the Mediterranean and in the developing world."[6]

The implications of the EC's single market program on the European Community's external relations are numerous. First, non-EC European countries are seeking membership in the EC in order to take full advantage of the benefits of the internal market process. Also, the recent renegotiation of the Lome Convention between the EC and certain developing countries in Africa, the Caribbean, and the Pacific (the so-called ACP countries) guarantees that these countries will continue to receive the same or expanded preferential access to the post-1992 EC market that they presently enjoy with respect to many of their products. Another example is the recent decision by the EC and the European Free Trade Association (EFTA)[7] to begin negotiations to create a European Economic Space (EES) and realize the free movement of goods, services, people, and capital between the two trading blocs. Finally, the EC has conducted bilateral negotiations with Eastern European nations and the U.S.S.R. to set up trade and economic cooperation agreements. These

' U.S. Department of State telegram, 'EC Single Market Tally (January 4,1990).'

a Information Memorandum No. P 33, June 21, 1989; See also Programme of the Commission for 1990, Jan. 10, 1990, p. 21. The EC Commission is also planning to propose the establishment of an agency to coordinate scientific evaluation and member-state action in the field of pharmaceuticals. Ibid. p. 3. For more information on these proposed bodies, see pt. 2 ch. 6 of this report.

a Prognmme of the Commission for 1990, Jan. 10,1990; InternallÄarker European Report No. 1548, Dec. 13, 1989, p. 10. Parliament's Environment Committee has suggested that th:actcy should have an independent inspectorate to audit member-state performance and enforce environmental legislation. Internal Market p. 3. European Report No. 1553, Jan. 10, 1990,

• Prolpramme of the Commission for 1990, Jan. 10, 1990, p. 1. The EC Commission's executive powers principally involve quasi-legislative action to fill in a legislative framework established by the Council, adaptation of EC law to technical progress such *as in* the amendment of technical annexes to directives, and the management of such bodies as the common market organizations in agriculture. Delegation of Executive Powers to the Commission, Report From the Commission to the European Parliament, Sec (89) 1591, Sept. 28, 1989.

° The first *case* concerned the application of EC antitrust law. Other types of cases within the Court of First Instance's jurisdiction would include certain disputes concerning the European Coal and Steel Community and disputes between the EC and its employees. The Court is expected to issue decisions in less than a year, which is an improvement over the average decision time in the Court of Justice, of 17-24 months. After 2 years of the Court of First Instance's operation, the EC Council will consider whether to add antidumping cases to the Court's jurisdiction. Common Market Reporter (Commerce Clearing House (CCH)) No. 647, Jan. 4, 1990, p. 5.6.

a EC Commission President Jacques Delors, Address to the European Parliament presenting the Commission's program for 1990,Jan. 9, 1990, (hereinafter "Delors Address').

[7] The EFTA member states are Sweden, Norway, Finland, Austria, Switzerland, and Iceland. Under a 1972 free-trade agreement, industrial goods are traded duty free between the EC and EFTA countries.

agreements provide for the elimination of many of the member-state quotas imposed on exports from these countries. Such quotas would be unenforceable in the integrated market. The following section examines the internal market process in the context of the EC's external relations.

Enlargement

External events, including the rapid changes occurring in Eastern Europe, may have a significant influence on the EC single-market process in coming months. These events have added strength to calls for a "widening" of the EC integration process by bringing in new members, including Eastern European countries.[8] One idea that has em is a Europe of concentric circles, in which the EC would form the inner ring, the six members of EFTA the middle ring, and the Eastern European countries the outer ring.[9] Others caution that for European integration to succeed, emphasis should be placed on "deepening" the current EC 1992 process by intensifying cooperation among the existing 12 EC members in all spheres— not just in economics, but in political, social, monetary, and defense areas as well° Finally, with efforts at eventual German reunification moving along swiftly, EC officials also point to the need for firmly anchoring West Germany in the European Community.[11]

Nevertheless, it is expected that applications for EC membership will rise over the next several years. As EC integration approaches the 1992 deadline, many countries with historic ties to the EC are concerned that they may miss opportunities that full membership in the Community might hold. This concern has caused them to reassess previous decisions to limit their associations with the EC to free trade or other cooperative agreements that enabled them to benefit from liberalized trade while maintaining a greater degree of independence and sovereignty than would be possible by full membership in the EC. Turkey and Austria have officially applied for membership in the EC, and Morocco, Cyprus, and Malta have not hidden their desire to eventually become members of the Community.[12] There have also been indications that Sweden, Norway, and even East Germany and Hungary are potential members of an enlarged EC.[13]

An opinion of the. EC Commission on December 16, 1989, which postponed action on Turkeys 1987 application for membership in the EC, made it clear that further consideration of other applications for membership would also be ruled out until at least 1993.[14] EC Officials argue that the EC 92 process must be complete before further "widening" of the EC can occur.[15]

In its opinion on Turkey, the EC Commission indicated that although that country's request for membership could not be acted on at the present time, the EC would pursue strengthened trade and economic relations with Turkey in the interim."• However, according to some EC experts, remaining political and economic obstacles make it unlikely that Turkish membership in the EC will come before the first decade of the next century.'? Not least of these difficulties are wide structural disparities between the still highly agrarian economy of Turkey and the much more industrialized economies of EC member states, as well as Turkey's historical conflict with Greece and its continued military presence in northern Cyprus.

A number of EC officials believe Austria—which formally applied for full EC membership on July 17,1989[18] — is a more promising candidate. On October 21, 1989, French Minister for External Trade Jean Marie-Rausch, stated that "accession to the EEC by Austria . . would be 'desirable and in any case, possible' after 1993."[19] Austrian Chancellor Franz Vranitsky has vowed to push his country's application for membership to the EC forward, "so that it does not take second place to eventual moves to integrate" other Eastern European countries into the EC.[20] The largest stumbling block to full Austrian membership in the EC is its 1955 commitment to "perpetual neutrality " the price required by the four victorious powers (led by the Soviet Union) in return for Austria's national sovereignty.[21] According to some, the price

• "Westward Ho," *The Economist,* Nov. 25, 1989, p. 58; and David Buchan, 'Delors Stresses implications of Expanding EC," Financial *Times,* Dec. 1, 1989.

• Ibid. Also see Reginald Dale, 'EC Sees a Chance To Be 'Magnet' to East,' *International Herald* Tribune, Mar. 11 1989. 'Magn Stresses Implications,' and David Buchan and David Goodhart, 'Bonn strains at the Brussels Anchor,' *Financial Times, Oct.* V', 1989, p. 2.

" USITC staff interview with U.S. Embassy officials in Paris, Dec. 21, 1989.

" Maltese Prime Minister Edward Adami said his Government expected to submit a formal application for membership in the Community in 1990. See Malta Expects to Apply to Join EC Next Year,' *Europe-1991 The Report on the Single European Market,* Dec. 6, 1989, p. 457; and 'EEC/Mediterranean Countries: Towards a New Mediterranean Policy,' *European Report, Nov.* 1, 1990, p. 5.8 and 5-9.

"'EEC Enlargement: French Minister Says Accession of Austria, Hungary, and Sweden Is Possible,' *European Report,* Oct. 25, 1989, p. 1-1.

" 'Turkey Commission Issues Negative Opinion On Community Membership,' European *Report,* Dec. 18, 1989, p. 1-5.

sG Corrado Pirzio-Biroli, Acting Head of the EC Delegation in Washington, DC, speaking at 'Strategic Issues of the 1990s; a conference sponsored by the International Club and the Center for Strategic and International Studies, Jan. 19, 1990, (hereinafter "Pirzio-Biroli speech).

'•'Turli.7: Commission Issues Negative Opinion,' p._1-3.

"'We Must Have Lunch Someday,' *The Economist,Nov.* 11, 1989, p.62.

" 'Austria Files Request for Membership in EC, Other Countries Also Ex to Submit Bids,' *International Trade Reporter,* vol. 6, Ju y 1989, p. 963.

'• 'EEC Enlargement,' Oct. 21, 1989, p. 1-1.

"'EEC Enlangement: Fears that Austrian Membership Application WillTake Second Place to East Geri:luny,' *barroom Report,* Jan. 11, 1990, p. 1-2.

si Bureau of National Affaris (BNA), 'Austria Wants to Join the Community,' *1992• The External Impact of European Unification,* July 21, 1989, p. 4.

required by the four victorious powers (led by the Soviet Union) in return for Austria's eventual amalgamation of the EC states into a political union with a common foreign and security r•olicy does not go well with Austrian neutrality the recent developments in East-West relations may provide Austria with more flexibility in resolving the neutrality issue.

Despite a declaration by the Swedishprime minister in 1988 that full membership in the EC was not possible if it involved foreign policy and defense coordination, political pressures from Swedish business could force the issue in the near future. The Federation of SWedish Industries is concerned that any drift by Sweden's EFTA partners toward EC membership could only tip the internal market balance further against Sweden, by weakening its labor-intensive industries.[23] In addition, the federation estimated that only full membership in the EC could guarantee a complete reduction in frontier costs for Swedish goods and allow its industry to remain competitive.

Containing even broader implications for future enlargement of the EC was a declaration by EC Commission President, Jacques Delors, on January 6, 1990, that East Germany could be a potential EC member state if it became a pluralistic democracy, with an open economy.[24] This declaration followed a statement by the French Minister for External Trade in October 1989, that "not before, but after 1993 the EEC could surely count on ... Hungary ... to join the Community."[28] However, the President indicated that to join the EC, any countries desiring full membership would have to have free-market economies. He stated that he hoped Hungary could make such a transition within 4 or 5 years.[28]

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

Since June 1988, when the EC and the Council for Mutual Economic Assistance (CMEA)[27] signed a joint declaration of mutual recognition, trade and economic relations between the EC and these countries have intensified 2B The Soviet Union and all of the Eastern European nations except Romania established formal diplomatic ties with the EC soon after.[29] The desire of these countries to improve economic links with Europe was evident. Moreover, as wide-ranging reforms swept the Soviet Union and Eastern Europe, these countries looked to the EC, as well as other Western nations, to reinforce the process of political reform and economic liberalization and to establish greater participation in European and world economic affairs. During 1988 and 1989, the EC signed trade agreements with Hungary, Czechoslovakia, Poland, and the U.S.S.R. The EC is currently negotiating agreements with East Germany and Bulgaria and has plans to expand existing bilateral accords with Czechoslovakia and Romania. Negotiation of these agreements is scheduled to be completed during the first half of 1990.[38]

Romania was the first nation among Eastern Europe and the U.S.S.R. to sign a trade agreement with the EC, in 1980. Only Romania was interested in accepting the EC's offer to negotiate a bilateral agreement, since other European CMEA members (including the Soviet Union) insisted that only CMEA and not individual East European countries or the U.S.S.R. could negotiate agreements with the EC 3t

However, as the reality of the EC's plan to integrate more fully was recognized by the Soviet and East European Governments, these nations began to actively pursue bilateral agreements with the EC to ensure continued or improved access to EC markets.[32] Although EC member countries conduct only about 7 percent of their total trade with the seven European CMEA countries, the EC is the major trading partner for these countries among western industrial nations.[33] In particular, the EC's increasing use since the mid-1970s of voluntary export restraints, antidumping measures, and other nontariff restrictions sparked fears among the European CEMA countries that the EC would impose EC-wide restrictions under the single market plan in place of member-state barriers they currently faced. This concern remained the central focus of their bilateral talks with the EC.[34] However, as economic reform spread across Eastern Europe and the Soviet Union, the desire to strengthen economic ties on a broader basis with the EC also grew.

In general, the EC has supported strengthened economic links with the European CMEA because of its long-term potential as a large market for EC exports.[35] In the EC's view, political factors have historically limited what should have been a natural growth in East-West trade.[38] The EC's overall policy towards Eastern Europe contains both economic and political elements; it seeks to —

--*A gsburger Allgemeine,* July 18, 1989.

[23] 'EEC/Sweden: Industry Sees Swedish Membership as Only Answer to the Single Market; *European Report,* May 5, 1989, p. 5-2.

[2]."EEC Enlargement; Jan. 11, 1990, p. 1.2.

as "EEC Enlargement,' Oct. 25, 1989, p. 1.1.

" Ibid.

" CMEA (also abbreviated as COMECON) consists of the Soviet Union, Czechoslovakia, Hungary, Poland, Romania, East Germany, Bulgaria, Mongolia, Cuba, and Vietnam.

[2]'Until 1988, the U.S.S.R. rejected the EC's legitimacy. See Commission EC, "EC. and COMECON Establish Official Relations," *European Community News,* June 24, 1988.

" Romania plans to establish diplomatic relations with the EC shortly. See EC Commission, "EC-Eastern Europe Relations, European Report, Jan. 19, 1990.

[3°] EC Commission, Telex, "Conseil Affaires Generales; Feb. 5, 1990.

[a1] 'Special Feature: EEC Relations with the Countries of Eastern Europe; *European Report,* Dec. 20, 1989.

[32] Congressional Research Service, 'European Community: Issues Raised by 1992 Integration," May 31, 1989, pp. M-82.

as Ibid.

[3'] Ibid.

as Ibid.

as Ibid.

> ***associate them more closely with the Community through trade, cooperation and*** appropriate *financial* ***support, the balance between these three elements being determined by the degree of progress made by each country towards open political and economic systems. As democracy and economic liberalisation take root, the agreements can be applied flexibly and further developed to provide for a form of association corresponding with aspirations in east Europe and the Community's own interest.***[37]

Status of Trade and Economic Cooperation Agreements

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

Hungary

The EC-Hungary agreement on trade, commercial, and economic cooperation was the first extensive bilateral trade agreement concluded by the EC with a CMEA country.[38] It was signed on September 26, 1988, and entered into effect on December 1, 1988, for a 10-year period. The agreement covers trade in both industrial and agricultural products, with a few exceptions.[39] Each country agreed to grant the other most-favored-nation (MFN) status. Key provisions addressing Hungary's major concern — the removal of discriminatory national quantitative restrictions (QRs) — provided for their elimination over a 7-year period but were rewritten in November in the context of the PHARE Action Programme." Under the PHARE plan, the EC agreed to speed up the timeframe and eliminate all specific QRs on imports from Hungary from January 1, 1990, and to suspend nonspecific QRs (i.e., those that apply to other third countries) for a period of 1 year from the same date." The 1988 agreement also calls for improved market access for C products into Hungary and for economic cooperation aimed at opening up new sources of supply and new markets in the following sectors: industry, mining, agriculture, energy, research, transport, tourism, and environmental protection.

Czechoslovakia

Although the EC-Czechoslovakia trade agreement was negotiated at approximately the same time as that between Hungary and the EC,[42] it is more limited in scope because it covers only trade in industrial products. The 4-year accord provides for the EC to eliminate or suspend member-state QRs directed at Czechoslovak imports, but no timeframe is specified. In return, Czechoslovakia agrees to encourage imports from the EC.[43]

Because of the limited scope of the agreement, in December Czechoslovak officials requested that it be expanded to provide for the elimination of national QRs and the development of commercial and economic cooperation, similar to the agreements reached by the EC with Hungary, Poland, and the U.S.S.R. Informal discussions between the two parties are now taking place to this end."

Poland

The bilateral 5-year trade, commercial, and economic cooperation agreement signed with Poland on September 19, 1989, and implemented on December 1, 1989, is similar to that concluded with Hungary 1 year earlier." Like the pact with Hungary, this agreement covers trade in industrial and agricultural goods, with certain exceptions." It also grants MFN status to each party. The elimination of national *QRs directed* at Polish exports was Poland's primary goal throughout negotiations. A November agreement in the context of the PHARE program accelerated the original 5-year timetable established for the elimination of national QRs. The EC agreed to eliminate specific

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[37] EC Commission, "Relations Between the Community and the Countries of East Europe: Implications of Recent Developments in the German Democratic Republic, Czechoslovakia, Bulgaria and Romania," January 1990, p. 1.

[38] As noted above, Romania was the first European CMEA country to negotiate a bilateral trade agreement with the EC, although it was limited in scope. *Proposal fora Council Derision on the conclusion of an agreement on trade and commercial and economic cooperation between the European Economic Community and the Hungarian People's Republic,* Com (88) 568 final, Oct. 12, 1588.

[39] The EC agreements with both Hungary and Poland (see below) do not apply to products covered by the treaty establishing the European Coal and Steel Community, nor to textile products or agricultural products already subject to existing agreements.

[40] PI-ME—Poland Hungary Aid for Restructuring of Economies—is a special program established to coordinate economic aid to Hungary and Poland from the Group of 24 industrialized countries. The program was initiated by the Group of Seven highly industrialized countries at the Paris Economic Summit in July 1989. The EC is coordinator of the operation.

[41] The PHARE plan alsojranted Hungary access to the EC's Generalized System of Preferences (GSP) program for 1990. The GSP benefits will cover textiles and agricultural products, *as* well as industrial goods. See EC Commission, 'EC-Eastern Europe Relations, Jan. 19,1990; and "Special Feature: EEC Relations with the Countries of Eastern Europe," *European Report, Dec.* 20, 1989.

[42] The agreement was signed on Dec. 19, 1988, and entered into force on Apr. 1, 1989.

[43] For further details, see *Agreement between the European Economic Community and the Czechoslovak Socialist Republic on Trade in Industrial Products, Official Journal of the European Communities* (0J), No. C 7, (Oct 1, 1988) pp. 5-19.

[44] EC Commission, "Relations Between the Community and the Countries of East Europe; p. 3 and Annex 1.

[45] *Agreement between the European Economic Community and the Polish People's Republic on Trade and Commercial and Economic Cooperation, 01* No. L 339 (Nov. 22, 1989).

[46] "The exceptions are the same as those under the EC-Hungary agreement (see above); however, unlike the accord with Hungary, the pact with Poland calls for both parties to grant each other trade concessions in the form of reduced customs duties and levies on certain agricultural imports.

QRs starting January 1, 1990. The EC also agreed under PHARE to suspend nonspecific QRs applied to Poland and to extend the benefits of the EC's Generalized System of Preferences (GSP) to Poland for 1990.[47] Like the EC-Hungary accord, the 1989 agreement with Poland also seeks to give EC products greater access to the Polish market and to foster economic cooperation and the expansion of trade, particularly in the following sectors: industry, agriculture, mining, energy, transport, tourism, telecommunications, environmental protection, health, research, training, standards, and statistics.

The Soviet Union

A new relationship between the EC and the U.S.S.R. was cemented on December 18, 1989, with the signing of their first bilateral trade and economic cooperation agreement.[48] The 10-year accord covers trade in all products except those covered by the treaty establishing the European Coal and Steel Community and the EC-U.S.S.R. textile treaty.[49] The accord grants MFN status to each party. Although the agreement is similar to those signed with Hungary and Poland, its terms are less generous in the area of QRs. Under the accord, the EC will eliminate specific QRs imposed on Soviet industrial and raw material exports to the EC by 1995. In return, the U.S.S.R. will grant nondiscriminatory treatment to EC exports with respect to QRs, licensing, and the allocation of scarce foreign-currency resources. The Soviet Union is also obliged to facilitate the operations of EC businesspeople and develop a suitable climate for investment in that country.

In the area of economic cooperation, an extensive number of sectors have been targeted, thus making this EC treaty the broadest negotiated to date with a European CMEA nation. These sectors include industry, agriculture and food, raw materials and mining, transport, tourism, the environment, management of natural resources, energy, science and technology, financial services, professional training, statistics, and standardization. For the first time, this agreement covers nuclear energy, nuclear safety, and nuclear research for civilian purposes.

Romania

Although Romania was the first European CMEA nation to conclude a trade agreement with the EC, it was limited in- scope.[58] The initial 5-year agreement was extended, but efforts to expand it broke down in 1987 and were finally suspended in April 1989 due to Romania's failure to conform with its obligations under the 1980 pact and the deterioration of its human rights record. In response to the political situation in Romania in December, the EC froze the 1980 agreement and proposed the withdrawal of GSP benefits.[51] However, because of the overthrow of the Ceaucescu regime, the EC plans to rescind the restrictions imposed in December and begin negotiations to establish an expanded bilateral agreement, similar to those concluded with Hungary, Poland, and the U.S.S.R.[52]

Bulgaria

In February 1989, the EC Council authorized the EC Commission to open negotiations with both Bulgaria and Poland for the conclusion of bilateral trade and economic cooperation agreements. Although the EC-Poland accord progressed smoothly, negotiations with Bulgaria were discontinued during the summer, following EC concern over the Bulgarian human rights situation. Formal negotiations are expected to resume shortly. The EC Commission anticipates that one final round of negotiations should be sufficient to reach an agreement[53]

East Germany

In December, the Council granted the EC Commission a mandate to negotiate a trade and cooperation agreement with East Germany. Reportedly, the EC-East Germany accord would be similar to those concluded with Hungary and Poland. It would span 10 years, phase out member-state QRs on East German exports by 1995, and would provide for cooperation in a wide range of sectors. The agreement is not likely to affect the special trade arrangements currently existing between the two Germanies.[54]

EC Sectoral Agreements With East European Countries and the U.S.S.R.

Some of the Eastern European countries and the U.S.S.R. are party to sectoral agreements with the

" Similar to those for Hungary, GSP benefits will cover textiles and agricultural products, in addition to industrial

gwcj: Agreement Between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on Trade and Commercial and Economic Co-operation.

[46] In December 1989, the EC and the Soviet Union initialed a new textiles agreement applied provisionally from Jan. 1, 1990.

[86] The EC-Romanian trade agreement, which covered industrial products only, was signed in 1980 and entered into force in 1981 for a period of 5 years. It committed the EC to making efforts to liberalize existing restrictions and committed Romania to increasing imports from the EC. Romania was also obliged under the agreement to provide certain economic information to the EC and to take a flexible approach to compensation trade. See EC Commission, 'Relations between the Community and the Countries of East Europe," annex, p. 3.

" Actually, the decision to suspend GSP benefits was never implemented. EC Commission, "European Commission Position on the Situation in Romania: Statement by Vice President Frans Andriessen, Press Release, Dec. 20, 1989.

[52] EC Commission, "EC-Eastern Europe Relations,' p. 1 and "Relations Between the Community and tlie countries of East Europe," p. 4 and annex pp. 3-4.

EC Commission, "Relations Between the Community and the Countries of East Europe;. 3 and annex 2.

°'"EC/East Germany," Eurobrief, vol. Z No. 9, Jan. 12, 1990, p.111.

EC covering steel, textiles, agriculturalproducts, and, in the near future, fisheries.[55] Self-restraint arrangements covering steel are currently in force with Bulgaria, Czechoslovakia, Hungary, Poland, and Romania. The EC Commission recently proposed that these quotas on imported steel from these countries be increased by 18 percent[56] The EC has concluded textile agreements with Bulgaria (outside the Multifiber Arrangement or MFA), Czechoslovakia (MFA), Hungary (MFA), Poland (MFA), Romania (MFA), and the U.S.S.R.[57] A new textile agreement with the U.S.S.R., in force as of January 1, 1990, grants Soviet textiles greater access to the EC market than did the previous arrangement[58] The EC also plans to open negotiations with East Germany on textile trade.

The Future Relationship

The future relationship between the European CMEA countries and the EC will depend on the level of political and economic reforms they embrace. The network of trade and cooperation agreements is a first step towards creating normal commercial and economic relations. As the reform process continues, other forms of association are being explored. The EC Commission is currently examining the possibility of concluding association agreementssa with Eastern European cotuitries.e[0] In a preliminary assessment, the EC Commission listed the principle elements of a common framework for association: trade liberalization, improved cooperation, technical assistance and financial support, joint infrastructure projects, political dialog, and information exchange and cultural cooperation. All of these elements would require adjustment in response to the needs, capacities, and progress of reforms of each country.*[1]

The EC Commission noted that efforts to negotiate association agreements "should be distinguished from any commitment concerning the question of accession (to the Eq."[62] Because the current tendency in the EC is towards deepening rather than widening, the EC Commission does not anticipate that Eastern European countries (given that they meet the political and economic criteria) will become EC members until after 1992. The one exception is East Germany.° The process of German reunification has committed the EC Commission to "paying particular attention to developments in the German Democratic Republic:[164] Should the reform process in East Germany progress swiftly, that country could accede to the Community prior to any other new members.e[5]

Relationship to EC 1992

The historic restructuring now taking place in Eastern Europe and the Soviet Union will have a significant impact on the single market process, although the nature of the effect is not yet clear. Many are of the view that "if Europe is going to be subject to sweeping, pervasive change, it is better first to complete and solidify the unification of the Community, political as well as economic, for its own protection and to give it as influential a voice as possible in whatever new European order may evolve:[1]w Jacques Delors, President of the EC Commission, supports this view and calls for the acceleration of the integration process to act as an anchor for a new Europe and a magnetic pole for Eastern European countries.[67] Moreover, according to this viewpoint, it is important to firmly secure West Germany into a strong EC to minimize fears of a powerful, united "Deutschland uber glee's

On the other hand, others believe that events in the European CMEA countries are diverting limited EC resources away from completing the internal market Some believe that the EC 92 process should be intentionally slowed down so that the EC can respond more flexibly to the changes that occur in these nation.s.[69] However, EC officials contend that this viewpoint is in the minority and that implementation of the single market plan will speed up in direct response to developments in Eastern Europe and the Soviet Union.[70] Indeed, the 12

" The EC maintains self-restraint agreements covering agricultural products with most East European members of CMEA. For example, the EC has an agreement with East Germany covering trade in sheep meat and goat meat. In the fisheries sector, negotiations are currently taking place with the Soviet Union and East Germany and are planned with Poland. See EC Commission, "EC-Eastern Europe Relations,' P.S.

" 'Steel: Commission Proposes to Raise Imports from East *European Report, Jan.* 19, 1990, p. 5-7.

Eurc EC Commission, 'EC-Eastern Europe Relations,' p. 5 and International Monetary Fund, *Issues and Demi- opments in International Trade Policy,* Occasional Paper No. 63, December 1988,p. 92.

'"EEC/USSR: Textile Trade Pact Initialled,' *Europa:it Report,* Dec. 18, 1989, p.

as Association agreements are negotiated on the basis of art. 238 of the Treaty of Rome.

" During the first half of 1990, the EC Commission plans to forward to the EC Council a communication develo ute concept of association as applied to the countries of Europe.

" EC Commission, 'The Development of the Community's Relations With the Countries of Central and Eastern Europe," *Communication from the Commission to the Council and the Parliament, Sec (90)* 196, Feb. 1, 1990.

as Ibid.

Pirzio•Biroli speech.

" EC Commission, `Programme of the Commission for 1990,' p. 26.

as Pirzio-Biroli speech. Furthermore, some suggest that if East Germany becomes part of an enlarged Federal Republic of Germany, East Germany will become a de facto member of the EC. Revision of the Treaty of Rome wouldprobably be required, however. See 'Mx EC and East Germany: Growing Pains,' *The Economist,* Feb. 10, 1990.

" 'Perestroika in East EuroppeePlus or Minus for EC 19922" *EuruMarket Digest,* Novem 1989, p. 1.

" 'Undeterred by East European Upheaval, Delors Calls for Stronger Community,' 1992— *The Impact of* European *Unification,* Jan. 26, 1990, p. 1.

Europ ean Commission, 'Europe: The Challenges of Change, Extracts from the speech by Sir Leon Britten, Vice President of the European Commission, to Sixth Formers of Leighton Park School, Reading, [United Kingdom,' Jan. 19, 1990; pass Release, Jan. 19, 1990.

as 'Perestroika in East Europe; p. 1.

7° For example, Corrado Pirzio-Biroli, D eputy head of the EC Delegation in Washington, DC, dKfused this view. See BNA, 'In Brief,' 1992—*17te External Impact of European Unification,* Dec. 1, 1989, p. 7.

member states agreed at the Strasbourg European Council in December that "It is in the interest of all European States that the Community should become stronger and accelerate its progress towards European Union."[71]

Patterns of Trade

The successful reordering of Europe, which involves the removal of barriers to trade, should foster increased intra-European trade in the long run. In principle, non-EC countries in Europe—including both the European CMEA and EFTA — should benefit from the economic growth expected to result from a more integrated EC market, particularly since the Community is in the process of lowering external barriers directed at these countries. The establishment of the customs union within the EC during the 1960s resulted in an increase in EC trade with the rest of the world, but trade expansion was only guaranteed through U.S. and EC cooperation at the Kennedy Round of multilateral trade negotiations.[72]

The potential for trade expansion between the EC and the European CMEA appears significant Even West Germany, with its traditional links to Eastern Europe, now supplies to the European CMEA nations with a population of about 424 million only percent of the amount it sells to the 17 EC and EFTA countries with a population of 300 million.[73] At the same time, technically developed industrialized European CMEA countries could gain market share in the EC, if only by reducing transport costs on goods now imported from the newly industrialized Asian nations (NICs).[74] Indeed, a reunited Germany could offer the benefits of both technological know-how and inexpensive manpower, combined with minimal transportation costs, to replace Japan and the NICs as a source of exports to the rest of Europe.[75]

However, in the short run certain conditions will limit the expansion of trade between the EC and European CMEA. First, certain of the European CMEA countries lack the ability to manufacture and distribute products that are competitive in EC markets. Also, EC exports to these countries would be limited by their low purchasing power and the nonconvertibility of their currencies. Only after European CMEA exports expand will hard currency become more available.

Nonetheless, the potential for economic development in Eastern Europe and the U.S.S.R. is vast. In the long run, if reforms advance and the environment for investors improves, East-West trade will increase. The EC and European CMEA, together with the EFTA nations, will expand trade, perhaps at the expense of non-European countries, should trade diversion occur. U.S. firms are already tapping the Eastern European market, which could also serve as a back door to the EC market. However, U.S. companies are not alone. Japanese firms are currently studying the possibility of setting up export bases in Eastern Europe and the U.S.SR. to access the post-1992 EC market The NICs are similarly building a presence in Eastern Europe. In the long term, as third countries establish bases in the European CMEA, their export capabilities will increase and contribute to a more competitive environment throughout Europe.

The U.S. administration is hoping that pressure from the Eastern European countries will encourage the EC to liberalize trade more quickly than originally envisioned under the 1992 program. Some examples are the moving forward of dates to eliminate national quotas on certain Eastern European exports, and European CMEA criticism of the EC's protectionist agricultural system. According to the USTR, "Our new allies in free trade may help lceep the EC honestre

The major concern of U.S. companies now is that strict U.S. rules governing export controls and technology transfer will limit their access not only to European CMEA markets, but to the EC market itself. Traditionally West E pean governments have supported a less restrictive export-control regime than the United States. Not only could U.S. firms lose potential markets in the European CMEA, but EC firms could reduce their reliance on U.S. components in defense and high-technology products if the U.S. Government does not liberalize its policy with regard to reexports of U.S.-origin goods and technologies??

Finally, there is growing concern among EC member states that increased competition from the European CMEA will adversely affect Community producers, particularly in the poorer regions where there are strong similarities in production-[7]s EC producers of textiles, steel, and agricultural products have voiced concern that European CMEA firms will become formidable competitors if the Community continues to grant them more open access to these sensitive EC markets.[79] Spain and

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'Conclusions of the Presidency, European Council, Strasbourg, Dec. 8-9,1989; *European Community News,* No. 41, Dec. 11, 1989,

" Horst Tomann, "EC Internal Market: An Opportunity for CMEA Countries?' *Interaxmomics,* Novembed ber 1989, p. 306.

[73] Holger Schmieding, "A Concept for a Pan-European Economic Integration; *European Affairs,* p. 38.

" Bettina Hurni, "European Integration: West and East,' *Interecorwmics,* July/August 1989, p.179

"However, it is also possible that the increasing presence of firms from Japan and the NICs in Eastern Euroe would accomplish the same objective. 'Germanys *May* Compete With Industrialized Asia,' *Journal of Commerce,* Feb. 8, 1990.

"Testimony of Peter Allgeier, Assistant USTR for Europe and the Mediterranean, before the House Foreign Affairs Committee, Feb. 20, 1990.

"For more information about the technology transfer issue, see *Europe 1992: Report of the Advisory Committee for Trade Policy and Negotiations,* November 1989, pp. 33-41, or Congressional Research Service, 'European Community: Issues Raised by 1992 Integration,' May 31, 1989, pp. 82-83.

" BNA, 'Eastern Europe: EC Mulls Over Outlook for Southern European States, 1992— *The External Impact of European Unification,* Jan. 26, 1990, p. 10.

'Steel: European Steelmakers Oppose Opening of EEC Borders to East European Steel," Eu *n Report,* Jan. 13, 1990, 5-1 and 'W. Europeans Fear ocks of EC Charity,' *Journal of Commerce,* lan. 26, 1990.

Portugal in particular fear that economic rapprochement with Eastern Europe and the Soviet Union could limit their economic growth and erode their share of EC markets as technical advances and modernized plants are realized as a result of aid and foreign investment [80] Evidence already suggests that investment projects destined for southern EC member states have been diverted to Eastern Europe, where wages fall below even the lowest EC labor rates, found in Portugal. [81] Moreover, East European workers are fairly well educated and their factories lie close to the EC's major markets. Should the EC's own member states suffer from stiffer competition, the EC could be forced to respond by erecting protectionist barriers to third-country imports. European CMEA countries could be particularly hurt, since traditionally their exports have induced a large number of EC antidumping complaints,*

EFTA

The EFTA nations constitute a larger trading partner of the EC than do Japan and the United States combined. Consequently, the EFTA countries are concerned about any possible results from EC unification that would disadvantage their companies in relation to EC firms. Recent events, however, have pointed toward the establishment of a more structured partnership, involving closer EC-EFTA ties.

Attention on a closer EC-EFTA relationship, based on the notion of a European Economic Sace, first gained momentum at a meeting of EC and EFTA ministers in Luxembourg in April 1984. In the resulting Luxembourg Declaration, the ministers stressed the need for increased EC-EFTA cooperation in such fields as harmonization of standards; the simplification of border formalities and rules of origin; state aids and industrial subsidies; public procurement; and social issues such as education and the environments*

Back in 1984, trade barriers between the member states were still pervasive. For EFTA firms, the modest steps toward cooperation expressed in the Luxembourg, Declaration offered the prospect of increasing their access to individual member-state markets to roughly the level already enjoyed by firms exporting from one EC country to another. However, the emergence of the single market program changed the situation dramatically.

m EC and EFTA firms had been enjoying fairly equal access to EC markets, completion of the single market would integrate EC member states more closely among themselves than with EFTA. [84]

In a speech to the EC Parliament in January 1989, EC Commission president Jacques Delors suggested that it was time to review whether the EC and EFTA were headed in the right direction or whether a "new, more structured partnership with common decision making and administrative institutions were needed.mEis challenge was taken up almost immediately at an EFTA summit held in Oslo, Norway in March 1989. The resulting Oslo Declaration was worded to cover significant differences of view.ss Norway proposed movement towards a full customs union, and Switzerland was reluctant to relinquish any measure of national sovereignty However, despite such differences, the EFTA heads of state affirmed their willingness to explore a means of achieving a more structured partnership with the EC, and to strengthen EFTA's decisionmaking process and collective negotiating capacity a1

EC and EFTA foreign ministers agreed in a joint declaration on December 19, 1989, to begin formal negotiations aimed at further economic integration and eventually at creating the EES envisioned in the Luxembourg Declaraticm.ss Exploratory talks will take place in early 1990 before the launching of full negotiations, which will require a negotiating mandate from the Council of Foreign Ministers. Such a mandate is not expected before May 1990. [80] The objective of the proposed negotiations is "to enable to the greatest possible extent, the free movement of goods, persons, services and capital between the 18 EEC and EFTA countries: [10] In the negotiations, the EC will be asking EFTA countries to accept many of the EC rules on competition, public procurement, and technical standards. However, the major tasks will be to determine EFTA's level of participation in the decisionmaking process and to agree to some form of tribunal to rule on disputes arising out of EES regulations.ss One of

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[80] `European Community: Eyes East; *The Economist, Jan.* 6, 1990, p. 50.

[81] One example is General Electric's decision to move a new plant from Spain to Hungary. Daily announcements of West German investments andjoint ventures in East Germany are also of prime concern. See BNA, "Eastern Europe: EC Mulls Over Outlook for Southern n States," ix 10.

as In the years 1980-87, East^European producers were six times as likely, in terms of the import values concerned, to be harassed by EC antidumping measures than were suppliers from elsewhere. See Schmiedin& 'A Concept for a Pan-European Economic Integration,' p. 34.

• EFTA, Annex 1 to *Report of the Consultative Committee, 59th Meeting, Geneva, a-t. 11-12, 1988, and 17th Joint Meeting Between Delegations of the Consultative Committee and the EC01101ffiC and Social Committees of the EC, Berlin,* Oct *13-14, 1988,* EFTNCSC 13/88, Sept 2, 1988.

" Neil Gibbs, J.M. Didier & Associates S.C., 'EFTA and the Single Market' *1992: The External Impact of European Unification,* Aug. 11, 1989.

6. Ibid.

" These difficulties are outlined more fully in Bengt Jonsson, 'Will EFTA Be Within the Single *Market,' EIU* Europoin Trends, No. 3, 1989.

Historically, EFTA lacks the legal basis and institutional capacity of the EC to act on behalf olio members in external commercial policy matters. Each EFTA country has traditionally dealt bilaterally with the EC. Magnus Wijkman, "Patterns of Trade in the European Economic Space," *International Spectator,* January-March 1969, pp. 30-38.

•• 'EC EFTA Relations: Institutional Hurdles Loom in Creating Economic Space 1992— *The External Impact* of EurornUnifkation, Jan:120990, pp. 2 and 3.

EEC/Sweden: Carlsson Pushes for Fast Progress on Agreermt," Europlr.Vtsort Jan. 16, 1:90, 1or 5d unch of EEC Negotiations,' *European Report, Dec.* 18, 1989, p. 5-8.

" David Buchan, "EC and EFTA Agree Timetable For Treaty Negotiations, *Financial Tina,* Dec. 20, 1989, p. 16.

the major obstacles facing EC/EFTA negotiators is finding language acceptable to both parties on the institutional links that are necessary for the creation of the EES. One important option to be examined is die est blislunent of parallel courts for the surveillance and enforcement of the agreement [92] Another possibility that has been discussed is the creation of a parallel Council of Ministers that would group the EC's 12 member countries with the chairman of the 6 EFTA member countries to improve and strengthen the decisionmaking process.[93] Although the EFTA is pushing to complete the talks by the end of 1990, EC officials have indicated that the only important date for completing the talks is January 1, 1993, the date of the planned completion of EC integration.

Certain EFTA countries appear significantly more ready than others to establish closer links with the EC. For most EFTA countries, the principal objections to full Community membership are the EC's explicit long-term commitment to political union.[94] This objection is especially held by Switzerland and Finland, both of which are fairly strongly committed to a policy of neutrality in international affairs. However, these objections carry less weight in countries like Norway, Sweden, and Austria despite the fact that Sweden and Austria also have a strong interest in political neutrality...

Lome

The more than sixty ACP nations granted trade EV=n ces by the EC under a series of agreements as the Lome Convention.. are concerned that completion of the internal market may jeopardize special access they currently enjoy with respect to EC banana, sugar, rice, and rum markets. At least some ACP officials have expressed their beliefs that the two basic principles of Lome's development policy—trade and aid—are being threatened by EC integration..? They have also criticized the EC's policies to extend trade preferences to other developing countries under the GSP and under the tropical fruits proposal in the Uruguay Round.[98] A Caribbean official went one step further and said the EC should compensate ACP countries directly for losses that will occur as their exports are diverted away from a more competitive EC after 1992.[9]

After extremely difficult negotiations by EC and ACP officials, a Fourth Lome Convention was signed on December 15, 1989.[100] The convention will take effect on March 30, 1990. Some of the major achievements of Lome IV were a 10-year (instead of a 5-year) term; EC support for structural adjustments; a 5-year renewable financial aid package; the replacement of certain export stabilization and loan programs with outright grants; the renewal of the banana, rum, and rice regimes; improved access to the EC for ACP strawberries, yams, tinned pears, mixed dried fruit, and bran; more flexible rules of origin; and the inclusion of Haiti, the Dominican Republic, and Namibia (after its independence) in the convention.[101]

Of particular concern to ACP countries was the renewal of the rum and banana protocols. Preferential access to the EC's sugar and rice markets are covered by EC regimes within the framework of the Lome Convention and are fully compatible with the single internal market. However, the regimes for bananas and rum are organized on a national basis and therefore would not be compatible with the single market goal of free circulation of goods among the 12 member states.

The Rum Protocol has provided the ACP countries with duty-free access for rum, but only within limits of a volu ng rota, above which fixed duties have been imposed. The new protocol on rum under Lome IV provides for a rapid increase in the quota beginning in 1993 and its abolition in 1995.[102]

The EC market for bananas has been organized primarily on a national basis, with countries such as the United Kingdom, France, and Italy ensuring preferential access to traditional suppliers. Under the Banana Protocol, the EC has authorized these countries to take various measures to protect ACP suppliers of more expensive Caribbean bananas from competing bananas from the so-called dollar zones in Latin and Central America.[103] Under the new Lome agreement, the protocol on bananas has been renewed as it stood before but has been supplemented with a declaration that the advantages of traditional suppliers would be maintained once the internal market for bananas was completed.

" "EEC/EFTA: High Level Contact Group Recommends Negotiations, But Probkms Remain,' European *Report,* Oct. 23, 1989, p. 5.5 and 'EC/EFTA," *Eurobrief, vol 2 No.* 10, Jan. 26, 1990,1). 122.

" However, because EC-EFTA talks are still at an early stage, more specific details have not been disclosed on these institutional linkages. 'EC-EFTA Relations: Officials Tett Framework for Negotiating Future Tms,' *1992 — The External Impact of Europeaniinificaticnt,* Nov. 3, 1989, fa l et,

"'Neil Gibbs and others, T,ffA and the Single p.11.

For more information about possible membership in the EC, see the section entitled "Enlargement" above.

[91] The first of these Lome agreements was signed in 1975, and it has been renewed and expanded every 5 years since.

" 'Lome III: Convention Set to End on Sour Note,' *Europam Report,* June 6, 1989, p. 5-5.

" Ibid.

" U.S. Department of State Telegram, Nov. 6, 1989, Bridgetown, Message Reference No. 08374.

Bridgetown, EEC: The Lorne 4 Convention is Signed, ACP States' Concern Remaining,' Europe *Agence Internationale Dinformation Pour IA Presse,* Luxembourg-Brussels, Dec. 16, 1984.

'EC Signs New 10-Year Accord With ACP Countries,' Europe, January/February 1990, p. 52; and "EC to Sign Unique Lome Accord with 68 Developing Countries, European Community *News,* No. 44, Dec. 14, 1989.

[1132] EC Commission, "Fourth Lome Convention,' *Information Memo,* Brussels, Dec. 13, 1989, p. 6.

[1°3] "Bananas: United Kingdom Authorized to Protect Its Market for Another Year," European *Report, Jan.* 11, 1990, p. 4-3.

There was concern among some ACP countries that the Dominican Republic's accession to the Lome Convention could disrupt existing preferences granted under the sugar, banana, and rum protocols. [104] However, the ACP managed to persuade the Dominican Republic to renounce the benefits of these protocols before the final Lome IV agreement was reached. Concern that the Dominican Republic is not living up to these commitments has already surfaced with regard to bananas. [105]

Another concern of ACP countries had involved EC-Caribbean content rules for manufactured goods. Officials of the countries argued that the high threshold of EC and Caribbean content required under previous Lome pacts, before such could enter the EC free of duty, discouraged fopment of the manufacturing sectors in their countries. [108] Under Lome IV, there has been a relaxation of the rules-of-origin requirements on ACP exports to the EC. [107] Under the new rules, about 45 percent of the added value in manufactured goods will have to originate in ACP countries, compared with 60 percent previously.

GSP

Like the Lame Convention, the EC's GSP scheme provides nonreciprocal tariff concessions to developing countries. [108] However, the GSP regime is significantly less generous than Lome in many commodities of greatest interest to the ACP countries. In addition, it contains tariff-rate quotas—some of them nationally based—that effectively place quantitative limits on duty-free access of sensitive items that compete with EC products. The scheme provides for more favorable preferences for those countries appearing on the United Nations list of least developed countries, including exemptions from quantitative limitations. However, of the 39 countries on this list, all but 9 have signed the Lome Convention and receive these benefits anyway.m

On November 6, 1989, the EC Council of Ministers gave its approval to the proposed 1990 GSP, which is essentially identical to the 1989 program."' As the planned completion of the single market approaches, the EC Commission is opting for a gradual process of adjustment of the GSP to ensure that the least developed and poorest developing countries will not be penalized as national quotas for industrial and agricultural products are replaced by Community quotas." However, the EC Commission may be required to move faster; a recent Court of Justice judgment obligated the EC to abolish national quotas and to fix and use a Community quota, on a product-by-product basis, to be binding on all member states. [112]

On October 24, 1989, the EC Commission adopted a proposal to the Council encouraging the extension of the GSP for a number of agricultural products from Poland and Hungary in the larger context of putting forward an action plan for coordinated aid for those two countries. [113] Eligibility for GSP treatment for the two countries would "apply from next year," according to the proposal."[4]

Gulf Cooperation Council

The EC Commission failed to receive a negotiating mandate for a free-trade agreement between the EC and the six-member Gulf Cooperation Council (GCC) after intensive discussions of the Council of Ministers in the final months of 1989. [116] The GCC, comprising the oil producing states of Saudi Arabia, Kuwait, the United Arab Emirates, Bahrain, Qatar, and Oman, has been trying to obtain a free-trade agreement with the EC for several years, as the Gulf states have become increasingly concerned about the possibility of Europe "turning in on itself in the run up to 1993.' [116]

The discussions were hampered partly by concern on the part of EC petrochemical producers in the Netherlands and the United Kingdom, who feared that free trade would expose them to increased competition from low-cost gulf petrochemicals.' " Since the early 1980s, the Gulf states have complained about the sizeable duties their exports attract on entry into the EC under the GSP. [1 la Consequently, the only concrete result up until now has been a low-level economic cooperation pact signed by the GCC and the EC in June 1988.

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t[0]' Under the Sugar Protocol, the EC guarantees to purchase a certain quantity of sugar from specified ACP states and India at prices similar to those offered to European sugar beet producers (well above world prices).

"I Canute James, "Banana War Looms Among Caribbean Producers,' *Financial Times,* Feb. 8, 1990.

[10] Lucy Kellaway, 'Little Progress Towards New Lome Convention," *Financial Times,* Oct 31, 1989.

[107] 'EC to Sign New Unique Lome Accord," p. 2.

[13o] Margaret Kelly and others. 'European Community Trade and Industrial Policies,' ch. in *Issues and Developments in International Trade Policy,* (Washington, DC: International Monetary Fund, December 1988), pp. 100 and 101.

"' %id, p. 101.

"[o] 'GSP: Member States Approve Compromise for 19907 *European Report,* Nov. 7, 1990, pA-3.

"` "GSP: EEC Set to Adopt Preferential Scheme for 1990; *Europarn Report,* Nov. 3, 1989, p. 4-6.

"a Economic and Social Committee (ECSC) of the European Communities, "Opinion on the Proposal From the EC Commission to the Council on the EC's Generalized Preferences scheme for 1990: *01,* No. C 298 (Nov. *77,1989),* p. 46.

-.- EC Commission, 'Operation Phase: Improved Acceaa to Markets: *GSP,' Information Memo,* Oct. 31,1989,p. 65.

"' Ibid. For more information, see the previous section of this chapter, on Eastern Europe and the Soviet Union.

"[o] "EEC GCC: Free Trade Is Dead, bong Live Free Trade, ean *Report,* Jan. 7/1, 1990, p.

Europ[o] Andrew Cowers, 'EC Squares Up to Gulf Petrochemicals Problem,' *Financial Times,* Nov. 1, 1989.

"[7] Andrew Gowers, 'Talks to Improve EC-Gulf Ties in Petrochemicals,' *Financial Times, Oct.* 18, 1989, p. 7.

"[o] See discussion on GSP above.

Despite the recent failures, the EC Commission has indicated that it is still determined to conclude a trade agreement with the GCC to complement the 1988 agreement Under EC pro_posals, GCC states would eliminate duties on all European products over 8 years. [119] In return, the Community would immediately eliminate quantitative restrictions and duties on all GCC products, except for three lists of "sensitive" items. Those restrictions would be phased out over 8 to 12 years. [120] A meeting between the EC and the GCC, scheduled for March 1990, will bring together the foreign ministers from both sides to discuss these proposals.

Schengen Countries

Concerns by the Schengen countries [121] about the influx of East Germans into West Germany were at least partly responsible for a postponement of a pact that was to take effect on January 1, 1990, that would have abolished border controls between West Germany, France, the Netherlands, Belgium, and Luxembourg. [122]

The proposed effective date for entry into force of the pact, which fell 36 months before the EC single market deadline, would have allowed the Schengen countries to get a headstart on the other EC member states in formulating policies and judging the workability of the proposed integration measures. [123] Many officials believed the Schengen agreements could even serve as a prototype for full EC integration. In the event that EC integration was stalled, the Schengen accord could also serve as a fallback option, enabling the five highly developed northern European countries to enhance trade among themselves without occasioning "the stress that fiscal policy harmonization with the less-developed southern counterparts in the EC would bring." [124]

Since 1985, the five countries have been negotiating the implementation of the basic Schengen principles, with the free movement of people as the first priority. An agreement that was to be signed on December 14, 1989, would have established rules harmonizing visa, immigration, and asylum policies throughout the five countries. However, in late November, West Germany insisted that a provision be included to ensure that East Germany's 18 million citizens have free circulation throughout the entire Community n25 When the other Schengen countries balked, West Germany refused to sign the agreement After this reversal, diplomatic sources admitted that "Schengen [was] in very bad shape—and will undoubtedly be left alone for a good six months at least" 128

Two other factors reportedly contributed to the decision not to sign the agreement One was that Luxembourg was unhappy with provisions that would have required it to lift bank secrecy safeguards in its own law. [127] Another reason was France's concern about the recent increase in Arab terrorist activities on its soil and its concerns about the security of more open borders. [128]

Implementation

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

The Mechanics of Implementation

The EC Commission's Monitoring Role

The EC Commission is the agency responsible under the Treaty of Rome for ensunng that directives are implemented by the EC's member states. According to EC Commission President Jacques Delors, "this control activity assumes great importance for the achievement of the frontier-free area provided for by the single [sic] European Act." [129] Once a directive is issued by the EC Council or Commission, the EC Commission communicates the directive to each member state and publishes the directive in the *Official Journal of the European Communities.* Where appropriate, the time for transposition of the directive into member-state law and the duty to inform the EC Commission of the passage of national le:gislation are stated in the directive. The EC Commission monitors the progress of implementation by using a computer database called Automated System for Monitoring Directives' Execution (ASMODEE), and a system of spot checks in certain member states. [130] Between

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"'Gulf States Reject EC. Trade Offer,' *Europe-* 1992: *The Report on the Single European Market, Jan.* 10, 1990, p. 493.

[121] The Schengen Accord was signed by West Germany, France, the Netherlands, Belgium, and Luxembourg in June 1985 with the aim of eliminating all controls at their common borders on the free movement of people, goods, and services. While the agreement was signed prior to the EC Commission's own single market initiative, both were a direct result of the Fontainbleau European Council of 1984.

[122] David Buchan and Lucy Kellaway, 'Fears of German Influx Delay Pact on Open Borders,' *Financial Times,* Dec. 11, 1989, o 3. Department of State Memorandum `The Schengen Agreement: The EC Trendsetter for 199Z' (The Hague, Nov. 14, 1988).

[123] Ibid.

[124] "EFTA Parliamentarians call For New Strasbourg Ties,' *1992—The External lrnpxt of European Unification,* Jan. 26, 1990, p. 5.

[127] `Schengen Agreement Collapses,' *Common Market Reporter,* Jan. 4, 1990, p. 6.

[128] Ibid.

[129] Delors, 'Answer to Written Question No. 221W87 of Francois Roelants du Vivier, Mar. 1, 1988,' *01,* No. C 174 (July 10, 1989).

[130] European Parliament, 'Report Drawn up on Behalf of the Committee on Legal Affairs and Citizens' Rights on the Systematic Implementation of Community Directives,' Apr. 28, 1989, p. 7.

the time the EC Commission notifies member states of the issuance of a directive and the deadline for implementation, the EC Commission regularly reminds each member state of its obligations and organizes meetings of member-state experts to aid member states in interpreting directives on difficult subjects, such as company law and product liability.[131]

The EC Commission's DG M, the Internal Market Directorate-General (DG), coordinates the monitoring of transposition of internal market directives into member-state law. Each EC Commission Directorate-General contains a service that monitors member-state implementation of the directives in its own particular area of competence. When a member state wishes to notify an implementing measure to the EC Commission, the member state sends the text of the measure to the coordinating office within DG M. The coordinating office then transmits the measure to the appropriate DG for a legal analysis of conformity with relevant EC law. Copies of the measures are kept in the coordinating office in DG 111, which is considering 'fling public access to the texts. The EC • ion's General Secretariat and Legal Services supervise all monitoring work and intervene when problems arise, such as the need to seek a Court of Justice opinion on an allegedly nonconforming national law.[132]

If a member state fails to properly implement a directive by the deadline, the EC Commission may commence proceedings under Article 169 of the Treaty of Rome to enforce the member state's treaty obligation to implement the directive.[133] Upon learning of a possible treaty violation, which EC law calls "infringement," the EC Commission initiates discussions with the member state to resolve the problem.[134] Failure of the talks can then lead the EC Commission to bring an action against the member state in the European Court of Justice. Such an action may not result in compliance, however, as evidenced by such cases as the EC Commission's suit against Italy for failure to comply with EC norms on inspection of fruits and vegetables. The Court issued a 1983 ruling against Italy and issued another one in 1987 for Italy's failure to obey the 1983 ruling. The EC cannot coerce member states into implementing directives.[136]

The EC Commission "vigorously" applies all the legal and political resources at its disposal to induce member states to comply with their treaty obligations. However, the EEC treaty, unlike the European Coal and Steel Community treaty, contains no penalty for use against member states that infringe their treaty obli:ptions.[136] The EC Commission has noted that individuals can bring actions in member-state courts to enforce EC directive provisions, stating that the EC Commission "sets great store by the effects of this decentralized form of control."[137] The EC Commission's largest source of information on member-state failure to properly implement EC directives is complaints by individuals and firms who feel injured by noncomplying national measures. Other sources of information include questions from and petitions to the European 1'arliament.[139]

The EC Commission has asked each member state to appoint a single liaison officer to follow up on the implementation of EC law. In addition, the EC Commission is seeking to increase information exchanges on the subject of implementation, and to increase the number of bilateral contacts among member states to *assess* implementation and simplify measures for sanctioning noncompliance. To heighten consciousness of the integration process, the EC Commission has asked the Council to back a proposed program for *an* exchange of national officials similar to the recently begun MAITHEUS pilot program for the exchange of customs agents.[13a]

Monitoring the progress of implementation is not an easy task Each member state implements a given directive in its own way, using language particular to its legal system and often different from the exact wording of the directive. The procedures for adoption of national legislation differ among member states and range from acts of the legislature to legislation by decree, regulations, ministerial circulars, advice and memorandums to local authorities, as well as delegation of 1Vslative acts from central to local governing bodes. On occasion, existin; national law is considered sufficient to permit the executive authorities to act in conformity with an EC directive, so that no change in the law is needecl.[140]

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im EC Commission, 'Implementation of the Legal Acts Requited to Build the Single t," Com (89) *422,* Sept. 7, 1989, p. 9.

USITC staff interview with EC Commission official, Brussels, Jan. 10, 1990.

us Delors, 'Answer to Written Question No. 2503186 of Marcel Remade, Mar. 11, 1987.' Under art 100A(4) of the EEC Treaty, a member state may defend its noncompliance with an EC measure by daiming that the measure is incompatible with the members state's "major needs' or the natural or workplace environment In that event, it is up to the European Court of Justice to determine whether the member state's invocation of the treaty provision is justified.

The EC Commission has stated that it is streamlining the discussion process and in particular is reducing the time delays inherent in the process. IP (89) 662, Sept. 6, 1989.

"is Aggrieved individuals may obtain more meaningful relief from national courts, which increasingly folknv Court of Justice judgments on matters pertaining to EC measures. This

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avenue may not be available to citizens of one state seeking acaess to the market of another, however, because they may lack standing to sue in the second state's courts. ***Financial Times,*** Sept 25, 1989, p. 18.

'co EFelors, "Answer to Written Question No. 2127/86 of Nicole Fontaine, Jan. 26,1987?

[137] ibid.

"[15] IP (89)662, Sept 6, 1989.

"'Internal Market,' European ***Report*** No. 1521, p. 5.

[140] USITC staff interview with Ministry of Industry and Handicrafts official, Rome, Jan. 12. 1990.

The Role of Other EC Institutions

The EC Commission has asked the European Parliament to help promote implementation of EC law through its relations with member states' political bodies and, in particular, national parliaments."[1] In resolutions passed on October 12, 1989, Parliament responded affirmatively to the EC Commission's request, urged member states to step up implementation efforts, and called for a more transparent monitoring system for noting and publicizing implementation."[2] Parliament called on the EC Commission to improve the current method of monitoring member-state compliance with EC law by the use of legal experts in each member state as consultants It was suggested that a division of the EC Commission comprising a small staff of lawyer-linguists was needed to coordinate the efforts of these national experts, who would analyze the implementation of specific directives in their field of specialization.'"

Parliament also determined to increase its role in reviewing the status of implementation by amending its Rules of Procedure to have the relevant parliamentary committees consider and report on the EC Commission's reports on its monitoring of compliance with EC laws. Parliament stated that it wished "to monitor closely this vital aspect of Community affairs."[146]

At a plenary session of the European Parliament on October 11, 1989, EC Council President-in-Office Edith Cresson acknowledged that there were difficulties in implementing legislation at a national level in all the member states and she proposed an indepth study to look at ways of improving decisionmaking procedures to take into account the different constitutional arrangements in the member states. EC Internal Market Commissioner Martin Bangemann added that the EC Commission maintains a watchdog role over implementation and must continue to do so in view of the growing number of treaty infringements, standing then at some 1,400. On that day, Parliament adopted a resolution calling on the French presidency of the EC Council to include on its agenda the problem of delays in implementing internal market legislation."[6]

At its meeting of December 21-22, 1989, the EC Internal Market Council recognized the importance of full implementation of 1992 directives by member states, welcomed the recent progress made toward that goal, and stressed the need for more information dissemination on the subject to insure transparency. The council determined to reexamine at least once a year the status of implementation."[7]

Implementation of Standards Measures

Technical standards form a special case, in that the EC Commission works closely with private European standards bodies to produce European standards. This public-private relationship is generally closer in the EC than it is in the United States. While the EC Commission drafts mandatory technical requirements in its standards directives, it issues mandates to the private bodies to issue voluntary standards. Consequently, implementation in the standards area must take into account the parallel nature of European standardsmaking.'" Each member state has its own standards bodies that belong to the European bodies, and standardsmaking in a member state tends to organizationally resemble standardsmaking on the European level. In Italy, for example, the Ministry of Industry and Handicrafts issues mandatory technical rules when legislation such as EC Council directives require it. These rules are similar to the voluntary standards issued by the Italian standardsmaking bodies. Government rules sometimes refer to and incorporate private standards. When the Ministry issues standards, it uses its own technical staff. Sometimes the Ministry acts on its own initiative, usually in response to a perceived problem, but it sometimes refers to private standards in its rule. In the case of toys, the Ministry had issued rules even before the EC issued its directive, and the Italian rules were based on, although not identical to, European standards.'[49]

Sources of Information on Implementation

Upon passage of national legislation implementing an EC directive, a member state is required to inform the EC Commission of the fact. Starting on May 2.3, 1986, the EC Commission began providing information to EC institutions, although not to the public, on member-state implementation legislation in sector 7 (SG) of its Celex data base.[160]

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141 thid.

148 European Parliament, 'Resolutions on the Internal Market,' *Of* No. C 291 (Nov. 20, 19M p. 97. Parliament expressed its "astonishment at the lties encountered by certain governments in incorporating the texts adopted by their ministers into their national legislation, the sole excuse being the arcane character of many 0f the Community directives." Ibid.

EuropeanParliament, 'Systematic Implementation of Community ectives,' p. 6. Member-state governments are joining the call for better monitoring of compliance with EC measures; see, for example, the suggestion by the Dutch Minister for EC affairs that the European Parliament put forward its views on systematic surveillance of member-state compliance; Ibid., p. 10.

144 Ibid.

148 European Parliament, 'Report Drawn Up on Behalf of the Committee on the Rules of Procedure, the Verification of Credentials and Immunities on the Introduction of a Procedure for Considering the Annual Report of the Commission on the tion of CommunityLaw,' Document A 2-65189, Apr. 5, IV; 9.

1" European Parliament Plenary Session, Strasbourg, Oct. 9-13,1989, reported in *European Report, No.* 1535, Oct. 26, 1989,

'49 EC Council, 1382d Council Meeting, Press Release 11045/89 (Nesse 255-G), pp. 12-13.

'46 For a more detailed discussion of EC standardsmaking, see p. Z ch 6 of this report.

'" USITC staff interview with Ministry of Industry and Handicrafts official, Rome, Jan. 12, 1990.

'60 Delors, 'Answer to Written Question No. 20/86 of Hemmo Muntingh, June 16, 1986.'

The EC Commission has undertaken to provide public access to "precise details of all national transposition measures" in its public data base INFO 92. [151] That data base, which began working on January 1, 1990, lists the national laws that transpose EC directives by title, number, and date of publication, although it does not contain the actual text of the laws. [152]

The EC Commission publishes an annual report on its monitoring of member-state compliance with EC law. The report records in general terms the progress of each member state in implementing each EC directive, and gives details on the enforcement and judicial procedures undertaken to deal with noncompliance by member states. The most recent had been the fifth annual report, which covers activities in 1987; the sixth annual report has now been published. [153] The EC Commission also publishes semiannual reports on the progress of 1992, with the next one scheduled to appear at the end of March 1990)$[4]

[151] *Application of Instruments for Completing the Internal Market,* Sec (89) 2098, Dec. 4, 1989, p. 4.

[152] *Implementation of the Legal Acts Required to Budd the Single Market,* Com (89) 422,. Sept. 7, 1989, p. 11; USITC staff interview with EC Commission official, Brussels, Jan. 10, 1990.

[153] O/ No. C 330 (Der. 30, 1989),p. I.

[154] USITC staff interview with EC Commission official, Brussels, Jan. 10, 1990.

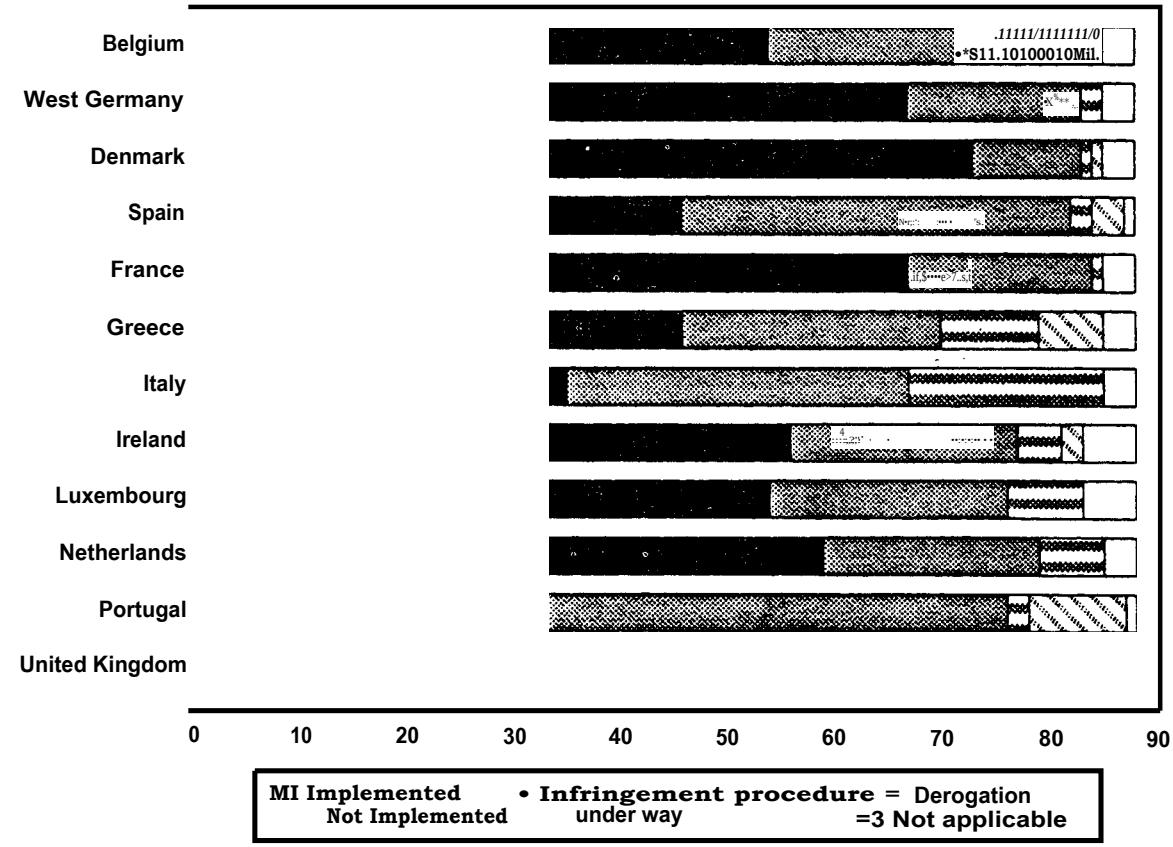
The Status of Implementation

As discussed above, the EC Council had by January 1, 1990, formally adopted 142 of the 279 measures listed in the White Paper, the vast majority of them being directives that member states need to transpose into national law. [155] However, as of January 17, 1990, only 14 of the 86 single market directives that should have already been trans into national law had been fully transposed by all member states. [155] Figure 1-1 provides a breakdown of implementation by member state, showing the numbers of infringement proceedings instituted by the EC Commission to enforce compliance with directives, and of derogations-exemptions from implementation deadlines - granted to member states.

[155] U.S. Department of State Telegram, 'EC Single Market Tally,' Jan. 4, 1990.

[156] Jacques Debts, address to the European Parliament presenting the Commission's Programme for 1990, Strasbourg. Jan. 17, 1990, p. 36. This includes all directives on capital movements. *Applizion of Instruments for Completing the Internal Market,* Sec (89) 2098, *Dec.* 4,1989, p. 3. Twenty-four directives have been transposed into all member-state laws except those of Greece, Spain, and Portugal, and 52 have beentransposed in 8 member states. *European Report,* No. 1554, Jan. 13, 1990, p. 9.

Figure 1-1
Breakdown of Implementation by member state



Source: *Application of Instruments for Completing the Internal Market,* Dec. 4, 1989, Sec (89) 2098

According to the EC Commission, the most progress toward full implementation has occurred in the field of veterinary and plant health legislation, whereas progress has been slow on technical barriers to trade, especially in the fields of transportation and financial services. [157]

EC Internal Market Commissioner Martin Bangemann has said of the single market integration program that "the most difficult problems do not now lie in Brussels but on the level of putting into effect and applying _Community measures in the member states. [158] However, the EC Commission does not believe that the task of implementing these directives requires long delays. It has opined that most member states can implement most of the directives without parliamentary legislation. [15]a The EC Commission warns that member states must pick tlp the pace, in view of the fact that 28 new pieces of EC legislation, such as measures on freedom of capital movements and public procurement, and on the "new approach" to technical legislation, are scheduled to enter into force in 1990. [160]

As of December 1989, the EC Commission was conducting 60 infringement proceedings against member states for failure to implement directives.' [6,] The EC Commission conducted more infringement proceedings in 1988 (1,137) than it did in 1987 (850). The EC Commission staff detected more instances of member-state noncompliance in 1988 (307) than in 1967 (260). Reasoned opinions by the EC Commission concerning infringements rose from 197 in 1987 to 227 in 1988, and referrals to the European Court of Justice rose from 61 in 1987 to 73 in 1988. The number of Court of Justice judgments not carried out by member states also rose in 1988 over 1987. The EC Commission also noted that member states are taking longer than before to implement judicial decisions, although "generally, such delays cannot be attributed to a lack of political will." [162]

The EC Commission issued the largest number of letters of formal notice to member states concerning the internal market and industrial affairs, thus indicating that it is monitoring matters relating to the completion of the single market "with particular attention." Agriculture was the second-largest category, and the environment, the third.

Of letters of formal notice in 1988, 107 were sent to Italy, 64 to Greece, and 58 each to France and West Germany. Of reasoned opinions, 52 were sent to Italy, 32 to Greece, 27 to France, and 24 to West Germany. The EC Ccim mission referred to the Court of Justice 14 cases each concerning Italy and Greece and 10 cases each for Belgium and France.' [63] The EC Commission has opined that the implementation problem could worsen soon because the particular steps to be implemented now, such as the removal of exchange controls and the freeing of capital movements, will need parliamentary action in member states and not just regulations promulgated by governments. [16,]

Even after a member state has passed implementing legislation, the EC Commission has warned, implementation can be stymied by national bureaucracies adopting a "nitpicking interpretation of the rules." This is particularly true, according to the EC Commission, in such sectors as customs, veterinary, plant health, agri-food, technical harmonization, and pharmaceuticals. [165] This bureaucratic nitpicking can result in discrimination against citizens from other EC countries, such as refusal to exchange driver's licenses or issue work permits "for reasons which can stem only from unreasonable bureaucratic behavior." [166]

U.S. Secretary of Commerce Mosbacher has stated that government analysts and business executives share a concern that narrow national interests may delay the liberalization of European markets and that special interests will seek to deny the benefits of 1992 to non-EC countries. He explained that this concern arises because the impact of 1992 lies not only in the drafting of directives but in their implementation. Thus the shape of Europe 1992 will not be known for some years. Secretary Mosbacher asserted that many Europeans are not completely in favor of more open markets. He suggested that some European companies have been accustomed to having their inefficiency shielded by their governments. He concluded that this is a major reason why the EC was unable to build a single internal market in its first 30 years.te?

Some commentators read the slow pace of implementation as a sign of reduced support for the 1992 program among member states. Such a view may not be accurate, considering that some member states that have exhibited little enthusiasm for integration, such as the United Kingdom and Denmark, have some of the best implementation records, [166] along with France and the Netherlands, [169] whereas Italy, a vocal supporter of integration, has one of the worst records. [170] As the EC Commission notes, the problems Italy and such

'" EC Commission, Sec (89) 2098, Dec. 4, 1989, p. 3. For example, only Denmark has implemented all measures on air transportation. Ibid.

' Europe-1992 *The Report on the Single European Market* (Lafayette Publications, Sept. 13, 1989), p. 325.

'"6 The EC Commission particularly noted that Italy *has* put in place a system for efficient incorporation of EC directives into national law, i.e., the so-called La Pergola law and other measures. Com (89) 422, Sept. 7, 1989, p. 10.

'" Sec (89) 2098, Dec. 4, 1989, p. 3.

[11]" Ibid., p0. 4.

[1]-- IP (89) 662, Sept. 6, 1989, and 'Internal Market," *European Report,* No. 1521, p. 5.

[163] Ibid.

[1]" Corn (89) 422, p. 7, and *Europe-1992: The Report on the Single European Market,* p. 325.

[1]" Com (89) 422, Sept. 7, 1989, p. 11.

'"*Europe-1992: The Report on the Single European Market,* p. 325.

'" Secretary of Commerce Mosbacher, remarks at the Columbia Institute Conference on 1992, Feb. 24, 1989, (Brussels: U.S. Mission to the European Communities, Feb. 25, 1989), p. 4.

""*Europe-1992.• The Report on the Single European Market,* p. 326.

""*Financial Times,* Sept. 25, 1989, p. 18.
Bruce Barnard, *Journal of* Commerce, Sept. 26, 1989.

other member states as Greece, Belgium, and Ireland ,[7] , have with implementation probably stem from bureaucratic inefficiency[12] and the press of domestic concerns rather than lack of enthusiasm. According to the EC Commission, the United Kingdom and Denmark have the best implementation record of the member states, and Italy has the worst.[173] Spain and Portugal are also behind on implementation, with the particular exception of measures dealing with border formalities and taxation. However, allowances are being made for Spain and Portugal because of their recent accession to the EC and because they must transpose into national law more than 1,000 old directives as well as the current spate of 1992 measures.[174]

According to the EC Commission, most failures to implement are due to administrative difficulties, political interests, and economic problems. There can also be failures of communication, as when a member-state government adopts a law but fails to promptly notify the EC Commission.[175] One EC official suggested that national legislatures have had difficulty keeping up with the accelerated pace of decisionmaking in Brussels, and that the countries with the best implementation record tend to be those with the best coordination systems between the national government and Brussels during negotiations.'[178]

Some commentators have stated that in the member states around the Mediterranean, officials adopt a more relaxed, "manna" approach to their duties.'" Federal states such as Belgium have difficulty because of their decentralized constitutional structure, particularly in such areas as social, environmental? and cultural policies, in which federal states have devolved significant power to their regions. Some member states, such as Spain, are both decentralized and Mediterranean.[179]

EC Internal Market Commissioner Martin Bangemann has warned that the EC may respond to the member states' failure to implement by issuing regulations, which are self-implementing, rather than directives, which need implementing legislation.[180] This may be an empty threat, however, because the member-state governments, whose representatives form the EC Council, have shown a strong bent for directives, even in the veterinary and agri-foodstuffs areas, in which the EC Commission suggested the use of regula tions.[181]

There are positive signs that implementation is progressing. Following the EC Commission's issuance in September 1989 of a warning that implementation was not proceeding fast enough, member states improved their record in the last part of the _year, particularly with respect to informing the EC Commission promptly upon the transposition of directives into national law. Member states also improved their record of compliance with Court of Justice opinions after September 1989.[182] British Foreign Secretary Douglas Hurd recently praised the EC for what he saw as. "really rather remarkable progress" on implementation during the French Council presidency.[183] According to the U.K.'sjunior Industry Minister, John Redwood, the United Kingdom has improved its own record recently by issuing 10 new measures implementing all but one of the outstanding directives.[184] The United Kingdom has used its good implementation record to counter criticisms that the country is not pro-EC. As one British official put it, "The reason why we often appear to quibble, argue, moan during negotiations is precisely because we have the machinery to implement the end result quickly and f$_{a}$id$_{y}$."ias

At least in the past, some member-state authorities have evidenced resistance to applying EC law. In 1985, it was reported that the French Interministerial Committee Secretariat (SGCI), charged with coordinating information exchange on implementation of EC directives, faced considerable problems because the information exchange was so incomplete, "the cumbersomeness of the French system so great and the incompetence of the legal departments of the ministries sometimes so blatant" that the SGCI, which had no legal status of its own, was forced to exert greater influence than it might have wished.[188] It was also noted that the

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[171] These countries have particular difficulties in the area of technical harmonization. Com (89) 422, p. 7.

[172] The EC Commission noted that the member-state government department that implements a directive is often not the same department that negotiated the draft of the directive. Consequently, the implementing department may have little incentive to move swiftly.

[173] *Doing Business in Europe* (CCH, Oct. 10, 1989), p. 3.

[174] Com (89) 422, p. 7; *Financial Times,* Sept. 25, 1989, p. 18; and *Europe-1992: The Report on the Single European Market,* p. 325.

[175] USITC staff interview with EC Commission official, Brussels, Jan. 10, 1990.

[176] U.S. Department of State Telegram, Dec. 28, 1989, Brussels, Message Reference No. 07303.

[177] *Financial Times,* Sept. 75, 1989, p. 18.

[178] European Parliament, "Systematic Implementation of Community Directives," p. 7.

[179] *Financial Times,* Sept. 25, 1989, p. 18.

[180] Bruce Barnard, *Journal of Commerce,* Sept. 26,1989; 'Internal Market,' *European Report,* No. 1524, p. 6.

[181] *Financial Times,* Sept. 25, 1989, p. 19. In the Final Act of the intergovernmental conference that produced the Single European Act, a declaration was inserted directing the EC Commission to give priority to the use of directives whenever an amendment of existing member-state legislation was necessary. *Final Act,* p. 24 ('Declaration on Article 100A of the EEC Treaty", cited in Corn (89) 422. p. 10, and G. Bermann, 'The Single European Act: A New Constitution for the Community?' *Columbia Journal of Transnational* Law, vol. 77, (1989) p. 539, n. 40.

[182] Sec (89) 2098, Dec. 4, 1989, pp. 2-3.

[183] *International Herald Tribune,* Dec. 11, 1989, p. 2.

[184] British officials maintain that the remaining directive, concerning intra-EC trade in meat, is being held up so that it can be passed into law along with two other related directives with an implementation deadline in 1990. *Financial Times,* Sept. 25, 1989, p. 18.

[185] Ibid.

[186] European Parliament, "Report Drawn Up on Behalf of the Committee on Legal Affairs and Citizen's Rights,' Document A 2 112/85, *European Parliament Working Documents 1985-1986,* Oct. 9, 1985, p. 16, citing Josselin, Delegation to the European Communities 'France and Community Law,' Report No. 26/84 to the National Assembly.

courts of Denmark sometimes exhibited a negative attitude toward applying EC law. [187]

Member states react differently to developments in particular areas. With respect to the environment, the Netherlands, West Germany, and Denmark are the most advanced, although neither West Germany nor the Netherlands has fully implemented a directive on the protection of birds. In contrast, Greece, Spain, Portugal, and Ireland are in earlier stages of developing environmental policy. In the middle are the United Kingdom, France, and Belgium, where environmental legislation already exists but EC directives tend to force the pace. [188]

In some areas, individual member states have particular sensitivities that interfere with full member-state harmonization. For example, in the case of heart pacemakers, Italian rules are more stringent than EC law, in that the Italian Ministry of Health requires certain preimplantation tests on the patient that the EC does not Food processing is another sector of particular sensitivity in Italy, as are telephones and electromedical equipment Processed-food laws in Italy existed prior to the formation of the EC, and are consequently hard to change. The Danish auto emission standard is more restrictive than the EC norm, a difference permitted by the EC Council on an informal basis, with the approval appearing only in unpublished meeting minutes. According to one Italian official, the Danish case has caused concern because although under the treaty Denmark was required to justify its derogation, it had not yet done so. [11']

As discussed above, each member state approaches implementation in a different way, according to its own culture and laws. According to the EC Commission, some member states—particularly Italy and Greece — have a relatively [redacted] implementation record. The following section, largely on staff visits to Rome and Athens, focuses mostly on those countries because their problems and their efforts to overcome them highlight the implementation process in a particularly clear way.

Implementation in Individual Member States

Italy

Although Italy is one of the most strongly pro-EC member states, it has the worst implementation record. [1110] Italy received over 100 warning letters in 1988 concerning failure to implement EC law and failed to comply with 20 rulings from the Court of Justice in 1989.' [91] One press report stated that Italv's delays are particularly long in the areas of the environment, company law, health in the workplace, and veterinary standards. [192]

The Role of the Ministries

Slow implementation of EC directives in Italy is a problem oladministration [193] and of Parliamentary delay in certain sectors. [1"] Within the Government, the Ministry for the Coordination of EC Policy, a part of the office of the Prime Minister and equivalent to other ministries but without appropriated funds of its own, seeks to coordinate implementation efforts. The Ministry of Foreign Affairs also collects the views of the ministries before participating in EC Council decisionmaking. Various ministries, notably Industry, Posts and Telecommunications, Environment, and Labor, participate in drafting laws and decrees to implement EC directives. The simultaneous involvement of numerous ministries can impede the implementation of many directives. The EC Policy Coordination Ministry, which seeks among other things to smooth interministry relations, was created only recently and is still Imply understaffed. It faces the difficult choice of either risking long delays by submitting implementing legislation to Parliament separately on each directive or risking complete deadlock by attempting to implement many directives in a single omnibus bill that is vulnerable to defeat if any sing : directive raises significant opposition.la Ministry has experienced difficulty in even drafting a list of EC directives that require implementation, because Italian law may already be m compliance with some directives and the various government ministries conduct a lengthy and not very transparent review to determine whether implementation is needed. [196]

The Role of Parliament

However, implementation does not depend on the ministries so much as on Parliament In certain circumstances, the process can be speeded in that ministers can issue decrees that have the force of law, but one way or another Parliament must approve the issuance of decrees. Within Parliament,

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'1" European Parliament, 'Report Drawn Up on Behalf of the Committee on Legal Affairs and Citizens' Rights,' citing H. Rasmussen, *The Application of Community Law in Daum*,* t, 1985), p. 66 .

(Eur31 are th The Econottrist, Oct. 14, 1989, p. 21.

I" USITC staff interview with Ministry of Industry and Handicrafts official, Rome, Jan. 1Z.1990.

[163] U.S. Department of State Telegram, 'Italy is a Laggard in Adopting EC Directives, Especially the 1992 Ones,' August 1989, Brussels, Message Reference No. EUR2507.

[16'] Bruce Barnard, *Journal of COMMaCC,* Sept. 26, 1989.

[1ea] 'Institutions and Policy Coordination, • *European Report,* No. 1531, Oct 14, 1989, p. I.

USITC staff interview with EC Commission official, Brusaels, Jan. 10, 1990. The EC Commission sees a general problem with Italian implementation and does not single out any topic or 4Ppe of directives *as* particularly problematic.

USITC staff interview with officials of Confindustrii, Rome, Jan. 12, 1990. Confindustria is the association of industries in Italy.

[198] U.S. Department of State Telegram, "Italy is a **Laggard in Adopting EC Directives, Especially the 1992 Ones,' August 1989, Brussels, Message Reference No. EUR2507.**

'ft Ibid.

lobbies and interest groups are very strong and can significantly impede and postpone legislation. At least in the past, members of Parliament have spent little time in Rome, preferring to stay mostly in their own districts. Also in the past, Ministers of Foreign Affairs have not always been strong, unlike more recent incumbents such as Andreotti. Governments and Parliaments have changed frequently, and ministers, who are generally politicians and not technicians, have changed portfolio even more frequently.[197]

Frequent Parliamentary elections have slowed the passage of laws, which must go through a lengthy process of review by first a Senate commission (similar to a Congressional committee), then the Assembly of the Senate, then a Chamber of Deputies commission, then the Chamber of Deputies assembly, then often back to the Senate commission, and so on. The process resembles that of the U.S. Congress but differs in that the Italian Senate and Chamber of Deputies have significantly fewer staff than Congress, making the job of passing legislation more difficult and necessitating the use of outside expertise from interest groups such as banks and insurance companies.'"

Italian industry sources stressed that the problem is one of organization, not of willingness to implement EC directives, and that no big lobbies focus on opposing EC law.[199] However, implementation in Italy can be and is delayed because of the actions of special interest groups 20° As directives are drawn up in Brussels, political imperatives, such as the need to show pro-EC sentiment, sometimes force the Italian Ministry of Foreign Affairs to support passage by the EC Council of a directive that may put some groups in Italy at an economic disadvantage. Italian industry sometimes feels left out of the EC legislative process, because it can participate mainly through the Economic and Social Committee, which is only advisory. Consequently, interest groups sometimes seek to postpone implementation in Italy of directives that they could not block in Brussels. On the whole, the Ministry of Industry and Handicrafts is satisfied with the pace of EC integration, but integration is not always a clearly understandable goal to translate easily into practice.[201] Italian industry generally supports the rapid and clear implementation of EC law and deplores delays. However, certain Italians are concerned that French and German views and interests are more influential in Brussels than are Italian views, and that implementation may therefore not always be in Italy's best interest.[202]

Reform Measures

The Italian Government has recently taken significant steps to cure its noncompliance with EC law. Following an enabling act issued on April 16, 1987, Italy adopted measures to implement a backlog of about 100 directives, thus improving Italy's record particularly with respect to Court of Justice judgments.[203] At the prompting of Prime Minister Andreotti, the Italian Government has decided to devote one of its Council of Ministers meetings per month to transposing EC directives into Italian law. The Italian Council's decisions would be prepared and monitored by the EC Policy Coordination Ministry. Prime Minister Andreotti stated that he expects help in this endeavor from the Labor and Economic National Council, representing all trade associations and labor unions.[204] Italy's aim is to be up to date on EC law before the second half of 1990, when Italy will assume the presidency of the EC Council of Ministers. Prime Minister Andreotti suggested several steps to be taken, including a special Parliament session on European affairs that would set deadlines for the adoption of EC directives, and faster approval of le ,gislation by Parliament. The Italian Minister for European Affairs, Pier Luigi Romita, declared on Oct 6 that "If we do not take action promptly to restore our credibility in the EEC, the situation in Italy will become contradictory with Community membership."[295]

The La Pergola Law

The Italian measure that has received the biggest press is the law, passed in March 1989, on "procedures for the performance of Community obligations."[296] The law is also called the "La Pergola" law after its chief proponent, the EC Policy Coordination Minister under the past De Mita government. According to the EC Commission, this law should "rationalize procedures for the implementation of Community law in Italy."[207]

'" USITC staff interview with officials of Confindustria, Rome, Jan. 12, 1990.

'" Ibid.

•• Ibid.

*". Such interest groups pose more of a threat than does the political opposition, because, in particular, the Communist Party is strongly pro-EC. U.S. Department of State Telegram, 'Italy is a Laggard in Adopting EC Directives, Especially the 1992 Ones,' August 1989, Brussels, Message Reference No. EURM07.

USITC staff interview with Ministry of Industry and Handicrafts official, Rome, Jan. 12, 1990.

202 USITC staff interview with officials of Confindustria, Rome, Jan. 12, 1990.

209 According to a 1988 yearend survey conducted by the Italian Senate Research Center, 137 directives (both 1992 and others) were implemented during the period January 1987-July 1988, of which 87 were approved with a single law passed by Parliament in 1987. These figures indude at least one directive, Directive 8 ,374, on product liability, that the EC Commission has determined to not be properly implemented in Italian law. U.S. Department of State Telegram, "Italy is a Laggard in Adopting EC Directives, Especially the 1992 Ones, August 1989, Brussels, Message Reference No. EUR2507.

i'O" Ibid.

20° `Institutions and Policy Coordination,' *European Report,* No. 1531, p. 1.

2" Law No. 86 of Mar. 9, 1989, *Official Gazette* No. 58 of Mar. 10, 1989, and *Financial Times,* Sept 25, 1989, p. 18.

2•• Ibid. Delors, 'Answer to written question No. 176688 (David Martin), Feb. 15,1989" *Of* No. C 157 (June *26,* 1989). However, in his address to the European Parliament presenting the EC Commission's 1990 program, EC Commission President Delors termed the La Pergola law "disappointing.'

Under this new legislation, the EC Policy Minister is to present to the Italian Council of Ministers a draft bill by the end of every January that would insure full compliance with EC law. By the beginning of March, the bill and a list of pending EC measures would be transmitted to Parliament, each of whose committees would have 40 days to express an opinion on any directive within its competence. Parliament would then vote on the bill, immediately if no committee opinions are offered.[208] This year, the Italian Government is working on presenting a bill to Parliament to implement about 120 directives and will act in a similar fashion each January and present to Parliament in March.

According to one Italian Government official, the law poses significant problems. One problem is simply that this is the first time the Italian Government has attempted such a measure. Moreover, the La Pergola process is elaborate and cumbersome. First the Government presents to Parliament a list of directives that must be implemented, then Parliament passes a law delegating authority to the various ministries to issue implementing decrees, and finally the ministers issue decrees in their respective fields.[209] The Government is to present to Parliament an "ordinary" law, which requires passage by the full Parliament process (consideration by each house's commissions, then by each house's assembly). The Government has stated that it intends to request Parliament to use "procedures of urgency," which, at least in the Senate, would mean passage by a commission rather than by the full assembly, and therefore some insulation from political pressures. However, this procedure would require agreement among the parties, who could deny the Government's request or act in commission without real urgency. Moreover, a decree issued pursuant to the La Pergola law takes longer to issue than a normal ministerial decree, because all ministries must discuss it before the appropriate minister issues it In principle, the text of a directive would be immune from change during the process. The EC Commission considers that a directive has been implemented in Italy when the decree is issued.[210]

Italian measures implementing EC directives, including both laws by Parliament and decrees issued by Government ministers, are published in the *Gazzetta Lifficiale della Repubblica Italian (Official Gazette).*[211] An entry in the *Official Gazette* will normally include both the directive and the Italian implementing measure. Consequently, the list of Italian measures implementing EC directives can in principle be obtained by reading the *Official Gazette,* but that is published only in Italian.

Implementation of Standards

In the standards area, the Italian Government works closely with the Ente Nazionale Italiano di Unificazione (UNI) and the Comitato Elettrotecnico Italiano (CEI), the Italian standards bodies. UNI is the Italian member of the European standards body (CEN) and issues standards in areas other than the electrotechnical sector, which is dealt with by CEI.[212] Italy is the only member state that has such separate bodies, paralleling the CEN/CENELEC division in Brussels. UM is governed by a managing board that includes representatives from various industry sectors, such as plastics and chemicals, and representatives from government ministries, such as Industry and Handicrafts and Public Works. UNI receives substantial funding from the Italian Government, but is nevertheless considered aprivate organization, as is the other standards body, CEI.[213]

UNI drafts standards in 44 technical committees, and 14 affiliated committees, each with subcommittees and working groups. Although the work of committees sometimes overlaps, the standardsmaking process provides for intercommittee review and coordination. The process also provides for comments, ostensibly from the public, but actually from only a selected group of less than 150 interested parties, including consumer and industry groups. U.S firms that want to participate in the standardsmaking process should seek membership in UNI's technical committees rather than rely on the "public" comment procedure. UNI prefers to deal with industry associations rather than individual firms. The standardsmaking process is 3-4 years old and has reduced the time for issuance of a standard from 2 years to 10-15 months.[214]

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[206] U.S. Department of State Telegram, 'Italy is a Laggard in Adopting EC Directives, Especially the 1992 Ones," August 1989, Brussels, Message Reference No. EUR2507.

USITC staff interview with Ministry of Industry and Handicrafts official, Rome, Jan. 12, 1990. There appears to be some disagreement as to whether the passage of the annual law delegates authority to the Government to implement EC directives by decree or whether the law itself fully implements those directives. The Italian Government official interviewed by the staff considered that the former was true, whereas the U.S. State Department considers that the latter is correct U.S. Department of State Telegram, 'Italy is a Laggard in Adopting ECTDirectives, Especially the 1992 Ones; August 1989, Brussels, Message Reference No. EUR2507.

[210] USITC staff interview with Ministry of Industry and Handicrafts official, Rome, Jan. 12, 1990.

[211] For example, Ministerial Decree No. 555 issued by the Italian Minister of Health on July 25, 1987, andpublished in the *Official* Gazette of Jan. 20, 1988, (but in force on July 25, 1987), modified a decree of Dec. 3, 1985, and implemented (the Italian word is "attuazione) EC Directive 8W431 of June 24, 1986, on the packaging and labeling of hazardous substances. Another example was the Ministerial Decree of May 14, 1988, issued by the Minister for the Coordination of EC Policy (Ministro peril Coordinamento delle Politiche Communitarie), published in the *Official Gazette* on June 18, 1988, that implemented EC Directive 85/397 on sanitary problems and sanitary police on intracommuniy trade in treated milk (the Gazette also published the text of the directive).

[212] USITC staff interview with officials of UNI, Milan, Jan. 11, 1990.

[213] Ibid.

[214] Ibid.

Founded in 1921, UNI's output has steadily increased, both in number of standards and in number of pages, although EC pressure to come to the negotiating table with more standards faster is leading to a decline in the growth rate of numbers of pages. UNI has issued a total of 7,150 standards (versus a total for AFNOR in France and.BSI in the United Kingdom of about 14,000 each), of which approximately 30 percent are CEN norms rather than purely Italian standards. UNI grew by 22 percent in 1989 largely because of heightened interest in 1992 on the part of industry, thus leading to larger sales of standards. Sales'account for more than 50 percent of income, with 25 percent coming from membership fees and 20 percent from the government. UNI participates in the EC's information procedure, and the government funds go mostly to that participation. Staff size has grown from 40 to 80 in 3 years, still a low level compared to the British and French levels of 750-1,000. UNI provides the secretariats for 11 CEN technical committees and 38 working groups, to which EC Commission mandates are subcontracted. UNI also provides experts to technical committees headquartered in other member states. Each year, UNI participates more and more in CEN, sending more UNI and Italian industry experts (the latter are accredited by UNI and paid by industry) to aid in the European standardsmaking process.[215]

Until now, UNI has both produced standards and accredited certifying bodies[216] and testing laboratories. Recently, however, UNI and CEI began forming a separate accreditation organization that they call SINCERT, the technical committee of which will be chaired by a representative of the Ministry of Industry and Handicrafts. Firms will be permitted to test their products in their own laboratories or use third-party facilities, but they must obtain certification, of their product or their quality assurance program, from a third-party certification body, accredited by SINCERT. UNI and CEI have also formed SINAL, an organization for accrediting testing laboratories, with the participation of industry groups and the Ministry of Industry and Handicrafts.[217]

Under the EC's new certification procedure, by which member states are to notify certification bodies to the EC, UNI and CEI will play an important role in the notification process. The Government plans to notify bodies that are accredited by UN1 or CEI, and those bodies have been delegated authority to participate in the notifications, although it remains the Government's responsibility to communicate its notifications to the EC. UNI and CEI have received applications for accreditation from non-Italian organizations but have not yet accredited any such bodies; UNI and CEI require that such bodies establish some presence in Italy and provide recognition to Italian certification bodies.[21]a

As to which sectors are particularly sensitive to Italy, and that may lead Italy to derogate from European standards 2t[9] the construction sector was cited as important The Ministry of Public Works has traditionally governed that sector and has expressed concern at UNI's attempt to issue standards in the area. Moreover, by tradition the foodstuffs and agricultural sectors have been the subject of government laws rather than UNI standards.=

Founded in 1909, the electrotechnical body CEI is a private organization, but experts from 10 ministries, such as Transport, Posts and Telecommunications, etc., play a role in the organization.[221] CEI is the ftalian member of the European electrotechnical standards body (CENELEC), and CEI's technical director has been a member of the CENELEC technical board and one of the two Italian representatives[222] in the General Assembly of CENELEC since 1975. Italy has representatives on nearly all the 50 technical committees of the European body. CEI's 40 employees work with about 2000 industry experts in 100 CEI technical committees, 200 subcommittees, and many working groups to issue standards. CEI's committees are organized and numbered to match those of CENELEC. CEI fully participates in the EC's information procedure, both providing information to other member states on its standards and commenting on others' standards. Member states are instituting a new, more elaborate, information procedure for electrotechnical standards, based on the work of a recent conference at Villa Mura in southern Portugal.=

CEI's subject matter is more homogeneous than that of UNI, which deals with many industrial sectors, thus leading to a difference in mentality and effect Unlike UM standards, CEI standards are governed by a specific Italian law,[22]• which gives them legal status, on the grounds that they cover products that are more sensitive than many products covered by UNI standards. Under the law, a producer is required to use good manufacturing practices and can !move compliance with the law by showing compliance with CEI standards. Compliance with such standards is not mandatory and may not insulate a producer from liability for a defective product, but noncompliance may cause more serious legal difficulties if the product turns out to be defective. The difference with UNI can also be seen in the fact that CEI's standards are mostly

[215] Ibid.
[216] There are approximately 30 such bodies in Italy.
[217] Ibid.
[21]•
[219] Under art. 100A of the Treaty of Rome, a member state may issue its own standards in areas also regulated by the EC where the member state determines it has a particular need. The member state must justify this need to the EC. Ibid.
[22]° Ibid.
[221] USITC staff interview with official of CEI, Milan, Jan. 11, 1990.
[222] The Italian national power company appoints the other one.
[223] Ibid.
[224] Law No. 186 of Mar. 1, 1968, published in *Official Gazette,* No. 77 on Mar. 23, 1968.

based on CENELEC measures rather than being purely Italian standards. Of the 150 standards pn duced by CEI in 1989 (as compared with 110 standards in 1988), 80 percent were based on CENELEC standards. This figure is expected to rise even further in the future. As a result of this high proportion, according to CEI U.S. firms interested in participating in the standardsmaking process would be better advised to apply to CENELEC rather than to CEI, which mostly just adopts European standards. Currently, experts from IBM, General Electric, and other firms are members of CEI committees and provide technical assistance in standardsmaking.[225]

EC member states have achieved mutual recognition of each other's standards in the low-voltage field. This field includes domestic appliances, cabling, computers, medical equipment, and electrical accessories such as plugs and sockets. Since the EC low-voltage directive 73/23 was passed, the Italian testing organization IMQ has [illegible] by other member-state bodies. There is reportedly opposition to extending, such cooperation into other sectors. Some national bodies are protective of their own mark. The spreading use of the "EC" mark may help. As to how Italy will notify certification bodies to the EC, CEI expects to provide advice to the Italian Government on who should **be certified.**[226]

Industry sectors of particular concern to Italy might include cableing, because Pirelli has a strong position, as well as household appliances, and lighting. However, this sensitivity may not result in any particular set of purely Italian standards, but might rather be part of a broad-based attempt to defend Italy's industries. Railway construction is also of interest to Italy, which chairs Technical Committee 9 of CENELEC.[22]?

Greece

According to the EC Commission's reports on implementation, Greece has the second-worst record on implementation after Italy 2[28] The Greek Government disagrees with the EC Commission's reports, however, and recently responded to the EC Commission that Greece's record is better than the EC Commission thinks. Upon receipt of one of the EC Commission's most recent reports, the Ministry of Foreign Affairs commissioned a survey on how many directives had been adopted in Greece and found that about 70 percent of the directives that needed to be implemented had been. One reason for disagreement with the EC Commission's figures is that some implementing laws had in fact been passed but had simply not yet been published in the Greek Official Gazette. Publication can take up to 2-3 months, depending on the importance of the law. Another reason is that some directives listed as unimplemented had not yet reached their implementation deadline 2[28]

Whether or not the Greek implementation record is as bad as the EC Commission has reported, Greek Government and industry officials recognize that Greek implementation is not always what it should be, because of several factors. In recent months, Greece has experienced political instability. Governments have changed frequently. Ministers succeed each other rapidly (agency heads tend to change every 8-14 months), as do their senior staffs. Consequently, consistent policy is hard to develop. Recently, the Government has been an uneasy coalition of three very different parties, who seek to govern by "ecumenical" consensus but in fact rarely agree. No one party has enough power to rule, and in **particular no one can elect a President on its own. To elect a President, 180 Parliament votes are needed, and the largest party, New Democracy, has only 148, whereas the Panhellenic Socialists (PASOK) have 120. PASOK appears to be supporting the popular Constantine Karamanlis for President, and it may gain more power thereby. This prospect is leading to concern in business circles. The fact that the Deputy Minister of National Economy is a Communist of the traditional Stalinist type and the Minister himself is a Marxist Socialist does not encourage investor confidence and suggests that the Ministry may give only lip service to implementation. In general, some perceive, ministers are ill informed about new developments and EC directives, and are often uninterested in pursuing the mechanics of implementation.**[230]

Implementation Procedure

The passage of laws has been impeded recently because governmental instability has led to several long adjournments of Parliament. Generally, though, problems in implementation stem not from Parliament but from the bureaucracy that drafts laws for Parliament's consideration, because the political decisions have already been made in Brussels. Bureaucratic delays occur because of the need to coordinate among the various ministries involved. For example, the directive concerning the right of establishment of students involved the Ministries of Culture and Education, Public Order, and Social Security and Health. The Ministry of Foreign Affairs acts in a coordinating role and generally does not involve itself with the substance of a directive unless there are political considerations. That Ministry submits an annual report to Parliament on EC developments, in

zaa Ibid.
aa° Ibid.
r27 /bid.

[299] **The EC Commission considers the most serious problems to be those in the sectors of automobiles, environment, and taxes. 'Me| EC Commission sees no real prospect of improvement, pakticularly in the first half of 1990, because of the unstable political situation. USITC staff interview with EC Commission official, Brussels, Jan 10, 1990. Ibid.**

[229] **USITC staff interview with Greek Ministry of Foreign Affairs officials, Athens, Jan. 16, 1990.**

[23°] **USITC staff interview with officials of the Greek Federation of Industries, Athens, Jan. 15, 1990.**

coordination with the other ministries. The list of Greek measures implementingEC directives could be gleaned from the Greek *0 ficial Gazette,* but it is published only in Greek.[231]

Interministerial debate generally does not involve how to change the text of a directive in its implementation, because most directives are implemented virtually verbatim, so much as how to choose the legal form of implementation, i.e. law (and if law, which minister will table it in Parliament) versus decree (and if decree, which minister will sign it). In principle, however, that decision should be automatic, because if a directive requires amending prior law then implementation must be by a new law.

The EC affairs section of the Ministry of Foreign Affairs deals with EC internal market measures, coordinates 1992 policy among the relevant ministries, and collects and presents Government views to the EC. Most directives fall under the jurisdiction of the Ministry of Commerce. The Ministry of Commerce is responsible for implementation of EC directives in the areas of procurement, insurance, company law, competition, consumer policy, safety standards (particularly with respect to food and beverages), and trademarks but not patents.[232] An EC directive can be implemented in Greece either by Parliamentary law or Presidential decree. A law is passed if the directive requires the amending of prior Greek law. Otherwise, a decree is issued, signed by the relevant minister, and countersigned by the President. EC directives are generally implemented by Presidential decree rather than by legislation. This is because Parliament passed a law[233] giving the ministries authority to implement EC directives, even when existing legislation must be amended.[234]

The Ministry of Commerce's EC Affairs directorate deals with Brussels and ensures coordination and proper implementation of measures within Commerce's competence. The actual issuance of decrees is done by the directorates that deal with the particular sectors. The Ministry of Foreign Affairs coordinates the actions of all ministries and represents Greece in EC-Greece legal disputes such as Court of Justice actions. Ministry of Commerce experts participate in the drafting of directives in EC Commission working groups in Brussels. Next, the Ministry of Foreign Affairs gives the Greek Government position in meetings of the Commitee of Permanent Representatives of the Member States. Finally, when the EC Internal Market Council votes on a directive, the Minister of Commerce represents Greece on Commerce subjects. In general, implementation of EC directives in Greece is hampered by the inefficiency of public administration as compared to that of such countries as West Germany.[235] Moreover, interest groups do play a role in blocking implementation of directives. for example, EC directives on insurance may force the Greek. Government to change a law that has traditionally provided funding for the Greek bankers' union, which might pressure the Government not to fully implement such directives. In the Ministry's view, however, the Government must implement sooner or later.[236]

According to some, the Karamanlis administration of the late 1970s created an additional implementationproblem because it was so.eager to enter the EC before losing power to the (then anti-EC) PASOK . party that it agreed to deadlines for implementation of existing EC law that the Greek civil service could not meet [237] The Greek Government recognizes that when Greece first joined the EC in 1979, the burden of implementing existing EC law (the "Acquis Communautaire") came as a shock. However, that pre-White Paper law was implemented and the Greek Government does not see any continuing evidence of that burden getting in the way of implementing 1992 measures.[238]

Implementation of standards

In the standards area, the Greek Government delegates significant authority for implementation to the Hellenic Organization for Standardization (ELOT).[236] Founded in 1976, ELOT is the body in Greece that issues standards and is the only Greek certification body. Although organized under the law governing private companies, it works closely with the Ministry of Industry. ELOT's Council of Administration includes representatives from the Government, and the Managing Director has until now been appointed by the Minister of Industry (the incumbent came from the Ministry of National Economy).

ELOT receives technical assistance from industry and the Technical Chamber of Greece, a public entity to which Greek engineers belong. ELOT's goal in standardsmaking is to follow ISO and, since 1981, when Greece joined the EC, CEN/CENELEC. Without abandoning ISO standards, ELOT is moving closer to the European approach. When exporting to non-CEN countries, Greek firms use ISO standards, and when dealing with the United States sometimes use purely U.S. standards. ELOT also performs quality assurance for both products and production lines, and accredits laboratories usingEN 29000 and 45000 and

[231] USITC staff interview with Greek Ministry of Foreign Affairs officials, Athens, Jan. 16, 1990.

[232] The Greek Industrial Property Organization handles patent matters.

[233] Law No. 1338/83, as amended by Law No. 1440/84.

[234] USITC staff interview with Greek Ministry of Foreign Affairs officials, Athens, Jan. 16, 1990.

[235] Greek civil servants have office hours from 7:30-8:00 a.m. to 3:00p.m., but starting time is often later in practice.

[236] USITC staff interview with Greek Ministry of Commerce official, Athens, Jan. 16, 1990.

[237] *Financial Times,* Sept. 25, 1989, p. 18.

[238] USITC staff interview with Greek Ministry of Foreign Affairs officials, Athens, Jan. 16, 1990.

[236] USITC staff interview with officials of ELOT, Athens, Jan. 15, 1990.

ISO 9000 series standards. ELOT is complying with EC testing and certification measures. SLOT has its own testing facilities for electric products, plastics, and toys; cooperates with private and public labs; and seeks to expand Greece's testing capabilities. ELOT does not yet test foodstuffs—which is done by Government laboratories—but it is moving in that direction. Food and pharmaceuticals are the principal areas covered by Government rules and not ELOT standards 240

ELOT standards are voluntary, although some become mandatory when covered by EC or Greek legislation, which up until now has been confined to the areas of safety and health, and not quality. In most such cases, legislation is first issued independently of the ELOT standard and contains only minimum requirements, then ELOT passes a standard. Standards are drafted by technical committees. The size of these committees depends on the subject, and they are composed of individual experts appointed by ELOT and paid a nominal fee and experts from the state, the Technical Committee of Greece, trade associations, [241] chambers of commerce, the Federation of Greek Industries, and regional associations. Experts from U.S. firms are free to participate in ELOT technical committees. Furthermore, when a standard draft is final, anyone from the public, including natural persons, is permitted to comment for 3 months, and ELOT is required under ISO procedures to respond to all comments.[242]

ELOT representatives serve on CEN/CENELEC technical committees (only a few so far), and all CEN/CENELEC work is reviewed and approved by ELOT, which plans to provide secretariats for two technical committees starting in 1990. ELOT plans to issue two to three purely Greek standards (on Greek product) in 1990, and will propose them to CEN/CENELEC —and ISO if it is interested. ELOT participates fully in the EC standards information system. ELOT has issued 1,200 standards so far and plans to increase the number rapidly. CEN/CENELEC standards can be faster to implement, because ELOT cannot change their texts. ISO standards can be adapted, and therefore can take more time to adopt. So far, purely Greek standards have formed a very small proportion of the standards ELOT has issued. ELOT follows the activities of U.S. standards bodies, and collects such information in its library. ELOT cooperates with Underwriters' Laboratories (UL) in the certification area and acts as an inspector for UL in Greece. Firms pay for the ELOT inspection, which is cheaper than having UL personnel come over from the United States 43

With respect to the **procedure** for notifying certification bodies to the EC, ELOT will do most of the work, with the Ministry of Industry acting as a "channel" between ELOT and the EC. ELOT generally recognizes the official certifications of well-known bodies in other member states and although it has the right to recheck, it rarely does. ELOT can accept third-country certification if the product meets the minimum requirements of relevant legislation. ELOT is the only sales point for standards in Greece, and it is under pressure to print more because demand outstrips supply 2[44]

Standards are obligatory with respect to safety, energy, and the environment; otherwise, they are generally voluntary. Whereas small Greek firms have difficulty meeting standards, large exporters can afford to comply with standards. [245] The latter participate extensively in ELOT's 65 working groups. ELOT has a small budget from the Government (mostly from the Ministries of Industry and Energy and Technology) and cannot fully fund its working groups, so industry has agreements with ELOT to develop standards. In specific sectors, one firm dominates, and the working group adopts the corresponding standard. For example, Pechiney of France dominates the aluminum sector, and the working group adopts French AFNOR standards. ELOT tends to give priority to working groups that base their efforts on ISO standards. ELOT is seeking to expand the number of standards it has adopted, in order to have standards to propose to CEN/CENELEC and gain influence in those bodies. ELOT is not yet very efficient, and many more standards are needed 2[48]

Greek industry feels that it can influence the standardsmaking process. This is not true, however, of the certification process, in view of the severe shortage of testing laboratories in Greece. As a result, Greek exporters tend to seek certification in other member states. There is also a lack of funding for the construction of new lab facilities. The development law No. 1262 favors development in outlying areas, whereas the need is for labs centrally located near existing industry. Shortage of funds hurts ELOT in standardsmaking as well, because the nominal fees it pays experts are not enough to keep them. Consequently, ELOT relies more heavily on industry and Government experts. Greece is very committed to standardization, but efforts in that direction are hampered by the same problems that plague the whole public sector. [247]

Decentralized States

West Germany

Certain member states have devolved considerable power on autonomous states, provinces, or regions. West Germany is an example of such a federal state, in that the West German States or "Lander" hold constitutionally guaranteed

[240] Ibid.
[241] Such experts are often appointed from private firms.
[242] Ibid.
[243] Ibid.
[244] Ibid.
[242] USITC staff interview with officials of the Greek Federation of Industries (SEV), Athens, Jan. 15, 1990.
[246] Ibid.
[247] Ibid.

powers in the areas of social policy, safety, and the environment.[248] If a member state has adopted a decentralized constitution, the task of implementation can be complicated, a situation that raises the specter of implementation by some regions and not by others.

Only central governments are parties to the Treaty of Rome,[249] but the EC fully sup• • its the devolution of power on regional and local . • • ies by its emphasis on the principle of "subsidiarity."[250] This principle means that, when possible, decisions be taken at the lowest level of government. Even when the EC has the authority to act, it prefers to sketch out only the broad goals and leave the task of working out the details to member states "according to their own traditions and their own laws."[251]

The European Court of Justice has repeatedly stated that each member state is free to delegate powers to domestic authorities as it considers fit and that implementation of EC law at a regional or local level is permissible. The EC Commission is not empowered to intervene in that choice of authorities.[252]

In practice, the EC Commission considers West Germany's level of implementation to be good. According to the EC Commission, the division of power between the federal authorities and the Lander has not made implementation more difficult, because the West Germans are well organized to avoid intergovernmental problems.[253] Nevertheless, Italian - producers report encountering problems in West Germany because of the Land system, in that differences in workman's compensation, social security, and safety requirements can preclude the sale of Italian products in more than one Land. A German-made tractor, for instance, will be built with alternate safety features to satisfy all Lander, whereas an Italian-made tractor may not.[254]

Belgium

In Belgium, since the 1980 constitutional reform, environmental matters have been dealt with by the autonomous regions of Flanders and Wallonie. The reform raised the possibility that one region might properly implement a directive and the other one might not. Indeed, the EC Commission knows of at least one directive that was implemented in Wallonie but not in Flanders.[255]

Spain

Spain has autonomous regions that are subject to the same concerns.[256] In addition, Spain has implemented a relatively small number of directives. The EC Commission does not see this as a particular problem, however, because Spain is a newcomer to the EC and is already working under the burden of implementing pre-White-Paper law. Spain has been accorded numerous derogations from the implementation deadlines imposed on other member states. Some derogations were scheduled to end on January 1,1990; others will last until January 1, 1992.[257]

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[241] USITC staff interview with Italian Ministry of Industry and Handicrafts official, Rome, Jan. 12 1990. Italian regions have much less power than do Lander, although they have some authority (by delegation, not guaranteed by the constitution) on environmental matters. In particular, a region can ban the construction ofa large polluting plant in its area; ibid; and USITC staff interview with officials of Confindustria, Rome, Jan. 1Z 1990.

[24·] See Treaty of Rome and Acts of Accession.

[8"] Sir Leon Brittan, speaking to the General Meeting of the Coningsby Club, July 13, 1989, IP (89) 566, p. 1.

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[262] Debrs, "Answer to Written Question No. 210W85 of Willy Kuijpers, Apr. 1, 1986, citing ECJ cases 96/81, 97/81, Commission v. Kingdom of the Netherlands, 1982/E.C.R. 1791 et. seq.'

[261)] USITC staff interview with EC Commission official, Jan. 10, 1990.

264 USITC staff interview with Italian Ministry of Industry and Handicrafts official, Rome, Jan. 1Z 1990.

". URIC staff interview with EC Commission official, Brussels, Jan. 10, 1990.

[266] ibid.

"' Portugal is in a position similar to that of Spain in that it is also a newcomer to the EC. Moreover, the generally poor economic situation is hampering implementation in Portugal. The Government is using derogations to give itself time to adopt new measures. However, the EC Commission believes that Portugal is making steady progress toward full implementation. USITC staff interview with EC Commission official, Brussels, Jan. 10, 1990. Portuguese Prime Minister Anibal Cavaco Silva pointed out that in recent months Portugal's record of implemented directives has risen from 12 to 38. Institutions and Policy Coordination,' *European Report,* No. 1547, Dec. 9, 1989, p. 7.

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

CONTENTS

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

Introduction

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

Customs Union Theory

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

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

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

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

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

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

Early Research on the 1992 Program

Early research conducted for the EC Commission, commonly referred to as the Cecchini Report, predicts that the total gains from completion of the internal market would be an increase in EC GDP of between 3.2 and 5.7 percent, a reduction of inflation of between 43 and 7.7 percent, and an easing of domestic budget balances and trade balances of between 1.5 and 3.0 percent of GDP and between 0.7 and 1.3 percent of GDP, respectively, over the medium term (5 to 10 years). It is also estimated that the labor market would improve, with the creation of between 1.3 million and 2.3 million jobs in the EC as a whole over the medium term. However, it is expected that the unemployment rate would fall by only 1 to 2 percent in the medium term.

Recent Research on the 1992 Program

This section presents a review of recent economic research on the 1992 market integration program.[1] In the previous report, *The Effects of Greater Economic Integration Within theEuropean Community on the United States,*[2] much attention was focused on the research conducted for the EC Commission and contained in the Cecchini Report. The Cecchini Report represents a major research effort on the part of the EC Commission to estimate the potential impacts of the 1992 program. Since this effort is regarded as the benchmark study estimating the potential impacts of the 1992 initiative, much of the current research draws upon the results of the Cecchini Report as a basis for further analysis. However, as research that estimates similar probable effects becomes available, it will be compared to the Cecchini results in order to assess their relative magnitude.[3]

The yaper "Completing the European Internal Market, by L Alan Winters, examines international trade policy within a completed European internal market His paper examines two sets of implications of the EC 1992 program for trade policy: first, the consequences of prohibiting member states from taxing or controlling intermember trade, and second, the potential dangers of member states' resorting to subsidy-based protection in the enforced absence of border measures.

Winters discusses the proposition that it is desirable to maintain some internal barriers to trade in order to reduce the degree of trade diversion entailed by a customs union.[4] Winters argues that this proposition is not relevant to the practical assessment of completing the internal market. The practical issue, he asserts, is the abolishment of existing nonoptimal barriers to trade. If the choice is between the present situation and free trade, Winters believes it is likely that free trade is preferable. He points out that this is especially true because many of the EC's internal barriers have been either introduced or at least maintained at the behest of the industries to which they apply. For example, Winters notes the monetary compensatory amounts and the barriers to importing automobiles. He also points out that given the effectiveness industries have in influencing the policy process and institutions in the EC, an elimination of internal barriers to trade is likely to result in a sizable benefit for the EC.

Winters further argues that the EC should adopt strict measures to prevent member states from replacing border measures on intra-EC trade with national subsidies. He contends that existing subsidies are large and lead to significant subsidy competition among member states. Winters emphasizes that in a customs union the cost of subsidies to an economy increases. Moreover, Winters asserts, given the independent policymaking by member states, the likely result of continued national subsidies is extended subsidy wars and oversubsidization. Therefore, he concludes that not only should barriers to intra-EC trade be eliminated, but also subsidies to national firms.

In the study "The Globalization of Markets and Regional Integration," Paul Welfens addresses the issue of industry concentration. He points out that 1993 will witness the emergence of new, EC-wide markets in many major industries. Welfens asserts that to the extent that economies of scale and learning-curve effects play a more significant role once the market potential increases, industries will tend toward increased concentration. As presented in the Cecchini Report, several major industries can expect unit costs to decrease by 5 to 20 percent if the production volume is doubled.s Welfens points out that if one assumes that the number of suppliers serving the U.S. market is the probable number that would serve the EC internal market, then the number of suppliers in the EC would shrink by more than half. He argues that only for the relatively young and innovative industries will the number of suppliers remain high.

In "Telecommunications in the European Internal Market," Jurgen Muller examines the possible effects that completing the internal market in the EC may have on telecommunications equipment and services. Muller asserts that the implementation of the EC Commission's proposals for the telecommunications sector are likely to have

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[1] The impending integration of the internal EC market has moved the 1992 program to the forefront of attention in the North American research community. This attention has begun to spark much economic research on the likely impacts of the 1992 program. Unfortunately, the results of this research are not currently available in economic journals and periodicals owing to the peer review process and the backlog of other research. Peer review and space limitations of economic journals and periodicals results in a 1-to 2-year lag between submission and publication. Consequently, much of the research that has been published on EC 1992 is of European origin and primarily focuses on the impact of the 1992 program within the EC. Thus, the research reviewed in this report is from a European perspective and focuses on internal EC issues. As research from a non-EC perspective becomes available, it will be highlighted in future reports.

[2] U.S. International Trade Commission, *The Effects of Graiter Economic Integration Within the European Community on the United States* (Investigation No. 332-2671 USITC Publication 2304, July 1989.

Already some researchers are skeptical of the results reported in the Cecchini Report. For instance, Merton Peck, a professor of economics at Yale University, in an editorial published in *The Journal of Commerce* on Oct. 26, 1989, argues that the Cecchini Report significantly overestimates the gains of the 1992 program and underestimates the difficulties in realizing them. in particular, he asserts that the cost savings assumed in the Cecchini Report are too high. Moreover, he argues that the political difficulties in implementing the program, such as the acceptance by member governments of firm closures, are assumed away.

[3] For a technical discussion of this proposition see the appendix of Winters' paper.

[4] Welfens obtains these figures from W.S. Atkins Management Consultants, *The 'Cost of Non Europe' in Public-Sector Procurement* (Luxembourg: Office for Official Publications of the European Communities, 1988).

a considerable impact because price levels and pricing structure are apt to change significantly due to greater market access, simpler EC-wide approval procedures, and the pressure of imports. Muller quotes the Cecchini Report in estimating a possible price reduction in end-user equipment of between 15 and 25 percent.[6] He argues that price reductions of that magnitude would result in significant restructuring of the equipment- manufacturing industry, mainly at the expense of small- and medium-sized firms, which are at present shielded from international competition by national procurement policies. Muller also assesses the impact of the potential fall in switching- and transmission-equipment prices on the services side of the market. He estimates that the various savings attributed to lower switching- and transmission-equipment prices could reduce the network operator's production costs by between 2 and 8 percent.[7] If these costs are passed on in lower prices for telecommunications service, telephone traffic is likely to increase. Moreover, Muller maintains that the availability of a wider product range and the decline in the cost of terminal equipment will also generate additional telephone traffic. Muller points out that there is considerable opposition to any changes in the present structure of national telecommunications industries that would shrink employment in this sector. Conversely, those who are most likely to benefit are much less outspoken. Muller argues that the long-term gains resulting from the EC's proposals outweigh the short-term losses.

In their paper "Indirect Taxation and the Completion of the Internal Market of the EC," Marko Bos and Hans Nelson discuss the issue of harmonized VAT and excise taxes within the EC as a result of the 1992 program. They point out that domestic tax declaration and collection systems will have to be substituted for declaration and collection on importation. In other words, Bos and Nelson point out that this means that sales to another member state will in no way be taxed differently from domestic sales.

Bos and Nelson review the EC Commission's conclusions as to what would be needed if border-crossing transactions within the EC were to be treated exactly like domestic transactions, which are as follows:

1. The substitution of a system of tax collecting by the country of origin in place of the present system of refunding tax on exportation and collecting it on importation;
2. The introduction of an EC clearing mechanism, to which (from which) net exporting (net importing) member states would contribute (receive payments) on a monthly basis; and
3. A harmonization of national VAT rates.

On the issue of excise-taxed products, Bos and Nelson note that the EC Commission took the view that equal treatment of border-crossing and domestic sales can be achieved through —

1. An interlinkage of the bonded-warehouse systems;
2. The maintenance of the destination principle (i.e., taxation based on the destination of the purchased good); and
3. A harmonization of the national excise-duty rates and regimes.

Bos and Nelson argue that the proposed VAT clearing mechanism should be capable of operating satisfactorily provided certain entities, such as hospitals, are integrated into the system and that VAT collection for mail-order firms is based on the country of destination. Bos and Nelson maintain that the harmonization of VAT rates is desirable but not strictly necessary. They conclude that fixing minimum rates at the EC level might suffice. On the other hand, Bos and Nelson assert that the EC's proposal to achieve uniform excise rates by the end of 1992 deserves support even though it may impinge upon the sovereignty of member states. They note that some industries and governments will have to make sacrifices. Bos and Nelson argue that if the completion of the internal market is to be accomplished, the unification of excise duties must be pursued with vigor.

In "Employment Effects of the European Internal Market," Dieter Schumacher examines the employment implications of the EC 1992 initiative for firms in the manufacturing sector of the EC. Schumacher notes that firms expect their domestic sales to increase slightly but expect their intra-EC exports to increase substantially in response to the EC 1992 program. This means that the increase in demand for manufactured goods will be met chiefly by imports from other EC countries. Schumacher notes that according to an EC Commission survey, revenue in this sector is expected to increase by 5 percent overall.[8] The growth in revenue expected in certain manufacturing industries in the EC as a whole as a result of completing the internal market is reported in table 2-1. Given an overall 5-percent increase, Schumacher calculates the labor requirement necessary to accommodate that growth. He finds that the EC as a whole will need a higher number of workers per million dollars of manufacturing output (15.7, as compared with 14.3 in 1985), a higher proportion of female workers (29.5 percent, as comparedwith 28.7 percent in 1985), and a higher proportion of unskilled workers (45.5 percent, as compared with 43.3 percent in 1985). Schumacher maintains that the 5-percent expected

[6] See INSEAD, *The Benefits of Completing the Internal Market for Telecommunications Equipment in the Community* (Luxembourg: Office for Official Publications of the European Communities, 1987).

[7] Ibid.

[8] See G. Nerb, *The Completion of the Internal Market: A Survey of European Industry's Perception of the Likely Effects* (Luxembourg: Office for Official Publications of the European Communities, 1988).

increase in output will shift the composition of the EC's manufacturing sector towards more labor-intensive activity.

Schumacher also assesses the expected labor productivity gains resulting from anticipated lower production costs in the completed internal market. According to a survey performed for the EC Commission,[9] labor productivity is expected to rise by approximately 3 percent, so that if revenue rises by 5 percent, employment in the EC's manufacturing sector will rise by approximately 2 percent. Schumacher notes that if one assumes that productivity growth of this magnitude is equal for all sectors in all countries, then employment would fall in those industries in table 2-1 for which the expected growth in revenue is less than 3 percent For example, according to Schumacher, employment in the EC as a whole will not rise in only two manufacturing industries—synthetic fibers and petroleum refining. Schumacher concludes by noting that his calculations reveal that the removal of the remaining barriers within the EC is likely to lead to substantial structural change in employment and that there will be both winners and losers.

In the paper "International Trade and Integration of the European Community," Alexis Jacquemin and Andre Sapir examine the structural determinants of European competitiveness. Jacquemin and Sapir attempt to identify those factors that positively influence EC imports of community origin (i.e. trade creation) and those factors that correspond to trade diversion. Once these factors are identified, Jacquemin and Sapir maintain that it will be possible to determine which factors should be emphasized and which factors should be phased out as the 1992 program progresses. Jacquemin and Sapir empirically model imports of EC origin as a share of total EC imports using inter- and intra-industry determinants, barriers to trade, and demand growth as explanatory factors. According to Jacquemin and Sapir, their estimations show that human capital and skilled labor, substantial physical capital, and research and development (R&D) are conducive to intra-EC trade and enable better resistance to imports of extra-EC origin (trade creation). Other factors, intended to capture the effects of the common external tariff and agro-business policy,io while being conducive to intra-EC trade, are likely to promote such trade at the expense of greater integration into world competitiveness (trade diversion). Jacquemin and Sapir believe that the influence of the former factors should be strengthened through EC policies, such as coordinated R&D and the accumulation of human capital. They further advocate that the latter factors should be considered as makeshift, destined to be phased out They conclude that it is necessary to resist the temptation to create a system designed to defend intra-EC trade at the expense of progress for world free trade.

Alasdair Smith and Anthony Venables undertake some industry simulations in their study entitled "Completing the Internal Market in the European Community." They posit that the EC 1992 program should have two principal effects on economic welfare. First, there is likely to be

• *Ibid.*

10 Agro-business policy encompasses the common agricultural and public procurement policies followed in the

Table 2-1
Expected growth In revenue by manufacturing firms as a result of the EC 1992 program, by Industry
(In percent)

ISIC No.	*Industry*	*EC5'*	*EC12*
311/2/3/4	Food, beverages, and tobacco	6	6
321	TextNes	6	7
322/4	Clothing and footwear	7	7
323	Leather and leather goods	6	6
331/2	Wood and wooden products, furniture	5	7
341/2	Paper and paper products, printing	5	5
351	Chemicals	4	4
352	Synthetic fibers	2	3
353/4	Petroleum refining	4	3
355	Processing of rubber products	4	5
356	Processing of plastics	5	6
361/2/9	Nonmetallic mineral products	4	5
371/2	Production and Initial processing of metals	4	4
381	Manufacture of metal products	5	6
382R	Mechanical engineering	6	6
3825	Office machines, EDP equipment	5	6
383	Electrical engineering	8	7
3843	Manufacture of automobiles	4	4
384R	Other vehicle manufacture	6	5
385	Precision engineering and optics	5	6
	Total, manufacturing industries	5	5

• EC5 includes Belgium/Luxembourg, France, West Germany, Italy, and the United Kingdom.

Source: G. Nerb, *The Completion of the internal Market: A Survey of European Industry's Perception of the Likely Effects* (Luxembourg: Office for Official Publications of the European Communities, 1988).

increased competition, resulting in lower prices as well as an increased range of products. Second, changes in the size of firms could lead to a greater exploitation of economies of scale. Their study attempts to quantify the magnitude of these effects in a formal model. Their model is one of partial equilibrium under imperfect competition.[11]

Smith and Venables use their model to evaluate two different policy options. The first is to reduce trade barriers between member states. They find that this policy increases intra-EC trade (trade creation) and is procompetitive. Their results indicate that firm scale is increased, lower average cost is attained, and modest welfare gains are achieved in their 10 study industries. Table 2-2 presents their results. Note that two cases are reported for each industry. One case holds the number of firms constant in an industry, and the second case allows for the unimpeded entry and exit of firms.

The second policy option Smith and Venables consider is a little more ambitious. They consider firms' acting in an integrated, EC-wide market, rather than in segmented national markets. This assumption removes the monopoly power[12] that firms have in a particular market (e.g., their domestic market) and replaces it with an EC average degree of monopoly power. Smith and Venables note that under this scenario there are substantial gains in some of their study industries. The results of this simulation are reported in table 2-3. Smith and Venables note that a comparison of the results in tables 2-2 and 2-3 reveal that the overall gains to the EC are greater under this second policy option.

Smith and Venables point out that the second policy option is closer to the spirit of "completing the internal marker than is a mere reduction in trade barriers as proposed in the first policy option. They question whether this second policy option experiment is meaningful given existing national trade restrictions imposed by individual EC members, together with the "article 115" controls on intra-EC trade.[13] Smith and Venables note that in practice, actual EC policy is likely to be some combination of their two scenarios. They believe that their results highlight the fact that while some gains can be derived from moving the EC closer to being a full customs union, more significant welfare gains may be obtained from the creation of a genuinely unified European market

" That is, firms operate under increasing returns to scale and produce goods that may be differentiated, and the ensuing indus try equilibrium involves intra-industry trade.

[12] Monopoly power refers to a firm's ability to obtain a price for its output at a level that is higher than the competitive result (i.e., pnce equals marginal cost). Firms tend to have a higher degree of market power in oligopolistic industries that are characterized by bamers to entry.

" Art. 115 of the Treaty of Rome permits countries to suspend the free movement of goods of extra-EC origin within in order to maintain national import restrictions.

Table 2-2
Simulation results for a reduction In trade barriers' *(In percent)*

NACE No. and industry	Chance in- EC output	Chance in- Average cost	Change in welfare as a share of- Consumption	The change in infra-EC trade
242 Cement, lime, and plaster:				
Fixed No. of firms	**0.24**	**(0.03)**	**(0.10)**	**(5.00)**
Variable No. of firms	**(0.05)**	**(0.10)**	**0.02**	**0.80**
257 Pharmaceutical products:				
Fixed No. of firms	**0.37**	**(0.08)**	**0.29**	**21.80**
Variable No. of firms	**0.29**	**(0.13)**	**0.29**	**21.60**
260 Artificial and synthetic fibers:				
Fixed No. of firms	**4.90**	**(0.51)**	**0.99**	**13.00**
Variable No. of firms	**6.52**	**(2.82)**	**1.17**	**5.80**
322 Machine tools:				
Fixed No. of firms	**1.67**	**(0.12)**	**0.84**	**13.80**
Variable No. of firms	**2.64**	**(0.05)**	**0.82**	**11.50**
330 Office machinery:				
Fixed No. of firms	**10.40**	**(0.98)**	**0.88**	**8.00**
Variable No. of firms	**15.50**	**(4.27)**	**1.31**	**6.40**
342 Electric motors, generators:				
Fixed No. of firms	**0.37**	**(0.05)**	**0.29**	**19.00**
Variable No. of firms	**0.31**	**0.09**	**0.29**	**18.40**
346 Electrical household appliances:				
Fixed No. of firms	**2.09**	**(0.32)**	**0.64**	**14.80**
Variable No. of firms	**1.80**	**(0.76)**	**0.70**	**13.70**
350 Motor vehicles:				
Fixed No. of firms	**3.36**	**(0.56)**	**0.83**	**17.90**
Variable No. of firms	**3.16**	**(1.40)**	**0.95**	**15.10**
438 Carpets, linoleum:				
Fixed No. of firms	**2.51**	**(0.17)**	**0.67**	**8.00**
Variable No. of firms	**2.68**	**(0.45)**	**0.74**	**7.10**
451 Footwear:				
Fixed No. of firms	**3.21**	**(0.03)**	**0.35**	**3.10**
Variable No. of firms	**3.16**	**(0.00)**	**0.37**	**1.40**

' Based on 1982 data.

Source: Alasdair Smith and Anthony Venables, "Completing the Internal Market in the European Community: Some Industry Simulations, *European Economic Review.* **vol. 32 (1988).**

Table 2-3
Simulation results for completely integrated markets'
(In percent)

NACE No. and Industry	Charms in- EC output	Charms in- Average cost	Change In welfare gs a share of- Con- sump- Hon	Change In welfare gs a share of- The change in infra- EC trade
242 Cement. lime, and plaster:				
Axed No. of firms	1.32	(0.12)	0.22	(78.00)
Variable No. of firms	0.71	(0.90)	1.08	(75.40)
257 Pharmaceutical products:				
Fixed No. of firms	3.32	(0.73)	1.11	(16.10)
Variable No. of firms	1.71	(2.17)	1.15	(16.50)
260 Artificial and synthetic fibers:				
Fixed No. of firms	9.59	(1.77)	4.14	(56.50)
Variable No. of firms	10.69	(4.25)	5.57	(55.60)
322 Machine tools:				
Fixed No. of firms	2.05	(0.16)	0.86	24.60
Variable No. of firms	2.82	(0.12)	0.83	29.50
330 Office machinery:				
Fixed No. of firms	27.30	(2.71)	3.88	(64.00)
Variable No. of firms	27.00		4.10	(64.30)
342 Electric motors, generators:				
Fixed No. of firms	1.72	1(03.2169:	0.52	2.50
Variable No. of firms	0.92	(0.94)	0.40	4.00
346 Electrical household appliances:				
Fixed No. of firms	8.08	(1.15)	1.79	(23.00)
Variable No. of firms	6.70	(3.35)	2.28	(25.80)
350 Motor vehicles:				
Fixed No. of firms	10.50	(1.72)	4.09	(61.40)
Variable No. of firms	9.68	(2.67)	4.50	(62.40)
438 Carpets. linoleum				
Fixed No. of firms	4.46		0.75	26.70
Variable No. of firms	3.80	10.211	0.75	
451 Footwear:				
Fixed No. of firms	5.53	(0.26)	0.46	0.00
Variable No. of limn	5.58	(0.42)	0.50	8.70

Based on 1982 data.

Source: Alasdalr Smith and Anthony Venable*. 'Completing the internal Market in the European Community: Some industry Simulations,' *European Economic Review.* vol. 32 (1988).

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CHAPTER 3
TRADE AND INVESTMENT IN THE EC

CONTENTS

CHAPTER 3
TRADE AND INVESTMENT IN THE EC

The European Community constituted one of the largest trading partners of the United States during 1984-88. The EC consistently accounted for between 18 and 20 percent of total U.S. imports during that period and between 22 and 23 percent of total U.S. exports.

Developments Covered in the Initial Report

The U.S. trade balance for all commodities traded between the United States and the EC was a deficit of $12.7 billion in 1988. The total U.S. trade deficit with the world reached about $129 billion in that same year. U.S. exports amounted to $308 billion in 1988, while U.S. imports reached $437 billion. As categorized by SITC commodity groupings, the United States imported primarily Road Vehicles, Machinery Specialized for Particular Industries, and Miscellaneous Manufactured Articles from the EC. The United States was a primary exporter of Office Machines and Automatic Data Processing Equipment, Other Transport Equipment, and Electrical Machinery Apparatus and Appliances.

The EC member states imported about $950 billion worth of goods in 1987. EC exports were at a level of $951 billion in 1987. The principal suppliers to the EC were in fact EC member states, including West Germany, France, and the Netherlands. and major markets for total EC trade in 1987 were West Germany, France, and the United Kingdom. Total imports external to the EC member states was a level of $399 billion in 1987, and total exports external to EC member states reached levels of about $394 billion. Switzerland, Austria, and Sweden formed the principal non-EC sources, and the principal external market for EC exports was the United States, followed by Switzerland, Sweden, and Austria.

One of the more significant trends in EC trade, as recorded by the UN OECD database, is increased intra-EC trade as a percentage of total EC trade with the world. In 1984, a total of $633 billion in imports was recorded by the 12 EC member states. EC trade with other EC countries comprised approximately 51 percent of this amount, or about $325 billion. The percentage of intra-EC imports increased gradually to about 58 percent in 1987.

EC exports record a similar trend. Intra-EC exports made up approximately 59 percent of the total of $951 billion in EC exports in 1987, or about $557 billion. This represents an increase from 1984 when intra-EC trade accounted for about 54 percent of total exports of $608 billion.

Developments During 1989

U.S. Trade with the EC

Introduction

The European Community, as defined by its current member states, continues to be one of the largest trading partners of the United States (see app. E, tables E-1 and E-2). In terms of imports, the EC consistently accounted for between 18 and 24 percent of total U.S. imports during 1985-89. The EC ranked second during 1989 with Japan and Canada ranked first and third, respectively.

U.S. Trade Balance

The U.S. trade balance for all commodities traded between the United States and the EC was a deficit of $1.5 billion during 1989. This compares favorably with a deficit of $12.7 billion recorded in 1988, indicating a substantial reduction of the U.S. trade deficit with the EC in 1989.

The individual SITC divisions that provided the largest impact on the current trade balance are shown in table E-3. U.S. exports of Office Machines and Automated Data Processing Equipment (SITC division 75) exceeded imports by about $8.0 billion, and provided the greatest positive balance with the EC during January-September 1989. Various other SITC divisions (79, 87, and *22)* encompassing primarily manufactured goods also provided positive trade balances. Road vehicles (SITC division 78) provided the greatest negative trade balances, primarily as a result of U.S. imports of automobiles from West Germany, the United Kingdom, and Italy.

U.S. Exports

During 1989, U.S. exports to the EC totaled $82.5 billion, representing an increase of 15.7percent over 1988. Exports to the EC accounted for 7,4 percent of total U.S. exports in 1989. The EC was the United States' most significant export market in 1989, as it has been since 1987.[1]

Among EC nations, the United Kingdom was the largest purchaser of U.S. exports, accounting for 23.8 percent of U.S. exports to the EC. West Germany was the second largest EC nation in terms of purchases of U.S. exports, accounting for 19.5 percent of all U.S. exports to the EC. France and the Netherlands each accounted for 13.2 percent of U.S. exports to the EC.

Exports of products in the following categories accounted for the largest percentages of U.S. exports to the EC in 1989: Other Transport Equipment, which includes rail coaches, airplanes, and ships; Office Machines and Automated Data ProCessing

[1] **The second-largestpurchaser of U.S. exports was Canada, with total purchases of U.S. goods amounting to $75.0 billion —213 percent of all U.S. exports—in 1989. Japan was the third largest purchaser of U.S. exports, purchasing $42.8 billion of U.S. goods— 12.2 percent of all U.S. exports.**

Equipment; Power Generating Machinery and Equipment; Electrical Machinery, Apparatus and Appliances; and Miscellaneous Manufactured Articles (tables E-4 through E-8). Exports to the EC of products in these categories totaled $34.1 billion, slightly over 42 percent of total U.S. exports to the EC.

The largest SITC division grouping for U.S. exports to the EC was Transport equipment (SITC division 79), which includes railway and tramway vehicles, aircraft, and ships. Exports to the EC in this category increased by 52 percent during 1989 compared with $6.3 billion to $9.5 billion in 1988. This was largely due to increased activity in EC travel and tourism indirectly resulting in greater demand for these types of vehicles. The largest market for division 79 exports was within the United Kingdom, followed by Germany and the Netherlands.

The second largest SITC category was Office Machines and Automated Data Processing Equipment (SITC division 75). Total U.S. exports increased from $23.1 billion during 1988 to $23.2 billion during 1989, an increase of less than one percent, while exports to the EC decreased by 15 percent over the same period. The EC accounted for 45 percent of exports within this category, with the United Kingdom, West Germany, and the Netherlands comprising 29, 23, and 14 percent, respectively, of total IJ.S. exports to the EC.

The third largest category of exports to the EC during 1989 was Power Generating Machinery and Eciuipment (SITC division 71). Total U.S. exports in this division amounted to $14.2 billion, with U.S. exports to the EC amounting to $5.1 billion, or 36 percent of the total. Exports of articles under SITC' 71 to the EC during 1989 increased by 28 percent in 1988.

U.S. Imports

Imports from the 12 EC countries in 1989 totaled $84 billion, essentially the same level as that in 1988. Imports from the EC accounted for nearly 18 percent of total U.S. imports of $468 billion in 1989. The EC currently ranks as the third-largest source of U.S. imports, behind Japan and Canada.

The 5 largest SITC commodity groupings of U.S. imports from the EC were Road Vehicles; Machinery Specialized for Particular Industries; Miscellaneous Manufactured Articles; Power Generating Machinery and Equipment; and General Industrial Machinery and Equipment (SITC divisions 78, 72, 89, 71, and 74, respectively). These five groupings accounted for $29 billion, or 21 percent of total U.S. imports from the EC. These same five groupings accounted for 29 percent, or $135 billion of total U.S. imports from all countries during 1989 (tables E-9 to E-14).

Imports of Road Vehicles (SITC division 78) from the 12 EC countries totaled $9.5 billion in 1989, representing a decrease of about 15 percent from the level of $11.2 billion recorded in 1988. Imports from the EC accounted for nearly 15 percent of total U.S. imports of these products of $64 billion in 1989. The EC ccurrently ranks as the third-largest source of these imports, behind Japan and Canada. The largest EC supplier was West Germany, whose imports amounted to $6.1 billion during 1989, compared with $7.8 billion in 1988.

Imports of Machinery Specialized for Particular Industries (SITC division 72) from the 12 EC countries in 1989 totaled $5.7 billion, essentially the same level as in 1988. Imports from the EC accounted for nearly 44 percent of total U.S. imports of these products of $12.9 billion in 1989. The EC is the largest source of these U.S. imports. Specific products and product groupings included in SITC 72 are agricultural machinery; lawnmowers; construction vehicles such as bulldozers, excavators, and mechanical shovels; industrial machinery for producing textiles, including spinning, weaving, knitting, and washing machines; and other machines related to the manufacture of paper.

Imports of Miscellaneous Manufactured Articles (SITC division 89) from the 12 EC countries totaled $5.2 billion in 1989, showing an increase of 10 percent over 1988. Imports from the EC accounted for nearly 22 percent of total U.S. imports of these products of $23.8 billion in 1989. The EC is the largest source of such U.S. imports. Miscellaneous Manufactured Articles (SITC division 89) includes such products as miscellaneous printed materials, office supplies, jewelry, musical instruments, and other miscellaneous manufactured articles.

EC Trade With Eastern Europe

The deficit in the EC balance of trade with Eastern Europe gradually declined from nearly $11 billion in 1984 to about $6 billion in 1987. The lower deficit was largely due to lower levels of imports from the Soviet Union, while exports increased to all countris in Eastern Europe. Exports to Czechoslovakia nearly doubled during the period, from $1.3 to $2.4 billion, while exports to Romania decreased by 9 percent from $827 million in 1984 to $752 billion in 1987.

EC imports from Eastern Europe, as defined by the country grouping of Bulgaria, Czechoslovakia, East Germany, Hungary, Poland, Romania, and the Soviet Union, fluctuated between 1984 and 1987. EC imports from these countries decreased from $28.3 billion in 1984 to $25.0 billion in 1986 before increasing to the 1987 level of $28.0 billion. The overall decrease recorded in imports for 1984-87 was about 1 percent The largest supplier in this country grouping was the Soviet Union, which accounted for slightly more than 53 percent of total imports. The next largest supplier was Poland, which supplied 12 pei+cent of total EC imports from Eastern Europe (tale E-14).

EC exports to these countries amounted to $17.3 billion in 1984, rising significantly to $22.1 billion in 1987. Exports increased by 27 percent during this period, or by an average of about 9 percent per year.

In 1987, exports to the Soviet Union made up 48 percent of total EC exports to Eastern Europe. Hungary, Poland, and Czechoslovakia each received 11 to 13 percent of total EC exports to Eastern Europe (table E-15).

Trends in EC Trade

One of the more significant trends in EC trade, as recorded by the UN OECD database, is an increase in the intra-EC trade as a percentage of total EC trade with the world. Intra-EC imports accounted for about 58 percent of total EC imports of $950 billion in 1987, or about $553 billion. Such intra-EC imports were $325 billion in 1984, or 51 percent of total EC imports of $633 billion. The growth in percent of intra-EC imports increased by about 4.6 percent annually since 1984.

EC exports reflect a similar phenomenon. Intra-EC exports made up approximately 59 percent of a total trade figure of $951 billion of exports in 1987, or about $559 billion. This represents an increase from 1984, when intra-EC trade amounted to $330 billion out of total exports of $608 billion, or about 54 percent The percent of intra-EC exports has also gradually increased by an average of about 2.6 percent per year since 1984.

Investment

Investment in the EC

Introduction

In 1988, U.S. investment in the EC was at a level of $126.5 billion, compared with $8.8 million by Canada, $8.3 billion by Japan, and $44.9 million by South Korea. Although U.S. investment in the EC increased by 76 percent during 1984-88, Japanese investment is reported to have increased by 404 percent and South Korean investment, by 251 percent [2]

EC member states as a group experienced a nominal ,GNP growth rate of 33 percent in 1989.[3] There are expectations that the elimination of physical, technical, and tax barriers within the EC will result in GNP growth, the creation of new jobs, and consumerPice decreases. As economies throughout the EC grow, governments are expected to spend more on telecommunications, power generation, and transport, with the largest growth and investment expected in the electrical and heavy-engineering sectors. One source forecasted growth in GNP in the EC member states to reach 3 percent per year in the early 1990s, compared with 2 percent per year for the United States and about 4 percent per year for Japan. According to the forecast, West Germany, France, and Spain are likely to experience the greatest growth.[4]

Government Support for Investment

The European Investment Bank (EIB) was established concurrently with other treaties founding the EC Commission. Beginning in 1957, the primary task of the Investment Bank was to provide funding and resources to promote equal development within EC member states and to provide aid to developing countries. Approximately 10 billion ECU were invested by the Bank in 1988, with 90 percent of this amount allocated to EC member states, and the remainder to third countries.[5]

The EIB is currently financing projects in the Eastern European countries of Hungary and Poland, and some speculate that the Investment Bank will be able to expand operations in the future. However, recently the EC Commission indicated plans to set up a special development bank for Eastern European countries that would also allow other countries to participate in joint financing. Such a bank would be especially attractive to some Eastern European countries, which could require capital investment to improve their basic infrastructure.°

The EC has also taken steps to encourage new and continued investment in the EC member states. The European Seed Capital Scheme of the EC Commission serves to help increase the availability of seed capital funds for entreprenetus.[7] Currently backing 24 new seed capital funds provided by private European investment firms, the EC Commission will provide approximately 12.5 million ECU to meet part of the capital needs of firms investing in the less developed areas. Seed capital is typically used to assess new technology or study process feasibility, as well as to arrange for licensing and patents. In Europe, many private investment firms provide seed capital to smaller companies.

Currently the Seed Capital Scheme is backing three funds each in Italy, Spain, West Germany, and the United Kingdom. There are two funds each in Belgium, France, and the Netherlands, and one fund each in Greece, Ireland, and Portugal. Three additional funds are "transnational" and deal with operations in more than one country.

U.S. International Investment Position

The U.S. international investment position, as compiled from estimates by the Department of Commerce Bureau of Economic Analysis (BEA), indicates the balance between U.S. claims on foreign corporations and foreign claims on U.S. corporation. The international investment position is adjusted each year by reflecting changes in the capital flows and adjustments to the valuation of holdings.

• **James M. Jones and Linda M. Spencer,** *America's Position in the European Community Investment, Diplomacy and Trade,* **(Arlington, VA: Congressional Economic Leadership Institute, 1990), 1,. 2.**

[3] **Conversations with Don Wright, U.S. Department of Commerce.**

• **"'Wild Card' Investment Themes for 1990,** *Financial Times,* **Dec. 5, 1989, p. 44.**

European Report, **Nov. 22, 1989, sec. 3, p. 2.**

• **Ibid.**

[7] **"EC Tries to Plug the Gap for Early Stagers,'** *Financial Times,* **Dec. 5, 1989, p. 12.**

Reinvested earnings are the most important source of investment funds for U.S. companies investing abroad. During the latter part of the 1980s, these flows experienced sharp fluctuations, reflecting differences in growth rates among european economies and that of the United States, disparities in the cost of borrowing, and large shifts in exchange rates. In addition, changes in investments trade flows can occur as a result of the revaluation of the U.S. dollar resulting from a change in the base of investment data as collected by the U.S. Department of Commerce.

U.S. Direct Investment Abroad

U.S. direct investment abroad, as a measure of U.S. private assets held in foreign markets, was at a level of $308 billion in 1987 (table E-16). Increases in the direct investment position in 1988 totalled nearly $19 billion, resulting in a cumulative total of nearly $327 billion in 1988, or an increase of 6 percent. The 1988 rate of increase was the slowest since 1984 and reflected a sharp drop in reinvested earnings and a shift to equity capital inflows.

Overall, U.S. direct investment in Europe made up approximately 47 percent ($126.5 billion) of total U.S. direct investment abroad in 1988. U.S. direct investment in other industrialized nations made up a sizable proportion of total foreign direct investment, including Canada (18 percent, or $61.2 billion) and Japan (5 percent, or $16.9 billion), indicating foreign investment is not largely limited to developing countries as a means of shifting production to lower cost areas of the world. Total U.S. direct investment in Developing Countries, as designated by the BEA, amounted to 24 percent, or about $76.8 billion, in 1988.

The concentration of U.S. direct investments in Europe is not a recent development, but reflects the long historical ties between the United States and Europe. European investment in the United States was one important factor in the early development of the American industrial infrastructure. During the nineteenth century, European investment acted as an important factor accommodating sharp bursts in U.S. economic growth and in the domestic expansions of canal and railroad facilities. Because of this development, the United States itself was investing in Europe as early as 1869. [8]

Since 1984, U.S. direct investment abroad, especially in the EC, has increased, largely due to reinvested earnings as U.S. foreign subsidiaries kept foreign profits abroad rather than converting them into dollars at a time when dollar exchange rates were declining. The increase in the U.S. direct investment position reflects a continued strength in U.S. bank lending to the overseas, interbank market, some increased U.S. direct investment abroad, and U.S. net purchases of foreign bonds.

U.S. direct investment in the 12 EC member states totaled $126.5 billion in 1988, an increase of 5 percent from $120.1 billion in 1987. Growth in U.S. direct investment in the EC was slightly less than the overall U.S. direct investment growth rate of 6 percent The largest levels of investment were in the United Kingdom ($48 billion), West Germany ($22 billion), and the Netherlands ($15 billion). The U.S. direct investment position in the EC was the greatest in the area of General Manufactures, reaching a level of $65 billion, an increase of about 1 percent from the 1987 position. Direct investment in General Manufactures in 1988 made up approximately 52 percent of total U.S. direct investment in the EC, followed by Finance and Insurance ($21.6 billion, 17 percent of total), and Petroleum ($15.7 billion, 12 percent of total).

Investment in the United States

Introduction

In recent years, foreign-owned foreign multinational companies have increased holdings in the United States as a means of expanding globally and gaining access to the U.S. market By acquiring U.S. firms, foreign firms can establish a local manufacturing and technology base for operations in the U.S. market

Other factors resulting in increased foreign investment in the United States include few restrictions on foreign merger and acquisition activity, as well as the continuing economic growth and expansion in the United States. Potential profitability also attracts foreign investors into the domestic market, and economic growth abroad contributes to the foreign parent's profitability and provides the funds needed for investment

Foreign Direct Investment in the United States

New foreign direct investment in the United States in the form of capital outlays increased *by* 21 percent from $40.3 billion in 1987 to $65 billion in 1988, according to statistics reported by the BEA. The strong growth in new outlays primarily reflected the large number and size of acquisitions of new U.S. affiliates financed from abroad. The existing U.S. affiliates of foreign companies also experienced improved performance, further contributing to the increase.

The total foreign direct investment position in the United States in 1988 was at a level of $328.9 billion for all industries (table E-17). Of this figure, direct investment by the 12 EC member states attained a level of $193.9 billion in 1988, or 59 percent of the total. Among the EC member states, the largest foreign direct investment position was held by the United Kingdom ($101.9 billion, or 53 percent of total EC investment), followed by the Netherlands ($49 billion, or 25 percent of total EC investment) and West Germany ($23.8 billion, or 12 percent of total EC investment). The foreign direct investment

• U.S. Library of Congress, Congressional Research Service, *Foreign Ownership of U.S. Assets: Past, Present, and Prospects,* Report No. 88-295,1988.

position held by the EC in 1988 was over three times the position held by Japan ($53.4 billion, or 16 percent of total foreign direct investment) and over 7 times that of Canada ($27.4 billion, or 8 percent of total).

The largest areas of investment by the EC in the United States continue to be in manufacturing, wholesale trade, and miscellaneous services. The foreign direct investment position attained by the EC in manufacturing was $62.4 billion in 1987 and increased by 27 percent to $79.5 billion in 1988. The investment position held by the EC in the area of wholesale trade increased by 33 percent from a level of $24.8 billion in 1987, to $32.9 billion in 1988. The investment position in miscellaneous services reached $16.2 billion in 1988, increasing by 23 percent from the 1987 figure of $13.1 billion. Changes in the major industrial categories as compiled by the BEA are due primarily to increased equity capital inflows and increased reinvested earnings by the United Kingdom and the Netherlands.

EC Directives Concerning Trade and Investment

Resolution on Trade Statistics

A November 14, 1989, EC Council Resolution,[9] 89/C 297/02, emphasizes the importance of international trade and the collection of trade statistics. The directive requests the EC Commission to continue to work to improve the quantity as well as the quality of statistics by making them compatible with EC-wide definitions, withoutincreasing the administrative burden. The EC Commission is further directed to establish and make a data bank available to administrations and professional and research organizations which would provide updates in national and local laws regarding trade in goods and services. Further, the EC Commission is directed to involve the commercial sector more closely in the preparation of EC-wide policies, strengthen cooperation between member states and to make use of advisory bodies and existing structures to carry out this directive.

[9] Council Resolution (89Y297, *Offkial Journal of the European Communities,* No. C 297 (Nov. 14, 1989), p. 2.

EC Investment Resolution

The European Commission issued Proposed Resolution[10] 89/C282'06 on September 12, 1989, empowering the EC Commission to borrow funds for the purpose of promoting investment within the EC. In the proposal, the EC Commission is authorized to borrow under the New Community Instrument for the purposes of lending on finance investment projects within the EC member states.

The proposal further stipulated priorities of lending to small and medium-sized enterprises situated in rural areas. Those enterprises must help to protect the environment or must not be totally agricultural in nature. Any resulting loans are to be made with joint approval of the EC Commission and the European Investment Bank

[10] EC Council Resolution (89)/28Z *01* No. C (Sept. 12, 1989), p. 6.

PART II

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

This section, chapters 4 to 12, accounted for the major share of the resources used on the study. The following paragraphs explain what is and is not covered by the section and how the section differs from other writings on EC 92. The section generally sets the stage for what is to follow in the individual section chapters.

In June 1985, the EC Commission issued a White Paper outlining approximately 280 directives intended to complete the internal market of the EC by December 31, 1992. USITC investigation No. 332-267, first follow-up study, examines all of the White Paper directives that were proposed by the EC Commission as of December 31, 1989, and not covered in the initial report. When a directive that was proposed as of December 31, 1989, was modified following that date, the more recent version of the directive is noted in this study provided text was available as of March 23, 1990. See attached appendix C for a listing of the EC initiatives addressed in this investigation.

In this investigation, the USITC does not attempt to predict the progress of proposed directives in the approval and implementation stages. Nor does the USITC predict how proposed directives might be amended. Instead, it is assumed that proposed directives are implemented as proposed.

In addition to proposed directives, the investigation has examined other EC Commission decisions, recommendations, and regulations that are associated with the program to complete the internal market. These measures differ from one another and from directives in various ways including the degree to which an action by the EC is binding on member states. For instance, a regulation is essentially self-implementing, whereas an EC directive is implemented by each member state through alteration in member-state law. The investigation has also examined certain relevant decisions by the European Court of Justice. EC initiatives or developments that do not directly affect the program outlined in the White Paper to complete the internal market are not.included in this study.

The EC initiatives that are examined in more detail are those that seem potentially more significant for U.S. commercial interests. Because initiatives differ greatly from one to another, there is no reliable way to make quantitative comparisons of the potential effects of different initiatives.

In this investigation, EC initiatives are examined more closely if they include one or both of the following elements:

1. **A significant change in the EC regarding a product or service that the U.S. exports to the EC in large quantity.**
2. **A significant change in the EC regarding a product or service that U.S. facilities in the EC currently provide in large quantity.**

The initiatives are organized into categories depending on the nature of the initiative (e.g., whether it affects product standards, customs regulations, etc.) These categories are as follows:

- **Government Procurement and the Internal Energy Market**
- **Financial Sector**
- **Standards, Testing, and Certification**
- **Customs Controls**
- **Transport**
- **Competition and Corporate Structure**
- **Taxation**
- **Residual Quantitative Restrictions**
- **Intellectual Property**

Note that these categories were selected by the staff of the USITC and are not official EC designations. Likewise, the allocation of particular initiatives to specific categories is based on staff analysis and may differ from allocations by the EC Commission or other organizations or individuals.

CHAPTER 4
GOVERNMENT PROCUREMENT AND THE INTERNAL ENERGY MARKET

CONTENTS

CHAPTER 4
GOVERNMENT PROCUREMENT AND THE INTERNAL ENERGY MARKET .

Introduction

At art estimated 15 percent of the EC's Gross Domestic Product, the EC public sector represents a large and potentially crucial market for a number of U.S. industries. In several key areas-such as telecommunications equipment, power generators, computers, and water treatment equipment-public purchasers are the most important prospective EC customers for U.S. firms. Currently, however, U.S. suppliers do not have ensured access to nearly half of the value of EC beenisector contracts, because these contracts have removed from the scope of EC and international trading rules. As part of the 1992 program, the EC will put in place rules intended to introduce greater openness, transparency, and nondiscrimination in all phases of public purchasing.

Developments Covered in the Initial Report •

Background and Anticipated Changes

In the 1970s the EC adopted two directives intended to open member-state procurement to greater competition. The legislation attempted to increase transparency and reduceopportunities for discrimination in procurement of public works and supplies. Subsequently, the EC pined the Tokyo Round Agreement on Government Procurement, to which the United States is also a signatory.

Despite these steps, progress in opening up public sector opportunities in the EC was nunimat In its 1985 White Paper, the EC Commission proposed a substantial strengthening of member-state commitments on public procurement

The legislation envisaged as part of the 1992 program would -

- Close loopholes in existing directives governing central and local government purchases of goods ("supplies") and public works construction;
- Expand the scope of EC discipline to service contracts and most entities in the so-called "excluded sectors" of telecommunications, water, energy, and transport;
- Require member states to provide effective administrative and judicial remedies for wronged suppliers; and
- Strengthen EC oversight of member-state procurement practiCes.

The EC Commission had proposed five directives by December 31, 1988, covering (1) "supplies"; (2) "works"; (3) "remedies"; (4) energy, transport, and water, and (5) telecommunications.

Possible Effects

The EC's 1992 agenda for government procurement is generally welcomed by U.S. suppliers and procurement experts. Directives are substantively similar to previous U.S. proposals for change.

The EC's new rules could encourage more competitive procurement by entities at all levels in the member states. Rules that were previously vague and loosely worded will be more specific and detailed. In the case of the "excluded sectors," all suppliers offering products that meet the EC's definition of an EC product should be guaranteed specific rights. U.S. firms may benefit from the directives' requirements for public announcement of tenders, projected annual purchases, and winning bidders, since such information could help them pursue primary and subcontract opportunities in the EC.

U.S. suppliers are concerned that the directives on the excluded sectors wouenable member-state procuring officials to refuse to consider offers having less than 50 percent EC content Some U.S. companies appear to be hedging their bets by shifting their sourcing and investment from the United States to the EC. The EC has stated that it intends to use the possibility of discrimination against non-EC suppliers as leverage to obtain reciprocal market opportunities for EC firms.

The directives may also affect the competitiveness of EC suppliers relative to those in the United States and elsewhere. In several key sectors - notably computers, telecommunications, and heavy electrical equipment-gains from economies of scale could lead to the eventual strengthening of EC competitors in world markets.

U.S. suppliers are well placed to benefit if the directives do move EC public purchasing in the direction of greater openness. U.S. firms have strong international positions in many of the sectors expected to be most directly affected.

Developments During 1989

Government Procurement

Background and Anticipated Changes

The year 1989 saw no new proposed directives in the area of government procurement, although those directives proposed previously progressed through the EC's decisionmaking. process. As of yearend 1989, the EC had adopted three directives

and proposed one directive related to opening up public sector markets. These four directives are (1) supplies"; (2) "works"; (3) "remedies"; and (4) "excluded sectors." A fifth directive covering services is envisioned.' The EC Commission is also preparing a proposal for a directive on appeals procedures for contracts covered by the excluded-sectors directive. The status of the first four directives is discussed below?

Supplies Directive

The Supplies Directive was adopted on March 22, 1988, and became effective for most member states on January 1, 1989? Greece, Spain, and Portugal must comply with the directive by March I, 1992.

Works Directive

On July 18, 1989, the EC Council adopted the Works Directive, which coordinates procedures for the award of public works contracts.• During its second reading in February 1989, the European Parliament proposed two amendments that would require bidders to take account of youth unemployment and the chronically unemployed and to be informed of the social legislation in countries where the works would be performed. The Council accepted only the second of these amendments. This directive will enter into force on July 19, 1990, for all member states except Greece, Spain, and Portugal, which have until March 1, 1992, to comply.

Remedies Directive

The Remedies Directive, which facilitates appeals against discrimination in the award of public contracts covered by the Supplies and Works Directives, was adopted on December 22, 19139. [5] In July, the Council forged a common position that deleted a controversial provision allowing the EC Commission to suspend a tendering procedure for up to 3 months in cases of infringement. Also, the common position approved the introduction of ad hoc bodies to address grievances in member states that have no arrangements for the traditional form of review by the courts. The European Parliament did not approve any amendments to the common position during its second reading in November and the directive was adopted by the Council without debate. Member states must implement the directive by December 1, 1991.

Excluded Sectors Directives

Debate throughout 1989 delayed the Council from reaching a common position by yearend on the two directives covering public procurement in the four so-called excluded sectors. The first directive covers water, energy, and transport, and the second, telecommunications. In August, the EC Commission issued an amended proposal based on the amendments recommended by the European Parliament during its first reading in May. Of the changes suggested by the Parliament, the most noteworthy was the decision to combine the two directives into a single proposal. Other changes incorporated into the amended proposal likewise sought to simplify or clarify, rather than modify, the substance of the original directives.

Some of the more substantive changes incorporated into the amended proposal include the following:

1. Whereas the Supplies and Works Directives applied under certain circumstances to entities engaged in activities relating to drinking water, the amended proposal requires that the Excluded-Sectors Directive cover activities related to the entire water processing cycle, including activities in the fiield of hydraulic engineering projects, irrigation, land drainage, or the disposal treatment of sewerage.
2. The definitions of supplies and works were modified. Supply contracts will now cover contracts that include mechanical or electrical engineering activities that impose siting and installation costs that are higher than the cost of the supplies themselves. Originally these contracts would have fallen outside the scope of the directive. The amended proposal clarifies that turnkey contracts are covered under the definition of works contracts.
3. The amended proposal requires that entities notify the EC Commission of activities excluded from the directive's coverage, which would then be published in the Official *Journal.*
4. Where identified, the time limits for the operation of certain tendering procedures were generally decreased. More importantly, the amended proposal allows the contracting entity and potential

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' The EC Commission is currently preparing a proposal outlining procurement rules for public contracts awarded in the services sector, including engineering and architectural services, software and data processing services, and other technical consultancy services. (Software services connected with telecommunications equipment projects are covered by the directive on the excluded sectors.) See EC Commission, *Public Procurement in the Field of Services: The Context for* an *EC Directive,* Nov. *28,1988.*

For a description and analysis of these directives, see U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States* (Investigation No. 332-267), USffC Publication 2204, July 1989.

Council *Directive of* 22 *March 1988 Amending Directive 77/62/EEC Relating to the Coordination of Procedures on the Award Public Supply Controls and Repealing Certain Provisions of Directive 80/767/EEC, Official)ounial of the* Europesn *Communities,* No. LIZ', (May 20, S t Pe l, 11.

Council *Directive 18July 1989 Amending Directive 71/305/EEC Concerning* ion of_Procedures_ for the Award of *Public Works Contracts, 01* No. L 210 auly 7, 1%9), pp. 1-22.

• *Council Directive of 21 December 1989 on the Coordination of the Laws, Regulations and Administrative Provisions Mating to the* Applicetion *of Review* Pram:lures *to the Award of Public SupAcaisd Public* Works Coolness, 01 No. L 395 (Dec. 30, 1989), pp. 33-35.

suppliers to mutually agree on the time limit for receipt of bids in restricted or negotiated procedures, as long as all tenderers are granted equal time.

5. Contracting entities are now entitled to know what share of a contract may be intended for subcontractors.

Before a common position on the excluded sectors can be attained, several issues need to be resolved .[9] Reportedly, three issues remain foremost: (1) the scope of the directive's application, including the treatment of private companies and possible sectoral derogations;[7] (2) threshold levels; and (3) the treatment of non-EC-origin bids. With respect to the last issue, the directive states that contracting entities may exclude offers when less than half the value of the goods or services to be rendered are of EC origin (die so-called 50 percent value-added rule). Some member states favor maintaining the provision as it stands or increasing the content requirement, while other member countries are concerned that it would create an EC preference and prompt third-country accusations of a "Fortress Europe."[9] Reportedly, a value-added rule will be incorporated in the directive, but the inclusion of language linking its application to negotiations in the Government Procurement Code remains undecided.[9]

Regional Preferences

In addition to the directives mentioned above, in July the EC Commission adopted a policy on regional preferences in response to member-state concerns that liberalized public procurement markets are incompatible with the objective of strengthening economic and social cohesion within the EC.[10] Four countries— Greece, Italy, the United Kingdom, and West Germany—grant regional preferences in the award of public contracts as an instrument for economic development.[11] In order to ensure that regional preferences do not interfere with the single-market goal of nondiscriminitory access to public contracts, the EC Commission is offering these four member states two options to be implemented by December 31,1992: the progressive elimination of preferences or the modification of existing preference systems. The former objective would focus on encouraging small and medium-sized firms to effectively participate in public contracts, on utilizing Court-sanctioned nondiscriminatory contract provisions requiring the use of long-term unemployed persons, and on using structural funds to assist the regions in general. The role of small firms could be promoted through improving information on public contracts, training management, subcontracting large contracts, dividing contracts into lots, etc. Alternatively, member states could modify existing systems by granting regional preferences only in contracts that fall below the sums of 200,000 ECU for supply contracts and 5 million ECU for works contracts, the amounts currently identified as thresholds in the Supplies and Works Directives, respectively. Allowable preferences would have to be totally transparent and have no significant economic impact.[12] The EC Commission has requested discussions with the member states to coordinate a work program aimed at carrying out the above-mentioned objectives.

Compliance Monitoring

During 1989, the EC Commission also introduced a system for monitoring compliance with public procurement rules of projects executed with assistance from the EC's structural funds and financial instruments.[13] Both the EC Commission

[8] The EC Council reached an agreement in principle for a common position on the Excluded-Sectors Directive at the Internal Market Council meeting on Feb. 22, 1990. Reportedly, the provisions relating to the treatment of third-country bids (the 50-percent value added requirement and the 3-percent price preference) remained intact Mark Orr (Deputy U.S. Trade Representative for Europe and the Mediterranean) and Auke Haagsuta (First Secretary for Legal Affairs, Washin Delegation of the EC) speaking at a conference sponsored by the Columbia Institute on '92 Europe, The U.S. Role in a United Europe,' Feb. 23, 1990.

[7] Reportedly, the exploration and production of the supply of natural gas and electricity may be excluded from the scope of the directive. may be temporarily excluded from the directive's coverage until the entry Into force of directives on the transit of natural gas and electricity. (See the latter part of this chapter on the internal energy market for a discussion of these directives.) Certain countries are also requesting that they receive authorization to delay the date of the directive's application. 'Public Procurement: Council Fails to Agree on Utilities Directive,' *European Report,* Dec. 22, 1989, p. 4-12, and "Public Procurement: Member States Fail to Agree on Contracts in Excluded Sectors; *European Report, Jan.* 4, 1990,p. 4-1

[9] See 'Public Procurement: Experts Expect Political Guidelines at November 23 Council,' *European Report,* Nov. 17, 1989, p. 4.-12, and 'Public Procurement: Member States Divided on Directive on Water, Telecommunications, Energy, and Transport' *European Report* Nov. 23, 1989, p. 4-6.

[9] Apparently, the agreement for a common position incorporates the value added rule intact and does not include language linking its application to negotiations in the Government Procurement Code. "92 Europe, The U.S. Role in a United Europe,' conference sponsored by the Columbia Institute, Feb. 23, 1990. Also, see part 3 of this report for a discussion of the renegotiation of the Government Procurement Code.

[10] *Public* Procurement: *Regional and Social Aspects,* Coat (89) 400 final, July 2A, 1989.

[11] The purpose of regional preferences is to assist firms located in less favored regions in winning procurement contracts they otherwise would not receive because they lack know-how, infrastructure, access to capital, sophisticated marketing and product-development methods, or opportunities for specialization. The preferences granted vary widely among the countries and include, for example, geographically based tendering lists, price preferences, and allowing the resubmission of tenders. The EC Commission has concluded that these preference schemes have not contributed significantly to the economic development of the regions in question. Ibid.

[12] Reportedly, a member state would be allowed to retain its regional preference system if it were extended to all EC regions with a development index lower than that of the region where it intends to award the contract, thereby creating an EC regional preference regime. See 'Public Procurement: Arrangements for Certain Regional Preference Regimes,' *European Intelligence,* July 1989, p. 4-2.

[13] EC Commission, Notice C(88) 2510 to the Member States on Monitoring Compliance With Public Procurement Rules in the Case of Projects and Programmes Financed by the

and the national authorities are responsible for monitoring compliance. The monitoring mechanism includes preventive measures that aim to advise recipients of the obligations they assume in receiving EC funds, the payment request form already in use, and EC Commission spot checks. The mechanism also requires applicants for EC assistance to fill out questionnaires about all public contracts awarded that fall under the scope of the Supplies and Works Directives. Should the EC Commission determine that entities have not complied with these government procurement directives, it may choose to suspehd payments or order past payments returned. Contracts falling in the excluded sectors are not covered by directives in force. However, the EC Commission still intends to give priority, by way of an incentive, to applicants for assistance who aim to procure openly (whenever numbers of applications of the same type are excessive and all other things being equal).'[14]

Finally, 1989 marked an important precedent for the EC Commission in enforcing legislation under the 1992 program. During the summer, the EC Commission opened proceedings in the Court of Justice against Denmark for violating EC government procurement rules in the award of a contract for the construction of a bridge.[15] In particular, the EC Commission issued a "reasoned opinion" claiming that the Danish Government had not observed transparent bidding procedures and had inserted discriminatory clauses in the contract by specifying the use of Danish labor and supplies. Although the Danish Government deleted the offending clauses from the contract, it refused to acknowledge the right of the EC Commission to suspend the contract award on its own authority and went forward with the award. In response, the EC Commission filed a summary complaint with the European Court of Justice seeking an injunction suspending the contract and reopening of the tender procedures.'[8] However, during last-minute negotiations, the EC Commission agreed to withdraw its summary complaint for an injunction in return for an acknowledgement of error by the Danish Government, payment of monetary damages to reimburse all unsuccessful bidders of their expenses, and the opportunity for unsuccessful bidders to claim damages and interest in the appropriate Danish courts.'? Although its summary complaint was withdrawn, the EC Commission is pressing forward with its formal complaint of discrimination against foreign bidders on the merits. The Court's judgment is not expected for at least 1 to 2 years.[18] In the meantime, EC Commission officials cite the case as an important deterrent to any party attempting to circumvent EC public procurement rules and point out that bids for Danish Government tenders have increased by 400 percent's'

Possible Effects[20]

According to U.S. firms, the proposed directive on the excluded sectors is unlikely to change entrenched attitudes supporting national champions in the short run, although certain trends are likely to open public sector markets in the long term. These U.S. companies believe that the transparent procurement procedures required under the new directive, as well as other trends, such as increased privatization 2t globalization of the market, and budgetary constraints, will eventually open public markets in the excluded sectors.[22] The EC Commission also believes that significant changes in procurement practices will only occur in the longer run but adds that the directive provides for a review of its operation not later than 4 years after its entry into force. At that time, the EC Commission will assess the effectiveness of the directive and respond accordingly.[23]

The EC Commission claims that explicit enforcement mechanisms will ensure that all of the government procurement directives are observed. These measures include the Remedies Directive and an eventual parallel directive for the excluded sectors, as well as the institution of the monitoring system whose scope the EC Commission intends to eventually extend to the excluded sectors. EC Commission officials also cite the Danish bridge court case as confirmation of the EC Commission's ability to enforce government procurement rules.[24] U.S. suppliers urge the U.S. Government to support EC efforts to strictly monitor and enforce

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Structural Funds and Financial Instruments,' *01* No. C 22 (Ian. 28, 1989), p. 3.

[14] Ibid.

[15] *Common Market Reporter,* Aug. 24, 1989, p. *7.* is ibid.

" *Common Market Reporter,* Sept 26, 1989, p. 4.

" Procurement: Denmark Agrees to Pay Damages to Bidders in Bridge Dispute,' 1992— *The External Iapin of European Unification,* Oct. 6,1989; and *Common Market Reporter,* Jan. 11, 1990, .p. 7.

" See 'Single Market: Club de Bruxelles Conference Analyses the Major Issues,' *European Report,* Nov. 21, 1989, p. 4-4.

[20] All government procurement directives that have been proposed or adopted to date were analyzed in the initial report.

[22] The recent privatization of the e ..ty sector in the United Kingdom has already increased opportunities for U.S. suppliers of electric power generation, transmission, and distribution equipment and services. See 'Trade Mission Participants Discover That Electricity Privatization in the United Kingdom Opens Opportunities for U.S. Power Industry,' *Business* America, Aug. 28, 1989, p. 15.

[23] *Europe* 1992: *Report of the Advisory Committee for Trade Policy and Negotiations, November* 1989, pp. 15-25.

USITC staff meeting with EC Commission, Brussels, Feb. *27,1989.*

" "Public Procurement: Denmark Sees the Error of its Ways and Commission Drops Call for Work on Storebaelt to be Suspended,' *European Report,* Sept. 26, 1989, p. 4-4.

government procurement niles.[25] However, how effectively regional preferences are addressed could also determine the openness of markets.

Despite these forecasts of future liberalization, U.S. suppliers warn that certain provisions proposed the directive would hamper their ability to take advantage of more open procurement[26] These include the 50-percent value-added rule and the mandatory 3-percent price preference granted to EC bids over equivalent non-EC-origin offers. U.S. industry also seeks clarification of a provision , that describes the circumstances under which entities may obtain waivers from utilizing existing, European standards in favor of national standards and clarification of the time limits and conditions under which a member state may use Industrial adaptation" to postpone procurement changes.

Of particular concern is the 50-percent-content rule that denies competitive treatment and the procedural guarantees of the directive to non-EC-origin products and thus results in an unpredictable bidding situation for U.S. suppliers.[27] This uncertainty prevents U.S. suppliers from making long-term plans based on predictions of how much of the market will be open. C entities may never seriously consider bids that were costly to prepare. As a result, the 50-percent value-added requirement may have the effect of "politically inducing U.S. investment in the EC"[26] and could "pressure companies to increase foreign research and development in the EC in order to meet the content requirement."[26]

U.S. suppliers strongly recommend that resolution of the issue concerning the 50-percent value-added rule be considered essential during negotiations now under way in Geneva on revising the GATT Code on Government Procurement[30] The EC Commission appears willing to use the GATT forum to extend the benefits of its liberalized markets.[31] Furthermore, according to USTR, U.S. officials anticipate that ongoing negotiations under the Government Procurement Code will provide the opportunity to address the issues relating to standards and induStrial adaptation.

The Internal Energy Market

Background

The first guidelines on developing an EC-wide energy market were issued in 1968. Although progress was made towards defining the priorities for member states' domestic energy policies, for almost 20 years little movement occurred towards building a common market in energy. The EC Commission's White Paper, issued in 1985, did not expressly address the energy market However, in 1986, the EC Commission issued broad energy objectives, including the need for "greater integration, free from barriers to trade, of the internal energy market with a view to improving security of supply, reducing costs and improving economic competitiveness."[32] Accordingly, in 1987, the EC Commission announced its intention to draw up an inventory of the existing obstacles to a unified energy market and to submit appropriate proposals to progressively eliminate them by the end of 1992. In May 1988, the EC Commission completed its list of barriers[33] and in July 1989 submitted its firstproposals to implement the internal energy market Completion of the internal energy market by January 1, 1993, is now considered an integral part of the EC's internal market program.[34]

The major problem identified by the EC Commission in its report on existing obstacles is the tightly protected and partitioned European market for energy products. The segmented energy market results from (1) extreme diversity in both products and end uses; (2) wide diversity in the size of operators; and (3) a high degree of variation in 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 to 1.0 percent of EC GDP, or 20-30 billion ECU per year.[36] The removal of existing barriers would result in reduced energy costs to consumers, more competitive EC industry, improvements in the structure of EC industry, and increased security of supply.[38]

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[25] *Europe 1992: Report of the Advisory Committee for Trade Policy and Negotiations,* November 1989, pp. 15-25.

[26] Ibid.

[27] This situation differs from the Buy America Act in which suppliers of foreign products to the U.S. market are entitled to pay competitive procedures except for the Buy America price preference accorded U.S. products in evaluating bids. Europe 1992: *Report of the Advisory Committee for Trade Policy and Negotiations,* November 1989, p. 18.

[28] National Association of Manufacturers, 'NAM Points out EC-92 Market Opportunities and Concerns to Congress,' *NAM News,* Jan. 30, 1990.

[29] U.S. General Accounting Office, *European Single Market: Issues of Concern to U.S. Exporters,* February 1990, p. 4.

[30] Perhaps a GATT-signatory value-added rule could be negotiated. For a discussion of the GATT Government Procurement Code, see pt. 3 of this report.

[31] *Amended Proposal for a Council Directive on the Procurement Procedures of Entities Operating in the Water, Energy, Transport and Telecommunications Sectors,* Com (89) 380 final, Aug. 31, 1989, p. 61.

[32] *EC Council Resolution, 01* No. C 241 (Sept. 25, 1986) outlines the EC's latest energy policy objectives for 1995. These objectives include horizontal objectives that apply to the energy sector as a whole, such as guaranteeing supplies, reducing costs, and producing environmentally harmless *energy,* and vertical objectives specific to energy subsectors, such as oil, natural gas, solid fuels, etc. The goal to ensure a secure supply of energy could be met through efforts to reduce energy dependence and to improve diversity in energy supplies, particularly with respect to the need to find substitutions for imported crude oil.

[33] EC Commission, *The Internal Energy Market,* Com (88) 238 final, May Z 1989.

[34] European Parliament, *Report on the Internal Energy Market,* Session Documents, Doc. A2-158/89 (Apr. *28,1989),* p. 5.

[35] EC Commission, *Panorama of EC Industry, 1989,* p. 1-2.

[36] Ibid.

The EC Commission's report presents a framework for action to eliminate the obstacles. The first part of the four-part plan - application of the White Paper-proposes to remove technical barriers both by harmonizing rules and technical norms and by opening up government procurement[37] This part of the plan also proposes to remove fiscal barriers by approximating indirect taxation (VAT and excise duties). Part 2 proposes to apply provisions of EC law -

1. To ensure the free movement of goods and services (for example, by, removing import-license and certificate-of-origin requirements, buy-national policies, and rules setting special requirements for exports or imports);
2. To regulate state-sponsored monopolies of supply, transport, distribution, and importing and exporting;
3. To enforce competition policy more strictly; and
4. To discipline government subsidies ("state aids") in each member state.

Part 3 of the program addresses environmental protection and seeks to set emission standards for combustion plants and to harmonize safety standards. The major goals of the fourth part of the plan are establishing more market-based and transparent pricing schemes and ensuring an adequate and optimally utilized infrastructure. Followup studies on some of these issues are planned 3e

Anticipated Changes

In July 1989, the EC Commission proposed a package of four directives and regulations aimed at creating an EC-wide market in energy. These four measures are concerned with (1) procedures to improve the transparency of natural gas and electricity prices; (2) investment projects in the oil, natural gas, and electricity sectors; (3) the right of transit between integrated high-voltage electricity grids in order to increase and liberalize trade; and (4) the right of transit of natural gas in the high-pressure transmission grid. The EC Commission originally intended these proposals to be implemented on January 1, 1990 (for the regulation on investment projects), or by July 1, 1990 (for the remaining three directives), but the concerns of industry and the member states have slowed the process towards adoption. The four proposed directives and regulations are discussed in more detail below.

A fifth measure in the energy field proposed in 1989 instituted an EC-wide action program for improving the efficiency of electricity use .[39] The action program would focus on coordinating national initiatives in the areas of consumer information, technical advice, demonstration projects, and improving the efficiency of electrical appliances and equipment and electricity-based processes. The goal of the program is not only to improve the efficiency of such products, but also to encourage more energy-efficient behavior by consumers and industry.[40]

Transparency of Gas and Electricity Prices

Because of the segmented nature of the EC's energy market, prices for natural gas and electricity vary widely from country to country. The EC Commission points out in its relevant proposal - Draft Council Directive Concerning a Community Procedure to Improve the Transparency of Gas and Electricity Pnces Charged to Industrial End Users[41] - that energy price transparency is an essential precondition to free trade. The goal of the proposed directive is to make available more information on prices to offer consumers a clear choice both among different energy sources and among different suppliers. In order to improve price transparency, the directive establishes procedures obliging natural gas and electricity undertakings to collect details of prices charged to a range of industrial end users and to submit these price quotes biannually to the EC's Statistical Office (SOEC), which will then publish the information. All costs for collecting this information are to be borne by the companies themselves. The EC Commission argues that this directive should put pressure on companies charging the highest rates to reduce their prices in order to remain competitive.

The major concern of member states about this proposal has generally involved the confidentiality of rate structures.[42] However, this concern, as well as others, appears to have been addressed. Of the four energy directives currently under discussion, the price transparency directive enjoys the strongest support and is anticipated to be adopted by the EC Council by June 1990.[43] The next Energy Council meeting is scheduled for May 1990."

Investment Projects

To meet the single-market goals of increased efficiency and security of supply in the energy sector, the EC Commission is seeking to move the

[22] In 1988, the EC Commission proposed a directive on procurement procedures for entities operating in the excluded sectors, including energy. For a discussion of this directive, see the Government Procurement section of this chapter.

[30] The EC Commission plans to examine each of the obstacles listed in the inventory and to report to the Council on its findings. See Com (88) 238, p. 10 and *Prosmitame of the Commission for* 1990, Jan. 10, 1990, pp. 5-6,15.

[3]* *Council Decision of 5 June 1989 on a Community Action Programme for Improving the Efficiency of Electricity Use,* 01 No. L 1.57oune 9,19 p. 3Z

[41]' Ibid.

[•1] *Of* No. C 757 (Oct. 10, 1989), pp. 7-14.

[42] Peter Palinkas, 'The EC on the Way to an Internal Market,' *Intereconomics,* (SeptetribetiOttober 1989), p. 25

[43] Telephone conversation with an EC Commission official in Brussels, Feb. 22, 1990.

" 'Energy: Discussions on Price Transparency Move Towards an Accord," *European Report,* Nov. 29, 1989, p. 4-1.

EC countries away from national self-sufficiency to self-sufficiency in energy for the EC as a whole. The aim of the draft regulation on investment projects'[45] is to ensure the development of efficient energy infrastructures and the optimal allocation of resources at the EC level. Optimization of investment should (1) provide greater security of supply and flexibility; (2) require less investment because of the need for a smaller safety margin; (3) provide less risk of overcapacity; and (4) account more carefully for environmental concerns.

Specifically, the regulation requires persons and undertakings in the petroleum, natural gas, and electricity sectors to transmit data on planned investment projects to the member state on whose territory the project is planned. Investment projects for production, transport, storage, and distribution are covered. This regulation introduces two major changes to a similar regulation that was passed in 1972:[46] (1) member states are now obliged to transmit all project details to the EC Commission immediately following completion of a feasibility study, allowing time to make adjustments; and (2) the EC Commission is now required to inform the other member states of these investment projects and to invite them to submit comments or propose alternative solutions within 1 month. These changes will permit the EC Commission to "propose corrections" to the national authority, although these changes would not be obligatory. Furthermore, the new regulation obliges confidential treatment not only of the information forwarded but of all information circulated in connection with the regulation's procedures.

Industry concern over this regulation focuses on the problem of confidentiality, fears of ceding investment planning to a national or EC bureaucracy, and the difficulty in defining the "Community interest"[47] Because of these concerns, the regulation did not enter into effect on January 1, 1990, as originally planned and is not anticipated to be adopted by the EC Council during the first 6 months of 1990.[48]

Transit of Electricity Through Transmission Grids

Because barriers to trade limit intra-EC trade in electricity (estimated at less than 4 percent of total consumption[48]), some countries of the EC have competitive excess capacity of electricity that goes unused, whereas other EC member states find their generating capacity can barely satisfy demand at high costs.[50] As a result, the EC Commission proposed a three-part approach to liberalizing transborder trade in electricity. The three steps include (1) improving prior notification and the consultation procedure relating to future investment projects in electricity generation and transmission (which was addressed by the proposed regulation on investment projects discussed above), (2) creating the right of access to high-voltage electricity transmission networks, and (3) determining through newly established consultative committees whether access to the high-voltage grid systems by third parties should be organized.

The proposed directive on the transit of electricity through transmission grids[51] addresses the second stage of the three-part plan. Currently, transfrontier transit between the large networks is based on voluntary interutility agreements;[52] the proposed directive would establish a legal obligation to transfer electricity from one network to another and a monitoring mechanism to ensure compliance. In particular, the directive introduces the modalities for applying the right of transit between integrated high-voltage electricity grids, whether or not these grids fall within the territorial jurisdiction of the same member state. All requests for transit with a duration of 1 year must be communicated to the EC Commission and national authorities. Negotiations to formulate a transit agreement are conducted between the relevant entities—the electricity producers and the entities operating the networks. The transit conditions specified in the agreement must be equitable and should not include unfair clauses or unjustified restrictions. The EC Commission and appropriate national authorities must be informed of either the conclusion of a transit agreement or the lack of an agreement should 12 months pass from the date of the original request for transit without an accord. Interested parties are obliged to indicate the reasons why an agreement could not be reached. If such reasons are unjustified or insufficient, the EC Commission may open proceedings under relevant treaty provisions, either at the request of the applicant for transit privileges or on its own initiative.

[45] *Draft Council Regulation Amending Regulation No. 1056/72 on Notifying the EC Commission of Investment I'roiects of Interest to the Community in the Petroleum, Natural Gas and Electricity Sectors,* Com (89) 335, *01* No. C 250 (Oct. 3, 1989), pp. 5-6.

[46] *Council Regulation No.* 1056/72, May *18,* 1972, 01 No. L 120 (May 25, 1972), p. 7; and *Regulation No. 1215176, Amending Regulation No. 1056/72, May* 4, *1976, Of* No. L 140 (May 28, 1976), *p. 1.*

[47] Palinkas, 'The EC on the Way," p. 252.

[48] Telephone conversation with an EC Commission official in Brussels, Feb. 22, 1990.

[49] EC Commission, 'Information Memo: Towards Completion of the Internal Energy Market,' July 12, 1989.

[50] For a complete description of the EC's electricity sector, see EC Commission, *Increased intro-Community Electricity Exchanges: A Fundamental Step Towards Completing the Internal Energy Market,* Com (89) 336 final , Sept. 29, 1989. For an inventory of the existing obstacles to trade in the electricity sector, see EC Commission, *The Internal Energy Market,* Corn (88) 238, May 2, 1989.

[51] *Proposal for a Council Directive on the Transit of Electricity Through Transmission Grids,* Com (89) 336, 01 No. C 8 (Jan. 13, 1990), pp. 4-7.

[52] Local distribution undertakings or individual consumers cannot usually buy electricity from other countries. See EC Commission, Corn (89) 336 final, p. 5.

The third stay in the three-part plan to liberalize trade in electricity proposes that third-party access to the high-voltage transmission grid should be considered as a further means to reduce average electricity costs and increase security of supply. Application of the "common carriage principle' to the electricity market would mean that energy consumers could purchase electricity anywhere in the EC and be guaranteed delivery through the transmission grids currently reserved for the national or regional monopolies.[53] The EC Commission intends to examine whether access of third parties (e.g., large industrial consumers and electricity distributors) should be organized, and if so, under what conditions. Two consultative committees will be created to advise the EC Commission.[54]

The proposed directive on electricity transmission, together with the price transparency directive, face the least controversy and are expected to be adopted by the EC Council by June 1990.[55] Nevertheless, the requirement that electric utilities abandon their exclusive rights and agree to fair tariffs remains controversial.[55] Some member states are opposed in principle because they feel the directive would interfere with their national energy policies. Certain companies argue that the open-access provisions would endanger their long-term supply contracts and, therefore, the security of their supplies and that greater competition would lead to more uncertainty over future sales and higher investment risks. Because of this adverse effect on long-term planning, electricity undertakings claim that energy costs could tend to rise rather than decline.[57]

Transit of Natural Gas Through the Major Systems

The EC Commission has taken a parallel approach with the natural gas industry, which also faces significant obstacles to trade, although intra-EC trade in gas is substantially higher than that in electricity.[58] The EC Commission states that 'there is for practical and technical reasons no competition between gas suppliers for sales to end-consumers anywhere in the Community. In cases where competition from other fuels is not particularly intense, there is a lack of competitive pressure on gas suppliers to operate efficiently and minimise [sic] costs." As a result, similar to the electricity sector, the EC Commission has proposed a three-part approach to increase competition within the gas industry. The three stages in the plan are (1) to promote an EC dimension to future investments in the natural gas sector (which was addressed by the proposed regulation on investment projects discussed above), (2) to create the right of access among gas companies to the high-pressure gas transmission grids, and (3) to consult regarding a system of third-party (e.g., large industrial consumers and public distributors) access to the transmission grid.

The proposed directive on the transit of natural gas through the major systems[59] sets out the modalities for enforcing the right of transit of natural gas through transmission grids whether or not on the territory of the same member state. Negotiations for a transit agreement shall be conducted by the bodies responsible for the grids concerned; i.e., the gas companies. All other procedures involving gas transit are regulated the same way as in the directive on electricity transmission.

Similarly to its proposal for electricity, the EC Commission proposes to create consultative committees to determine whether to introduce third-party access to the transmission grid and, if so, under what conditions. In fact, the EC Commission has already estimated that the introduction of common carriage in the gas sector would benefit the EC by 625 million ECII per annum by the year 2000.[99]

As in the case of electricity, gas companies have reacted against the proposed transit directive, citing similar reasons for concern. These undertakings have also complained that the gas sector should not be singled out as was the electricity industry, since intra-EC trade in natural gas far exceeds that in electricity.[91] They argue that new regulations should not be introduced since the system inplace already operates effectively.e[2] Because of the controversy, it is doubtful that the directive on natural gas transmission will be implemented by the member states by July 1, 1990, as originally anticipated by the EC Commission.[83]

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as The "coaunon carriage principle' refers to the ability of third parties to mess existing transportation networks on payment of a reasonable tariff.

" EC Commission, *Increased Irani-Community Electri-ity Exchanger.*

" Telephone conversation with an EC Commission official in Brussels, Feb. 22, 1990.

as 'Energy: Commission Presents First Plans for Liberalising Trade,' *European Intelligence,* July 1989, p. 4-6.

" Palinkas, "The EC on the Way,' p. 253. For a discussion of the viewpoints of both energy supply undertakings and industry/users on common carnage, see European Parliament, Doc. A2158/89, pp. 21-22.

" For a complete description of the EC's natural gas sector, see EC Commission *Towards Completion of the Internal Market for Natural* Gas, Com (89) 334 final , Sept. 6, 1989. For an inventory of the existing obstacles to trade in the natural gas sector, *see* EC Commission, *The Internal Energy Market,* Com (88) 238, May Z 1989.

" Proposal for a Council Directive on the Transit of Natural Gas Through the Major Systems, Corn (89) 334, *01* No. C 217 (Sept 213, 1989), pp. 6-10.

** *Towards Completion of the Internal Market for Natural Gas,* Com (89) 334, Sept. 6, 1989, p. 11.

01 Energyer. Subsidies Would Face the Glare as Well; *Atlantic Trade* rt, Aug. 221989, p. 3.

-² "Energy:Freer Internal EC Market Could Close Doors to Outside,' 1992 – *The External Impact of European Unification,'* Nov. 17, 1989, p. 7.

*a Palinkas, 'The EC on the Way,' p. 253; and telephone conversation with an EC Commission official in Brussels, Feb. 22, 1990.

Other Anticipated Developments

The EC Commission plans to address a broad energy agenda in the time leading up to 1992. Some of the proposed directives require followup discussions and proposals, such as decisions on common carriage in electricity and natural gas. The EC Commission also intends to examine each of the obstacles listed in the inventory of existing barriers to trade and to report to the EC Council on its findings. Some of the issues pending include evaluation of the role of national monopolies, state aid policies, environmental issues,[64] and energy efficiency.[65]

For example, the EC Commission plans to report on how to ensure that competition is not distorted by state aids, predatory pricing, or other anti-competitive practices. The coal industry could come under considerable scrutiny. The EC Commission's desire to discipline the use of state aids leaves at stake certain vertical agreements between coal producers and consumers. These arrangements provide coal producers with a long-term guaranteed market, enabling them to maintain production capacities over a long period while eliminating competition from other coal suppliers and other forms of energy. These agreements also provide users with a guaranteed supply of coal regardless of market fluctuations, although prices are often fixed at unrealistic levels. The most noteworthy of these arrangements is the German lahrhundertvertrag„" which requires that electricity producers burn a certain amount of local coal until 1995. Power stations are compensated for using the higher cost domestic coal over other supplies of energy by a charge (the "Kohlepfennig") levied on electricity consumers. The German arrangement has been the source of many complaints, particularly by the French, whose exports of less expensive nuclear-generated electricity have been blocked by West Germany.[66] The EC Commission has also indicated that it plans to pressure West Germany into phasing out or at least reducing coal subsidies by 1993.[67] National aids such as those granted to the coal industry in various member states have been authorized by the EC Commission until 1993 and thereafter will be subject to the proviso of a license obtained from the EC Commission.e[68]

In the area of environmental concerns, the EC Commission is expected to make a decision regarding whether to retain a 1975 directive limiting the use of natural gas in electricity generation. Environmental groups propose to repeal the directive in order to encourage construction of new gas-fired capacity and to provide a disincentive to using highly polluting coal-fired power.[69] Also under discussion is an EC-wide energy tax, whose aim would be to cut consumption and make energy prices better reflect environmental costs?'" These are just a few examples of issues still pending.

Possible Effects

The EC Commission's efforts to forge an internal energy market in one of the EC's more tightly protected industry sectors are slowly moving forward. Strong opposition from member states to open energy markets has led the EC to take a step-by-step approach aimed at avoiding confrontations with national governments. As a result, completion of the internal energy market could be a long, arduous process. Member states have already expressed opposition to the four proposed directives, citing unwelcome interference from Brussels in their national energy policies, as well as concern that national energy industries could suffer from cheaper sources of sitr.[71] The achievement of the objectives of the in energy market will require coordination of national energy policies, especially price and tax policies. Harmonization of technical standards, environmental protection, safety requirements, and VAT and excise duties are all required to achieve this common marketer Controversy surrounds all of these areas targeted for change.

The eventual implementation of the internal energy market is expected to produce a more competitive environment, causing restructuring within the energy sector and ultimately, the restructuring of industry itself. U.S. industry is carefully monitoring this proce-A.[73] All companies operating in the EC will ultimately benefit from the greater freedom to choose among the types of energy consumed as well as suppliers. The petrochemical industry established in Europe already anticipates large cost savings from the internal market process, particularly in the energy area. For example, Dow Europe—the subsidiary of Dow U.S.A.—estimates overall annual savings of

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" In November, the EC Commission approved a communication to the Council describing relationship of energy and the environment. See 'Energy and Environment: Commission Paper Finally Approved on November 29; *European Report,* Dec. 1, 1989, p. 4-8.

Europ a list of future activities in the energy sector planned by the EC Commission, see EC Commission, *Programme of the ammission for 1990, Jan.* 10, 1990, p. 15.

" A recent agreement between West Germany and France should ease French opposition to the German policy in return for West Germany's promise to increase imports of French nudear power. See "Energy: Freer Internal EC Market Could Close Doors to Outside,' p. 7; and 'Paris and Bonn Do Deal on Energy Policies; *Financial Times,* Nov. 17, 1989, p. 2.

$7 See "Paris and Bonn Do Deal" p. Z or "Energy Subsidies Would Face the Glare as Well; p. 3.

" European Parliament, Doc. A2-158/89, p. 15.

" 'Energy: EEC Ministers Tackle Singlle Market, Electricity Efficiency arid Refining Costs,' European *intelligatce,* May 1989, p. 4-5.

" See 'Brussels Draws Up Proposals on Energy Efficiency," *Financial Times,* Dec. 4, 1989, p. 6, or European Parliament, Doc. A2-158/89, p. 9.

[71] For example, see 'Eneriy: Work Continues Into the Possibilities of the Common Carrier; *European Report,* Nov. 21, 1989, p. 4-8.

[72] Peter Palinkas, 'The EC on the Way," p. 254, and European Pazijamcnt Doc. A2-158/89r. 22-23.

Manufacturer's Association representative, Jan. 23, 1990.

approximately $50 million, roughly 1 percent of 1988 European sales, which could double if savings realized by energy deregulation are included. Because petrochemicals is one of the most energy-intensive industries, a unified energy market should have a relatively greater impact on this sector.[74]

Other sectors should also benefit from EC efforts to implement the internal market for energy. Opportunities for U.S. energy firms providing energy systems, equipment, and technblogy could increase. Diversification of energy sources to lessen dependency on single fuels and suppliers, concern about conservation and the environment, and the shift away from nuclear power have already prompted new projects or plans for reorganization in the energy sectors of member countries and should create opportunities for U.S. suppliers.[75] However, government procurement liberalization will also play a key role in determining the extent of U.S. participation in the EC's energy industry.

U.S. exports of coal should also benefit from the EC's energy policy objectives. For example, one EC goal is to reduce dependence on imported oil and promote the use of alternative energy sources, such as coal and natural gas. Also, the desire of certain member states to reduce their *use* of nuclear energy has led to a rise in the use of coal.[76]

Of the proposed energy directives, the one on transparency of gas and electricity prices is considered one of the more applicable to U.S. interests. For example, U.S. exports of coal to the EC could be directly affected. (See analysis below.) Also, the directive could have implications for opening up government procurement markets. Under the relatively closed procurement regime now in place in the EC, high procurement costs contribute to the relatively high cost of energy. The price transparency directive should make apparent to consumers how high energy prices actually are and should put pressure on energy entities to lower procurement costs. In turn, support should grow for the liberalization of public sector markets."

Transparency of Gas and Electricity Prices (Com (89) 33Z Final)

U.S. Exports to the EC

The United States exports neither natural gas nor electricity to the EC; however, U.S. exports of relatively inexpensive coal could increase if the directive on price transparency is adopted. Greater transparency of gas and electricity prices could lead better informed energy consumers to pressure member governments to eliminate or reduce state subsidies. It could also lead them to pressure gas and electricity undertakings to rely on cheaper energy sources. The United States is the world's leading producer of coal and is a major supplier to the EC market; however, U.S. coal exports will also have to successfully compete with other fuels for a larger share of the EC market

Diversion of Trade to the U.S. Market

This directive will not affect U.S. imports of energy products. The EC market for energy is currently tightly protected. Because the aim of the price transparency directive is to pressure gas and electricity companies into lowering their rates and demanding cheaper energy inputs, the EC is likely to increase imports of relatively inexpensive coal, including U.S. coal. Therefore, the directive is unlikely to block imports of energy into the EC that could be diverted to the U.S. market Furthermore, the linitt...1 States is a net exporter of coal and imports only small amounts of coke from Canada and Japan.

U.S. Investment and Operating Conditions in the EC

This directive should have little or no effect on U.S. investment in the EC's energy industries, since they are predominately state owned or monopolistic. Even in those energy areas in which private multinationals operate, such as oil and gas exploration and production, the directive will have little impact However, it should provide companies operating in the EC with more consistent energy prices on a country-by-country basis.

U.S. Industry Response

The directives dealing with energy policies are being closely followed by the U.S. coal industry. Industry sources indicate that state subsidies for coal in the EC have hampered efforts by U.S. coal producers to increase exports of lower priced U.S. coal to EC utilities. U.S. coal producers could experience an increase in demand for coal; however, there will also be an increase in the level of competition from rival fuels, such as heavy fuel oil and nuclear power.

•EC92 No Fortress for Chemical Trade," *Chemical Marketing Reporter,* Nov. 13, 1989, p. 16.

" U.S. Department of Commerce, EC *1992: Growth Markets,* September 1989, p. 55.

" Ibid., p. 50.

" Telephone conversation with NEMA representative, Jan. 23, 1990.

CHAPTER 5
FINANCIAL SECTOR

CONTENTS

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The 1992 program for financial services has raised interest and concern in the United States. EC capital markets and financial finns are likely to become relatively more competitive and efficient. Liberalized and open financial and capital markets in the EC should create potential business opportunities for U.S. financial services firms. Reciprocity provisions are included in the financial services directives, however, and the application of the Community's reciprocity policy may have the effect of restricting future market access for U.S. firms.

Developments Covered in the Initial Report

Background and Anticipated Changes

The Treaty of Rome set forth the free movement of services and capital as two of its principal objectives. However, barriers to the freedom of capital movements, to cross-border trade in financial services, and to the freedom of establishment for financial services firms have restricted the full financial integration of the EC market. With the adoption of the White Paper on Completing the Internal Market and the Single European Act, the EC set out to create a single financial market.

The financial services directives, in conjunction with the capital movements directives, are intended to have three broad effects: (1) to liberalize the financial services sectors; (2) to benefit the individuals and finns that consume such services; and (3) to increase the discipline of market forces on the monetary and fiscal policy of member states.

The approach of the EC has been to harmonize essential standards that apply to financial services firms regarding authorization, supervision, and prudential rules and to provide for the mutual recognition of home-country control on the basis of those harmonized rules. Under this regulatory regime, financial services firms will be able to operate throughout the EC with a single license.

The approximately 30 financial sector directives apply to banking, securities, insurance, and the free movement of capital. The Capital Movement Directive provides for the full liberalization of all capital movements as of July 1, 1990. The core banking directive is the Second Banking Directive, which introduces the single banking license and which is deemed by the EC to be "essential" to achieving the internal market. The Own Funds and Solvency Ratio Directives deal with the capital adequacy of banks and will be implemented simultaneously with the Second Banking Directive. A bank with a single license, including an EC subsidiary of a U.S. bank, will be able to undertake banking and securities activities throughout the EC either through branching or through the cross-border provision of services.

The Investment Services Directive is the core directive for securities firms. It is modeled on and complements the Second Banking Directive. The directive would introduce the single license and provide for the mutual recognition of home country control for securities firms. Other important securities directives coordinate rules on mutual funds, insider trading, and public-offer prospectuses. Once an investment firm has a single license, it can sell its services throughout the EC.

The two main insurance directives deal with the freedom of cross-border services for life and nonlife insurance. The Second Nonlife Insurance Directive provides that firms can sell nonlife insurance across borders to industrial and commercial customers on the basis of home-country control. The Second Life Insurance Directive would provide that firms can sell life insurance to individuals on the basis of home-country control when an individual in one member state seeks to buy life insurance in another member state.

Possible Effects

The 1992 program for financial services creates opportunities as well as challenges for U.S. firms. Although most of the necessary directives in this area, as outlined in the White Paper, have been proposed and many have been adopted, a host of definitional and interpretive uncertainties remain. As more final directives are adopted and as national governments begin to implement the directives, the pet effect of the financial services directives in the EC, in individual member states, and in the rest of the world should become clearer.

Developments During 1989

Banking

The Second Banking Directive

With the adoption of the Second Banking Directive in December 1989, the European Community has set in place a regulatory regime that should, over time, lead to and facilitate the creation of a single banking market in Europe.[1] The directive introduces both product and geographic liberalization. After January 1, 1993, EC banks will be able to do a wide range of commercial and investment banking business throughout the Community. The adoption of this directive is seen by the EC as symbolic of its commitment to economic integration, to mutual cooperation and to market forces. Compared to the U.S. banking

[1] See *Second Council Directive* (89/646), *01* No. L 386 (Dec. 30, 1989), p. 1.

market, which legally limits interstate banking and separates commercial and investment banking, the European banking market should become relatively more open and unified.

The Second Banking Directive relies on the concept of the single banking license. Once an EC bank has a single license, it can then do business throughout the 12 member states. A single license is available to EC banks and EC subsidiaries of third-country banks. In other words, the subsidiary of a U.S. bank could get a single license, whereas a branch could not. The range of activities that can be done with a single license includes merchant and investment banking activities, such as underwriting and advising on mergers and acquisitions, as well as traditional commercial banking activities. The annex to the directive contains a list of the activities that are covered by the single license.

The single license is made possible because the EC has harmonized essential rules regarding the authorization and prudential supervision of banks. These common rules mean that all banks that are authorized in the EC are subject to the same basic regulatory requirements. The Second Banking Directive provides for the mutual recognition of home-member-state control on the basis of the common rules. Under the mutual recognition principle, if a bank is authorized in its home member-state in accordance with the Second Banking Directive, then another member state must permit such a bank to do business in its territory. In other words, the host member-state must ize that a bank with a single license is authorized supervised by the home member state, even when banking activities are carried out in the host member state.

Along with the harmonization of certain essential standards in the Second Banking Directive, the EC adopted two measures in 1989 regarding the capital adequacy and solvency of banks. The Own Funds Directive sets forth common criteria for determining the composition of a bank's capital.[2] The Solvency Ratio Directive sets forth a minimum ratio of own funds in relation to certain risk-adjusted assets and off-balance-sheet items.[3] It requires banks to hold capital equivalent to 8% of risk-weighted assets.[4] These two directives are central to the prudential supervision of banks with a single license because they measure and ensure the financial strength and stability of EC banks. In a single banking market, common capital adequacy and solvency requirements should facilitate mutual recognition of home-country authorization and prudential supervision, and reduce distortions of competitive advantage that might have occurred if EC banks were subject to varying capital adequacy regimes.

The mutual recognition principle will create a regulatory environment wherein EC banks with a single license, including subsidiaries of U.S. banks, can freely sell their banking services throughout the Community, either by establishing branches in other member states or by selling their services directly across borders without utilizing a branch. The host member state may not require authorization nor endowment capital for branches of EC banks with a single license. Moreover, the Bank Branch Disclosure Directive, which was adopted in February 1989, provides that the host member state may not require the publication of annual branch accounting documents.[5] These restrictions on host-member-state regulatory powers effectively eliminate barriers that various member states have used to limit the market access of banks that were established in other member states.

Notwithstanding these restrictions, however, the host member state may establish conditions under which, "in the interest of the general good," a branch of a bank with a single license may operate. Also, the host member state, in cooperation with the home member state, is responsible for supervising the liquidity of branches and ensuring that institutions take steps to cover risks arising **out** of open positions on financial markets in the host member-state. Moreover, host member states **are** responsible for measures resulting from the implementation of their monetary policies. Ultimately, the development of the single banking market and the benefits of the single license will depend on good-faith cooperation between the regulatory authorities in the home and host member states.

The Treatment of Third-Country Banks

U.S. banks that have established subsidiaries in the EC prior to January 1, 1993, should generally benefit from the potential opportunities in the single, integrated market to the same extent as EC-owned banks because the Second Banking Directive recognizes the grandfather rights of existing and duly authorized subsidiaries. U.S. banks that seek to establish a subsidiary and to obtain a single banking license after the Second Banking Directive has become effective will be subject to the EC's reciprocity policy.

Access to the single market after January 1, 1993, will be contingent on whether EC banks receive "national treatment and effective market access" in the third country concerned. Under this policy, the

[a] See *Council Directive 89/299, 01* No. L 124 (May 5, 1989), p. 16.

See *Council Directive 89/647, 01* No. L 386 (Dec. 30, 1989), p. 14.

[4] The capital adequacy provisions follow international standards developed by the Basle Supervisor's Committee of the Bank for International Settlements. The United States participated in the work of the Basle Committee and has generally introduced the international standards in the United States.

[0] See *Council Diratívc 89/117, Of* No. L 44 (Feb. 16, 1989), P- 40.

EC will be looking to see that EC banks receive genuine national treatment that really works in practice (i.e., dejure and de facto national treatment). If the EC determines that the third country does not provide genuine national treatment to EC banks, then requests for banking licenses from banks of the third country could be suspended pending negotiations. Since the United States provides genuine national treatment to EC banks in the United States (although some state banking laws may adversely effect foreign banks), it is not likely that U.S. banks would be subject to the suspension procedure.[8]

However, even if a third country is found to provide genuine national treatment, the EC may seek negotiations in order to obtain treatment for EC banks in the third country "comparable to that granted by the Community to credit institutions from that third country." It is under this latter procedure that the EC could seek to negotiate with the United States. The negotiations would seek to obtain "comparable competitive opportunities" for EC banks in the United States, which could include the right to sell commercial and investment banking services throughout the United States on the basis of a single authorization? Such negotiations may be difficult because U.S. banking laws generally limit interstate banking and separate commercial and investment banking.

The single license and the reciprocity policy apply to EC subsidiaries of U.S. banks. The Second Banking Directive does not apply to branches of U.S. banks. Branches of U.S. banks will continue to be regulated by the First Banking Directive, which leaves the member states free to provide for third-country branches under their national law, but provides that such branches may not enjoy "more favorable treatment" than branches of EC banks. Therefore, branches of U.S. banks may be subject to requirements regarding authorization, endowment capital or annual branch accounting documents, for example, depending on the law of the member state concerned.

In the future, the EC may seek to provide uniform treatment to third-country branches throughout the Community on the basis of reciprocity. Moreover, the EC may seek to ensure that third-country branches do not receive "more favorable treatment" than branches of EC banks in order to correct possible distortions of competitive advantage that might occur if third-country branches were subject to less burdensome regulation than branches of EC banks.

[8] It should be noted that on Jan. 29, 1990, U.S. Senate Banking Committee Chairman Donald W. Riegle, Jr., introduced the Fair Trade in Financial Services Act of 1990, which would, if enacted, provide that national treatment include 'the same competitive opportunities (including effective market access)." The bill, S. 2026, would seek to ensure that U.S. financial firms receive de jure and de facto national treatment abroad.

[7] In a speech to the Overseas Bankers Club in London on Feb. 5, 1990, Sir Leon Brittan, Vice President of the EC Commission, stated that the EC would seek to negotiate regarding restrictive U.S. banking laws, including the Glass-Steagall Act.

Possible Effects

U.S. Exports to the EC

As the financial sector provides a service, commodity exports in the traditional sense do not occur. Although financial activities may originate in the United States, financial services by U.S.-based firms generally appear to be provided through branches or subsidiaries established in the EC. There are no good data that accurately quantify the amount of fees or revenues generated by U.S.-based financial services firms operating in the EC from the United States or in the EC directly. However, the Bureau of Economic Analysis (BEA) reports that fees and commissions generated by U.S. banks and brokerage firms in the EC were estimated at $1.27 billion in 1988; during the first half of 1989 the receipts were $802 million, up nearly 60 percent from $502 million over the same period in the prior year.- U.S. banks direct investment position in the EC at year end was estimated at $5.83 billion, up slightly from $5.77 billion in 1987.a

Diversion of Trade to the U.S. Market .

Industry sources did not indicate that any diversion of trade would occur to the U.S. market as a result of implementation of these directives. As financial markets are restructuring and becoming increasingly global, the flow of funds between countries is currently relatively unrestricted. Banks from the EC, the Far East and other world regions have had long established operations in the United States. Since the integration of the European Community should enhance the opportunity for U.S. and non-EC firms operating in the EC, it is unlikely any significant amount of trade will be diverted to the United States as a result of the plan. Banking in the United States has become intensely competitive. Although there will continue to be new entrants, the EC plan does not appear to be the catalyst

U.S. Investment and Operating Conditions in the EC

It is difficult to anticipate how investment and operating conditions in the European Community will be affected by the 1992 banking program. The 1992 banking program removes significant barriers to market access in the 12 member states, thereby enabling a bank with a single license to sell a wide range of banking services throughout the European Community. In the single banking market, U.S.

• Estimates based on BEA data.

° Periodically, the *Survey of Current Business,* a publication of the BEA, provides statistics on the U.S. international investment position, measuring the stock of U.S. assets abroad and of foreign assets in the United States. The BEA indicates their measurement is not entirely accurate as it is based on information subject to being outdated, incomplete, or based on misreported data on international balance-of-payment flows. Nevertheless, the data provide an indication of the magnitude of ***assets*** abroad.

banks should generally face the samepotential opportunities and challenges as EC banks. Although there are more U.S. banks in the EC today than in 1985, a number of large U.S. banks have withdrawn from the EC market and many others have restructured and limited their activities. The 1992 banking program does not appear to have significantly altered U.S. activity in this regard.

An integrated and dynamic Community banking market is expected by the EC to evolve over time as market forces effectively prompt a convergence of member state regulatory systems. At the same time, the competitive conditions in the EC banking market are being influenced by new computer and telecommunications technologies and a global trend toward the deregulation of financial markets and services. Many pnvate sector representatives from U.S. and EC banks view the developments in the EC as part of a global process of consolidation and restructuring in the financial markets, with the EC integration plan hastening the changes that have been gradually occurring.[10]

The new regulatory environment is built on coordinated capital and licensing requirements, common prudential rules and disclosure obligations, and regulatory cooperation between the supervisory authorities of the member states. The system is intended to promote the stability of the integrated financial market and to provide transparency and comparability for consumers, investors and regulators. Firms will be free to innovate and sell their services in the single, integrated market; at the same time, firms will face greater competition in new markets and at home. Greater competition will put pressure on operating and profit margins and a degree of consolidation is expected.

Market Access of Third-Country Banks

Two issues are raised by the EC's reciprocity policy: the first issue is whether third-country banking licenses will be subject to any limitation or suspension; the second issue is whether and to what extent the EC will negotiate to obtain "comparable competitive opportunities" for EC banks in the third country concerned.

The "national treatment and effective market access" standard contained in the Second Banking Directive has reduced concerns that U.S. banks might be subject to discriminatory treatment.[11] Moreover, the directive expressly recognizes the grandfather rights of existing EC subsidiaries of third-country banks. The directive provides that the reciprocity provisions do not apply to duly authorized subsidiaries or to the acquisition of an interest in an EC bank by such a subsidiary. However, some U.S. bankers are uncertain whether the Community's reciprocity policy will apply if they undertake a corporate restructuring or merge with another firm.[12]

After January 1, 1993, the market access for U.S. banks may be restricted by the application of the EC's reciprocity policy. The EC has stated that they would determine whether EC banks receive "genuine national treatment" or "de jure and de facto national treatment" in the third country concerned. Even though U.S. policy provides actual national treatment to EC banks (although some state banking laws may adversely effect foreign banks), it remains to be seen how the EC will define and interpret "effective market access." Although every indication suggests that the EC will be fair and reasonable in its effort to open foreign markets, U.S. firms and the U.S. Government have lingering concerns and will no doubt carefully follow the implementation of the EC's reciprocity policy.[13]

The other issue raised by the EC's reciprocity policy is the likelihood that the EC will seek to negotiate to obtain "comparable competitive opportunities" for EC banks in third countries. The EC will prepare periodic reports on the treatment of EC banks in third countries. Thereafter, the EC may initiate negotiations to open a foreign banking market to EC banks. In particular, the EC will negotiate with countries that do not provide "effective market access comparable to that granted by the Community to credit institutions from that third country." This procedure is intended by the EC to open foreign banking markets, and it has already prompted a reexamination of home country regulatory systems by the United States, Japan, and EFTA nations, for example. Such countries are looking at their own regulatory system with a view to maintaining the global competitiveness of their own banking firms and financial industry.

Due to the uncertainty about future market access, as well as other broader developments in the global banking marketplace, some firms are considering whether it is advisable and feasible to establish a banking subsidiary in the EC prior to 1993. Despite the incentive to invest in a subsidiary prior to 1993 in order to benefit from "grandfather rights," many U.S. banks are not presently prepared to commit the resources to the European market, and they may be adversely affected by the EC's reciprocity policy if they seek to do business in the EC after 1992.

For similar reasons, many other third-country firms are considering whether it is advisable and feasible to establish an EC banking subsidiary

[10] Conversations with bankers in Europe in January 1990.

[11] Conversations with U.S. bankers in the United States and Europe in December 1989 and January 1990.

[12] Conversations with French, German, and British bankers in January 1990.

[13] The United States Government has continuing concerns about how the EC will interpret and apply its reciprocity policy. See, e.g., Honorable David C. Mulford, Treasury Under Secretary for International Affairs, Statement before the House Banking, Finance, and Urban Affairs Subcommittee on Financial Institutions Supervision, Regulation, and Insurance (Sept. 24 1989). See also, Europe *1992,* a report of the Advisory Committee for Trade Policy and Negotiations (November 1989).

prior to 1993 to avoid the risk of being adversely affected by the EC's reciprocity policy. [14]

Japanese banks have been concerned because the EC has emphasized that its reciprocity policy is intended to open foreign markets, including the Japanese banking market in particular. Japanese banks have encountered some barriers in establishing operations in the EC. However, industry sources indicate that Japanese banks have been able to enter the market, and increase their market share significantly in certain sectors. Japanese banks have been reviewing their organizational and operational structure in Europe for various reasons, including the perception that Japanese banks are the main target of the EC's reciprocity policy, and the need to service increasing Japanese investment in Europe and the increasing economic liberalization in Eastern Europe. For example, the fourth-largest Japanese bank is considering expanding its operations in Frankfurt and making that city its European headquarters as opposed to its London office which is four times larger in terms of employees. [15] A spokesman for the bank stated this move may be made because of the growing importance of Eastern Europe and a decision later this year would be based on continuing developments in the region.

In addition to reviewing their existing banking operations in the EC, individual EFTA nations have taken a different approach. For example, Sweden and Norway have indicated a willingness to consider adopting the provisions of the Second Banking Directive and the Solvency Ratio Directive in their respective national laws with a view to extending the principal of mutual recognition of home-country control in the future. In other words, the single license concept could be extended to certain non-EC countries by agreement. Another example, which might serve as a model of future EC-EFTA cooperation in the financial services area, is theproposed EC-Swiss Non-Life Insurance Treaty. If approved, it would provide for the mutual right of establishment for Swiss and EC insurance firms.

Organizational and Operational Conditions

The potential benefits of a single license will probably encourage U.S. banks in Europe to operate through a subsidiary even though the capital and tax costs may be relatively higher. Although the Second Banking Directive introduces the possibility of universal banking throughout the Community, no one expects all banks to enter all product and geographic markets. Industry sources indicated that some economies of scale should be realized as banks consolidate their back office and marketing operations, for example, and sell their services on a cross-border basis or through branches that no longer need separate authorization, endowment capital or branch accounting documents. [16] While bank executives could not quantify the direct savings that might be achieved as a result, one individual with a major U.S.-based bank estimated that operating expenses could decline 15 to 20 percent as result of the consolidation of some activities after 1992. [17]

Competition

The liberalization of the banking sector should increase competition in the marketplace, thereby benefitting consumers. New market entrants and the potential threat of new entrants should force banks, including those banks with vast branch networks that virtually ensure sizable market share, to offer a wider array of products at more competitive prices. Moreover, in order to protect consumers and to encourage competition in the banking sector, the EC Commission has been taking action against hidden and variable charges concerning consumer creditle and interbank agreements on interest rates, for example. In this new and competitive market, banks may choose to expand broadly or they may focus on specialized markets.

The wholesale or institutional market has been largely globally competitive, whereas the retail market has been less so. Most of the increased competition will be for market share in what are expected to be new and growing markets, especially for individuals and small- and medium-sized firms. As a result, even though the retail market is said to be generally overbanked, [19] it is precisely this market where the Cecchini report on the effects of the 1992 program expects the greatest net welfare gain.

EC and non-EC industry sources note that at present the only true pan-European retail bank with operations throughout the EC is U.S.-based Citicorp.= The bank has been building a retail banking network in Europe for over a decade and over the last 5 five years has experienced overseas revenue growth of over 20 percent a year. [21] Given

[14] Conversations with French attorney and British management consultant in January 1990.

[15] Conversations with German and British bankers in January 1990.

[16] Conversations with French, German, and British bankers in January 1990.

[17] Conversations with British bankers in January 1990.

[18] See *Council Directive 90/88, 01* No. L 61 (Mar. 10, 1990), p. 14.

[19] For example, in 5 European countries alone, there were 145,000 brar.:hes as compared with 102,000 in the entire United States and 42,000 in Japan. See Professor Luigi Coccioli, Chairman, Banco di Napoli, Rome, Italy, Testimony before the House Banking, Finance, and Urban Affairs Subcommittee on Financial Institutions Supervision, Regulation, and Insurance (Sept. *V,* 1989).

[20] Conversations with United States, French, German, and British bankers in January 1990.

[21] See Sylvia Nasar, 'America Still Reigns in Services,' *Fortune,* June 5, 1989, p. 68.

the need for local expertise and personnel necessary to build a successful client relationship, Citicorp's strategy has focused on developing a local image and as such only about 2 percent of its overseas branch managers or executives are U.S. citizens.

U.S. and EC banks have an opportunity to expand their activities in each national market where financial products, such as money-market accounts, variable rate mortgages or credit cards, for example, are unavailable or underutilized. Citicorp has been successful in expanding its retail operations in the EC and should be able to pursue a wider range of commercial and investment banking activities through its branch network after 1992.

The level of consumer use of credit services such as mortgage lending and credit cards has varied significantly in the EC. In the United Kingdom consumers tend to use credit cards more than they do in France or West Germany. In France, debit cards are also used while the Eurocard or cash is most common in West Germany. Banks can exploit these opportunities by marketing their services directly throughout the EC, by establishing, expanding, or acquiring a branch network, or by linking up with suitable partners in a similar or complementary product or geographic market In other words, firms can expand on their own in either broad or specialized markets, or they can cooperate with other firms and sell each others' products in their respective markets.

EC and non-EC industry representatives expect that in the next several years only a few banks will try to dominate the retail banking business through an EC-wide presence. The retail market is considered to be overbanked in France, West Germany and the United Kingdom, whereas the markets of southern EC countries such as Italy, Greece, Spain, and Portugal might be developed further upon implementation of the 1992 banking program.[22] As a result, many banks may choose to target select product or geographic markets.

U.S. banks have earned a global reputation as innovators in developing new financing techniques such as asset-based securities, and option and hedging techniques and in relying on new computer and telecommunication technologies. While U.S. firms have had a long history of developing new products and stressing analytical researc.h, EC firms in general are in the early stages of growth. Industry sources expect that U.S. banking firms should be able to capitalize on their strength in specialized product markets after the implementation of the EC 1992 plan.

J.P. Morgan's strategy has been to concentrate on developing business locally through strong client relationships while maintaining a quality image by specializing in areas such as private banking, providing financial advice and arranging sophisticated mergers for major corporate and sovereign clients. Diversification by engaging in other investment services has brought mixed results for the firm. Morgan purchased a successful French brokerage firm, Nivard-Flornoy, in preparation for 1992. However, J.P. Morgan Securities, a subsidiary in London, experienced losses in the highly competitive government bond market in 1987 and 1988.[23]

Notwithstanding the benefits of the single license and the potential opportunities of expanding a branch network or exploiting a specialized product market throughout the EC on a services basis, many residual regulatory, structural, customary, cultural and tax barriers will hinder the development of a truly integrated banking market. Individual consumers may prefer dealing with a local bank and may resist new and unfamiliar financial products. For these reasons, banks may choose tofind suitable partners in potential growth markets.

Concentration, Mergers, and Acquisitions

The actions of EC banks in response to the 1992 program is one indication of how the competitive condition in the EC banking market will evolve. Whether a bank chooses to expand broadly or to focus on a specialized market, one key will be having an effective distribution system in the targeted market. For this reason, many firms are linking up with firms in other markets.

The major banks in the United Kingdom are rethinking their strategies in light of the EC integration plan. In 1989 Midland Bank, the third largest bank in the United Kingdom, announced that in preparation for 1992 it would focus on wholesale banking. It recently purchased a controlling interest in Euromobilaire, a leading Italian merchant bank, and also has majority stakes in German, Swiss and French banks that are involved in investment banking activities such as corporate finance, treasury operations,private banking and asset management.. National Westminster, the United Kingdom's second-largest clearing bank, has expanded through acquisition, but is also considering growing by tailoring its services to specific markets such as personal and corporate banking, leasing, and insurance brokering.

Major banks involved in broad-based banking activities are also developing specializations. Deutsche Bank, for example, recently started a new British fund management business to provide services to British subsidiaries of German companies, and to British companies as a specialist manager of international bond funds and European equity portfolios.

While U.S.-based Citicorp has been successful in developing its retail banking operations

[22] Conversations with U.S. and European bankers in January 1990.

[23] "1.P. Morgan Raises the Stakes in Europe," *Financial* Times, Nov. 9, 1989, p. 28.

throughout Europe, industry sources indicate that commercial or corporate activities have proven to be more successful for most U.S. banks and investment firms.[24] Initial wide-ranging services have been scaled back and the current corporate strategy is to provide "niche" or very targeted banking and investment services. For example, one U.S.-based investment services company has focused on trade financing, while another firm has emphasized corporate finance. EC and non-EC sources anticipate a continuing trend toward smaller, more consolidated operations.[25] For example, one U.S.-based bank that 5 years ago had the third-largest network in terms of offices in the EC has closed or sold all but three of its EC offices.

Several West German banks appear to be positioning themselves to provide a wider array of retail and merchant banking services by purchasing existing banking operations in other countries. For example, Deutsche Bank, the largest bank in West Germany has acquired or increased its position in banks in Holland, Italy, Portugal, and Spain. In 1986, Deutsche bought Bank of America's 100-branch Italian network for $603 million. Deutsche has also diversified by purchasing Morgan Grenfell, a British merchant bank, and moving into management consulting and life insurance. During 19B8 Deutsche Bank led in terms of assets among West German banks with 305 DM billion, followed by Dresdner Bank with 231 DM billion and Commerzbank with 180 DM billion. These banks together hold an estimated market share of 12 percent of West German personal customer business. Industry sources estimate that 4,700 banks hold the remaining percentage.[26] With EC 1992 as the catalyst, however, all three major banks have stepped up efforts in expanding into insurance activities. For example, Dresdner Bank and Allianz (West Germany), Europe's largest insurer, have agreed to cross-market some of each other's products in five states in central Germany.

The major French banks are also exploring potential new markets. Over the last several years, Credit Lyonnais has built z network of 300 branches outside France. The *firm* has been selective, however, about which countries it has entered. France and West Germany, one company source indicated, appear to be unprofitable in terms of establishing new retail operations. In 1989, Credit Lyonnais acquired control of Italian-based Credito Bergamasco and the Belgian subsidiary of Chase Manhattan Bank.

Spain's largest bank, Banco Bilboa Vizcaya, announced last year that it arranged to swap a subsidiary for Banque Nationale de Paris' Compaigne de Credit Universel unit. Another Spanish bank, Banco de Santander bought 10 percent of the Royal Bank of Scotland in 1988, announced an alliance with Japan-based Nomura Securities and purchased 3 percent of Kemper Corp., a U.S. financial services holding company in 1989. Spain's large rural savings banks have joined with Deutsche Genossenschaftsbank, the organization for West Germany's cooperative banks to open a new bank that will act as a central point for providing information, establishing the overall policy for the savings banks, and serve as a vehicle to open new banks.

The exchange of shares of equity at levels of 10 percent between two financial services companies, such as a bank and an insurance company (termed "bancassurance" in France) is becoming more common to gain exposure to other markets both within and outside the home country. For example, Union des Assurances de Paris, a large French insurer, and Banque Nationale de Paris initially exchanged a 10-percent interest in each other for $380 million, but expect to remain separate entities.

Industry sources indicated a variety of reasons for the later strategy: a friendly alliance to preclude a possible takeover attempt, an initial positioning for a later larger stake as strategic plans change in anticipation of 1992, or as an indirect way to establish a presence in a country.[27] In the case of the linkage between a bank and an insurance firm, the bank gains from the higher capital levels of the insurance firm, which can help it maintain solvency ratios and also provide a quasi-captive source of stable, long-term funds for the bank's investment products, while the insurance firm gains from the distribution channels of the bank's branches.

U.S. Industry Response

Despite the wave of consolidation taking place in *the* EC financial market, U.S. firms, with some exceptions, have not been notably active. U.S. firms have in the past freely entered the EC and operated with relatively few restrictions but have also left the EC when competition in banking intensified and profitability was negatively impacted. Most recently, U.S. banks' strategies have been to focus on strengthening their U.S. banking operations due possibly to higher capital requirements, third-world loan difficulties, and other opportunities in the United States.

Although the 1992 program is generally considered to be a positive development in opening the EC markets and liberalizing capital flows among the member states, it appears unlikely U.S. banks will significantly increase their presence as a result. Many U.S. banks entered Europe over a decade ago to serve subsidiaries of U.S. multinationals, and because competitive opportunities in the United States were limited due to the McFadden and

[24] Conversations with French, German, and British bankers in January 1990.

[25] Conversations with German and British bankers in January 1990.

[26] The Long Shadow of the Majors; *Financial Times,* July 11, 1989, p. 24.

[27] Conversation with French banker in January 1990.

Glass-Steagall Acts. With the influx of new entrants into Europe and deregulation of London's market, competition became so intense that a number of U.S. banks scaled back operations or totally withdrew from the marketplace. Industry sources expect that U.S. banks may be most successful in developing certain specialized product markets where their expertise with innovation and automation may give them a clear competitive advantage in the single banking market

Investment Services and Securities

The Investment Services Directive

The proposed Investment Services Directive is modeled on and complements the Second Banking Directive.[28] It would introduce a single license for nonbank investment firms. Like the Second Banking Directive, the Investment Services Directive is intended to establish a regulatory environment wherein authorized firms can branch or sell their services freely throughout the Community. The directive sets out to harmonize essential rules regarding authorization and prudential supervision and to provide for the mutual recognition of home-country control on the basis of those rules. The investment services that are subject to the single license are set forth in the annex to the directive. The services are covered by the Second Banking Directive as well, and they may be undertaken by a bank with a single banking license.

As noted in our initial report, many questions are raised by the Investment Services Directive due to the fact that fewer standards and regulatory details are provided in the proposal, as compared to the Second Banking Directive. Moreover, essential flanking measures have not yet been proposed. In this regard, principal concerns relate to the capital adequacy of investment firms, the prudential supervision of investment firms, the allocation of home-host supervisory authority, conduct of business rules, and investor protection.[28]

The main debate has centered on drawing up capital adequacy rules for nonbank investment firms, which would be analogous to the banking directives on own funds and solvency ratios. Two very different approaches are being considered. One approach would set a relatively high minimum capital requirement which would ensure the solvency and stability of investment firms and provide the basis for prudential supervision. This approach has been criticized because it could operate as a barrier to entry by new firms. The other approach relies on a complicated and flexible risk-based standard that would set the capital requirement on the basis of the market risk of the various activities of a firm. Although the risk-based approach results in lower capital requirements, it requires constant and complicated capital adequacy adjustments and agreeing on the appropriate components of a risk-based standard has proved troublesome.

The EC wants to establish rules for banks and non-bank investment firms that do not distort competition. However, the high capital approach tends to favor universal banks that undertake investment activities, whereas the risk-based approach tends to favor investment firms. EC investment firms that are currently operating under a risk-based system, including U.S. investment banks in the United Kingdom and France, would face considerably higher capital costs if the EC adopts the high capital requirement

Many U.S. firms carry out their securities and investment banking activities in Europe through a non-bank financial institution. U.S. investment firms in London have been concerned that the capital adequacy directive would raise capital requirements. In a letter to Sir Leon Brittan, four U.S. firms in London said that excessive capital requirements may lead firms to consider moving some operations to non-EC locations.

EC investment firms are also concerned that the single banking license and the single investment firm license become effective simultaneously. If the development of an acceptable directive for investment firms is delayed too long, then investment firms, including U.S. firms, may be put at a competitive disadvantage as compared to banks with the benefit of a single license.

A final concern for U.S. investment banks is raised by the EC's reciprocity policy. The amended proposed Investment Services Directive contains a reciprocity provision that is modeled on the more flexible approach provided in the Second Banking Directive as adopted. Thus, the EC will rely on a "national treatment and effective market access" standard and may seek negotiations to achieve "comparable competitive opportunities" for EC investment firms in the United States.

Insider Trading

The Insider Trading Directive was adopted in November 1989.[38] It coordinates rules on insider trading and provides for extensive cooperation between member states so that cross-border insider trading can be effectively pursued.

The directive prohibits trading on the basis of inside information by primary and secondary insiders. The directive defines inside information as "information which has not been made public of a precise nature" relating to transferable securities or

a See *Amended Proposal,* Com(89) 629, Of No. C 42 (Feb. 2Z 1990), p. 7.

[25] See, e.g., European Economic and Social Committee (ECSC), 'Opinion of the Economic and Social Committee on the Investment Services Directive; *01* No. C 298 (Nov. *22,* 1989), p. 6, and The Securities Association, *Investment Services Directvx: A Commentary and Analysis* (March 1989).

[30] See *Council Directive 89/592, 01* No. L 334 (Nov. 18, 1989), p. 30.

issuers thereof "which, if it were made public, would be likely to have a significant effect on the price" of such securities. The directive prohibits primary or secondary insiders from using inside information for their own account or for a third party. In addition, primary insiders may not disclose inside information to a third party, except in the normal course of employment, nor solicit a third party to act on the *basis* of inside information.

A primary insider is a **person who possesses inside information "by virtue of his membership of the administrative, management or supervisory bodies of the issuer, by virtue of his holding in the capital of the issuer, or because he has access to such information by virtue of the exercise of his employment, profession or duties." A secondary insider is a person who is not a primary insider but** "who with the full knowledge of the facts possesses inside information" obtained either **directly or indirectly from a primary insider. As for the enforcement of the prohibition, each member state shall establish penalties "sufficient to promote compliance."**

The Insider Trading Directive is an important contribution towards the creation of a genuine European capital market in that it seeks to ensure fairness and transparency for investors on all securities markets in the EC. Denmark, France and the United Kingdom have tough insider trading laws already, whereas the remaining member states will have to either introduce new rules or toughen their existing regimes. The directive is complemented by a Council of Europe Convention on Insider Trading which would extend mutual cooperation in this area to non-EC signatories from Council of Europe member states.[31]

Stock Exchange Directives

One objective of the EC is to establish a regulatory environment in which securities can be issued and traded freely throughout the Community. Our initial report noted the earlier directives that coordinated the conditions for admission to a stock exchange[32] **and the information about the issuer and the securities that had to be** disclosed in the listing particulars.[33] A subsequent directive provided for the mutual recognition of listing particulars when admission is sought in two member states at about the same time.[34]

In 1989, the Public Offer Prospectus Directive was adopted.[35] It coordinated requirements regarding public-offer prospectuses and provided for mutual recognition when offers are made in two member states at about the same time. The information required in a prospectus is comparable to the information contained in the listing particulars. In November 1989, the EC Council reached a common position on a proposed directive that would provide for the mutual recognition of public offer prospectuses as listing particulars.[36] The **proposal** provides that when admission is sought for securities that have been that subject of a public offer within the previous three months, then the prospectus, if drawn up in accordance with the Public Offer Prospectus Directive, must **be** recognized as listing particulars, although some additional information could be required. Once this directive is adopted, a company could prepare **one prospectus to have its shares offered in more than one member state and to have its shares listed in more than one member state. This directive should make it easier for firms to raise capital throughout the EC.**

Possible Effects

U.S. Exports to the EC

As the financial sector provides a service, commodity exports in the traditional sense do not occur. Although financial activities may originate in the United States, financial services by U.S.-based firms generally appear to be provided through branches or subsidiaries established in the EC. There are no good data that accurately quantify the amount of fees or revenues generated by U.S.-based financial services firms operating in the EC from the United States or in the EC directly. However, the Bureau of Economic Analysis (BEA) reports that receipts from banks and brokerage firms fees and commissions generated in the EC were estimated at $1.27 billion in 1988. During the first half of 1989 the number was $802 million, up nearly 60 percent from $502 million over the same period in the prior year.[37] **U.S. finance and insurance companies' direct investment position in the EC at year end 1988 was $21.6 billion, up nearly 21 percent from $17.9 billion in 1987.**[38]

[31] It should be noted that the U.S. Securities and Exchange Commission recently negotiated cooperation agreements with the Governments of France and the Netherlands, respectively, that would facilitate and enhance mutual assistance in securities matters.

[32] See *Council Directive 79279, Of* No. L 66 (Mar. 16, 1979), p. 21.

[33] See *Council Directive 80/390, 01* No. L 100 (Apr. 17, 1980), p. 1.

[34] See *Council Directive 87/345, 01* No. L 185 (July 4, 1987), p. 81.

[35] See *Council Directive* 89/298, 01 No. L 174 (May 5, 1989), p. 8.

[36] See EC Commission, Corn (89) 133, 01 No. C 101 (Apr. 22, 1989), p. 13. The Council reached a common position on Nov; 13, 1989.

[37] Estimate from BEA data.

[38] Periodically, the *Survey of Current Business,* a publication of the BEA, provides statistics on the U.S. international investment position, measuring the stock of U.S. assets abroad and of foreign assets in the United States. The BEA indicates their measurement is not entirely accurate as it is based on information subject to being outdated, incomplete, or based on misreported data on international balance-of-payment flows. Nevertheless, the data provide an indication of the magnitude of assets abroad.

Diversion of Trade to the U.S. Market

The international flow of funds is relatively unrestricted with investors purchasing instruments denominated in numerous foreign currencies from issuers throughout the world. Investment firms from the EC, Far East, and other world regions have had long established operations as well as access to the U.S. markets. While the integration of the European Community should have an impact on those U.S. firms operating in the EC, it is unlikely any significant amount of trade will be diverted to the United States as a result of the plan. Both domestic and foreign investment firms operating in the United States are currently encountering an intensely competitive market in which consolidation and shrinking profit margins are the norm. Although it is likely that new firms will enter the United States, the integration of the EC does not appear to be the cause.

U.S. Investment and Operating Conditions in the EC

The increasing globalization and inter-dependence of world financial markets has been driven by a variety of factors, including deregulation and technological innovation.[39] As the internationalization of stock trading has grown, world stock market capitalization has grown from $2.5 trillion in 1980 to over $8.0 trillion in 1988.[49] The 1992 program responds to these developments and is intended to accelerate the trend towards relying on the efficiencies of global market forces in the European Community. The 1992 program for investment services and securities will change competitive conditions in the EC market for securities firms, securities products and securities markets. European industry sources view EC integration as hastening the changes that have been evolving in the investment services sector over the last decade.•

Market Access of Third-Country Investment Firms

Third-country investment firms will be subject to the Community's reciprocity policy. The Investment Services Directive contains a reciprocity provision that is modeled on the "national treatment and effective market access" standard from the Second Banking Directive, as adopted, and a grandfather provision is included.•[2] As in the banking area, however, lingering questions about possible EC interpretations of the reciprocity provisions would remain. For example, several U.S. industry sources were concerned whether the reciprocity policy would be applied to a restructuring, a merger or the acquisition of a bank.[43]

Organizational and Operational Conditions

The resolution of the debate over the appropriate capital adequacy regime for investment firms will determine whether it will be more advantageous to carry out investment banking activities through a universal bank structure with high capital requirements based on credit risk or through an investment firm structure with relatively lower capital requirements based on market or position risk The capital adequacy regime for investment firms will also influence the global competitiveness of doing investment services business in the EC market. The EC is trying to establish a regime that would not tilt the competitive advantage in favor of one organizational structure.

The EC has always indicated that the single investment firm license and the - singe banking license would become effective simultaneously. Industry sources are concerned that, if the licenses are not effective at the same time, banks might have a competitive advantage over investment firms.[44] Therefore, the timing of implementation may influence competitive conditions in the EC market

The allocation of supervisory responsibility between the home and host member state may create problems in certain cases for investment firms seeking to operate with a single license. One potential problem is illustrated by the situation in which an investment firm with a single license tries to issue mortgage-backed securities through its branch operation in a host member state that does not provide for such a security. Even though the investment firm is supervised by home member state under the law of the home member state, the host member state may enforce national laws that protect the public good. The uncertainty relates to whether the host member state may prohibit or otherwise restrict the issuance of the security, deeming it to be too risky for its citizens. Another example of uncertainty arises where a firm becomes insolvent in a host member state and the host member state takes measures to protect its citizens.

The ancillary securities directives coordinate various information disclosure obligations in order to ensure transparency and comparability throughout the Community, thereby easing cross-border securities transactions. The directives,

[38] See U.S. Securities and Exchange Commission (SEC), *The Securities Markets in the 1980s: A Global Perspective,* Jan. 26, 1989.

[4°] !bid, pp. 32-33.

[41] Conversations with financial service firms in Paris, London, and Frankfurt in January 1990.

[42] It should be noted that the Explanatory Memorandum to the proposed Investment Services Directive expressly provides that the reciprocity regime does not apply to existing Investment businesses already established in the Community. See EC Commission, Corn (88) 778 of Dec. 16, 1988.

[4°] Conversations with banking and investment services representatives in the United States and London in December 1989 and January 1990.

["] Conversations with bank and investment services executives in the United States, London, Frankfurt, and Paris in December 1989 and January 1990.

which deal with listing particulars, prospectuses, shareholder disclosure obligations and insider trading, are considered to be generally positive developments by U.S. and European sources and should result in cost savings to issuers." They may also bring greater efficiency to the capital markets due to the uniformity among documents and member state regulations."

Competition

The globalization of financial markets has created an intensely competitive environment. Deregulation has encouraged the introduction of complex new financial instruments and the expansion of financial markets. Brokerage commission rates were opened to competitive pricing and an influx of foreign and domestic investment firms and banks entered the major financial centers. While the supply of international financial instruments has increased, the number of companies wanting to act as dealers in buying and selling them increased even faster. The increased competition to deal in Eurobonds, government securities, and stock resulted in greatly reduced profit margins. Events such as the market crash in October 1987 and the decline in Euromarket activity magnified the overcapacity as activity in stock trading and new issue offerings **slowed, and, as a result, the revenues for many investment firms declined.**

The profitable U.S. firms operating in the EC are concentrating on specialized or "niche" services such as corporate finance or merger and acquisition advice, rather than expanding into the retail brokerage sector. Industry sources indicate that despite the opportunity after 1992 to increase marketing of financial products to individuals throughout the EC, it would be difficult and prohibitively expensive to develop such networks at this point.[47] Several EC industry sources acknowledge the expertise U.S.-based firms have developed in such areas as hedging techniques and financing acquisitions and they consider that U.S. banks may have a competitive advantage as the EC deregulates its financial markets and allows greater movement in capital flows and cross-border mergers and acquisitions.[48]

Despite the retrenching and structural changes, U.S. firms have been successful in the Euroequity market. In 1987 U.S. issuers raised $2.6 billion or 17 percent of that market, up significantly from $200 million or 9 percent in 1985. In contrast, from 1983 to October 1988 the British issuers accounted for about 27 percent, while the Japanese issued less than 1 percent of Euroequity offerings.[49]

" Conversation with industry representatives from the United States, France, West Germany and United Kingdom in December 1989 and January 1990.

" Conversations with attorneys in Paris in January 1990.

" Conversations with bank and investment firm executives in London in January 1990.

'S Ibid.

" See Organization for Economic Cooperation and Development (OECD), *Financial Market Trends,* November 1988, p. 62.

Concentration, Mergers, and Acquisitions

The consolidation by investment firms on Wall Street, and investment firms and banks with brokerage operations in London continues. Many British industry representatives indicate that the majority of banks, both British and foreign such as Citicorp, Merrill Lynch, and NatWest, that had purchased stock brokerage operations in the mid-1980's or expanded operations, have suffered large **losses and have been forced to shut securities operations either totally or on a partial basis.[50] Citicorp, the largest U.S.-based bank with a major presence throughout the EC, announced recently that its 1986 acquisition and merger of two prominent stockbrokerages continued to be unprofitable despite aprevious restructuring. It is closing the operation. In early 1990 the largest U.S. securities firm, Merrill Lynch, announced the biggest annual loss in earnings in its history as a result of a pretax charge related to a continuing worldwide restructuring of its business. These latest announcements reflect the shakeout that has occurred in response to overexpansion and the slowdown of growth in some areas of the financial services markets.**

Recognizing the trends towards internationalization and consolidation, First Boston in 1988 announced its merger with its European affiliate, Financiere Credit Suisse-First Boston, and its intention to develop into a global investment bank with centers in the United States, Europe and Japan.

As the regulations separating investment and commercial banks tend to be much less prevalent in the EC than in the United States, mergers and other combinations among the two types of entities have occurred on a regular basis. Nevertheless, with the integration plan of 1992, this activity- has been increasing. For example, between December 1987 and November 1989 Deutsche Bank expanded its investment banking activity by establishing or taking majority control in the following firms: MDM (Portugal), Albert de Bary (Holland), Barclays Commissionaria (Italy) and Morgan Grenfell Group.

Development of Products and Markets

While the stock market, options and futures exchanges in the United States will continue to play an important role as financial markets, the flow of investor funds into the European and Far Eastern countries is expected to rise as their level of sophistication in operations and new product offerings develops. For example, the Eurobond market has become a primary investment source for global investors. London's financial futures exchange (LIFFE) is offering 3-month D-mark interest rate contracts and the world's first ECU future. The French futures market (MATIF), which opened in February 1986, already trades more contracts than the LIFFE. West Germany recently opened its first automated options and future

[oo] Conversations with securities firms and bank representatives in London in January 1990.

exchange and linked the operations of its regional stock exchanges. A number of EC investment firm representatives indicated that serious consideration is being given to starting operations in Eastern Europe either directly or through establishing operations in EC countries closer to the Eastern European borders.[51] Nevertheless, one management consulting firm estimates that European stock-trading volume still is only half that of precrash levels, growing about 10 to 15 percent annually.[52]

Increasing automation within firms and exchanges as well as computerized linkages between exchanges are also expected to accelerate within the EC and among all the major global exchanges, resulting in higher efficiencies, lower execution costs, and increased trading opportunities for investors.

Mutual Funds

The Mutual Fund directive became effective October 1, 1989. The directive is expected to provide uniform investment fund regulation within the European Community. It applies the concept of mutual recognition. Once a mutual fund, otherwise known as a UCITS, is authorized in one EC country it can be offered to investors in any of the 12 EC-member countries without further approval. The UCITS directive regulates only the EC equivalent of open-end investment funds which invest in exchange-listed or over-the-counter securities and does not cover money market funds and closed-end funds. U.S. industry representatives consider the directive to be trade enhancing since it opens the EC market to cross-border selling within Europe.

Denmark, France, West Germany, Ireland, the Netherlands, the United Kingdom and Luxembourg have adopted laws to implement the UCITS directive in their home countries. An extended grace period has been given to Greece and Portugal which have until April 1, 1992, to implement the directive. At the end of 1989, EC investment companies held an estimated $370 billion in fund assets compared to $553 billion in fund assets held by U.S. investment companies, excluding their money market funds.[53] France is the largest single EC market for mutual funds with French firms managing nearly 50 percent of total EC fund assets.[54] A number of U.S. firms, among them Fidelity, Dreyfus and Merrill Lynch, have established management funds in the EC to offer a variety of funds, industry sources indicate.[55] Fidelity is the eighth largest fund in the United Kingdom.[56]

In 1988, Luxembourg became the first EC country to adopt implementing legislation to adapt local laws governing mutual funds to the UCITS directive. In addition, Luxembourg offers favorable tax treatment to mutual funds. As a result, many U.S. and other non-EC investment funds, such as Fidelity, Merrill Lynch, and Alliance Capital, have chosen to establish their funds in Luxembourg. The total number of investment funds established in Luxembourg reached 584 by June 1989 and controlled nearly 2.5 billion Luxembourg francs ($65 million) in assets, up from only 99 investment funds controlling 398 million Luxembourg francs in 1983.[57]

The UCITS directive does not cover marketing. Once approved in a member state, the UCITS may be sold throughout the EC, but are subject to each EC member state's marketing rules that address such areas as advertising, direct sales, and unfair competition. The marketing rules are applicable to both the host country's own firms and those from any other country.[58] Several industry representatives indicate that as a practical matter, establishing marketing programs and distribution channels in the EC can be difficult and expensive, especially since the customary way of distributing mutual funds varies among member states.se For example, in Great Britain people frequently buy funds directly from insurance, securities or investment fund companies which advertise while in West Germany people tend to have long-standing relationships with banks and purchase most of their investments through them. In fact, insurance companies run 60 percent of the unit trusts in Great Britain, while banks run 90 percent of them in West Germany.°°

To distribute effectively in each country, a mutual fund might have to set up its own offices in Great Britain or rely on independent brokers while in West Germany it might have to try to set up a relationship with an existing bank that already has a distribution network of branch banks in place. One securities firm is even considering the option of forming a joint venture with a European automobile manufacturer's credit operation to offer mutual

°' Conversations with bank and investment services representatives in Frankfurt and Paris in January 1990.

" Conversation with management consultant in London in January 1990.

" Telephone conversation of Feb. 26, 1990, with the Investment Company Institute (ICI), Washington, DC.

[64] See *1992—The External Impact of European Unification,* Jan. 1Z 1990, p. 10.

°° Discussions with industry and trade association officials in the United States, London, and Frankfurt in January and February 1990.

e° Ibid.

" See Colin Jones, 'Fiscal Paradise?' *The Banker,* December 1989, p. 68.

e° Speech by Kathryn B. McGrath, SEC/ICI Procedures Conference - 1989, Washington, DC., Dec. 7, 1989, p. 6.

[51] Conversations with industry and management consultant executives in the United States and London in January and February 1990.

" See 'Survey: European Insurance," *The Economist,* Feb. 24, 1990, p. 16.

funds to individual buyers of vehicles. Technical factors that might not be a concern in the United States are important in terms of cost effective and competitive marketing to EC investors. For example, translating a prospectus from English into a foreign language can cost between $50,000 and $100,000.[61] When translations into three of four European languages need to be done, this expense can be a critical factor in determining potential markets and distribution methods.

Although the UCITS directive has made it easier for investment companies to create new funds that can be marketed throughout the EC, the directive does not permit U.S. and other non-EC investment companies to take their existing domestic funds and sell them directly in the EC.[62] U.S. investment companies would prefer to sell their established domestic funds abroad because this would allow the investment company to advertise a fund's historical track record, something that cannot be done with a newly established fund.

The present directive is currently being used as a basis for bilateral talks between the Investment Company Institute (ICI) and the European Federation of Investment Companies and Funds, an association of various European mutual funds trade groups. The groups hope to agree to a formula that would eventually permit a greater cross-border offering of funds between the United States and the EC.[83] To do this a number of obstacles arising from differences in regulation and tax treatment of investment funds between the U.S. and the EC must be resolved.

One of the most difficult obstacles is the lack of prohibitions in EC member states against affiliated transactions, or self-dealing. EC regulatory agencies permit affiliated transactions and rely on third-party custodians to monitor transactions to ensure that shareholders are protected. By contrast, U.S. law prohibits affiliated transactions. Another area of difference between U.S. and EC treatment of investment funds includes that of share pricing. Many EC nations make use of backwards pricing, which means that if an investor buys or sells shares in a fund, the share's price is based on the closing price of the previous trading day. U.S. funds practice forward pricing in which the purchase or selling price is based on the closing price of the day the order is received.

Distinct approaches to investor protection pose additional conflicts. Under the UCITS directive, a fund is required to have sufficient financial resources to conduct its business and to meet its liabilities. Additionally, it must have approval from home country regulators of the management's "repute" and "experience, the fund's rules, and its choice of a depositary for fund assets. By contrast, the U.S. system allows virtually anyone to start a mutual fund, provided they can pay $150 to register as an investment adviser and have an additional $100,000 in capital for the fund.

Finally, differences in tax treatment exist. Many observers consider such tax-related problems as the biggest impediment to complete cross-border investment. U.S. tax law requires an annual distribution of fund earnings which are then taxable to shareholders, impose a withholding tax on foreign shareholders, and levy tax on a foreign citizen's estate if the investor held shares in a U.S. mutual fund at the time of death.[84] By contrast, European countries do not compel distribution which allows money to build up tax-free within investment funds.€[5]

By permitting U.S. and other non-EC investment funds to create and market new investment funds throughout the EC, the UCITS directive allows for growth by U.S. investment funds in the EC. However, this development will only begin to realize its potential when the issues dividing the U.S. and the EC investment funds industries are resolved. U.S. investment funds should benefit from any EC decision to allow existing domestic funds to market their products directly in the EC and by any decision to equalize tax treatment between these two markets.

U.S. Industry Response

Overall, most U.S. securities firms in the EC are concentrated in London and have operated there for a number of years. The integration plan of 1992 should not lead to many structural changes among the U.S. firms because most have already determined their strategies. Recognizing their strengths, most are targeting specific areas. Those mentioned by industry executives include private investment services for wealthy clients, pension fund management, merchant banking, investment banking, global custody functions, merger and acquisition advice, trade financing, and development of financial strategies for corporate clients.e[6] Firms such as Goldman, Sachs & Co., Morgan Stanley, Shearson Lehman, and First Boston are capitalizing on advising firms as European mergers increase. Citing prohibitive costs, low profit margins, intense competition, and general difficulty in developing a network, industry representatives stated it is unlikely that U.S. investment firms would develop retail operations such as those extensive operations that exist in the United States.[67]

[61] Discussions with industry representatives in the United States, London, and Frankfurt in January and February 1990.

[62] See 1992 — *The External Impact of &drop= Unification,* Jan. 12, 1990, p. 8.

[83] Ibid.

[84] McGrath speech, p. 7.

[5] See "Special Report.' *BNA Securities Regulation & Law Report,* Jan. 12, 1990, pp. 71-73.

[6] Conversations with industry representatives in the United States, Paris, Frankfurt, and London in December 1989 and January 1990.

[67] Conversations with bank and investment services representatives from the United States, West Germany, France, and the United Kingdom in December 1989 and January 1990.

Aside from the similar concerns voiced by EC-based banks and securities firms about the Investment Services Directive, the U.S.-based companies indicate the EC integration plan is a positive step that should result in an overall liberalization of capital flows and greater transparency among member states, operating efficiencies, cost savings through harmonization, and elimination of diverse regulatory requirements at the firm level. o

Views of Third Countries

The domination of the Japanese throughout the global markets is illustrated by the fact that the 10 largest banks in the world are Japanese. The Tokyo Stock Exchange turnover volume is now the largest in the world. Of total worldwide stock market capitalization, the United States' share has fallen to 34 percent by mid-1988 from 56 percent in 1980. [88]

The four major Japanese investment firms, Nomura Securities, Yamaichi Securities, Daiwa Securities and Nikko Securities, have established a significant presence in London and other offices throughout the EC. An important part of their strategy is to follow their corporate clients into new markets and assist them in financing. Industry sources expect that this will continue to grow as new Japanese manufacturing operations are established in the EC, such as the building of a new Suzuki auto plant in Ireland.m

Industry sources in the EC also indicate that it has become common for the Japanese firms to also purchase shares in other financial institutions to build broad networks in Europe prior to the 1992 integration plan." Nomura, the largest investment firm in the world, for example, announced last year that it was taking a 1.5-percent stake in the fifth-largest Spanish bank, Banco Santander, as well as a 10-percent share in that bank's investment operation. The previous year it had purchased 10 percent of a Francois-Dufour Kervern, a French stockbroker, announced it was buying 5 percent of Matuschka Group, a West German fund management and financial services firm; and 14 percent of Compagnie d'Investissements Astorg, a French investment group concentrating in medium-sized companies.

Insurance

The principal development in 1989 was the EC's public enunciation of its renewed commitment to liberalize and integrate the largely segmented, national insurance markets of the Community. Notwithstanding the limited scope of the insurance measures proposed and adopted to date, the EC Commission intends to propose major framework directives in 1990 that will establish a single insurance license. [72] With the hope of establishing an integrated insurance market in Europe, the EC Commission expects to propose a Nonlife Framework Directive and a Life Framework Directive that will enable an insurance firm with a single authorization to branch freely or to sell its services throughout the Community on the basis of home-country control. In addition, the EC Commission is preparing a proposal on pension funds that would introduce the possibility of managing and marketing private pension funds on a cross-border basis.

Many EC national insurance regulatory authorities have told their insurance companies that liberalization would occur and to prepare for it. The British, Dutch and Irish governments have long advocated liberalized markets where regulatory authorities are chiefly concerned only with the overall solvency of an insurer. The French government over the past two years has shifted from advocating a highly protected industry, to one currently playing a leading role towards further cross-border liberalization. It has not only experienced considerable success in the past two years as it liberalized various financial regulations, but also sees the globalization of banking and securities as inevitable. Thus, it reasons, the insurance industry must also liberalize or be left behind as banks and securities firms compete with the industry for available funds. [73] Finally, it has every intention of promoting the role of Paris as an EC financial center. [74]

The West German regulatory authorities and insurance companies may represent the least enthusiastic proponents of increased cross-border insurance transactions and home-country regulatory control. Such a shift would represent a major philosophical change in German regulatory thinking. The West Germans argue that they have one of the most liberal financial systems in the world, dating back to 1901 when consumer protection regarding insurance was first legislated. The universal banking system operates in the Federal Republic. There is no desire by German consumers, say local insurers, for financial "supermarkets" that mix cross-border banking, securities and insurance. On the contrary, say proponents of this view, the German consumer insists on security rather than greater variety of insurance products at cheaper cost, and this is why the German regulatory authorities carefully review every insurance product innovation and even

" Conversations with industry representatives in the United States, London, Paris and Frankfurt in December 1989 and January 1990.

u SEC, The *Securities Markets in the 1980s,* p. 32.

-- Conversations with financial services firms in London and Frankfurt in January 1990.

Ibid.

" See Sir Leon Brittan, Vice President of the Commission of the European Communities, Speech to the European Committee of Insurers, Brussels, Nov. V, 1989.

" Conversations with insurance sources in Europe, January 1990.

7• The French Government is, for example, encouraging "headquarters" companies to set up in France. Similarly, Ireland is attempting to promote Dublin as a center for the captive insurance business.

suggest pricing bands for many insurance policiesYs In any case, of the larger member states, the West German insurance regulators and industry currently appear to be least convinced that insurance must liberalize if it is to compete successfully with other financial products?. German views will be important in determining the outcome of the framework insurance directives.

Life Insurance

In December 1989, a common agreement was reached by the EC Council on the proposed Second Life Insurance Directive?"' The agreement will likely become a common position after the European Parliament renders its first opinion on the proposal.

The proposed life insurance directive does not seek to introduce a single insurance license along the lines of the single banking license. The proposal, like the Second Nonlife Insurance Directive that was adopted in 1988,[78] would establish a regulatory regime that is considerably less liberalized and integrated than the regime envisioned for commercial and investment banks. The pro life insurance directive is limited in that it would an insurance firm to branch freely throughout the Community on the basis of a single authorization in the home member state. The proposal only introduces the freedom to provide cross-border services.

The freedom of life insurance services provided by the proposal is also limited in two ways:First, the proposal only applies to individuals ("mass risks"). Second, the directive would provide for home-country control only for the passive freedom of insurance services. In other words, if an individual in one member state takes the initiative to buy a life insurance policy in another member state, then the law of the firm's home member state applies. On the other hand, the law of the host member state applies when a life insurance firm actively seeks to sell its policies in another member state. It should be noted that host member states may choose to recognize home-member-state supervision in the case where an insurance firm actively sells insurance policies in the host member state.

As our initial report noted, the original proposal contains a reciprocity provision that may restrict the market access of U.S. firms. Moreover, the regulatory regime sought to be established by the proposal raised concerns in the EC and the United States. The main issues related to the limited scope of liberalization, the operation of the home-host rule, the exclusion of group coverage, the distinction between active and passive services, and the role of advertising and independent brokers in determining which member state's rules applied?.

The EC Council's common agreement reportedly expanded the scope of the proposal by adding group insurance coverage, including group pension schemes (large risks"), and providing for home-country control, even when an insurance firm actively sells its group policies in another member state. Therefore, home-country control will apply to group insurance when the customer takes the initiative and when the insurance firm takes the initiative. The rationale for this change is that companies in one member state that purchase group insurance policies in another member state are sufficiently sophisticated that they are able to evaluate the policies and protect their interests. For a transitional period, host member states may choose to continue to apply host-member-state law when insurance firms actively seek to sell their group policies.

The EC Council's agreement also rwortedly clarified the role of insurance brokers. Differing views had arisen regarding which member state's law should apply when an insurance broker sold a policy. Some member states argued that the host-country laws should always apply because the broker was actively selling in the host country, whereas other member states argued that the customer sought the policy through the broker and, therefore, home-member-state law should always apply. The agreement provides that, after a transitional period, the law of the home country applies to cross-border insurance sales that take place through a broker in the host member state to large risk or to mass risk consumers who apply to a broker on their own initiative. Host-member-state law would apply when individuals have not taken the initiative to contract an insurance broker.

Lastly, the EC Council's agreement reportedly incorporated the more flexible reciprocity provision that was contained in the Second Banking Directive... If so, then the EC will be looking to see that EC insurance firms receive "national treatment and effective market access" in the United States. It is not clear whether the U.S. regulatory system would satisfy this standard since insurance firms are regulated by the individual States. Even if the EC determined that EC insurance firms receive effective market access in the United States, they may seek to negotiate to obtain "comparable competitive opportunities."

Three ancillary insurance measures were acted upon in 1989. The amended proposal for an Insurance Accounting Directive would coordinate the annual and consolidated accounting requirements for insurance firms in order to ensure transparency and comparability in the single

-- Conversations with insurance sources in West Germany, January

aerman banks, on the other hand, probably stand to P??ee?tC?.C.o?a?l?issi?:?ri, Co?cu?r(g3n 19?, ?a?l?i?c?. ?r?3?8?k?t?F?e?b?. 15, 1989), p. 7.

[78] See *Second Council Directive* (88/357), *01* No. L *172* (July 4, 1988), p. 1.

" See, e.g., ECSC, "Opinion of the Economic and Social Committee on the Second Life Insurance Directive,' 01 No. C 298 (Nov. 27, 1989), p. 2.

Conversations with EC insurance officials in January 1990.

markets' Under the amended proposal, member states may choose to value investments on the basis of the purchase price or the current value, but whichever valuation method is not used in the balance sheet must be disclosed in the notes on the accounts. The amended proposal for a Winding-Up Directive would coordinate rules on the compulsory winding-up of insurance firms in order to ensure that general creditors and insurance creditors (e.g., policyholders, insured persons and victims) are protected throughout the Community.[82] The amended proposal for a Third Motor Insurance Directive would ensure that all compulsory motor insurance policies cover the entire EC and that victims of uninsured motorists are to be compensated promptly from a national guarantee fund.[83]

Possible Effects

U.S. Exports to the EC

Although insurance activities related to the EC may originate in the United States, insurance services by U.S.-based firms are generally provided via branches or subsidiaries established in the EC.[84] American companies have a very small share of the EC insurance market, not exceeding 1 or 2 percent overall. Some companies have several decades of experience in Europe, and the pace of new entries has increased since the 1970s: for example, between 1975 and 1985 26 U.S.-owned companies obtained authorization to transact business in the United Kingdom.ss The principal U.S.-based insurers operating in the European Community include the American International Group (AIG), CIGNA, Chubb and Continental. MG is the only company considered by large European insurers to be a potential major EC player, although it is confined to the large-risk marketm CIGNA plays a role in some important fire insurance lines, and Chubb continues to garner business in such niche markets as executive protection, computer theft, errors and omissions, and trustee accounts. Each of these firths has been established in Europe for some years and have expanded, or are planning to expand, service to most ECmember states. Other American direct insurance companies active in one or more EC nations include Allstate, American Life, American Re, Employers Re, Federal, Hartford, Kemper, National Union of Pittsburgh, Nationwide, PanAtlantic, Prudential, Transamerica, Travelers, Unity Fire & General, and Vigilant Recent entrants, all aimed at the perceived lucrative life insurance markets of southern Europe, have included Metropolitan Life's entry into Spain, Prudential's opening operations in Italy, Connecticut Mutual Life establishing offices in Luxembourg, and Mutual Benefit Life of New Jersey setting up Portuguese operations.[87] Several companies note the reality that barring the acquisition of an established insurer already doing a large amount of business in the EC, the only effective way to enter the market is to find a niche where the company can begin to make a name for itself among brokers and consumers.[88]

Methods of organization vary. AIG, for example, while retaining a London-based subsidiary to deal with the British and Irish markets, has centralized its main "European" headquarters subsidiary in Paris. Chubb has a London-based subsidiary that operates autonomously and a Brussels-based subsidiary that has branch operations in Spain, the Netherlands and most other EC countries. CIGNA has a similar arrangement All reflect a general trend to create at least one European subsidiary of sufficient size and financial muscle to be creditable to European insurance consumers and regulators, with branch operations in several parts of the Community. In several instances this has meant transferring assets from a second or third European subsidiary or branch operation to the company's "major" European subsidiary. Other U.S. groups continue to have subsidiary or branch operations in several EC countries, but many U.S. companies offer insurance services in only one or two EC member states.

In attempting to characterize the potential European strengths of U.S. companies in general terms; it is notable that U.S. insurers tend to have more experience than Europeans in offering innovative policies to diverse customers, in dealing with several regulatory authorities within a generally accepted set of rules, and in taking advantage of large economies of scale in marketing and administering insurance policies. Such experience might offer U.S. insurers some benefits in the EC market if they choose to take advantage of them. Conversely, U.S. insurers often tend to have a disadvantage in dealing with diverse languages, exchange rates for several currencies, differing legal systems, and cultural diversity. Of great importance, insurance companies build business on the strength of their reputations, during times of both economic boom and distress. In jurisdictions such as the EC, an insurance company's reputation for honoring all claims even in times of economic gravity are of uppermost importance to clients. Developing such a reputation requires time and the will to persevere in a market The stringent demands of U.S. investors for quarterly profits

" See EC Commission, Com (89) 474, *01* No. C 30 (Feb. 8, 1990), p. 51.

See EC Commission, Coe (89) 394, *01* No. C 253 (Oct 6, 1989 p. 3.

See EC Commission, Com (89) 625, *Of* No. C 11 (Jan. 17, 1990), p. 14. The EC Council reached a common position on the measure in December 1989.

" The international insurance needs of domestic multinational clients, however, *have* often been the incentive for U.S. insurers to begin exploring entry to foreign markets.

" See Robert L Carter, The *United States and the European Community: insurance,* University of Nottingham, United Kingdom, paper delivered to the American Enterprise Institute's conference on 'The United States and Europe in the 1990's; Washington, DC, Mar. 5-8,1990.

" According to the June 5, 1989, edition of *Fortune,* p. 68, AIG has 375 insurance offices in 130 countries, and collects 40 percent of its premiums outside the United States.

Atlantic Trade Report, Sept. 6, 1989, p. 4.

" Conversations with U.S. insurance companies in Europe, January 1990.

sometimes tends to make such perseverance difficult for U.S. companies. The entry of a large U.S. insurer into the German insurance market when times were good, and its subsequent withdrawal when markets softened, for example, is cited as but one example of the view among some European sources that U.S. insurers have difficulty in committing their companies to a long-term point of view.sa

The current pattern of a few U.S. insurers operating in Europe in niche markets seems likely to continue. Indeed, a 1988 survey of over 150 U.S. life/health and property/casualty insurers confirmed that a large majority are unlikely to enter West European markets in the next 10 years.°° The primary reason may be that the U.S. insurers have long enjoyed a large, expanding domestic market, so that only a relatively few companies have felt any need or ambition to exploit their specific advantages by trading internationally, particularly by establishing a presence abroad .[91] Other reasons may include the centralized management organization of many large U.S. insurers (e.g., where they would have difficulty granting the necessary autonomy for local executives to make on-the-spot major financial commitments), a lack of capital, and/or problems in the U.S. domestic market (e.g., California insurance referenda in 1989) that divert top management attention from seriously examining international opportunities.

U.S. brokers

In contrast to the insurance company role, the large U.S. insurance brokerage houses have already established a major EC presence, at least in the United Kingdom. They acquired majority shares of leading firms of Lloyd's of London brokers in the 1970s, which gives them direct access to the Lloyd's market. Such U.S. brokers include Marsh & McLennan (who bought C.T. Bowering), Alexander & Alexander (bought Alexander Howden), Frank B. Hall (bought Leslie & Godwin), Fred S. James (has since been taken over by the British Sedgewick group), and Johnson & Higgins (who have a "special relationship" with the British firm of Willis Faber). Of potentially considerable significance, Marsh & McLennan completed its takeover (it had 25 percent) of the prominent West German brokerage house, Gradmann & Holler, in 1989.

These developments could be significant. Even though insurance brokers play a small role in several EC national markets (e.g., they handle less than 15 percent of all West insurance business), there is a wide consensus that the EC 92 program offers them an excellent competitive opportunity.[92] It is the role of brokers to know international underwriting markets and to research them continuously on behalf of potential clients. Brokers will undoubtedly be approaching potential European corporate clients, making known to many for the first time the advantageous coverage and costs that might be obtained outside their home insurance market. Thus, perhaps gradually, large, medium and small corporate consumers will begin to consider "international" coverage or, at minimum, pressure their traditional insurance company to match the offers made elsewhere.

A similar phenomenon could eventually impact "mass" markets, perhaps starting with simple items such as term life insurance, but spreading to other markets. Brokers could also introduce and promote many new insurance products that do not currently exist in several EC member states. Outside of the largest insurance companies, only brokers offer the in-house research of international markets that middle-range and smaller insurers will need to depend on to help them maintain their market share. In short, brokers will be agents of change in terms of promoting cross-border competition as well as new insurance products. Finally, since U.S.-based brokerage houses are well established in some European countries, it is possible that their wide knowledge of the U.S. underwriting market might offer U.S. insurers already established in the EC the opportunity for new business.[93]

Such competition could contribute to greater market efficiency within the EC, with a decline in insurance costs. There is broad agreement, for example, that the EC insurance industry tends to be less efficient than the EC banking sector, which has faced a considerably greater degree of international competition.[94]

In the field of reinsurance, U.S. providers have been largely content to concentrate their activities in U.S. domestic markets. Although this is beginning to change, European companies continue to dominate both international and U.S. reinsurance markets. The largest U.S. reinsurer, General Re, obtained only 5 percent of its 1987 premiums from abroad, for example, as compared to 90 percent for the Swiss Reinsurance company, or roughly 70 percent of the largest British Reinsurer, Mercantile & Genera1.[95] U.S.-based Employers Reinsurance Corporation, however, acquired the Danish company Nordisk Re in 1989, and most of the major American reinsurance companies have a presence in London, Zurich or Brussels.

Reciprocity

In December, 1989, the EC Council of Ministers reportedly modified the Second Life Insurance

" Conversations with insurance sources in Europe, January 1990.

" Arthur Anderson & Co. and Life Office Management Association (LOMA), *Insurance Industry Futura: Setting a Course for the 1990s* (Chicago: Arthur Anderson & Co. and LOMA, 1988).

" See Carter, *Insurance.*

1/2 Conversations with insurance sources in Europe, January 1990.

" Ibid.

" Ibid.

" See Carter, *Insurance.*

Directive by transforming its "reciprocity" clause into a requirement for national treatment and effective market access. This modification reportedly conforms to the language that had previously been placed in the Second Banking Directive.[98] This decision was taken out of step with agreed procedures, i.e., before the European Parliament had rendered its views. Many insurers, perhaps especially those in France, oppose the change. They argue that the EC needs leverage in third-country financial market negotiations, especially with the Japanese. They claim they will oppose the change in the European Parliament, but this opposition is judged by EC Commission officiab to be of questionable effect[97]

Diversion of Trade to the U.S. Market

Since the EC's proposed insurance directives tend to be trade liberalizing, it is unlikely that they will cause a diversion of trade to U.S. markets. The U.S. insurance market is very large and highly competitive; non-U.S. based companies have Long played a role in it

The United States is by far the EC's la insurance export market There are about insurance companies in the United States and several large EC-based primary insurers (subsidiaries enjoying national treatment) have been established in the U.S. market for decades, especially in the property/casualty lines of insurance. British insurers have been especially notable, e.g., Royal, Commercial Union. As recently as 1988, the British conglomerate B.A.T. Industries took over the California-based Farmers Group, the seventh largest U.S. property/casualty insurer. In January 1990, BAT. industries itself was in the throes of being acquired by the Holyoke group led by Sir James Goldsmith. If the deal goes through, it is currently planned that Farmers would be acquired by the (French/Italian) Axa-Midi group.

In the life insurance field, the United Kingdom's Legal and General bought the U.S. Government Employees Life Co. in 1981, followed by Prudential's (United Kingdom) purchase of Jackson National Life in 1986. Other acquisitions of U.S. insurers by Europeans include the 1982 purchase by Winterthur (Swiss) of Republic Financial Services, and more recently Nationale-Nederlanden Netherlands) acquired Southland Life[98] and Irish Life (Ireland) bought Inter-State Assurance.[99] Reliable figures on the foreign share of the U.S. insurance market are difficult to compile and evaluate. One estimate of the foreign (mostly European) market share of the 1987 U.S. insurance market is 5.5-percent of premiums for life insurance, and 10.5-percent of premiums for nonlife insurance.[100]

Reinsurance is something of a special case. The global annual reinsurance market is currently valued at approximately $50-55 billion in net premiums written. The United States constitutes perhaps 45 percent of the total. For largely historical and cultural reasons the reinsurance industry has long been dominated by European-based companies. It is estimated by industry sources that European companies control perhaps 65-70 percent of global reinsurance markets, and over 50 percent of the U.S. reinsurance sector. The five largest reinsurance companies operating in the United States are General Re (a U.S. public company), Employers Re (a subsidiary of the General Electric Company), USF&G (public), American Re (a subsidiary of Aetna Insurance), and North American Re (a U.S. subsidiary of Swiss Reinsurance).

The position of Lloyd's of London in insuring large and unusual risks has long been well known. The United States constitutes about 40 percent of Lloyd's global $10 billion premium income.m

U.S. Investment and Operating Conditions in the EC

The EC Insurance Market and Regulatory Structure

The $260 billion EC insurance market accounts for about 24 percent of a global insurance market that exceeds $1 trillion in net premium income.= Viewed in a broader financial context, more than 1 trillion ECU ($1.2 trillion) are tied up in pension funds in the Community, a significant proportion of these in life insurance plans.=

The 12 national EC insurance markets have heretofore been highly fragmented, in terms of market accessibility, size, and regulation. Insurance prices vary widely between national jurisdictions. (See table 5-1.) The Community has about 4,600 insurance companies (compared to about 5,700 in the United States and 94 in Japan). In 1985, the total European insurance community included 905 companies operating in the life sector and 3,208 in nonlife, 378 companies engaged in both businesses, and 186 specialized reinsurers. Of gross premiums received, 59.5-percent was in the nonlife sector, and the rest (40.5 percent) in the life sector. [94]

[60] Conversations with EC insurance officials, January 1990.
[" Conversations with insurance industry sources in , January 1990.
Nationale-Nederlanden gained access to the Taiwan insurance market in 1987 through its U.S. subsidiary company, Life of Georgia.
[" Carter, *Insurance.*
['00] See U.S. Department of Commerce, *U.S. Industrial Outlook*, 1990, pp. 55-3 and 55-8.
['0'] Lloyd s current insurance capacity considerably exceeds this figure.
['02] See 'Europe's Insurers Draw a Bead on 1992; *The Economist*, Oct. 28, 1989, p. 81, and Swiss Re, *Sigma*, March 1989. The U.S. share is 38 percent, and the Japanese portion is 23 percent; the rest of the world accounts for the remaining 15 percent. These figures represent premiums as computed in current U.S. dollars. Fluctuations in the exchange rate for the dollar in 1987 should be kept in mind in the interpretation of the results.
[103] See S of Sir Leon Brittan.
['" See EC Commission, *Panorama of EC Industry 1989*, pp. 29-9 to 29-16.

Table 5-1

Comparative "prices"' of European insurance services, by product for Belgium, West Germany, Spain, France, Italy, the Netherlands, and the United Kingdom

Product	Belgium	West Germany	Spain	France	Italy	Nether-lands	United Kingdom
Ufe insurance ..... (average cost per annum)	78	5	37	33	83	-9	-30
Home insurance ..... (premium for fire and theft)	-16	3	-4	39	81	17	90
Motor insurance ..... (annual compre-hensive premium)	30	15	100	9	148	-7	-17
Commercial fire ..... and theft (annual cover)	-9	43	24	153	245	-1	27
Public liability cover ..... (annual premium)	13	47	60	117	77	-16	-7

' Percentage differences in prices compared with the average of the four lowest national premiums.

Note.—The figures indicate the extent to which premiums in each country are above or below a low reference level.

Source: EC Commission, as cited In *ReActions,* December 1989, p. 19.

In terms of market development, there is a noticeable north/south split, with the levels of expenditure for both life and nonlife insurance being much lower in the southern group of countries than in the north.' os The southern tier of markets are growing fastest and are expected to continue to do so. The life insurance markets of Italy and Spain, for example are growing very rapidly as consumers' discretionary income expands and state-sponsored pension plans are perceived as being inadequate.

There is also a difference in insurance regulatory philosophy between EC states. The United Kingdom, the Netherlands, and Ireland lightly regulate their industries, paying attention largely to the solvency of a company. They leave it to consumers to compare the coverage of risks in policies and the prices paid for them. Conversely, the other EC member states have varying degrees of heavier regulation. The West German system is perhaps the most strict, reviewing as it does each new insurance product before it can be sold, judging how that product will fit into an insurance company's "plan" submitted previously to the regulators, and in many cases setting the price bands that companies can charge for a given insurance product.I[06] Some German insurance companies assert that German consumers insist on this level of regulation and protection. Others see signs of a growing consumer movement where individuals are more ready to compare policies and prices on their own, without the guidance of the state tor

In both the EC and the United States, however, the actual number of insurance companies that do extensive business outside their home markets is very small. The major exceptions are Switzerland, and the special role of Lloyd's of London in the United Kingdom. However, because of the small size of their home markets and the proximity of their neighbors, EC insurance industries have tended to be more "internationally" oriented.

Moreover, insurance for "mass" risks, i.e., risks such as private auto or homeowner's fire insurance needed by many individual citizens or small businesses, tend to be local in nature throughout the world; insurance for such risks requires very extensive local agent or other distribution networks for marketing, as well as frequent servicing requirements. When sold across national frontiers, such risks also entail dealing with different regulatory systems, currencies, and tax regimes. They require detailed local client, risk and market-specific underwriting information. Additionally, an insurer may also have to overcome consumer prejudice against dealing with a foreign company. For precisely these reasons, insurers entering foreign markets often find it easier to acquire an existing company with a good reputation, or to enter a joint venture with an existing domestic company. In any case,

Famy, and E.R. Schimdt, *Ernpirkal Enquiry on the Single Insurance Market Within the European Communities After* 2992: *Attitudes, Expectation and Appraisals of Insurers* (Geneva: Association Interntionalepour I'Etude de I'Economie de l'Assurance, and Institut fur Versicherungswissenschaften, University of Cologne, 1989).

"• As a note of interest, there are several parallels between the West German and Japanese insurance regulatory systems because Japanese practices were originally based upon those of Germany.

' " Conversations with insurance sources in Europe, January 1990.

third-nation insurers licenced in Europe (which includes native companies in different EC member states, as well as "foreign" insurers from outside the EC), with a few notable exceptions, find it difficult to enter the EC's mass risks market. Rather, they tend to be more interested in the "large" risks sector, i.e., providing insurance to commercial firms or to international markets. Examples of large risks would include sales of property/casualty insurance to industrial or business customers (e.g., a conglomerate's master casualty program), providing group life insurance/pension plans to large blocks of employees of large companies, marine insurance, and reinsurance.

The Internal EC Market and Its International Role

The European insurance market is undergoing a sea change. Mergers and alliances between insurance companies, banks and other financial institutions began in earnest 2 years ago, and has continued to pick up momentum. Although a significant market share may not necessarily ensure success in the European insurance market, it does create an advantage in terms of the investment of insurance premiums, and the success of an insurance firm depends equally on the investment of funds as on the evaluation of risk los

The largest exporter of insurance in the EC is the United Kingdom, which (excluding reinsurance) derived about 44 percent of its worldwide net nonlife premium income, and 16 percent of its life premium income, from outside its borders. [109] As the most extreme example, Lloyd's of London obtains two-thirds of its $10 billion in premiums from outside the United Kingdom. [110] However, there tends to be a greater British insurance presence in English speaking former colonies, e.g., the United States, Canada, Australia, than within Europe.

International business, mainly transacted by foreign subsidiaries rather than consisting of direct exports, also accounts for a substantial part of the total premium income of the largest insurance companies in several other EC countries. For example, "overseas" premiums (which include those obtained in other EC countries) comprise one-third of the total premium income of the West German company Allianz (Europe's largest insurer), and more than half of the total premium incomes of the AFG Group (France), Generali (Italy), and Nationale-Nederlanden (Netherlands). [111]

Even so, the European insurance companies are relatively small compared to some of their Japanese and American counterparts. Only Allianz (West Germany) makes it into the world's top 15 insurance companies, ranked by net premium income. [112] In terms of the pan-European market, however, the London stockbrc King firm of UBS Phillips & Drew believes that Allianz and nine other companies are growing by acquisition and alliance and will dominate the European market for insurance. These companies include Generali (Italy), Union Assurance de Paris, UAP (France), Prudential, (United Kingdom), Sun Alliance (United Kingdom), Swiss Re (Switzerland), Winterthur (Switzerland), Royal (United Kingdom), Nationale Nederlanden (Netherlands), and Munich Re (West Germany). [113]

Distribution Driving Market

The desire to quickly obtain a distribution network in order to be ready to compete when the EC 1992 directives enter into effect is one of the primary driving forces behind European mergers and acquisitions activity. Methods of distribution differ from country to country in Europe. The Netherlands, for example, relies almost exclusively on independent agents and 95 percent of the British market is generated from brokers and intermediaries. Switzerland [114] and West Germany, conversely, operate predominately (more than 85 percent) via tied agents and company sales people. Not surprisingly, it is very difficult for foreign companies starting out in Europe to gain a significant market presence in the latter countries. [115] Also, insurance is a paper/data-processing-intensive business, and considerable operating economies of scale may be possible for large firms.

These factors have led to an acceleration of mergers within Europe over the past 2 years. The market is ahead of the legislators in rather comprehensively restructuring how insurance is bought, and which companies might dominate certain markets. [116]

For example, in October 1989, the West German insurance giant Allianz agreed to pay some FFr 6.5 billion ($1 billion) for a 50-percent stake in the Via Assurances and Rhin et Moselle insurance operations of Compagnie de Navigtion Mixte, a French holding company. Allianz's home market in West Germany has already been invaded by Groupe Victoire, an acquisitive French insurance

[109] See "Survey: European Insurance," *The Economist*, Feb. 24, 1990.

[110] See Carter, *Insurance.*

[111] R.L. Carter and S.R. Diacon, *The British Insurance Industry: A Statistical Review, 1988/89* (Brentford: Kluwer Publishing, 1989).

[112] Swiss Re, *Sigma*, February 1989. Eight of the world's 15 largest insurance companies are Japanese, 6 are American, and 1 is West German. In order of size (with their approximate net premium incomes, expressed in US$ billions, following in parentheses), the companies are Nippon (40), Sumitomo (n, Dal Ichi (26), State Farm (19), Yasudi(18), Prudential of America (17), Aetna Life & Casualty (17), Allianz (15), Meiji (14), Metropolitan Life (13), Allstate (12), Asani (11), Tokyo (11), Travelers (10), Mitsui (9).

[113] UBS Phillips & Drew, *European Insurance Review*, London, January 1989,p. 6.

[114] Switzerland has signed a bilateral treaty on insurance with the EC, giving its companies the same rights and status as native EC insurers.

[115] Phillips & Drew, *European Insurance Review.*

[116] Conversations with insurance sources in Europe, January 1990.

company and the fifth-largest insurer in France. In July of 1989, Victoire offered Sal 0 ppenheim, a West German private bank, about FFr15 billion ($2.5 billion) for Colonia Versicherung, the bank's insurance subsidiary, and the second-largest insurer in Germany. Similarly, Axa and Compagine du Midi (France) merged in 1988; it is now a conglomerate of 46 insurance companies, half of which are located outside of France. Italy's Generali Insurance has a 20-percent stake in the group. Axa-Midi is in line to acquire the California-based (but British-owned since 1988) Farmers Insurance Company. Completion of that deal would double Axa's size and give it a major opening in the U.S. insurance market. [117] Numerous other mergers and acquisitions have occurred, particularly in Belgium, Italy, the United Kingdom, and Spain. [118]

EC Bank and Insurance Company Mergers

Banks offer highly tempting established (and thus economical) distribution networks for insurance. Insurance companies tend to have large amounts of cash that banks find useful to meet regulatory solvency ratios and to function as a quasi-capital source of continuing funds for investment in banking products. Investments by insurance firms also tend to be long-term and stable in comparison to the other deposits banks rely on. Thus, the current climate of greater deregulation in financial services has encouraged the formation of alliances between insurance companies and banks, aimed at providing one-stop shopping for the management of consumers' savimp. Such link-ups have become so common that the French now talk of "bancassurance" while the West Germans refer to "Allfinane To name but a few, Allianz has tied up with Dresdner Bank (West Germany). The bank offers Allianz's policies through its branches while the insurer's 20,000 salesmen promotes Dresdner's products. Allianz has also set up a joint venture with Spain's Banco Popular to sell life policies in the Spanish market through the bank's 1,600 branches. These actions followed the announcement by Deutsche Bank, Germany's largest bank, that it was forming its own life insurance subsidiary. Britain's Commercial Union has signed up Credito Italiano to sell both life and nonlife insurance through its 503-branch network in Italy and the Guardian Royal Exchange group has purchased three Italian insurers in partnership with Istituto Bancario San Paolo di Forino. Spain's third-largest insurance g, roup, Mapfre, has purchased the Oviedo Bank (Spain). [119] UAP (France) is affiliated with the largest state-owned French bank, Banque Nationale de Paris, while the French insurer GAN took 51-percent control of the Credit Industriel et Commercial in December, 1988, which netted it 1,400 bank branches as potential distribution points. Also, the British Abbey Life Insurance Company bought a bank, Lloyds in December 1988, and promptly announced that it was acquiring the French mortgage-lending company Ficofrance. It also has an agreement with Monceau, a mutual insurance group, to launch an endowment mortgage in the French market. [120] In January, 1990, the Britannia Building Society (a British savings and loan institution) also announced the formation of its own life insurance company.

The largest and probably most significant European insurance merger deal to date, however, was announced on December 19, 1989. Compagnie Financiere de Suez, the French financial conglomerate based on Bank Indosuez, [121] refinanced its earlier takeover of Victoire, a French insurer, by selling a 34-percent interest (FFr 14.4 billion), $2.4 billion) in Victoire to Union des Assurances de Paris (UAP), the largest insurer in France and a state-owned company. [122] As mentioned earlier, Victoire itself controls Colonia, the number-two West German insurer bought by Victoire shortly before its takeover by Suez. UAP already holds 31 percent of Royale Beige, the largest Belgian insurer, and 23 percent of Sun Life in the United Kingdom. [23] Other alliances are also involved..

The U.S.-based AIG wanted to join this merger and Suez reportedly wanted AIG and UAP to have equal shareholdings. UAP refused, however, and American participation was thus blocked. [124]

The resulting network creates an insurance conglomerate nearly as large as Allianz - currently the world's eighth-largest insurer with a net premium income of $15 billion. More importantly, it covers almost all the European insurance market Outside of the conglomerate's two bases in France and Germany, the various companies are also active in Britain, the Netherlands, Belgium, Italy, and all of Scandinavia. [125]

While insurance and banking mergers are too new to draw many judgments, there are signs that bank-insurance joint ventures can work well. An

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"' *ReActions,* December 1989, p. 58.

"[6] See, e.g., the article on European insurance in *Commerce in Belgium,* May 1989.

ift See Carter, *Insurance.*

'a° *Financial Times, Jan. V.* 1990, pt. 2.

'ft' For an analysis of the Suez group, see *The Economist,* Jan. 20, 1990.

in Dai-lchi Mutual, the giant Japanese insurer (world's third largest), and Baltica Holding. the Danish insurance group in which Victoire in turn recently acquired a 22.5-percent stake, will each pay FFr 2.1 billion ($350 million) for 5-percent stakes in Victoire, now valued at FFr 42 billion (S7 billion). Baltica already has important links in the British insurance market and acquired 10 percent of the Hambros Bank of the Netherlands in 1988. *National Undenoriter,* Dec. 11, 1989, p. 25.

[1]-- *Financial Times,* Dec. 19, 1989, p. 1.

las *ibid.*

[126] In announcing the deal, Suez's Chairman noted that "It is now up to the managements of Victoire and Colonia to seize a chance which I would qualify as unique.' The Chairman of UAP added that Victoire would have total management autonomy as Sun Life and Royal Beige did already, but that UAP's 34-percent stake meant that no strategic decision could be taken without his group's agreement. He added that in the domestic French market Victoire and UAP would continue to compete with each other, but that he saw possibilities for cooperation in areas such as reinsurance, travel and emergency assistance services, and perhaps joint acquisitions in the future. *Financial Times,* Dec. 19, 1989, p. 1.

example is the 50-percent stake that Aachener and Munchener Beteiligung-AG, a West German insurance company, has in Bank fur Gemeinwirtschaft. During the first 4 months of 1989 the insurance company's salesmen brought in **14,000 new** loans to the bank worth over DM250 million ($136 million). In return, the bank sold DM300 million ($165 million) of life policies and some nonlife. [126]

The Trade and Industry Committee of the British House of Commons has,expressed the view that the current intense merger activity will slow. In **a 1989** study[127] it notes that the costs of entering the EC market for new companies have risen sharply. Given that the preferred route for entry into foreign markets is through the acquisition of an indigenous, established insurer, the study concludes that the mergers and acquisitions that have already occurred have so reduced the numbers of European insurers that are both available and suitable for acquisition that price levels now make many targets unattractive for many potential bidders, whether European or foreign. The Chairman of the giant UAP offers a somewhat different French perspective: "The current spate of mergers and acquisitions in the French market is the same process which happened in the United Kingdom **20 to 40 years** ago. There are presently around 600 insurance companies in France, many of which **do not operate** across borders. This is too much for **the size of the market, so some companies will disappear. The process is not just a response to the formation of the EC single market in 1992."** [128]

Many small- to medium-sized EC companies will likely choose to remain as national insurers, relying on continuing differences in culture, customs and language, and the loyalty of their customers, to compete effectively with the emerging pan-European groups. Others will become niche players in one national or wider European market,.and some will seek the security of some form of involvement in larger groups capable of competing in most, if not all, EC countries. [128] **Although the largest EC insurers are now pursuing pan-European strategies, there is wide debate as to whether** management restructuring **can be accomplished to** provide effective insurance services to customers, and whether profits can be made over the long term through such strategies. [130]

In any case, the number of insurance companies in the EC will likely decline **in number**[131] **and the competition will increase as a small number of large pan-European insurers gain an increasing share of national markets. U.S. and Japanese insurers (as well as others, such as Australia) will participate in this market to a limited degree. The consolidation of the single European market will also, however, probably limit the expansion of EC insurers abroad (i.e., outside the EC), due to their need to concentrate their managerial and financial resources closer to home.**

Lloyd's of London

Lloyd's is a world-renowned association of individuals offering insurance for their own accounts. Lloyd's underwrites insurance through syndicates, with each individual assuming a portion of the risk accepted by the syndicate. It generally does not underwrite life business, but concentrates on marine, aviation, **property and liability lines. It writes a great deal of reinsurance.**

All the business has to be channelled, however, through authorized Lloyd's brokers, who alone are permitted to deal with Lloyd's underwriters. This is why, as described earlier, U.S. brokers moved so firmly into the market in the 1970s. The European integration process presents some important challenges for Lloyd's, even though only 9 percent of its premium income comes from the EC. The Lloyd's marketing system is based on brokers. The market as such has no physical presence outside of London. Its insurance business is mainly concluded by means of cross-border transactions processed directly from the London market. Hence, the considerable increase in cross-border activity foreshadowed by the EC directives may bode well, especially for direct insurance activity. [132] **Some, however, believe the role played by Lloyd's in the European insurance market is likely to decline, citing the scandals and regulatory difficulties during 1988 and 1989 and the decreasing number of participants in Lloyd's syndicates. New business generated by Lloyd's brokers in the newly liberalized European insurance environment could change this pessimistic view. In particular, some believe that Lloyd's brokers perhaps need to recapture the middle and smaller commercial risks that serve as steady "bread and butter" business, rather than concentrating on the largest risks that may go sour.** [133]

[1] **See "Europe's Insurers Draw a Bead on 1992,'** *The Economist, Oct.* **28, 1989, pr. 81.**

[127] **British House of Commons, Trade and Industry Committee,** *Financial Services and the Single European Market,* **HC 256, (London: HMSO, 1989), par. 581, as quoted in Carter,** *Insurance.*

in *ReActions,* **December 1989, p. 58. It should be noted that the EC's First Life Insurance Directive does specify that insurance companies are limited to insurance activities. This is law throughout the Community. However, holding companies of all** *kinds* **are permitted, and they mix many financial services. The only requirement in practice, therefore, is that an insurance company mustbe a subsidiary, i.e, a separate legal organization, of a holding company that may offer a wide vanety of services. National authorities decide how these holding companies are regulated. In the United Kingdom, for example, this is done informally, through conversations among banking, securities, and insurance regulators. They usually decide which regulator will oversee an operation on the basis of preponderance of its business.**

[3] **See Carter,** *Insurance.*

[130] **Conversations with insurance sources in Europe, January 1990.**

[131] **Fully and Schimdt,** *Enquiry on the Single Insurance Market Within the* **EC.**

[132] **Swiss Re, 'Supplement,'** *Experiodica,* **June 1989.**

[133] **Conversations with insurance sources in Europe, January 1990.**

Reinsurance in the EC

Quite apart from Lloyd's, global industry data confirms the continuing dominance of European companies in the world reinsurance market.[124] West German-based Munich Reinsurance company is by far the largest, with the latest available net premium income totalling $6.5 billion. The second-largest company was Swiss Reinsurance, based in Zurich ($2.6 billion). Of the top 10 companies, making up over 30 percent of the global market, 4 are headquartered inWest Germany. The remainder are based in the United States (2), Switzerland, the United Kingdom, Italy and Sweden.

Given the increasing size of European insurance companies (due to mergers and acquisitions) and their consequent ability to retain larger risks, some consumers and regulators believe that the role of reinsurance may decrease in importance. This is especially true when coupled with the increasing movement by large industrial consumers of insurance to form their own captive insurance companies so as to both save premiums and to insure that insurance capacity is always present

Japanese Participation in the European Market

The size and concentration of the Japanese insurance industry is enormous. The Japanese life insurance companies alone, for example, have assets of about 100 trillion yen ($700 billion),[135] and the 15 largest life insurers each command over $11 billion in net premiums. In comparison, the 15 largest U.S. life insurance companies, selling to a life market of comparable size (indeed, Japanese life premiums exceeded those of the United States in 1987), average about $5 billion in premium income.[136]

Another feature of the Japanese insurance market is the small number of companies (25 life companies, 69 nonlife), all of roughlLtile same size in terms of premiums. The 15 largest nonlife insurers, for example, are on average only 3.6 times larger than all the other nonlife companies. In the United States, the top 15 nonlife insurers would be about 125 times larger than the average company.[137]

Currently, Japanese insurers conduct relatively little insurance business in Europe other than on the London market There has been some movement, however, towards broader participation, particularly by Japanese insurers investing in banks and other financial service sectots.m Sumitomo, for example, obtained a financial stake in Banque Paribas (France) in 1987, later acquired interests in the Berliner Handel-Und Frankfurter Bank, and in September 1988, moved to establish a financial stake in Creditstalt-Bankverein of Austria, reportedly in the belief that the country will soon join the EC.[139] Also, Japanese insurance companies are now investing heavily in European real estate. More than 400 billion _yen ($2.76 billion) is expected to be invested in the European real estate market by the end of March 1990. In June 1988, this amount was 100 billion yen ($690 million). For comparison, Japanese insurance companies have invested about one trillion yen ($6.9 billion) in the U.S. real estate market[140]

In European insurance markets, the 5-percent equity purchase by Dai-Ichi in the huge, new French-based Suez/Victoire conglomerate (December 1989) is one of the ways in which it hopes to continue expanding its activities in Europe[141] Tokio Marine and Fire (Mitsubishi), which a British subsidiary, has entered into ajoint venture with Allianz in Italy, and Yasuda has formed a joint venture in France with the French insurer GAN. In January 1990, Taisho Marine and Fire (of the Mitsui group), the third-largest property/casualty insurer in Japan, announced that it is holding talks with Generali of Italy, with a view to acquiring a 10-percent stake in Generali's Turkish subsidiary, and gaining a foothold in Eastern Europe (where Generali already has a joint venture in Hungary).[142]

Despite all this activity, the immense capital available to the Japanese insurers has not yet had a major impact on the EC insurance scene. Japanese investment remains cautious and exploratory, confined largely to following Japanese industriaVinvestment expansion into the EC. According to a recent survey, however, 41 percent of EC insurance companies expects the main foreign interest in entering the EC market will come from the Japanese.[143]

Switzerland

In 1989, after almost 2 decades of negotiations, Switzerland initialled an agreement with the EC on direct nonlife insurance wt ich Will bring it into the

[124] Swiss Re, *Sigma,* May 1989.

[125] See "Euromarket Private Placements; *The Economist,* Dec. 16, 1989, ta. 76.

[132] Swiss Re, *Sigma,* February 1989.

[137] Ibid.

[132] Similar activity is happening in the United States. Japanese firms have had a longstanding interest in investing in U.S. financial companies. In 1986, Sumitomo Bank, Ltd., invested about $500 million in Goldman, Sachs & Co. in return for a nonvoting stake in the firm. A year later, Yasuda Mutual Life Insurance to. paid $300 million for an 18-percent voting stake in Paine Webber Group, Inc. In 1988, Japan's largest brokerage, Nomura Securities Co., acquired a 20-percent stake in the takeover boutique Wasserstein, Perella & Co., for $100 million. In January 1990, Nippon Life Insurance Co. made a $310 million cash injection into American Express Co., opening the door for the Japanese insurance giant to take a 1.6-percent stake. Nippon and American Express first forged an alliance in May 1987, when Nippon purchased a 13-percent stake in Shearson Lehman Hutton Inc., the brokerage firm controlled by American Express. *Washington Post,* Jan. 6, 1990.

[140] *Journal of Commerce,* Oct 11, 1988, p. 15A.

[140] Swiss Re, *&periodical),* June 1989.

[141] *Wall Street Journal,* Dec. 19, 1989, p. A10.

[142] International Business News Supplement, European *Report,* Dec. 23, 1989.

[142] Farney and Schimdt, *Enquiry on the Single Insurance Market Within the EC,* as quoted in Carter, *Insurance.* Other survey results indicated that such interest would come from U.S. (37 percent), Swedish (9), and Swiss (7) insurers.

single European insurance market, allowing its insurers to either establish themselves in any EC member state, or supply insurance services across national frontiers, on the same conditions as a Community insurer.'" Although other European Free Trade Association (EFTA) states would very much like a similar agreement, industry sources judge it unlikely that similar agreements with third nations will be agreed until later—after the proposed EC insurance directives are implemented and their effects evaluated. The small population and high level of Swiss activity throughout the financial sector of the EC, coupled with the reciprocal business of German, French, and Italian insurers in Switzerland, help explain the agreement.

Eastern Europe

In regard to Eastern Europe, MG is the only known U.S. company to be actively participating in the Eastern European market thus far. MG has had modest Bermuda-based (investment) joint ventures with Poland, Romania, Hungary, and Yugoslavia for some years and is currently awaiting a license to open an office in Budapest in 1990.[145] There is wide agreement by all concerned in the EC insurance market that West German (and perhaps Italian) insurance companies are best placed to take advantage of new opportunities that may develop in those countries.[148] Physical proximity, contacts, and the leadership role of industrial German companies in forming joint ventures with Eastern Europe are cited as reasons. Indeed, there is some speculation by EC national insurance regulators that possible new East European insurance regulatory regimes would in all likelihood tend to be modelled after the currently heavily regulated West German industry. This perception may serve to strengthen the West German insurance industry's argument that a widely liberalized cross-border insurance market and regulatory structure in Western Europe should be postponed until the evolution of Eastern European markets becomes clearer. The counter argument by others in the EC is that insurance cannot remain heavily regulated if the banking and securities industries are liberalized. Money would flow out of insurance and into banks, which in many cases offer competing products, particularly in life insurance and investments.

Taxation

There are at least four areas of taxation that directly impact on the insurance sector:

(1) *Tax on insurance* premiums. A wide spectrum of practices exist. Some EC Member States impose no taxes on insurance premiums, while others, such as France, impose as high as a 25-30 percent tax on some insurance policies. The revenues generated from such taxes are not inconsequential; it is estimated, for example, that direct and indirect taxes on insurance premiums garner some FFr 20 billion ($3.5 billion) for the French Treasury annually.[147] To replace such revenue with other taxes could be politically sensitive.

(2) *Preferential tax deductions for insurance bought from local companies.* Such preferential tax treatment has been practiced historically in several Member States, e.g., Germany. It will clearly become illegal with the EC 1992 program due to its discriminatory and protectionist nature.

(3) *Preferential tax treatment for life insurance policies.* Several EC governments have encouraged savings by giving favorable tax treatment to the purchase of life insurance plans. For example, West Germany chooses to use this incentive, while the United Kingdom has discontinued it. There are also widely varying practices between EC States over the tax treatment of accrued savings in life insurance savings plans. These differences will be exacerbated when cross-border selling in different currencies becomes more common, either for groups and pension plans of large companies, or for individuals.

(4) *Methods of company taxation.* There are great differences in the way EC member states tax insurance companies, particularly in the way reserves are taxed. Some nations such as the United Kingdom, Denmark and Ireland largely tax reserves along with income. Many other EC member states, however, allow insurers to build up considerable reserves with very little tax, against the day of large catastrophic claims. The question of current versus historic valuation of assets is one example of the problem inherent in attempting to "harmonize" the taxation practices of the 12 EC member states.

Many involved in European insurance see the first three tax problems as important but resolvable over time.[148] Perceived future competition as provided for in agreed 1992 directives are already beginning to harmonize them, e.g., the French tax on insurance premiums is slowly dropping. With time, these questions may be resolved without formal legislation, although they will likely furnish a basis for pleas by some member states for additional "adjustment" time before insurance

[144] *ReActions,* Dec. 1989,. 27.
[145] *National Undertorites,* Jan. 8, 1990, p. 1.
[146] Conversations with insurance sources in Europe, January 1990. Both Generali and Allianz have recently signed joint ventures (49-percent stakes) in Hungary.
[147] Interview with the National Association of French Insurers, Paris, Jan. 24, 1990.
[148] Conversations with insurance sources in Europe, January 1990.

directives take effect. Market mechanisms also may ultimately resolve the company taxation policy question. Due to its sheer magnitude, complexity, and sensitivity, member states may chose to avoid addressing it with legislation from Brussels. Instead, for example, if the British government should see a serious threat that the insurance companies headquartered in Britain might move to the Netherlands, it could find it in its own best interests to change its insurance company taxation arrangements.[149]

U.S. Industry Response

In broad terms, the U.S. insurance industry has welcomed the liberalization of the EC market. The EC 92 program has been widely reported in specialist insurance periodicals and discussed at professional meetings. There is some evidence that U.S. firms are examining more seriously the opportunities that a West European single market may offer them.[150] Those U.S. insurers already established in the EC have been active in the trade organizations that monitor, advise and comment on proposed EC rules, e.g., the American Chamber of Commerce in Brussels, the International Chamber of Commerce in Paris (and the Chamber's U.S. affiliate, the U.S. Council on International Business in New York), and the Council of American Insurers in Europe (Brussels). Several of these associations include representatives of major corporate consumers of insurance, as well as providers of insurance services. In the United States, the industry has, in broad terms, monitored the emerging EC rules, especially through the International Insurance Council (a Washington-based trade association).

Industrial and commercial insurance customers doing business in more than one EC nation (but headquartered anywhere) are generally pleased with the EC insurance directives. They look forward to being able to consolidate their insurance programs among a fewer number of insurers. They would thereby save a great deal of management time, probably be able to acquire more competitive insurance bids because of the increased size of a company's consolidated insurance transactions, and generally save money via economies of scale. From the consumer viewpoint, the New York-based Risk and Insurance Management Society, RIMS, has played a lead role inioroviciing EC information to its U.S. membership of large corporate consumers of insurance.

On the regulatory front, the Kansas City-based National Association of Insurance Commissioners (NAIC) is the association of the 54 State regulatory insurance commissions in the United States that regulate the domestic industry on a State-by-State basis. It has also monitored evolving EC insurance directives. At its September, 1989 meeting,[15]I for example, the NAIC passed a strongly worded resolution of concern regarding the reciprocity provision of the EC's Second (life) Insurance Directive. The NAIC's International Insurance Relations Task Force is examining possible trade barriers within U.S. insurance regulations that may prove to be discriminatory against EC insurance companies, with a view towards encouraging the elimination or moderation of such provisions. The most obvious such barrier is the prohibition by several states of the purchase of U.S. insurance companies by (foreign) state-controlled companies.

The U.S. State insurance commissioners also realize that the logic and viability of the provisions of U.S. law that generally prohibit the mixing of insurance and banking services in much of the United States, are increasingly contested.[152] The NAIC is also highly aware that the somewhat complex system of autonomous State-by-State insurance regulation in the United States may itself be cited by Europeans as a *de facto* trade barrier. For example, the United States is subject to criticism from OECD nations for its exemption from the OECD insurance codes, based on the view that the federal government cannot bind state regulatory organizations.[153] Foreign insurers desiring to enter the U.S. insurance market have also complained of the heavy financial and legal burden imposed by the time-consuming process of being admitted in several states.[1]s[4] Within NAIC councils, various proposals have surfaced for streamlining the state-by-state licensing procedure.[1]s[5]

[14°] Ibid.

[18°] See, e.g., John Sinnot, President, Marsh & McLennan Worldwide, Remarks to the National Associations of Insurance Commissioners, Las Vegas, NV, Dec. 5, 1989, and Henry Parker, Managing Director, Chubb & Sons, Address to the Association of Professional Insurance Women, as reported in the *National Undcneritcr*, Jan. 8, 1990, p. 4.

[1°'] National Association of Insurance Commissioners, Northeast Zone Fall Meeting Wilmington, DE, Sept. 10-13, 1989.

[''] The latest development affecting U.S. regulations upholding the separation of banking and insurance occurred in December 1989. A U.S. Court of Appeals (New York: `Merchants National' case) ruled that State-chartered subsidiaries of bank holding companies can engage in any insurance activities permitted by State law. In a unanimous 3-0 decision the court upheld the view of the Federal Reserve Board that the insurance restrictions of the Bank Holding Company Act do not apply to activities conducted directly by State-chartered banks, whether or not the banks are subsidiaries of holding companies. It thus rejected the view of insurance agents that State-chartered subsidiaries should be barred from most insurance activities under existing federal law. Some States are expected to grant such authorization readily; Delaware may do so as early as January 1990.

[163] Conversation with OECD officials, January 1990.

[1°4] See, e.g., BAT. Industries, Testimony regarding the purchase of Farmers Insurance in the British House of Commons, *Financial Services and the Single European Market*, Trade and Industry Committee, HC 256, (London: HMSO, 1989).

[165] See Mr. James Corcoran, Superintendent of Insurance of the State of New York, Remarks to the National Association of Insurance Commissioners regarding a "Port of Entry' concept, as well as John T. Sinnott, President, Marsh & McLennan Worldwide, Speech to the NAIC, Las Vegas, NV, meeting Dec. 5, 1989.

CHAPTER 6
STANDARDS, TESTING, AND CERTIFICATION

CONTENTS

CONTENTS — *Continued*

CONTENTS — *Continued*

CONTENTS — *Continued*

CONTENTS — *Continued*

CONTENTS — *Continued*

Figures

Tables

CHAPTER 6
STANDARDS, TESTING, AND CERTIFICATION

Introduction

Divergent standards among the EC member states often hold back the competitive potential of U.S. suppliers. Elimination of standards-related barriers in the EC is a key component of the 1992 program. Of the 300 or so initiatives originally the 19i White Paper, 1o re tha Cfraaremstanclanrct dr Arnoag ll thrust of the EC standards agenda is viewed as positive by U.S. business, if new standards and testing procedures are biased against U.S. suppliers, the United States could experience an erosion of its competitive position and a drop in actual EC sales levels.

Developments Covered in the Initial Report

Background and Anticipated Changes

ly drafted, standards can serve as a valuab e shorthand for referring to products and can contribute to predictability in the environment for both producers and consumers. However, standards may be set unreasonably high or at a very detailed level, thereby making it difficult or impossible for some producers to comply.

In its 1985 White Paper, the EC Commission proposed a "new approach" to the elimination of technical barriers in the EC, which is based on two guiding principles: (1) mutual recognition of existing standards when possible, and (2) harmonization in those exceptional cases in which there are legitimate but conflicting views among the member states on essential public policy matters.

The "new approach" has four essential features:

- *Mutual recognition.* — Except for issues of public health and safety, member states must allow goods certified as meeting any EC member state's requirement to be sold freely in their markets without being modified, tested, certified, or renamed. This will apply to all goods regardless of source.
- *Harmonization of essential requirements.* — These are generally those related toimblic health and safety, or consumer and environmental protection. However, EC-wide mandatory requirements will also be developed when there are compelling commercial reasons for doing so, as in telecommunications.
- *Streamlining testing and certcation procedures.—To* be done by adoption of EC-wide standards for laboratory accreditation and good manufacturing practices and through enhanced mutual recognition of test data and certification marks among member states.
- *Preventing new technical barriers from arising.* — An EC-wide information procedure on all draft and final national standards in member states was introduced in 1983 and was later expanded.

The actual scope of coverage, the technical means of achieving the "essential requirements," and the mechanisms for judging conformity will in most cases be decided by technical experts in the private regional European standards-making bodies, CEN, CENELEC, and ETSI.

The EC has made considerable progress on the standards component of the 1992 p As of yearend 1988, the major framework directives on pressure vessels, toys, construction materials, and electromagnetic compatibility had been adopted or were close to being adopted. The EC Council was reviewing proposals on machine safety and personal protective devices. Harmonization of regulations for chemicals and tractors had been completed. Also, two environmental measures harmonizing emission controls on large passenger cars and on commercial vehicles were , and there was agreement on standards r cellular telephones.

Possible Effects

Third countries have a substantial stake in the outcome of the EC Commission's standards-related work. The development of uniform standards for all of Europe could improve U.S. business operating conditions in the EC by making it possible to supply one product to all EC markets andby facilitating the acceptance of goods moving from one EC member state to another. In addition to scale economies, U.S. firms could benefit from additional flexibility in production and shipment and reduced administrative burdens. However, to the extent that such standards require use of particular designs or processes and production methods, U.S. suppliers may be harmed. Moreover, U.S. business is concerned that proposed testing and laboratory certification rules could lead to costly and time-consuming new testing practices for products shipped to the EC.

Strategies for dealing with the EC's proposed changes depend on the contents of EC directives themselves, the behind-the-scenes work of Europe's regional standardization bodies, and on actual testing procedures. The United States does not participate in the EC's regional standardsmaking bodies and does not have a formal means of commenting on draft standards developed by them, as do EC and EFTA suppliers. It therefore has no assured means of securing changes if the proposed standards would be detrimental to U.S. suppliers. Regional standards are also not notified to the GATT Standards Code unless they are translated into national regulations at the member-state level. Some U.S. firms are investing directly in the EC now to ensure that they will be poised to benefit even if the new standards impede U.S. exports.

Developments in 1989

Introduction

The previous report focused on the thrust of the EC's standards agenda, presented a flowchart of the so-called "new approach" to standards harmonization and provided detailed writeups on 13 particular standards directives that could pose a roblem for U.S. firms.' The report noted that to a extent differences in standards in the EC re ect divergent approaches by member states to social, environmental, and consumer concerns. Technical bathers have also been used to protect EC industries deemed of strategic importance. Because divergent standards and testing requirements dampen U.S. sales now, the report concluded that the regulatory harmonization envisaged as part of the 1992 program could hold enormous potential for benefitting U.S. firms.

The report cautioned, however, that actual implementation of the EC's standards policies could pose seriousproblems for U.S. firms. The lack of timely information during the EC's stanthrds-setting process and the potential for mischief in product approval were a source of concern for nearly all U.S. business and government experts contacted. Some U.S. exporters, particularly smaller firms, appeared vulnerable to harm by the EC's new regulatory requirements.

This report provides additional background on the EC's standards-harmonization process, summarizes major U.S. concerns associated with it, analyzes the EC's proposed "global approach" to testing and certification, and discusses government and private efforts in 1989 to increase U.S. access to the standards-drafting process. A detailed update of the EC's progress on standards-related work during 1989 follows the treatment of the more fundamental issues. Finally, an overview of the EC's overall regulatory thrust in key industries and indepth analyses of some 30 particular standards directives are provided.

Background

In many ways, the 1992 standards agenda represents a virtual revolution in regulatory philosophy and implementation in the EC. The member states are placing substantial confidence in the private sector, ceding much of their remaining regulatory authority to Brussels, creating new enforcement bodies, and using common standards as a means to improve the overall competitiveness of EC industry. A single $4.6 trillion market, operating by one set of ground rules, will eventually emerge, setting the stage for launching commercially viable European firms in sectors ranging from toys to telecommunications and from food to forklifts, and representing major opportunities for all suppliers.

The Agenda

The revolution is being won in hundreds of legislative and other actions, covering everything from product labeling requirements to product liability. Of the 279 directives proposed in the 1985 White Paper, more than half pertain to standards. And even that number understates the scale of the EC's standards agenda; a single directive on workplace safety affects an estimated 55,000 types of machines. At the end of the process, the EC will have moved closer to creating EC-wide regulatory agencies similar to the U.S. Food and Drug Administration (FDA), Environmental Protection Agency (EPA), and Consumer Product Safety Commission (CPSC), and will have eliminated a host of legal and technical barriers that have effectively segmented member-state markets from one another.

The stakes for the United States are high. Banner U.S. export industries —such as machine auto parts, computers, pharmaceuti telecommunications, chemicals, and medical equipment— may be fundamentally affected by the EC's 1992 standards agenda. These manufacturing industries alone represented nearly $40 billion in U.S. exports in 1989.[2] Potentially affected exports of agricultural commodities and processed foods together accounted for another $1 billion in U.S. sales. The President's Advisory Committee for Trade Policy and Negotiations (ACTPN) identified standards as one of six issues the United States has a substantial interest in helping shape.[3]

' U.S. International Trade Commission (USITC), *The Effects of Greater Economic Integration Within the European Community on the United States* (Investigation No. 332-267), USITC Publication 2204, July 1989.

[2] Major U.S. manufacturing industries that could be fundamentally affected by the 1992 program are defined as the SITC categories for organic chemicals (51); inorganic chemicals (52); dyeing, tanning, and coloring materials (53); medicinal and pharmaceutical products (54); essential oils and perfume materials and toilet, polishing, and deansing preparations (55); fertilizers, manufactured (56); explosives and pyrotechnic products (57); artificial resins and plastic materials, and cellulose esters and others (58); chemical materials and products, n.e.s. (59); machinery specialized for particular industries (72); metalworking machinery (73); general industrial machinery and equipment and machine parts, n.e.s. (74); office machines and automatic data processing equipment (75); telecommunications and sound recording and reproducing apparatus and appliances, n.e.s., and electrical parts thereof (77); road vehicles (78); sanitary, plumbing, heating and lighting fixtures and fittings, n.e.s. (81); furniture and parts thereof (82); and professional, scientific, and controlling instruments and apparatus, n.es. (87). U.S. exports to the EC of such products totalled $37.7 billion in 1989, about one-fourth of the $150.9 billion in total U.S. exports of such goods in the year.

[3] The Advisory Committee for Trade Policy and Negotiations EC 92 Task Force, *Europe 1992. Report of the Advisory Committee for Trade Policy and Negotiations,* Nov. V, 1989, cover letter to the Honorable Carla A. Hills, United States Trade Representative, p. 1.

The Logic

In terms of fundamental approach, the 1992 program represents a major break from the past In 1985, the EC decided that(—

- **Only products that pose a risk to human health and safety, the environment, or consumers will be regulated at the EC level; and**
- **All other products will not.**

The principle of "mutual recognition" will be used to allow products legally marketed in one member state to move freely throughout the Community.s Member States are still permitted to retain their own quirky regulations—like West Germany's beer purity laws, or Italy's pasta ingredient rules. They are just no longer allowed to use them as an excuse to keep out products approved by their EC neighbors.s

EC-wide technical harmonization is being pursued only when there are important differences between member states on the means to achieve essential public goals. Thus, EC regulations will reportedly affect only about 10 to 20 percent of the products subject to standards in Europe.? The EC is committed, notably by the Single European Act, to use the 1992 program to set high standards for protecting the environment and consumers and for ing public health and safety. Common standards will also be set when such standards will contribute to realization of other policy goals, such as the liberalization of public procurement, the deregulation of services, and the creation of commercially viable markets for new technologies.

The Process

Where it believed EC-level regulation was warranted, the European Community shifted most of its legislative efforts from directives defining all characteristics of!Particular products toward directives which define broad features that whole categories of products are to have .s The move towards weighted majority voting, along with this "new approach" to technical regulation, promised to increase the speed and flexibility of the EC in reducing technical trade barriers.

Not only were 12 different sets of regulations to be fairly rapidly replaced by one, "new approach" regulations would be much more flexible, because manufacturers would only be legally required to meet the key objectives of the legislation, i.e., user safety, as spelled out in so-called "essential requirements." Producers were to be allowed to choose among standards developed in the private sector to achieve conformity with them, and to test innovative products directly against the essential requirements.

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

Because EC-level harmonization was already well advanced, the EC decided to continue regulating **some major industries—such as autos—differently (table 6-1). For such products, EC directives may contain harmonized European technical specifications and testing protocols and products must be approved by member state regulatory authorities (i.e., private "certification" is not an option). Some such "old approach" directives and regulations are "optional," meaning that member states are free to retain national laws on the same matter. They are not, however, permitted to prevent the sale of products meeting the requirements of the EC regulation.**

"New approach" directives, on the other hand, call for "total" harmonization, meaning that all member states will be obliged to only allow the sale on their market of goods complying with the "essential requirements" set forth in EC directives. Generally speaking, all products sold in the EC must satisfy the applicable "essential requirements," not just products intended to be traded across member-state borders.[9]

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[4] **The EC Council of Ministers formally adopted the 'new approach to technical harmonization and standardization' in a resolution of May 7, 1985, published in** *the Official Journal Y the European Communities (01),* **No. C 136 (June 4, 1985) pp. 1-9.**

[5] **The EC Court of Justice has explicitly excluded sanitary and phytosanitary questions from the application of the principle of mutual recognition because the risks involved are too large. There is only one other qualification to this general rule ormutual recognition.' A member state may consider that essential public policy considerations (such as the protection of health and safety, the consumer interest, or the environment) demand that specific technical requirements are met. In such a case, it may impose those requirements (art. 36 of the Treaty) provided that it can demonstrate that they are necessary to achieve the objective in question and are proportionate to that objective. When specific requirements are imposed, however, test data generated in another member state must generally be recognized for the purposes of obtaining certification in the importing member state. EC Commission, Directorate General for Internal Market and Industrial Affairs,** *Completing the Internal Market: The Removal of Technical Barriers to Trade Within the* **European** *Economic Community, An Introduction for Businessmen in the United States,* **Brussels, Apr. 13, 1989, draft, p. 11.**

[6] **The policy is based on the landmark Cassis de Dijon decision, interpreting member-state obligations under art 30 of the Treaty of Rome. The discussion requires mutual recognition of products certified** *as meeting* **the standards of another member state unless there were fundamental concerns about issues of public health, safer, or the environment For a further discussion, see USITC,** *Effects of EC Integration,* **USITC Publication 2204, July 1989,1,p. 6-10 to 6-11.**

U.S. General Accounting Office, Report to the Chairman, Subcommittee on International Trade, Committee on Finance, U.S. Senate, *European Single Market: Issues of Concern to U.S. Exporters,* **GAO/NSIAD-%-60, February 1990, p. 23.**

[8] **The United Kingdom's Department of Enterprise (DTI),** *The Single Market: New Approach to Technical Harmonization and Standards,* **2d ed., p. 2.**

[9] **It will be made a criminal offense to sell products anywhere in the EC that do not comply with the rules. Ibid., p. 1.**

Table 6-1

List of regulated product groups covered by EC directives

Products subject to new approach' directives:'	Products subject to 'old approach' directives: [3]
Medical devices (4 directives)	Processed foods:
Machinery:	Various foods and definition of spirits
Machine safety	Flavorings, additives, emulsifiers
Small industrial trucks (less than 10 tons)	Packaging materials In contact with foods
Lifting and loading equipment	Animal feedstuffs
Mobile Machinery	Chemicals:
Rollover protection structures	Medical specialties
Simple pressure vessels	Detergents
Telecommunications:	Fertilizers
Telecommunications terminal equipment	Extraction solvents
Electromagnetic compatibility	Chemicals (GLPs, premarket approval)
Construction products [2]	Cosmetics
Miscellaneous products:	Pharmaceuticals
Toys	Automobiles, trucks, motorcycles
Personal protection equipment	Agricultural and forestry tractors

Those establishing 'essential requirements' for products and EC mandates for development of voluntary standards by CEN/CENELEC or ETSI. Compliance with these voluntary standards will be considered presumptive proof of conformity with legally binding essential requirements.

[2] Although construction products are governed by a new approach' directive and CEN/CENELEC are developing voluntary standards to ensure product conformity with the directive's essential requirements, the EC Commission will be developing legally binding interpretative documents pertaining to the six essential requirements contained in the directive. CEN/CENELEC is also drafting voluntary building codes, but these codes reportedly will become binding upon the member states at some point in the future. Field interviews with staff of CEN/CENELEC. Jan. 8, 1990.

[3] Those involving EC legislated standards, tests, and tolerances and approval by member-state regulatory authorities.

Source; U.S. Department of Commerce, *Report of the U.S.-EC Standards Talks,* Oct. 4-5, 1989, p. 10.

U.S. Reaction

The initial U.S. business reaction to the EC's standards program was enthusiastic. In the past, divergent national standards in the EC member states had held back the competitive potential of U.S. suppliers. Manufacturers were often forced to make costly modifications to meet country- specific requirements or to abandon some markets altogether. Even when standards were similar, lack of mutual recognition of tests between EC member states resulted in delays and higher costs. Scale economies gained by the acceptability of a single product throughout the EC, and reduced inventory storage costs could provide an immediate, positive boost to U.S. firms.")

But closer inspection in 1989 added an element of concern and confusion to the overall favorable U.S. response. Some began to worry that the growing influence of environmentalists, consumers,[11] and unions[12] would lead the EC to "harmonize up" regulatory requirements, putting in jeopardy U.S. access to the entire EC market.[13] It became apparent that, because of their lack of direct representation and uneven access to information, some U.S. suppliers had limited influence over the private standards bodies entrusted by EC authorities with drawing up voluntary standards — the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC), and the European Telecommunications Standards Institute (ETSI). In July 1989, the EC said it would not allow member states to accept test results and certificates generated by bodies located outside their borders for purposes of enforcing certain EC regulations (a position which has since softened somewhat). Moreover, the fact that work on supporting standards was bogging down in some areas fueled uncertainty by t7 S suppliers attempting to get ready for 1992.

Strategic Implications

The long-term strategic implications of the EC's program also grew clearer in 1989. The EC's systematic updating of technical regulations posed the prospect that standards developed as part of the 1992 program might become de facto or de jure

[10] According to the National Institute of Standards and Technology's Maureen Breitenberg —

Standards promote understanding between buyer and *seller and make possible mutually beneficial commercial transactions. Product attributes cannot always be evaluated by individual purchasers by inspection or even from* prior *experience. However, a product's conformance to accepted standards readily provides an efficient method of conveying complex information on the product's suitability. . . . Standards underlie mass production methods and processes. . . standardized and interchangeable parts can reduce inventory requirements and facilitate product repairs.*

ANSI, *The ABC's of Standards-Related Activities in the United States,* U.S. Department of Commerce, National Bureau of Standards, NBSIR 87-3576, May 1987,p. 7-8.

[11] In a field interview with USITC staff on Jan. 9, 1989, one U.S. expert on 1992 issues stated that there is some nervousness

[11] —*Continued*

in industry because, although consumer protection measures have not been of great concern so far, the rise in consumerism within the EC may lead to more drastic measures in the future.

[12] The EC Commission has proposed provision of financial support to the European Trades Union Confederation to establish technical expertise for the examination of standards-related proposals affecting hygiene and safety at work. European Communities, Economic and Social Committee, *Economic and Consultative Assembly Bulletin,* No. 9, 1989, p. 18.

[13] See, for example, U.S. Chamber of Commerce, *Product Standards in Europe's Internal Market: A Status Report for U.S. Business,* June 1989, p. 6.

world standards. Some claimed that the state-of-the-art standards being developed in areas like machine tools could give European competitors an upper hand, not only in the EC, but in third-country markets.[14] The toppling of the Berlin Wall apparently made it easier for Eastern European and Soviet scientists to work with European standards institutes— a way for the Eastern bloc to quickly obtain Western technology and for European suppliers to get a leg up on their competitors in the United States and Japan.[15] EC member states were aggressively marketing their standards in the developing world, and some foreign buyers were reported to be writing in EC requirements in their bid specifications.[16] Moreover, it appeared that the EC's approach to regulation might well find ready followers outside Europe, including the United States, as concerns about environmental and consumer protection grow.'?

The move was also prompting domestic and international soul searching about how standards should be developed, how they relate to overall industrial competitiveness, and what role governments should play in ensuring that standards do not become unfair barriers to trade. Some feared that the EC's unified approach to third countries on product testing was making the patchwork quilt of U.S. Government and private accreditation schemes look pale by compansons.[18] And, after a series of unsatisfactory efforts to resolve U.S. standards-related disputes with the EC in the GATT, some suggested that international agreements—like the Standards Code—don't provide U.S. business with much protection.'[9]

The Bottom Line

Alternatively hailed as a significant opportunity for enhanced efficiency and derided as a mercantilist threat to U.S. firms and workers, the reality of the program's impact on U.S. suppliers lies somewhere between these two extremes. Most U.S. suppliers still expect to reap substantial gains from the EC's move toward more uniform standards and testing procedures. Closer examination in 1989 may have shattered some of their highest expectations of the EC's 1992 standards program, but it has also debunked a number of myths, allayed many fears, and convinced nearly everyone of the enormity of the task facing the EC as it struggles to dismantle years of suspicion, tradition, and conflicting national tolerances for risk and regulation. It has also highlighted the need for an effective U.S. response, both at the Governmental and the private sector level. Recent statements have gone a long way towards easing initial U.S. concerns about the EC's proposed "global approach" to testing and certification. However, the issues remaining are quite complex. Addressing them satisfactorily could be a slow and difficult process.

Summary of Major U.S. Concerns With EC 1992-Related Standards

Presented below is a brief rundown of the major generic and industry-related issues for the United States in 1989 associated with the EC's 1992 standards agenda. Each of these issues are discussed in greater depth later in the chapter.

Testing and Certification

- **The EC's proposed testing and certification policy is a major concern for U.S. business. Despite official EC assurances of nondiscrimination, U.S. suppliers fear that they may be forced to undergo much more costly and time consuming approval procedures than their EC-based competitors.**
- **Suppliers that meet CEN/CENELEC standards will be able to use the fastest and least expensive means of proving conformity. But lack of access by some U.S. firms to these bodies during the standards-drafting process may close off this option, at least temporarily.**
- **Products that do not meet these standards may need to obtain third-party certification that they meet "essential requirements" set forth in EC directives. In other cases, generally for higher risk products, all suppliers will be legally required to submit products to third-party testing or surveillance. The EC has stated that it does not currently intend to allow accreditation of U.S. labs for such purposes. However, it has recently assured the United States that U.S.-generated tests may be acceptable in specified circumstances.**

" Representative of this were comments made by Robert B. Toth at a seminar for U.S. Government officials sponsored by the U.S. Industry Functional Advisory Committee on Standards on June 20, 1989.

USITC field interview with an official of a member-state national standards institute, Jan. 10, 1990. At an ANSI conference on Mar. *V.* 1990, a CENELEC representative predicted that most Eastern Europe standards institutes will become members of CEN/CENELEC within 10 to 15 years. An EC Commission official stated, we must do all we can to help these countries assimilate our EEC] technology and standards."

" As reported in a USITC staff meeting with academia, Jan. 19, 1990.

" USITC staff meeting with U.S. Government officials, Feb. 6, 1990.

" See, for example, report by U.S. General Accounting *Office, Laboratory Accreditation: Requirements Vary Throughout the Federal Government,* GAO/RCED-89 102, March 1989.

" See ch. 16 for a discussion of relevant cases and efforts to address gaps in current coverage of the Standards Code. One analyst concludes, "While the Standards Code has improved information flow between countries on their respective standardization activities, it does not have the force or stature necessary to effectively prevent the use of standards as trade barriers. Lenard Kruger, Congressional Research Service, *International Standardization: The Federal Role,* Apr. 14, 1989, p. 6.

- The EC has said that accreditation of U.S. laboratories and certification bodies will only be permitted on the basis of formal "mutual recognition" agreements. Such agreements will be based on two principal criteria: (1) competence, and (2) reciprocity (or mutual economic benefits). The reciprocity criterion raises both practical and policy problems for the United States. U.S. testing laboratories complain that without such accreditation they will be placed at a competitive disadvantage relative to their EC competitors.

Transparency in Standards Development

- Some U.S. suppliers have complained that they have inadequate information about the EC's 1992-related work and few channels to make their interests known. Moreover, they have little confidence that their comments will be afforded sympathetic consideration. The problem is twofold:

  o For some products, such as processed foods, the EC Commission has been delegated substantial authority by the member states for developing lists of approved products. Lacking sufficient in-house expertise, the EC Commission relies upon a network of committees drawn up from experts in the member states and in the private sector. The nonpublic nature of such committees' work has made it difficult to obtain information and has hindered the efforts of interested parties to effectively present their views. (The EC does not have mechanisms like the United States' notice of proposed rulemaking and "sunshine" rules.)

  o In other areas, such as machinery, the EC has shifted substantial responsibility for developing technical specifications from the member-state regulatory authorities and national standards institutes to the private, regional standards bodies CEN, CENELEC, and ETSI. These bodies, and their national members, do not permit participation by firms located outside the EC and EFTA, draw heavily upon EC trade associations for input, and only make publicly available well-advanced drafts, thus making it difficult for smaller producers, U.S. exporters, and consumers to make their voices heard.

- A number of improvements were made in 1989, and some U.S. firms were using the new channels to advance their interests. Among other things, the EC began to issue a monthly update on standardization work, agreed to accept comments on draft standards from third-country suppliers, and renewed its pledge to base its own standards on internationally developed ones. Several factors suggest that it still may be difficult to preempt technical barriers in the EC by means of existing mechanisms, however.

The International Standards System

- One commonly mentioned avenue for U.S. influence over EC standards is greater U.S. participation in the international standards organizations such as the International Standards Organization (ISO) and the International Electrotechnical Commission (IEC), to which CEN/CENELEC member organizations belong. Since the United States does have a legitimate "seat at the table" in those forums, and since the EC has pledged to base its work in relevant international standards, there are merits to that approach.
- However, there are several factors that suggest that it may be difficult for U.S. business interests to preempt technical barriers in the EC through this route. In some product areas, the United States has thus far made little effort to participate in the ISO and the IEC, has adopted few international standards, and could be easily outvoted by EC members. Getting EC experts to the international table while the EC is preoccupied with putting its own house in order by 1992 may be a problem.
- Moreover, the process is slow and requires a major commitment of resources. Some U.S. industries—including medical devices, computers, telecommunications, construction machinery, machine tools, and air-conditioning/refrigeration equipment— have signaled a fresh commitment to the international standards-drafting process; many others have not.

The U.S. Standards System

- The challenge posed to U.S. industry by 1992 has called into question certain aspects of the privately funded and highly decentralized U.S. standards system. Some believe that the system is ill equipped to deal with the EC's

well-organized and far-reaching standards agenda.

- The more than 250 active private sector standards-drafting bodies in the United States have thus far been leery of seeking "help" from the U.S. Government for fear of diminishing their role in the domestic and international standards process. They are also suspicious of Government influence, particularly in areas not currently subject to extensive Government rules. Even if more Government involvement were desired, there is substantial debate about its proper role.
- Nevertheless, with the EC member states and other major U.S. competitors actively promoting their standards overseas, there is a fear that without a more coherent U.S. approach, the United States will be systematically shut out of key export markets via the imposition of new technical barriers to trade. Indeed, EC 1992 is seen by some as a "blessing" because it has bared the weaknesses of the U.S. system and has provided an urgent impetus for change at a time when global competitiveness is increasingly being determined by the ability to gain a time or technological edge, not natural comparative advantage.

Agriculture

- In agriculture, veterinary and phyto-sanitary regulations may well be formulated in such a way as to require use of particular production methods. This has been a problem for the United States in the past. The so-called "third country meat directive"—which aims to ensure that meat conforms to health and sanitary requirements by stipulating the way that meat must be processed—has already resulted in a reduction in the number of U.S. plants eligible to export meat to the EC from over 400 to about 125.
- Product approvals by U.S. and EC food-health agencies are normally based on evaluations of safety, efficacy, and quality. Rather than basing regulations solely on such scientific grounds, some EC interests have invoked a "fourth criterion," suggesting that new production methods only be allowed if there is a genuine "need." Approval may hinge on "social" issues such as small farmers interests and animal rights (BST) or consumer fears (hormones).
- The January 1989 hormone directive effectively halted U.S. exports to the EC of beef for human consumption, thus prompting U.S. retaliation. Some are concerned that the EC's refusal to base decisions solely on relevant empirical data and sound science will mean continuing trade rows with the United States, which has been more willing to permit use of chemical growth promoters and biotechnology.

Processed Foods

- The EC's approach to food additive regulation differs fundamentally from that in the United States. First, its scope is broader, defining anything not normally eaten by itself as a "food additive." Second, its impact is more restrictive, since only those additives that are specifically approved are permitted to be used.
- The U.S. FDA also uses positive lists, but a large number of substances are considered to be "Generally Recognized as Safe" and thus do not require premarket approval under U.S. law. The U.S. Government has complained that EC positive lists are not being developed using open procedures and that the process for obtaining approval is lengthy, particularly for manufacturers located outside the EC.
- The U.S. Department of Commerce reports that the United States accounted for 8 out of the EC's 10 largest food companies last year, with nearly S16 billion in investments in the EC. Such suppliers tend to service the market from their EC-based subsidiaries and are well placed to influence EC decisions. The$600 million in direct U.S. exports in 1988 appeared to originate from smaller firms, which do not have a real voice.
- The EC is moving in the direction of centralizing authority for the approval of new food products and the inspection of food processing facilities. This may improve the consistency of regulatory decisions but carries with it some risks. Absent sufficient technical infrastructure, staffing levels, and regulatory independence, such centralization could slow product approval.

Chemicals

- The EC's plans to create a central environmental agency could have major implications for future U.S. access in the chemical industry. The environmental movement is also growing, and more stringent rules—about public access to environmental information, disposal of

wastes, and liability—are being framed. Efforts to inform consumers about pesticides and food additives could well heighten fears and lower the industry's sales. U.S. firms exported some 8 billion dollars' worth of chemicals to the EC last year, one-fourth of U.S. worldwide sales.

Pharmaceuticals/Medical Equipment

- The EC is set to create a single marketing authorization for new drugs. The most recent proposal combines a centralized procedure similar to a Community wide FDA with a decentralized mutual recognition procedure. It is still unclear whether U.S. companies will retain the option of seeking approval one member state at a time, something they may prefer. Although the U.S. industry serves the EC primarily through its EC-based subsidiaries, U.S. exports totaled more than S1 billion in 1988.
- With $1.2 billion in direct U.S. exports and S3 billion in EC-based sales, U.S. makers of medical equipment generally expect to gain as a result of the harmonization process. But EC acceptance of U.S. test data remains a key industry objective.

Autos/Auto Parts

- In the auto industry, the EC is moving from at least 13 sets of different regulations to a single set of requirements. Final action on harmonization of the 44 key standards will mean that suppliers will only need to obtain one "whole-type" approval to gain access to the entire EC market. U.S. parts suppliers also stand to gain, since they are highly competitive in the technology needed to meet the stringent emission rules being proposed as part of the 1992 program. U.S. exports to the EC of parts and autos totaled about S2 billion in 1988.

Other Machinery

- The EC has proposed several far-reaching directives affecting virtually all types of machinery sold in the EC. The regulations proposed, which deal with safety matters, reportedly affect half of all the machinery sold in Europe. The United States is a major producer of such goods and, in areas dominated by large multinational firms, stands to gain as conflicting member-state rules are brought into line.
- However, small and medium-sized firms accounted for an estimated 80 percent of the more than S5 billion in U.S. machinery exports to the EC. Such U.S. suppliers are often ill equipped to follow the behind-the-scenes work of CEN/CENELEC, or to shoulder the potentially large financial burden of third-party production surveillance by EC-based labs.

Construction Products

- The EC is developing a single set of standards for all construction-related materials and adopting a common set of building codes. The scope of the proposed regulation is vast, covering all products and materials incorporated in buildings or engineering works. Without effective access to the standards-drafting process, however, U.S. wood products producers—together accounting for some S1 billion in U.S. exports in 1988—fear they may lose ground to their Scandinavian competitors, who do participate in the EC's process. Third-party testing and use of quality control systems will often be required, and could result in added costs and delays if U.S. labs are not permitted to perform such services.

Telecommunications and Computers

- In telecommunications, standards harmonization is part of overall industrial policy. It's also key to government procurement liberalization and ongoing deregulation of the telecommunications services market.
- The EC's overall agenda tracks closely U.S. deregulation, but its regulatory philosophy differs: its rules are intended to ensure interoperability in addition to "no harm to network." Moreover, the EC is anticipating the need for standardization of future technologies, in areas such as HDTV and cellular phones.
- At the end of the day, the EC will have one-stop regulatory approval and the world's single largest market for network, digital transmission, and radio-based, communications equipment. Moreover, it will have some of the world's most stringent requirements for interoperability of computers and terminal equipment. U.S. suppliers are considered world leaders in this area, as evidenced by the $11 billion in U.S. computer exports, and 1.3 billion dollars' worth of U.S. telecommunications shipments to the EC market in 1988. They expect to gain by the proposed changes.

Major Policy Developments in 1989

If the U.S. reaction in 1988 to the standards component of the 1992 program could be characterized as broadly optimistic, 1989 could be summarized as a year of concern, confusion, education, and compromise. The U.S. Government began to sort through the ramifications of the EC's standards agenda for U.S. producers, identifying fundamental concerns about transparency in standards development and equal treatment in product approval. Meanwhile, the EC's 1992-related actions were leading to a wrenching reappraisal of the U.S. standards, testing, and accreditation system.

Recognizing the need to deal with fundamental U.S. concerns, private sector and government representatives in the world's two largest trading blocs began an earnest dialog on ways to maximize the program's potential for market expansion. The EC's July proposal on a global approach to testing and certification dominated much of the year's agenda. By December, improvements in U.S. access to Europe's standardsmaking process had been [redacted] upon. Some U.S. firms were testing the new els effectiveness in protecting their interests.

Concerns about testing and certification, on the other hand, were amplified, as the number of questions without answers rose and the few clear guidelines set by the EC seemed to pose a threat of undermining the ability of U.S. firms to serve the EC market. Evaluation of the proposal raised numerous issues, including the post-1992 status of existing agreements regarding the acceptance of U.S. tests.= Although some U.S. firms appeared to be operating on a "worst case" scenario, initial analysis suggests that if the EC provides reasonable opportunities for acceptance of U.S. tests, the proposed conformity-accec-sment system could represent an improvement over the present fragmented regime.

Testing and Certification

Background

Part of the EC'sjolan to remove technical barriers in the EC involves putting in place a new system for demonstrating and certifying product conformity. Currently U.S. suppliers are required to adhere to the separate national conformity-assessment procedures that are in effect in the various EC member states. Product approval of regulated products differs vastly among the 12 member states. Some countries, such as West Germany and France, rely heavily on third-party product testing, whereas others, like the United Kingdom, focus more on total quality assurance or on self-certification of products by manufacturers. The EC's proposed "global approach" to testing and certification would eliminate the need for U.S. manufacturers to submit numerous separate tests and reports to secure free movement of their products throughout the EC. Once a product has been tested and certified as being in conformance, it will be free to be sold in all member-state markets.

Anticipated Changes

In July 1989, the EC Commission submitted to the EC Council a proposal for the Communi ys future approach to conformity assessment [21] The proposal has three parts: a general policy statement entitled, "A Global Approach to Certification and Testing"[22], an explanatory memorandum setting out in detail the rationale for the proposed policy, and a draft Council decision effecting a modular approach to conformity assessment A key objective of the proposal is to provide users, consumers, and public authorities with full assurance that products placed on the EC market conform to EC statutory requirements regarding health, safety, and other essential public policy matters. Although its immediate role will be to make possible the uniform implementation of "new approach" directives (see text box), the document should be seen as a broad outline of principles that will 'de future EC policy towards testing and certification in both the regulated and the non-regulated spheres. The policy also calls for creation of various voluntary mechanisms, such as quality assurance schemes, intended to raise the overall competitiveness of EC-made goods.

Choice of Assessment Procedures

The previous report= explains that the EC's "global approach" to testing and certification will differentiate between voluntary and regulated areas. In the areas in which no directives apply, mutual recognition of testing and certification will be encouraged but left up to the private sector. In areas covered by EC directives, however, the EC aims to increase flexibility by offering manufacturers, whenever possible, a choice of methods to demonstrate conformity.[24]

20 For a discussion of this issue, see "EC Integration and Other EC Commitments: ch. 17 in pi 3 of this report.

Com(89) 209 final, June 15, 1989, reprinted in *01* No. C 267/3, (Oct. 19, 1%9).

[22] During field interviews with USITC staff on Jan. 8, 1990, EC Commission officials explained that the "Global Approach' document has no legal weight and is essentially a pohcy statement

[22] USITC, *Effects of EC Integration,* USITC Publication 2204, pp. 6-14 to 6-16. Although the analysis contained in the report was based on a draft EC Commission policy statement and a summary of the July proposal, it still reflects the basic philosophy and key elements of the formal proposal submitted by the EC Commission on July 24, 1989.

[24] See "Commission Memorandum on Global Approach to Testing and Certification: Annex to Com(89) 339 final, *Of* No. C 267/20, Oct. 19, 1989.

THE GLOBAL APPROACH: ANATOMY OF A PROPOSAL

Taking a few steps back might be helpful in understanding the EC's proposed policy towards conformity assessment. Suppose you are an EC Commission staff person charged with formulating a policy framework to ensure that regulated products in the EC do, in fact, conform with legislated requirements. Specifically, you have been asked to develop an impartial logic base that could be used to guide Communitywide decisions about how to maintain a balance between the risk associated with particular products and the cost to manufacturers of providing reasonable assurance.

You have three main goals in framing the policy:

- First, you need to assure that products placed on the market in any member state are safe for circulation. You have already refrained from regulating products that do not pose a danger to human health and safety, the environment, or consumers. You know that any product approved for sale in one member state is free to circulate throughout the entire EC market.

- Second, you want to provide producers with flexibility, both in the choice of methods to be used and in the vendors they will deal with to achieve them. You are aware that there are literally thousands of private testing laboratories in the EC, with differing technical and financial capabilities. While providing producers and government officials with assurance of the technical capability of these laboratories, you wish to avoid giving a select few laboratories a de facto monopoly on testing services.

- Third, you are dealing with governments who have substantially different tolerances for risk and widely varying views on how to insure against them. Some have relied almost exclusively on self-declarations of conformity by manufacturers, others routinely required product tests, and still others relied upon production surveillance. These differences can be traced in part to the varying views of their populations about government responsibility for preventing risk, and in part to variances in national legal redress mechanisms available to consumers and workers.

You have been told that the document you come up with will be used as a guide to policymaken, some with little prior experience in evaluating risk. They have been charged with choosing the most appropriate conformity-assessment procedures for products ranging from light bulbs to implantable medical devices. Their choices will be binding, both on producers and on member-state authorities.

You have also been told that the legislators must delegate substantial responsibility to the member states for applying these principles. Moreover, there is no independent, central means available for assessing the competence of individual labs. Since the EC Commission is, however, ultimately accountable for the safety of goods placed on the EC market, your superior has expressed a need to be in a position to hold the member states accountable for their approval decisions.

You return to the office and start to jot down the elements you believe will be needed to accomplish your assignment. In a few hours, the list reads as follows:

I. Guidance for policymakers about the degree of assurance that various conformity-assessment procedures provide.

2. Criteria for assessing the competence of labs and certification bodies.

3. Means of matching laboratory skills to the products they will be empowered to approve.

4. Guidance for approved labs about the types of documentation they may require to do their work.

5. Provisions for due process, protection of confidential business information, and adequate redress for producers.

Happily, you discover that an international standard for third-party testing bodies exists, and that this standard—the ISO 45 series—largely addresses items 2 through 5. Moreover, you find that evaluation of conformity with this standard is always tied to the particular products to be tested. The fact that harmonized mandatory essential requirements and voluntary European standards exist for the products to be regulated will, you are assured, provide a fair degree of certainty that the results produced by such bodies are uniform. You charge the private regional standards bodies with transposing those standards into voluntary European standards and turn your sights to categorizing existing conformity-assessment measures by the degree of assurance that can be associated with each of them.

To no one's surprise, you find that the methods providing the greatest assurance are also the most expensive and time consuming. The most comprehensive method, known as full quality assurance, is the subject of another set of international standards—the ISO 9000—although the standard only lists the elements that must be present at the production site for such systems. The ISO 45 series does not contain standards for bodies monitoring and approving such qual, ity systems. You request the private European standards to elaborate a standard for bodies registering quality assurance schemes.

Armed with a proposed response, you report to your supervisor. Your proposal gets the green light, but your supervisor worries that it may have one loophole. "If you are relying heavily on private bodies to conduct such tests, and if they depend on revenues from producers for their survival, and if such firms will be forced to compete with thousands of other firms across the EC, isn't there a financial incentive for them to approve products?" your superior asks. "How can we assure the independence of such labs?"

You return to the office and jot down another item:

6. Means of preventing "shopping around" by producers for the lowest common denominator.

The conformity-assessment options are divided into eight modules, with each successive module requiring greater proof of conformity.[26] The particular modules that apply will be spelled out in each directive.[28] They range in complexity from a simple attestation by the manufacturer of a product's conformance (manufacturer's declaration of conformity), to testing and approval of a prototype by a notified body (type-approval), to full quality assurance. The degree of assurance of a product's safety associated with each module generally rises with its complexity (figs. 6-1 and 6-2).

While manufacturers' declarations of conformity are expected to be the rule, more comprehensive assessment procedures will be applied to those products posing a serious risk of endangering human, animal, or plant health. Products manufactured in accordance with European standards — i.e., those developed by CEN, CENELEC, or ETSI —will generally be presumed to comply with the essential requirements of EC directives.[27] Those that do not will usually need to be tested by an independent body.

The modular approach placespeat emphasis on quality assurance techniques. CEN/CENELEC has adopted the EN29000 series of standards on quality assurance in an effort to harmonize quality assurance in the EC and envisions elaborating on these rules for particular sectors.[28] These standards must be met by manufacturers in order to comply with many of the proposed EC modules. Manufacturers who wish to use these modules to demonstrate compliance with EC directives must have their quality system registered by a notified body (see below) or other accredited or recognized otganization.[28]

[as] The modules differ according to (1) the stage of development of the product, i.e., whether the product is in a design stage, a prototype, or in full production, (2) the type of assessment involved, which depends on whether the assessment entails documentary checks, type testing, quality assurance, onsite inspection, etc., and (3) whether the manufacturer or various third parties carry out the assessments. See "Commission Memorandum," Annex to Com(89) 209 final, *O/*No. C 267/21, Oct 19, 1989.

as When a directive permits a choke among modules, the choice of conformity-assessment procedures will be at the sole discretion of the manufacturer. Member states will not be permitted to require use of particular modules or to impose additional modules over and above those specified in the directive. USITC field interview with staff of EC Commission, Jan. 8, 1990.

" See 'Commission Memorandum; Com(89) 209 final, *01* No. 267/20 (Oct 19, 1989).

[26] The EN29000 refers to quality assurance standards for manufacturers. The texts of international standards ISO 9000 to ISO 9004 were approved by CEN as European standards without any modification and were adopted using the numbers EN29000 through EN29004. The comparable U.S. standards are the ANSI/ASQC90 series, which are the same as the 150 9000 series and areprontulgated by the American Society for Quality Control. The ES129000 series is not complete and will be elaborated with specific quality-control standards for specific sectors.

as American National Standards Institute, ***ANSI Global Standardization News,*** September 1989, p. 42.

Uniform Levels of Competence and Conduct

In those cases where testing or certification by an independent body is required, the EC will rely on bodies designated by the member-state authorities to assess the conformance of products with particular EC directives. These bodies, referred to as notified bodies, will be officially designated by member states as competent to perform functions such as verificiation, approval of quality assurance systems, or type-examination in line with particular ~~ar~~ approach directives. Such bodies must be stru and operated to meet uniform and transparent standards of competence and conduct as spelled out in the EN 45000 series of stanclards,[30] and will be the only entities authorized to perform required third-party testing to demonstrate compliance with EC requirements.[31]

Single Mark of Conformity

The "CE" mark will be the obligatory indication that products governed by "new approach" directives meet statutory requirements. It will replace all national marks now used to show compliance with legislated requirements.[32] The CE mark will signify that the products have complied with the essential requirements and with the conformity-assessment procedures spelled out in each particular directive.[33]

Products bearing the CE mark will have the legal right to be marketed throughout the EC.[34] However, this CE mark alone will not be sufficient in all jurisdictions to obtain market acceptance of products.[36] Additional marks signifying per-

[70] The Community's EN45000 series of standards set the criteria that will be used to ensure the competence of such - bodies and define the means to be used to assess conformity with such criteria. 'EN" is nomenclature for European standards produced by CEN and CENELEC.
series refers to standards for performance by testing laboratories and certification bodies. These standards are based on relevant ISO/IEC guides and ILAC documentation. The EC has requested CEN to elaborate the EN45000 for inspection bodies and accreditation bodies.

" Bodies will be notified in connection with particular directives, and are only authorized to assess conformity to the directives for which they have been specifically notified. USITC field interview, Jan. 8, 1990.

[32] See "Commission Memorandum; Annex to Com(89) 209 final, June 15, 1989, *01* No. C 267/23, Oct. 19, 1989.

" Ibid.

[34] 'New approach" directives generally state that the member states are required to recognize the results of notified bodies located outside their borders. However, there is an "escape clause' that will allow a member-state authority to refuse admittance to any product that it has reason to believe does not conform to the essential requirements. Indeed, the directives require member-state authorities to take off the market products that bear the CE mark if they are believed to be unsafe. The member state may act immediately, but will have to notify the EC Commission of what they have done, and why. The EC Commission will investigate the matter and act appropriately. If the EC Commission finds the action justified, it will alert all the member states. Actions believed to be unjustified by the Treaty of Rome may be brought before the E rvpea Court of Justice. USITC field interview with staff of the EC Commission, Jan. 8, 1990; British DTI, ***The Single Market,*** p. 3.

[36] ANSI Task Force on Certification and Testing "Review of European Certification and Testing; at ANSI-CEN/CENELEC Meeting Brussels, July 28, 1989.

H. EC declaration of conformity (full QA)

G. EC unit verification

Manufacturer submits technical documentation

Manufacturer submits product

Notified body—
- verifies conformity with essential requirements
- issues certificate of conformity
- affixes the CE mark

Module B: EC type-examination

F. EC verification

E. EC declaration of conformity (product QA)

Manufacturer—
- operates an approved QS for inspection and testing
- declares conformity with approved type, e.g., essential requirements
- affixes the CE mark

Notified body—
- approves the QS
- carries out surveillance of QS

D. EC declaration of conformity to type (production Quality Assurance (QA))

C. EC declaration of conformity to type

plus

Module A: EC declaration of conformity

Manufacturer keeps technical documentation at the disposal of national authorities.

Figure 5-2
Conformity assessment In the European Community under the "Global Approach" to testing and certification, by modules

Actions by—	MODULES	A	B+C	B+D	B+E	B+F	G	H
Notified bodies	Each product					or		
	Product surveillance							
	Samples		o			•e		
	OA surveillance			O- EN 29002	O. EN 29003			O- EN 29001
	Type-testing		•	O-	–e			O- DESIGN
Manu-lecturer	Technical documentation at disposal of national authorities							

• Mande cry requirements
0 Suppiwnental requirements
• Identification symbol of notified body required.

Conformity-assessment procedures

Source: Belgian institute for Normalization.

formance or safety over and above legislated requirements may continue to be affixed to products as 'quality marks." Absence of these marks will not affect the legal right to market a product in the EC, but may, as a market reality, be necessary to ensure market acceptance 38

Ease Of Movement in the Nonregulated Area

In the nonregulated area, the EC is seeking to build confidence and enhance cooperation. Among other things, the EC Commission is encouraging the widespread application of the EN45000 series of standards and the sectoral elaboration of standards for quality assurance schemes.[37] It also proposes creation of a central organization to coordinate private sector activities, the European Organization for Testing and Certification (EOTC). As presently envisioned, the organization would not assess products itself, but rather would serve as a mechanism for bringing together all interested parties — producers, consumers, users, public authorities, testing laboratories, certification bodies—for purposes of establishing and safeguarding basic principles of competence, openness, and transparency (see fig. 6-3).

In the meantime, the EC has taken several interim steps to encourage the EC testing and certification community to work more closely. CEN/CENELEC have instituted a program that authorizes the establishment of sectoral committees to handle certification and testing problems that might arise within their area of competence — either product oriented or discipline-oriented (fig. 6-4). One of these committees, the European Quality System (EQS) was established in 1989.[38] The existing sector committees cover electrotechnical equipment, electronic components, and information technology. Proposed sector committees will cover construction products, medical devices, gas appliances, aerospace, water supply-related equipment, steel, high voltage electrical equipment, chemicals, and machines.[39]

Treatment of Third-Country Suppliers

The EC Commission has stated its intention to uphold its commitments in the GATT and under the Tokyo Round Standards Code to ensure that products originating in third countries are granted access to certification systems in the EC (both voluntary and mandatory) on the same basis as products originating in the EC.[40] Third-country suppliers will be given the same choices of means

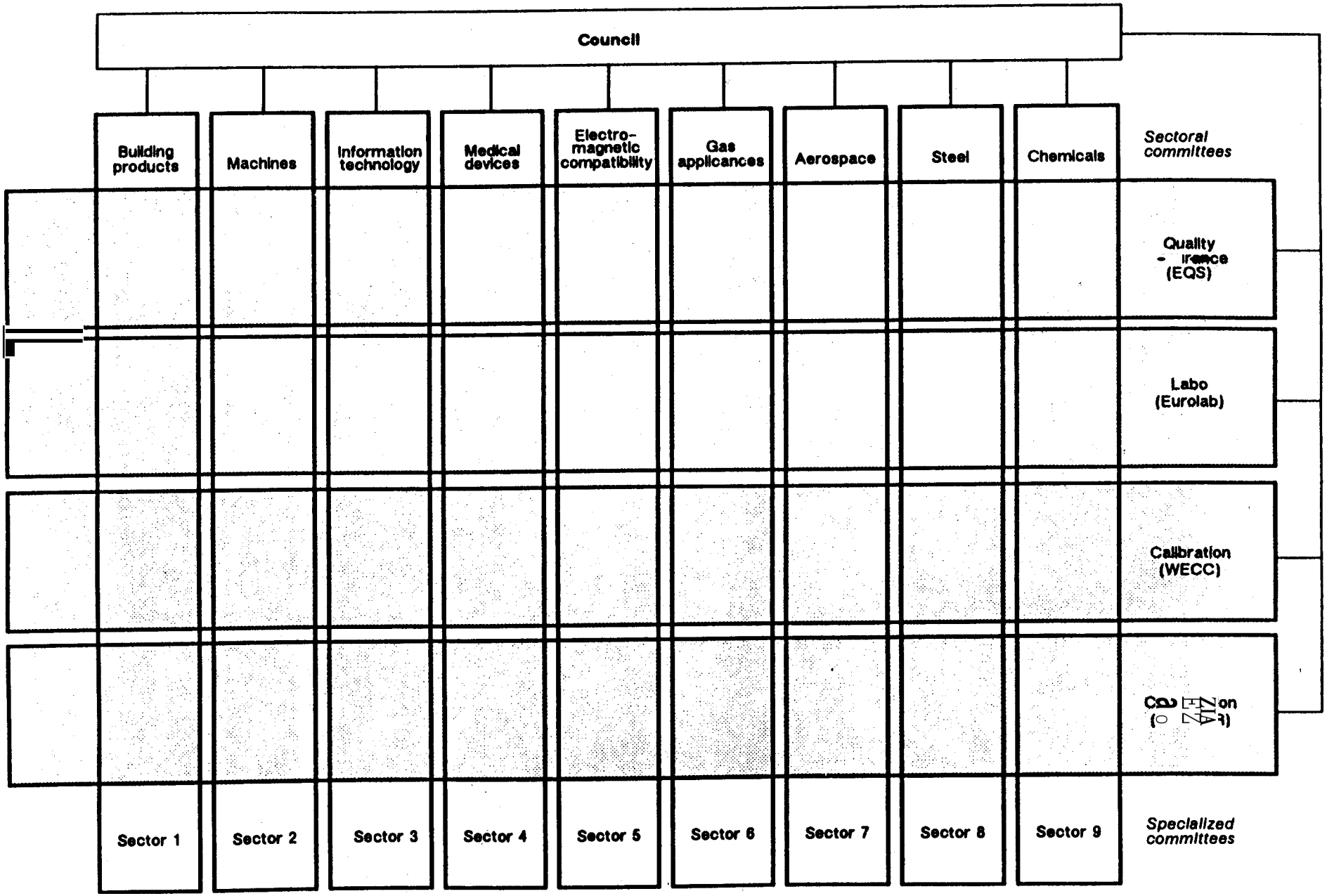
as American National Standards Institute, *ANSI Global Standardization News,* September 1989, p. 36.

[37] See "Commission Memorandum," Annex to Com(89) 209 final, June 15, 1989, *Of* No. C 267/17 (Oct. 19, 1989).

[26] The principal objective of a recently proposed committee on quality assurance is to develop confidence in quality system assessment and certification and to avoid duplication of quality assessment in EC and EFTA countries. CEN/CENELEC, "Memorandum of Understanding on the Establishment of a "European Committee" for Quality System Assessment and C (EQS) as a Committee Within the European Framework for Testing and Certification," October 1989.

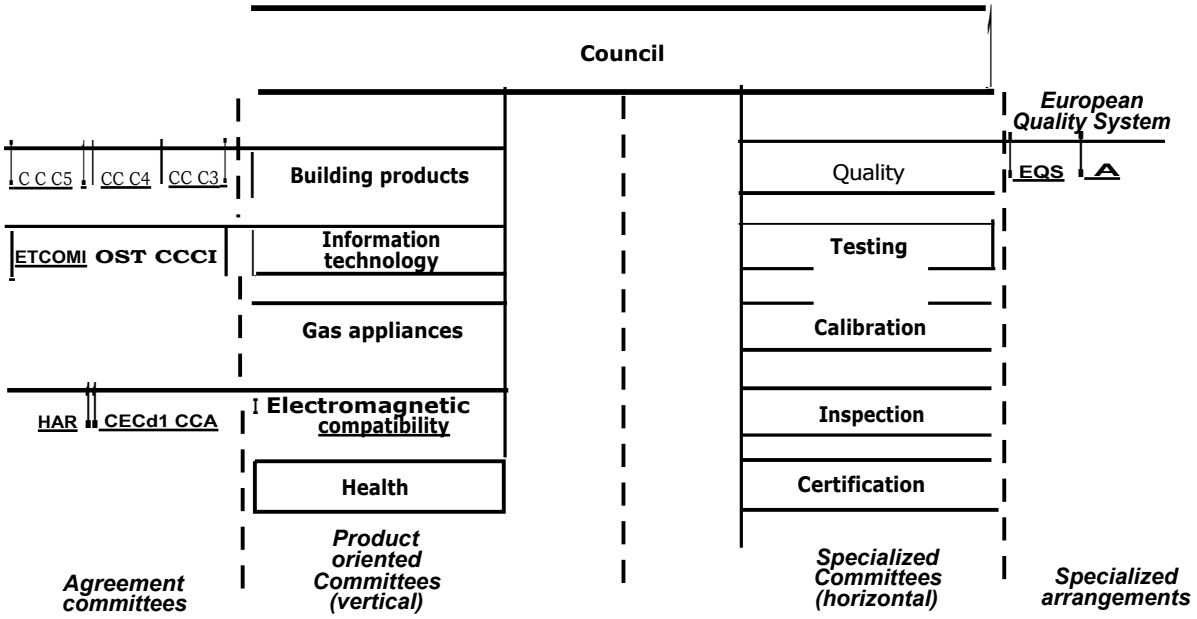
" American National Standards Institute, *ANSI Global Standardization News,* September 1989,p. 38; Mar. 15, 1990, briefingby ANSI delegation to Mar. 12, 1990, meeting with CEN/MVELEC.

[40] See 'Commission Memorandum on a Global Approach,* Com(89) 209 final, June 15, 1989, Of No. C 267/76 (Oct. 19,1989); and statement of Mr. Riccardo Perissich, Director General, DG III, EC Commission, in response to questions posed at a National Association of Manufacturers meeting Washington, DC, Feb. 6, 1990.


Council
Building products
Machines
Information technology
Medical devices
Electro-magnetic compatibility
Gas applicances
Aerospace
Steel
Chemicals
Sectoral committees
Quality
(EQS)
Labo
(Eurolab)
Calibration
(WECC)
Sector 1
Sector 2
Sector 3
Sector 4
Sector 5
Sector 6
Sector 7
Sector 8
Sector 9
Specialized committees

Source: CEN.

Figure 6-4
Proposed organization of the European Organization for Testing and Certification, by sector and committee



Source: Belgian Institute for Normalization.

to demonstrate conformity with EC directives as given to EC suppliers, including manufacturers' declarations of conformity. Notified bodies will be required to treat non-EC suppliers in a nondiscriminatory fashion. Third-country products may only be denied certification for the same reasons products originating in the EC can, namely nonconformance with legally binding essential requirements:"

Nevertheless, the EC Commission notes that these multilateral agreements do not contain specified binding obligations on signatories relating to the acceptance of tests, reports, certificates and marks from third countries.[42] The EC Commission stated that the Community would be prepared to conclude agreements with third countries for the mutual recognition of tests, reports, and certificates provided that (1) the technical competence of the non-Community partner is adequate to ensure that the tests and inspections carried out by a non-Community body will offer the same guarantees as those within the Community; (2) the mutual benefits flowing from the agreement are equivalent and guaranteed in an identical manner; and (3) the bilateral agreement is limited to testing, certification, and inspection activities of designated bodies of the two parties, i.e., it is not automatically transferable to third-country products.[43]

The EC has stated that in those cases where regulation exists at the national or Community levels, acceptance of foreign test results will not be permitted without a Community-level negotiation with the government of the foreign country." Agreements to provide mutual acceptance of results from U.S. testing labs would apparently have to be negotiated with the EC as a bloc. Moreover, all existing bilateral agreements regarding testing bodies outside the EC would eventually have to be reexamined with a view towards determining whether they should be translated into EC-wide agreements:is

US. Reaction

Both government and private sector experts agree that the EC's policy towards conformity assessment may ultimately have a more significant impact on U.S. industry than the standards

[41] EC Commission, Mutual *Recognition of Tests and Certificata: The Global Approach,* July 5, 1989 (Nine-page summary of the proposal and press release).

[42] See 'Commission Memorandum on a Global Approach. Annex to Com(89) 209 final, 01 No. C 267/26 (Oct 19,

[43] Ibid.

[44] American National Standards Institute, *ANSI Global Standardization News,* September 1989, p. 42.

[42] USITC field interview with staff of the EC Commission, Jan. 8, 1990.

themselves.i[8] Most have heartily welcomed the EC's move toward more uniform and less duplicative approval procedures.[47] Nevertheless, the topic received prominent attention during hearings held by the Interagency Task Force on 1992 Standards on July 25, 1989, and elicited an outpouring of concern by U.S. manufacturers and testing labs alike during a public comment period in September.[48]

Although the same testing and certification procedures would apply to European and U.S. producers, the system as proposed may cause more difficulties for U.S. suppliers, because they may effectively be forced to have their products tested in Europe by "notified bodies."" U.S. producers warn that this could seriously undermine their ability to efficiently serve what often is their most important export market, and fear that the time and money associated with going through EC laboratories will diminish their competitiveness vis-a-vis EC-based rivals. U.S. testing laboratories charge that the EC's refusal to accredit them will put them at a competitive disadvantage relative to EC-based labs.[50]

The EC's refusal to accredit non-EC laboratories and certification bodies was cause for immediate concern by U.S. manufacturers and testing laboratories. Fears associated with that prospect were fueled by a lack of information on how the proposed system would operate in practice. Among the many questions raised by U.S. business [51] were the following —

- Will U.S. testing organizations be "notified?"
- Will member-state "notified bodies" be permitted to conduct necessary approval procedures in their U.S. facilities?
- Will member-state "notified bodies" be permitted to subcontract testing, onsite inspection, and production surveillance to U.S.-based labs?
- To what directives does the proposal apply? Will it be applied to previously passed directives?
- What guarantees are in place to ensure that "notified bodies" protect proprietary business information and do not behave in an arbitrary manner?
- What is the status of existing bilateral mutual recognition agreements, in both the regulated and the nonregulated area?

A number of practical concerns were raised as well. Testing products directly to the essential requirements may not be a viable option, many believe.[52] On the other hand, lack of access by some U.S. firms to CEN/CENELEC could effectively close off the option of fast-track approval through conformance with harmonized European standards, at least temporarily.[53] Even if not legally required by EC directives, there is some concern that failure to conform with standards developed by CEN/CENELEC may subject U.S. firms to greater liability risks.[54] Currently, mutual recognition agreements exist between certain individual member-state regulatory and certification bodies and major U.S. regulatory agencies and private

" Comments by U.S. Department of Commerce, International Trade Administration, Feb. 26,1990; formal submissions by the National Association of Manufacturers, the U.S. Chamber of Commerce, and the American Chamber of Commerce in Brussels to the U.S. Interagency Working Group on EC Standards, Testing, and Certification Issues; report by the Advisory Committee for Trade Policy and Negotiations EC 92 Task Force submitted on Nov. ?7,1989, to the United States Trade Representative.

[47] Ibid. Also see comments by the National Association of Manufacturers and other organizations submitted to the Commerce Department and the United States Trade Representative.

" Oral and written comments were submitted by more than 40 companies and organizations to the U.S. Government Interagency Working Group on EC Standards, Testing, and Certification Issues during hearings held at the U.S. Department of Commerce on July 26-17,1989. Formal submissions were made by a number of U.S. interests in response to the working group's notice in the *Federal Register* (54 F.R. 37967), Sept 14, 1989, including the Marley Corp., Straus & Goodhue, the Square D Co., the Air-Conditioning and Refrigeration Institute, and the Health Industry Manufacturers Association.

[46] See, for example, formal statements for the record by the Health Industry Manufacturers Association; Dash, Straus & Goodhue, Inc.; and the U.S. Chamber of Commerce to the Interagency Task Force Working Group on EC Standards, Testing, and Certification Issues, July 26-27,1989.

" Ibid.

[61] See, for example, statements of the Marley Organization and the American Council of Independent Laboratories before the U.S. Government Interagency Working Group on European Community Standards, Testing and Certification Issues, July *27,* 1989; written comments of the Health Industry Manufacturers Association to the Office of European

[51] —*Continued*
Community Affairs, U.S. Department of Commerce, Oct 13, 1989, in response to *that* agency's notice in the *Federal Register* (54 F.R. 37967), Sept 14, 1989; comments of the EC Committee of the American Chamber of Commerce in Belgium, Dec. 21, 1989; Dash, Straus & Goodhue, letter to USITC staff, Feb. 3), 1990.

[42] For example, U.S. industry and testing officials have expressed concerns about the vagueness of the essential requirements contained in EC directives and the fact that the directives do not give guidance as to how compliance can be demonstrated. Dash, Straus & Goodhue, Inc., letter to USITC staff, Feb. 20,1990; and letters dated Oct. 13, 1989, to the Office of European Community Affairs, U.S. Department of Commerce, from the Air-Conditioning & Refrigeration Institute, and Caterpillar, Inc., in response to that agency's notice in the *Federal Register* (54 F.R. 37967).

" In a June 1989 brochure for British industry entitled *Standards: Action Plan for Business,* (p. 2) the British DTI states that, "Using common European standards will often be the best way for businesses to satisfythe common [EC] regulations.'

" Failure to comply with European standards may increase a producer's exposure to liability because it weakens the argument for someone who does not comply. USITC staff interview with R.B. Toth Associates, Jan. 1, 1990. In a USITC field interview with Confindustria on Jan. 12, 1990, an Italian official stated that certification of products is the best defense in a liability suit.

testing houses.[55] U.S. industry officials feared that such agreements could be put into jeopardy by the proposed system. Other industry officials are concerned that third-party testing and application of national marks of conformity could remain a necessity exclusively from a marketing standpoint, offsetting their potential gains from the one-stop regulatory approval envisioned under the global approach.se

The fact that the Global Approach prevents suppliers from submitting products to more than one notified body has raised fears in U.S. industry circles that U.S. firms would have nowhere to turn should they encounter discrimination or arbitrary behavior when seeking to obtain required third-party testing or surveillance from EC-based labs. Moreover, U.S. testing laboratories warn that the policy effectively leaves U.S. suppliers at the mercy of notified bodies with whom U.S. suppliers have little or no prior experience and could give the designated labs unbridled power to dictate fees and schedules.[57] U.S. suppliers have also expressed concern that uniform test methods may not be used to determine conformity with essential requirements. Most U.S. industry representatives concurred with suggestions by the National Association of Manufacturers (NAM) that, in order to minimize costs and technical difficulties for U.S. suppliers of securing tests and proofs, European standards and testing protocols should be based on international rather than on purely European ones.se Others complained that the amount of technical documentation required to be kept on file or submitted was excessive.sa The potential significance of testing-related barriers in the EC is underlined by the fact that the "great majority" of standards-related complaints received by the U.S. government by American exporters since the Standards' Code inception have concerned the nonacceptance by foreign governments of test data generated in the United States and burdensome and time-consuming certification procedures.so

Bilateral Consultations

The strong U.S. interest in the EC's proposal led the United States to propose, under the general rubric of the Mosbacher-Bangemann agreement of May 31, bilateral consultations with EC Commission officials and representatives of CEN/CENELEC. The two sides extensively discussed the EC's proposal at the resulting October 4-5 meetings.[61] The U.S. delegation, which included both private sector and Government representatives, sought to clarify the EC's position; to explain the functioning and operation of the U.S. testing, certification, and accreditation system; and to register concerns about certain elements of the EC's proposed policy.

In its presentation, the EC emphasized its attempts to make all aspects of conformity assessment more uniform and transparent, notably by adopting the EN45000 and the EN29000 throughout Europe. The enormity of the task confronting EC officials in harmonizing testing and certification activities throughout the Community can be seen in the fact that in Europe there are some 10,000 testing laboratories and 1,000 testing bodies, each with a different capacity, legal status, and reputation.[62] The EC Commission indicated that its present policy was that member states would only be allowed to appoint "notified bodies" situated in their own territory. The kinds of operations these "notified bodies" could have outside their borders, such as reliance upon overseas subsidiaries or third-country contractors was, however, still under consideration, the EC officials stated.[63]

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[55] The U.S. Food and Drug Administration (FDA) has negotiated memorandums of understanding (MOUs) with its counterparts in several EC member states, including West Germany, the United Kingdom, and Italy. Under these agreements, EC member-state health and regulatory officials agree to accept FDA certification and testing. The two major private West German testing houses, the VDE (electrical) and I UV (mechanical, automotive) have cooperative arrangements with the U.S. Underwriters Laboratories (UL). For certain products, UL is allowed to test products for the EC market in the United States, using the applicable West German standards. When necessary, West Germanengineers are sent to the UL laboratories, and the VDE or TUV mark is issued under UL supervision. The West German standards and testing organizations also maintain a number of testing laboratories and offices throughout the United States that are utilized by U.S. firms; UL maintains offices in West Germany and other foreign markets. British DTI, *The Single Market,* p. 5; and U.S. Department of State Telegram, June 28, 1989, Bonn, Message Reference No. 20300.

[5°] Dash, Straus, & Goodhue, Inc., letter dated July 26, 1989, to the Office of European Community Affairs, U.S. Department of Commerce.

USITC staff interview with U.S. testing official, Mar. 21, 1990.

[5*] Statements by the National Association of Manufacturers, the Flavor and Extract Manufacturers Association, and the Fragrance Materials Association of the United States before the U.S. Government Interagency Working Group on European Community Standards, Testing and Certification Issues, July 26, 1989.

[5°] See formal statement by the U.S. Council for International Business on A *Global Approach to Certification and Testing,* Jan. 9, 1990, p. 6; and written comments by Caterpillar, Inc. (Oct. 13, 1989), Farm and Industrial Equipment Institute (Oct 13, 1989), and Dunaway and Cross (Oct. 16, 1989) to the Office of European Community Affairs, U.S. Department of

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Commerce, in response to that agency's notice in *the Federal Register* (54 F.R. 37967), Sept. 14, 1989.

[5°] U.S. Departments of Agriculture, Commerce, and State and the Office of the United States Trade Representative, *Second Triennial Report to the U.S. Congress on the Agreement on Technical Barriers to Trade,* 1986, p. 16, as cited in Leonard Kruger, *International Standardization: The Federal Role,* p. 5.

[•] See the Joint Press Communique issued on Oct. 6, 1989, "Talks Between U.S. and EC Commission Officials on Standards and Certification."

[52] U.S. Department of State Telegram, July 28, 1989, Brussels, Message Reference No. 8764.

[133] Memorandum to M. Peralta of the American National Standards Institute (ANSI) dated Dec. 9, 1989, regarding Impressions of the Oct. 4-5 U.S. Meetings With EC and CEN/CENELEC Officials," p. 2.

The EC Commission indicated that it would be discussing with the Council of Ministers whether there are circumstances to go beyond the reliance upon EC laboratories for purposes of regulatory ,z-lorcement, and if so what assurances would be needed to ensure that these bodies are competent and will remain so.[64]

The officials closed their formal presentation by noting that for the most part its modular system of conformity assessment should be implemented in 1993, when most of the "new approach" directives are slated to go into effect. (Only the toy, pressure vessel, electromagnetic compatibility, and construction products directives will be implemented before Jan. 1, 1993.) The EC Commission expressed the hope that its proposals would be adopted soon, allowing 2 to 3 years of preparations. Both the EC and the United States agreed that all parties involved in the two regional systems needed to start soon to clarify how negotiations of mutual recognition agreements, both in the public and the private sector, will work. It was agreed that bilateral consultations on conformity-assessment issues should be held after the Council of Ministers had provided guidance on how the Community should handle mutual recognition agreements with third countries.[85]

U.S. Strategies for Dealing With the "Global Approach"

Despite the overall positive tone of the talks, the United States delegation left the meetings with substantial concerns about the EC's proposed policy.ee Two key options for responding to the EC's proposed "Global Approach" emerged from the far-reaching discussions between U.S. private and Government officials which ensued: (1) seek EC agreement to accredit U.S. testing laboratories and certification bodies on the same basis as bodies located within the EC, and/or (2) pursue mutual recognition agreements with the EC as a bloc for products covered by "new approach" directives, and to the extent necessary, for products covered by existing mutual recognition agreements.

The first option is being pursued on various fronts, notably m the Standards Code.[87] Among the proposals on testing and certification currently being discussed in the Code is a proposal tabled by the United States in November 1989.[68] The proposal would amend the Code to provide for nondiscriminatory treatment in systems for accreditation or approval of testing laboratories, inspection or quality system registration bodies. The proposal essentially would require signatories to the Standards Code who use accredited laboratories for purposes of regulatory approval to make the rules and criteria for becoming accredited publicly known, to allow applications for accreditation from all parties on a non-discriminatory basis, and to consider those applications solely on the basis of such criteria. Adoption of this proposal would presumably make possible the accreditation by member states of U.S. labs for purposes of assessing conformity with EC 1992 standards directives.[89] The EC tabled its own proposal regarding conformity assessment in the Standards Code in February.

Negotiation of mutual recognition agreements is also being considered. However, the EC's proposed reciprocity" criterion for such agreements raises both policy and practical problems for the United States.[70] As a policy matter, the principle is objectionable since its use implies that the EC will deny U.S. suppliers national treatment in testing and certification. The United States fundamentally objects to this EC treatment Moreover, due to significant differences in the U.S. and EC testing, certification and accreditation systems, the Commission's insistence on identical treatment for EC facilities in the U.S. market could, the U.S. Government cautions, result in limited access for U.S. testing facilities in the single EC market[71]

Mutual recognition agreements should be based only on objective criteria relating to technical competence, the U.S. Government argues. The criteria the EC proposes to use to judge competence seem acceptable to the United States,[72] although

" As reported in U.S. Department of State Telegram, Oct. 16, 1989, Brussels, Message Reference No. 13270, reporting on Oct 4-5 meeting in Brussels between U.S. Government and private sector representatives and EC Commission and CEN/CENELEC officials.

[66] In response to U.S. questions, the EC indicated that negotiations with third-country bodies will be handled at two levels. The practical negotiations will take place between notified bodies and third-country organizations. The EC Commission will reportedly want to be associated with these negotiations to confirm that reciprocal treatment is obtained. U.S. Department of State Telegram, Oct. 16, 1989, Brussels, Message Reference No. 13270, reporting on Oct 4-5 meeting in Brussels between U.S. Government and private sector representatives and EC Commission and CEN/CENELEC officials.

" See, for example, letter by Assistant Secretary of Commerce Duesterberg to private sector participants in the meeting, Nov. Z 1989.

[7] For a discussion of the Standards Code's current coverage of testing, certification, and accreditation schemes, as well as current proposals for strengthening such obligations, see ch. 16 of this report

IS The proposal originated in the private Industry Functional Advisory Committee on Standards Testing and Certification, a body set up to advise the U.S. Government on trade policy affecting these areas.

" Apparently, U.S. testing labs are evaluating whether it would be worth it" to become a notified body. The accreditation process the EC proposes may be quite expensive. USITC staff interview with official at the U.S. Department of Commerce, Jan. 9, 1990.

" The EC's use of competence as a criteria and the standards by which competence will be measured (CEN's EN45000 series) seem acceptable to the United States. USITC staff interview with official of the Office of the United States Trade Representative, Jan. 31, 1990.

U.S. Government Interagency Task Force on the EC Internal Market, An *Assessment of the Economic Policy Issues Raised by the European Community Internal Market Program for* 1992, March 1990 (forthcoming), p. 4.

[72] USITC staff interview with government officials involved in the Standards Code negotiations, Jan. 31, 1990; interview with ANSI official in Washington, Nov. 2.Z 1989.

there are indications that the EC Commission may more vigorously apply them to non-EC labs than to those located in the EC.[73] However, U.S. testing laboratories reportedly may have difficulty obtaining the liability insurance envisioned.[74]

The United States argues that even if it were to accept the EC's premise that such agreements should be based on "mutual economic benefit," does not "owe" the EC anything in return for national treatment of U.S. labs in the EC since the U.S.system is already legally open to EC labs on the same basis as U.S. labs. Indeed, a landmark case involving the Occupational Safety and Health Administration (OSHA) put U.S. agencies on notice that they must put in place objective criteria for assessing competence of testing firms and must =applications from all corners on a tory basis7[8] Moreover, the actions of such regulatory agencies can be contested in the courts, notably on antitrust grounds. Thus, the U.S. side argues, even if they wanted to, it is not clear that = S of U.S. accreditation and approval would be legally allowed to discriminate against applicants from the EC.[78]

As a practical matter, even if the United States agreed that mutual recognition agreements were properly based on reciprocal benefits and that it did ovve the EC somethin& the United States might find such agreements difficult to conclude. The fact that there is not a sing* unified institutional mechanism to assess the competence of U.S.-based labs tes the equation?"' Problems are • with each of the three possible scenarios: (1) the product is regulated in both the United States and the EC;_ (2) the product is tegulated in the EC but not in the United States; and (3) the product is not regulated either in the United States or in the EC

Regulated/Regidated Scenario

The EC has said that it will require third countries to recognize results from all of the laboratories on its list of notified bodies as a prerequisite for mutual recognition agreements, a condition that might be untenable for U.S. a - suchas the CPSC, OSHA, FDA, and EPA rruiertheir authority and rules. Puttint together an "offer,/ also might prove difficult, since Federal agencies that accredit labs operate rather narrowly focused schemes.[78] Differences in regulatory philosophy and in actual levels of consumer, environmental, or public health protection between the EC and the United States may also make it difficult to conclude EC-wide mutual recognition agreements. Some products being regulated by the EC as part of the 1992 program, such as toys and machine tools, are not as extensively tilated in the United States.[78] Other products, siith as medical devices, are regulated differently. (The United States does not type-test such machines.)[88]

Regulated/Nonregulated Scenario

In other cases, for example building products and boilers, the U.S. Federal Government does not regulate much of the market for a particular product, but State and local authorities do. In the absence of new Federal regulations, the U.S. Federal Government might hesitate to prevent the imposition of additional requirements at the State and local level or to force State and local authorities to mutually recognize EC labs or test results. Moreover, the possibility that the United States may have to adopt new Federal regulations or testing standards in order to satisfy the EC's conditions for mutual recognition requirements is a major concern of U.S. industry and trade association officiaLs.[81] They say that both voluntary and mandatory procedures should in principle be accepted as legitimate.[82]

Nonregulated Scenario

In the nonregulated area, it is clear that the responsibility for negotiation of mutual recognition agreements will rest with the private sector and not However, there is currently no U.S. umbrella r • tion for accrediting testing and certification bodies in the United States.[84] The

USITC field interview with staff of the EC Commission, Jan. 8, 1990. Essentialsy the issue here is whether EC labs will in fad have to be accredited as meeting the EN45000, as the EC has incficated it will require of third-party labs.

" Dash, Strauss, and Goodhue fetter; Feb. 20, 1990.

" *MET Electrical Toting Co., Inc. v. Raymond J. Doman, Sen.y of Labor,* No Y-82-1133, D. Md.

" See, for example, arguments presented by the U.S. delegation clueing an Oct. 4-5 meeting in Brussels between U.S. Government and .ivateaetodor repnisentatives and EC Commission and eo si MX,C officials, as repotted in U.S. of State Telegram, Oct. 16, 1989, Brussels, Message =ent No. 13270.

" The EC Commission does not possessan independent capability to mews labs and does not have in place a system for so:mating accreditation bocries.(ember states are responsible for assuring the competence of EC-based notified bodies, and most of them have in place, or are developing, accreditation schemes).

-- See, for example, United States General Accounting Office, *Laboratory Accralitation: Requirements Vary Throughout the* Government, GAO/RCED-89-102, March 1989.

" USITC staff interview with the National Machine Tool Builders' Association, Jan. 9, 1990-

" USITC staff meeting with staff of the U.S. Food and Drug Administration, Jan. 3, 1990.

" The real question in terms of mutual re'osmition of test data, according to industry sources, is whether the U.S. Government must get involved in the process. The EC wants to know 'where the buck stops,' but that could imply the establishment of a recognized central body in the United States to coordinate and stand for the continued competence of U.S. labs and certification bodies. USITC staff interview with official of the National Association of Manufacturers, Jan. 5, 1990.

" Based on a formal statement of the National Association of Manufacters before the U.S. Government In Working Group on European Community S eating, and Certification Issues, July 26, 1989.

[63] Informal transcript of a statement by Riccardo Perissich, Director General for International Market and Industrial Affairs (DG RI), EC Commission, in response to a question at National Association of Manufacturers meeting, Washington, DC, Feb. 6, 1990.

[64] The umbrella body for the private U.S. standards developments , the American National Standards Institute (ANS is evaluating whether it should attempt to fill this void.

lack of such a system could make the negotiation of mutual recognition agreements extremely cumbersome and complex, and may make it difficult to assure uniform compliance with the EC's proposed competence and conduct criteria.[85]

The EC does not currently have an umbrella organization either, but the creation of the EOTC is expected to rectify that gap.[88] It is still unclear what role, if any, the EC Commission and the EOTC would have in future private, voluntary arrangements, which are currently concluded without any governmental involvement, and whether such EC involvement would be intended to secure a "balance of benefits" or to advance overall EC commercial interests relative U.S. private sector participants. Recent statements suggest a more flexible EC attitude towards reciprocal benefits.[87]

Formal U.S. Government Response

On December 14, 1989, Under Secretary of Commerce for International Trade J. Michael Farren presented the U.S. Government's formal response to the EC's proposa1.[88] In the paper, the United States stated that it supported the broad outlines of the EC's proposed approach. However, it expressed fundamental objections in those areas where the EC proposed to apply different procedures if the parties involved are not of European origin, such as in third-party testing and accreditation systems.

The U.S. Government strongly urged the EC to adhere to the principle of national treatment in all regulations. The fundamental demand of the United States was that procedures and criteria for becoming accredited to perform conform' assessment according to European stan dards should be transparent and open for application by all interested parties, including those located outside the EC. The U.S. Government urged the EC to develop a practical method for recognizing the technical *validity* of non-European standards and tests in order to avoid duplication and unnecessary costs to manufacturers and purchasers.

Current Status

The Council debated the Commission's "Global Approach to Testing and Certification at the Dec. 21-22 Internal Market Counci1.[88] At the dose of the discussion, the Council adopted a resolution on a global approach to conformity assessment and arrived at a joint guideline on the substance of a draft Decision on the modular approach, on which the Opinion of the Parliament is awaited.[°O] The resolution effectively gives the EC Commission the "green light" to establish negotiating priorities for mutual recognition agreements with third countries, issue mandates for completion of EN45000 and EN29000 series, to establish the EOTC, and to develop a program for less developed regions in the Community to improve their conformity assessment infrastructures.al

Of particular interest to the United States, the Council stated that —

> Inn its *relations with third countries the Community will endeavor to promote international trade in regulated products, in particular by conduding mutual recognition agreements on the basis of Art. 113 of the Treaty in accordance withCoco law and with the Community's international obli while ensuring in the latter case that:*
>
> - *the competence of the third country bodies is and remains on par with that required of their European counterparts,*
> - *the mutual recognition agreements are confined to reports, certiftates* and *marks drawn up and issued directly by the bodies designated in the agreements,*
> - *in cases where the Community wishes to have its own bodies recognized, the agreements establish a balanced situation with regard to the advantages derived by the parties in all matters relating to conformity assessment for the products concerned.*

The Council resolution was viewed as advocating a more liberal approach to third countries, since it appears to require the pursuit of "mutual benefits" only in cases where foreign access for Community suppliers is desired and is already limited, either legally or practically. The. EC Commission had originally proposed that benefits for EC suppliers in third countries would have to be "equivalent and guaranteed in an identical manner."

" The United States does not possess a coherent system for accrediting the competence of the estimated 40,000 private testiltag, certification, and quality assurance bodies operating in the United States. The Commerce Department's National Voluntary Laboratory Accreditation Program (NVLAP) and the private American Association of LaboratorrAccreditation are the two largest accreditation bodies in the United States, but there are many other Federal, State, and local government, as well as private sector, laboratory accreditation Maureen Breitenberg, ***The ABCs of Standards- Activities in the United States,*** U.S. Department of Commerce, National Bureau of Standards, NBSIR 87-3576, May 1987, p. 10.

" See 'Commission Memorandum on a Global Apprpacb; Annex to Can(89) 329 final, ***Of*** No. C 267/2S (Oct. 19, 1989).

" USITC field interview with staff of the EC Commission, Jan. 8, 1990.

" ***Response of the Government of the United States of America to the European Community on (89) 209, A Global Approach to Certification and Testing and Proposal for a Council Derision*** Concerning ***Modules for Various Phases of Conformity Assessment Procedures*** (Dec. 11, 1989).

" 'Council Resolution 90 On a Global A$_{FF}$.,,ach to Conformity Assessment; passed Dec. 21, 1989;01 No. C 10 Gam 16,199.

6° Council of the European Communities, General Secretariat Press ***Release*** No. 89111045, '1382nd Internal Market Council Meeting," Dec. 21 and 22, 1989, p. 17.

" USITC field interview with staff of the EC Commis**, Jan. 8, 1990.

The Council did not finally act upon the proposed "modular" approach to conformity assessment because the European Parliament had not come forward with its opinion. Parliament is reportedly drawing up two reports—one on the EC Commission's overall policy statement and one on the modules. Parliament's opinion is expected by April 1990. Staff of the EC Commission predicted final Council action by June 1990.[92]

EC Commission Views

Field interviews with EC Commission staff in early 1990 confirmed that the EC does not presently intend to permit non-EC laboratories to become notified bodies. However, the EC Commission officials suggested that the issue is still under review.[93] The EC officials stated reassuringly that they had no intention of disrupting existing trade flows or of flouting their obligations under the GATT to accord U.S. suppliers nondiscriminatory treatment They indicated a willingness to allow EC "notified bodies" to subcontract work to foreign testing laboratories under the circumstances spelled out in the EN45000 and in the individual modules." The EC Commission officials also signaled a willingness to be responsive to third-country interests when developing the EC's own negotiating priorities for mutual recognition ents. The EC's priorities reportedly will ce **emphasis on those EC directives that will be implemented earliest, and on those areas where EC access to third country markets is restricted in some fashion.[99] At the same time, the question of whether uniform test methods will be used remains unanswered.[9']**

The officials reiterated that the proposed approach will not immediately pertain to many products, notably those subject to "old approach" directives. **(See Table 6-1.)[97] The EC** Commission has **stated separately that in addition to serving as the basis for conformity assessment for products subject to "new approach" directives, the modular approach proposed by the EC Commission will be used as a consistent basis for future product standards directives. The EC official explained that the EC has no intention to amend formally directives already adopted by the Council, even those which preceded the 1985 "new approach." However, the Commission said it expects that as a result of the acceptance of the global approach, it will have greater discretion for applying new approach modules to all directives adopted over the last 20 years. Once approved, the EC Commission reported that it will ao use the eight modules as a means to suggest appropriate approaches to conformity assessment in member state national legislation.[9']**

In response to a question about the significance of the Commission's emphasis on quality in the "Global Approach" document, the EC official stated that it amounted to an exhortation to the private sector to think very hard about accreditation, certification, and quality assurance programs in an effort to improve the overall efficiency and competitiveness of European industry. The Approach" is more than just an approach to ensure conformity to essential health, safety, consumer and environmental safeguards set out in "new approach" directives, he explained, it is a statement about the relationship of standards, testing, certification, and quality assurance to EC's overall industrial policy. The document will not only

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▪ USITC field interview with staff of the EC Commission, Jan. 3, 1990.

• According to EC Commission staff, the EC Commission's current thinking is that member states are not necessarily limited to notifying only bodies located in their territory. However, the EC Commission believes that the member state must have jurisdictional power over the "notified bodies.' The member state must be able to veri fy the conformity of the 'notified body' to the relevant EN45000 standard and must be able to take measures to withdraw the notification should the body prove to be substandard or operating in a manner inconsistent with Community policy. It is also expected that notified bodies will have a legal relationship with member-state authorities notifying them, but the thinking on what the relationship is and how it will be interpreted reportedly varies from member state to member state. As far as the Community goes, EC Commission expects the member state to be able to hold the notified body accountable for its conduct. The EC Commission will hold the member states directly accountable, i.e., the notified bodies will not have a direct relationship with the EC Commission. USITC field interview with staff of the EC Commission, Jan. 8, 1990.

[9'] The notified body will be ultimately responsible in all COOL

as USITC field interview with staff of the EC Commission, Jan. 8, 1990.

" When asked about this point in a field interview on Jan. 8, 1990, an EC Commission official stated that European bodies developing standards —CEN/CENELEC/ETSI —are being encouraged to develop test methods at the same time. However, the EC Commission has no plans to ensure uniform apOiation of essential requirements by the notified bodies. On other hand, the official continued, the EC Commission will be bringing together notified bodies for each directive so they

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can compare notes, consult on implementation, and discuss problems that have arisen. The notified bodies will be obliged to communicate with other notified bodies. The EOTC is likely to have some influence on development of test methods. This mechanism will also be effective in identifying problems that arise regarding the technical competence of particular notified bodies, he believed.

" When queried on this point, *an* EC Commission official responded that the global approach will not apply to products subject to old approach directives unless the old approach directives are specifically reexamined and changed. Such reexamination will only occur if there is a pressing need to reexamine the technical aspects of the directives. They will not be reexamined solely for the purpose of bringing them in line with the global approach. Nevertheless, he said, the global approach does represent overall thinking and currently policy about how conformity assessment should be approached in EC legislation, and therefore, it is a fairly far-reaching statement USITC field interview with staff of the EC Commission, Jan. 8, 1990.

" U.S. Department of State Telegram, Oct. 16, 1989, Brussels, Message Reference No. 13270, reporting on Oct 4-5 meeting in Brussels between U.S. Government and private sector presentatives and the EC Commission and CEN/C ELEC

" A representative of the Italian federation of industry, Confindustria, emphasized the linkage between standardization and industrial and trade policy. He noted that standardization can lead to an improvement in the level of technology in Europe, but imposition of higher standards also posed the risk of forcing adjustment costs on certain European firms. USITC field interview, Jan. 12,, 1990.

guide future Council actions in the area of conformity assessment, but will shape other policies related to standards that are, in the Commission's view, important for internal market cohesion and future industrial competitiveness, he said.=

Possible Effects

The precise impact of the Global Approach on U.S. interests is hard to assess at this time because it is difficult to determine how much the proposed EC policy deviates from current member-state practice, how much difficulty U.S. firms will have in meeting CEN/CENELEC or ETSI standards, and how U.S. firms will be affected if U.S. certification, testing, and inspection bodies are not accredited as competent to perform the testing, certification, and inspection required by some "new approach" directives. The U.S. companies that are likely to be affected most by the global approach are equipment makers operating under directives that require involvement of notified laboratories. These firms include manufacturers of telecommunications equipment, computers, pressure vessels, toys, as appliances, medical devices, metalworking machinery, certain mobile machinery, construction products, and personal protective equipment U.S. exports of such equipment to the EC have historically been very substantial.

The U.S. products affected by these directives are also among the products that are most likely to face technical barriers in the first place, according to consultants to the EC.[101] Thus, to the extent that the EC's "global approach" results in more cumbersome procedures being applied to U.S. products than to those originating in the EC, it could significantly reduce the anticipated gains by U.S. manufacturers from the standards component of the 1992 program. Conversely, if it results in less costly and time consuming procedures than is currently the case, the proposed EC policy could play a major role in knocking down testing-related barriers to U.S. products in the EC.

In theory, the creation of the EC-wide harmonized conformity-assessment procedures should make it easier for non-EC and EC suppliers to trade in the Community. Although a number of important issues need to be resolved that will have a major impact on the plan's ultimate effect on U.S. access to the EC market, it would appear that the conditions of testing and certification for non-EC firms under the proposed approach will be at least as liberal, and possibly more liberal, than the current situation. With few exceptions, mutual recognition of test results does not currently exist in the EC, thus forcing U.S. suppliers to undertake the costly and time-consuming repetition of tests and approvals for each member-state market [102] Bilateral agreements on the mutual recognition of test results exist for only a few of the U.S. products subject to EC technical regulations — notably, chemicals, pharma- ceuticals, food additives, medical devices, and low voltage electrical equipment Moreover, it does not appear that U.S. testing labs are currently accredited directly by member-state authorities as competent to perform tests and issue certificates of conformity.

Many large U.S. exporters and firms with extensive operations in the EC are encouraged by the EC's proposed approach, which they believe will reduce duplicative testing and certification requirements in individual EC member states and enable them to cut costs and gain scale economies in producing for a much larger EC market One-stop regulatory approval may make it easier for U.S. suppliers to take advantage of the entire EC market In many instances, U.S. manufacturers should be able to utilize manufacturers' declarations of conformity on an equal basis with their EC counterparts. Module A of the global approach permits such self-certification and does not require the involvement of either a notified laboratory or the registration of the manufacturer's quality system and is extensively used in "new approach" directives.

Moreover, many initial U.S. fears about the EC proposal have been allayed by recent assurances by EC officials. As noted previously, in January 1990, EC officials stated that in at least some instances, notified bodies will be permitted to subcontract lab tests and inspections to other testing organizations, including testing houses outside of the EC. [103] Furthermore, EC officials have assured U.S. testing bodies that manufacturers could seek out the help of U.S. laboratories (even ones that were not notified) to compile test data needed to have their products certified for sale in the EC. [104] EC officials have recently told U.S. industry officials that existing agreements regarding mutual acceptance of test results between U.S. and EC private bodies such as Underwriters Laboratories and the West German VDE will be permitted to stand in most cases. [106] Assurances about the treatment of proprietary business information and availability of

[100] USITC field interview with staff of the EC Commission, Jan. 8, 1990.

[101] The consultants identified the processed food, pharmaceutical, building material, electric product, machinery, and telecommunications industries as the industries most affected by technical trade barriers in the EC. Groupe MAC, *Technical Barriers in the EC: An Illustration in Six Industries,* vol. 6: *Research on the Cost of Non-Europe,* 1988, p. 4.

[102] Low voltage electrical products (domestic appliances, cabling, computers, medical equipment, and electrical accessories such as plugs and sockets) and bathroom fixtures have been cited as areas in which mutual recognition of test certificates among the member states has been successful, however. USITC field interview with UNI officials, Milan, Italy, Jan. 11, 1989.

[103] Dash, Straus, and Goodhue, Inc., letter to USITC, Feb. 20, 1990.

[104] Ibid.

[106] This is particularly the case in the nonregulated sectors. For example, the VDE would be permitted to retain its agreement with the UL Since the conditions under which the VDE agrees to have its private mark fixed to a product are set by the VDE and are not subject to many of the EC directives, (or not applicable, such as in the low voltage directive) in the unregulated sector, the VDE will still be permitted to accept UL test reports for a particular U.S.-made product and to affix the VDE mark. Dash, Straus, and Goodhue letter.

redress mechanisms have also been given.'[108] The primary objective of many U.S. manufacturers and testing organizations at the present time seems to be ensuring that any benefits accruing to EC firms as a result of the globalization and standardization of testing and certification requirements be accorded to U.S. firms as welL

However, if the technical harmonization directives or associated European standards, are discriminatory against non-EC suppliers, and there are indications that some are, or if non-EC suppliers are effectively forced to undergo more costly and time-consuming conformity-assessment procedures, the EC s proposed policy may result in declining trade opportunities for U.S. suppliers. Moreover, some U.S. firms may exit the market if EC ' ents force them to duplicate costly testing an verification procedures that have already been conducted on the same products for U.S. regulatory purposes. Some U.S. firms reportedly believe that the requirement for manufacturers to obtain registration of their quality assurance schemes might make it harder for them to export to the Ec Small and medium-sized companies with marginal sales will be the most hurt by the "worst case" testing and certification scenario, according to one industry officiaLm

Should U.S. manufacture's encounter increased restrictions in exporting their products to the EC countries, a growing number may choose to establish manufacturing facilities in the Community in order to assure markets for their products. Those U.S. manufacturers that already tc%eumdteuction ties in the EC may exprd or production there to achieve greater economies of scale and make up for their lost export markets. Moreover, third-country suppliers of manufactured products to the EC may try to increase their market share in the United States should the :•roposals cause a decline in their exports to the E

A number of U.S. firms, both small and large, appear to be responding to the EC's proposed policy on testing and certification bydesignir_v_ their M#ts to meet standards developed by CEN and EC. Often, manufacturers can self-declare conformity to EC requirements if they meet such standards. In this regard, it is important to keep in mind that as engineering specifications for products, standards represent technology.[109] A shift from U.S. to EC-based technology may have long-run implications on U.S. competitiveness and short-run implications for those U.S. organizations and professional societies that make a living marketing their technology and standards to U.S., EC, and third-country producers, such as the leading U.S. private standards developer, ASTM.[110] It is interesting to note that several EC officials indicated that standards of the American Society for Mechanical Engineers for pressure vessels have gained worldwide — and EC-wide — acceptance, but that products meeting these standards will still need to undergo third-party conformity-assessment procedures." Movement to CEN/CENELEC standards may thus effectively foreclose significant 'export' opportunities for U.S. standards developers.[112]

Prospects for 1990

The EC Commission has indicated its intention to formally propose a directive in 1990 clarifying the use of the CE mark, to set in motion the process for creation of the EOTC,[113] and to foster the sectoral elaboration of quality standards.[114] The directive on the CE mark will reportedly overcome differences inherent in "new approach" directives already proposed or adopted.[115] The EC Commission confirmed that the EC was making formal and informal efforts to promote improvements in the quality of EC products by setting up industry committees to develop quality

[107] Doting field interviews, EC Commission staff noted that the EN45000 series of standards requires notified bodies to protect confidential business information and to pcovide redraw mechanisms. The series also Restricts the information that notified bodies can require to only that to evaluate conformity to technical requirements. The EC Commission officials indicated that if the EC Commission has reason to believe that notified bodies are violating the principles of confidentiality, it will notify the member states informally and, if necessary, ask the member state to withdraw the notification of the offending body. USITC staff interviews with staff of the EC Commission, Jan. 8, 1990.

[107] USITC staff meeting with staff of the U.S. General Accountin_g_Office, Dec 19, 1989.

[111] US staff interview with official of the National Association of Manufacturers, Jan. 5, 1990.

[100] USITC staff interview with NIST official, Mar. 13, 1990.

[110] USITC staff interview with NIST official, Nov. 14, 1989.

[111] USITC field interview with staff of the EC Commission, Jan. 8,1990; with CEN/CENELEC, Jan. 8, 1990.

[112] USITC staff interview with representative of ASTM, Dec. 21, 1989.

[113] A draft Memorandum of Understanding between the EC Commission, the European Free Trade Association (EFTA), and CEN/CENELEC for the setting up of the European Organization for Testing and Certification, dated Jan. 19, 1990, was made available to USITC staff. As presently envisioned, the EOTC would serve as the focal point in the EC for all questions relating to conformity assessment In addition to lending technical support to the EC Commission and Parliament on proposed standards and certification legislation, it would provide a forum for the voluntary standards sector to discuss and act upon conformity-assessment issues. The organization would also facilitate the negotiation of mutual recognition agreements in the nonregulated sphere and ensure that the basic principles set forth above are safeguarded in such negotiations. The organization would be made up of a Council, a supporting administrative infrastructure, and various sectoral committees and discipline-oriented committees. The ultimate aim of the EOTC is to reduce costs and eliminate nonregulatory technical barriers by creating a dimate that will encourage private actors to mutually recognize each other's tests and certifications.

[114] In a field interview with USITC staff on Jan. 8, 1990, CEN officials indicated that medical equipment is one area where elaboration of EN29000 was required.

[115] U.S. Department of State Telegram, Oct. 16, 1989, Brussels, Message Reference No. 13270, reporting on Oct. 4-5 meetings in Brussels between U.S. Government and private sector representatives and EC Commission officials. During a field interview with USITC staff on Jan. 8, 1990, EC Commission officials indicated that the draft directive on use of the CE mark had not been prepared but should be drafted soon.

assurance schemes and by encouraging the use of "quality marks." There is some concern that both such schemes may discriminate against non-EC suppliers. While the "CE" mark will be reserved to indicate conformity of products subject to EC technical harmonization legislation and cannot be used as a "marketing" tool, EC officials report that they are pushing for a single mark of conformity to European (CEN/CENELEC/ETSI) standards.[118]

There are indications that bilateral meetings with the United States in 1989 served to convince the EC Commission of the need for flexibility in dealing with different testing and certification systems.[117] Meanwhile, the strong U.S. reaction to the Commission's original proposal and the clear U.S. statement of concerns may have been a factor in convincing the Council to water down the original "equivalent economic benefits, guaranteed in an identical manner" language. Although there appears to be high-level EC recognition of the need to deal with third-country concerns in an overall policy framework of expanding trade opportunities, the issues raised are numerous and complex. Resolving them is likely to be a difficult and time-consuming proposition.

Transparency in Standards Development

The "new approach" depends heavily on the availability of European standards. These will usually be prepared by the European standards bodies on the basis of mandates agreed with the EC Commission. CEN and CENELEC are based in Brussels and bring together the national standards bodies of the EC and EFTA. In the words of the United Kingdom's Department of Trade and Industry, "Those who participate most actively tend to have the greatest influence on the outcome."[118] U.S. participation in the standards-drafting activities of CEN and CENELEC is effectively limited to European firms and to U.S. companies with long-standing investments in the EC."[119]

Because of concern that U.S. companies were having difficulty gaining effective access to the EC's standards-setting process, U.S. Secretary of Commerce Robert Mosbacher proposed in February 1989 that the United States be given a "seat at the table" as direct participants or observers of CEN/CENELEC activities.[120] Although the EC rejected the concept of formal U.S. involvement, mechanisms put in place in 1989 appear to have increased the transparency of the EC's standards process, made it easier for U.S. suppliers to obtain information, and resulted in better mutual understanding of each other's systems, limits, and goals (see fig. 6.4121 Nevertheless, the U.S. Government and U.S. industry have a number of outstanding concerns about U.S. access to and influence over CEN/CENELEC. Meanwhile, proposals for systematic improvements in U.S. access were advanced in the Standards Code and U.S. officials responsible for agriculture and food-related regulations began a productive dialog with their EC counterparts.[122]

Actions Taken in 1989 to Improve US. Access

Under pressure to provide more information on standards under development, in April 1989 CEN and CENELEC began providing a monthly report on European standards being working on or planned for the future. On May 31,1989, Secretary Mosbacher and Internal Market Commissioner Martin Bangemann discussed U.S. concerns. Among other things, the two leaders agreed on the importance of transparency during standards-drafting and on the need to promote use of international standardization.m

"° USITC field interview with staff of the EC Commission, Jan. 8, 1990.

USITC field interview with staff of the U.S. Mission to the EC, Tan. 8, 1990.

"° The United Kinom's Department of Enterprise (DTI), *The Single Market: New to Tedmical Harmonization and Standards,* 2d ed., p. 6.

"° The Advisory Committee for Trade Policy and Negotiations EC92 Task Force, *Europe 1992: Report of the Advisory Committee for Trade Policy and Negotiations,* November 1989, p. 28.

[122] There have been few if any complaints about U.S. access to the work of the EC's third stanclardis-drafting body, ETSI. Membership in ETSI is open to all relevant organizations with an interest in telecommunications standardization—that is, telecommunications administrations, network operators, manufacturers, users, and research bodies—within the geographical area of the European Confederation of Posts and Telecommunications Administrations. Non-European organizations concerned with telecommunications may be Invited to participate as observers in the technical work of the organization. Two U.S. organizations, ANSI and the T-1 Committee of the Exchange Carriers Standards Association have already been given this status. An agreement has also been concluded between ETSI and ANSI on the exchange of information about their respective standardization work. EC Commission, Directorate General for Internal Market and Industrial Affairs, *Completing the Internal Market: The Rentaoal of Technical Barriers to Trade Nfithin the European Economic Community: An Introduction for Businessmen in the United States,* Brussels, Apr. 13, 1989, draft, p. 10.

un American National Standards Institute, 'ANSI Global Standardization News, September 1989, p. 25; U.S. Department of State Telegram, Oct 16, 1989, Brussels, Message Reference No. 13270, reporting on Oct 4-5,1989, meeting between U.S. Government and private sector officials and the EC Commission and CEN/CENELEC.

[122] In a Sept 6, 1989, meeting with EC Commissioners MacSharry (Agriculture) and Bangemann (Internal Market), U.S. Secretary of Agriculture Yeutter proposed, and it was agreed in principle, that the United States and the EC should formulate a dialog on the EC 92 agricultural standards-setting process, notably those relating to animal and plant health and processed foods. U.S. objectives in the talks are to ensure that the process is transparent, that the regulations that result are based on sound Scientific principles, and that further restrictions on U.S. access to the market are not created. U.S.

t of State Telegram, Oct. 6, 1989, Brussels, Message Department 12947. A formal meeting is expected in late spring 1990.

'[60] *U.S. Department of Commerce News,* No. G89-14, May 31, 1989.

Figure 8-6
Chronology of EC 92 standards-related events In 1989

Date	*Event and comments*
Jan. 23-24. 1989	IEC/CENELEC meet in Geneva; ISO/CEN meet in Lisbon on coordination and agreement for exchange of Information.
Feb. 24. 1989	U.S. Secretary of Commerce Mosbacher meets with R. I. Winkler, President of CENELEC, and H. Zurrer. President of CEN, on standards and certification.
Mar. 1, 1989	CEN/CENELEC issues first monthly activity report.
Apr. 1. 1989	First U.S. comment on CEN/CENELEC standards activity through ANSI.
May 9-10. 1989	ISO Executive Board discusses proposals to expand CEN/ISO information exchange and to increase U.S. Impact on ISO.
May 30. 1989	Secretary Mosbacher presses CEN/CENELEC officials for increased U.S. access at an early stave of standards-drafting work.
May 30. 1989	U.S. Secretary of Commerce Mosbacher meets with EC Commission officials—Joint communique resulting from discussion states that U.S. and Europe have shared goal of liberalization of trade and Investment.' Both sides underline their commitment to the work of international standards bodies and to the principle of the transparency in standardization. Both agree to the continuation of the recently initiated dialog between European and U.S. standards bodies as well as between officials. It Is agreed that a meeting of U.S. and European Community officials be held In Brussels later in 1989 regarding technical regulations and related standardization activity.
June 27. 1989	Letter from Presidents of CEN/CENELEC to their TC Chairmen restating CEN/CENELEC policy on use of International standards, advising them to consider comments received from national members of ISO/IEC outside Europe, and providing an opportunity for comments by non-EC interests at ad hoc meetings.
July 12. 1989	Meeting of IEC/CENELEC representatives on knplementation of IEC/CENELEC agreement on exchange of information. •
July 25. 1989	U.S. Department of Commerce public hearing to obtain private sector views about EC 92 standards. testing, and certification.
July 28. 1989	U.S. private sector meeting with CEN/CENELEC under auspices of ANSI. Decisions on mutual cooperation includes the following: • Resolve Issues of mutual concern. • Pursue transparency in standards development. • Strengthen relevancy of international standardization. • Expand ISO/IEC liaison with other organizations. • Develop informal arrangements when more formai mechanisms are not warranted. • CEN/CENELEC provides clarification on Europe's global approach to certification and testing.
August 1989	ANSI establishes Brussels office.
Aug. 17, 1989	Mosbacher letters to Winkler and Zurrer on transparency status, need to monitor operation of mechanisms agreed to in May.
Oct. 4-5, 1989	U.S. Department of Commerce meeting (Including private sector representatives) with EC Commission and CEN/CENELEC representatives. • In discussion of standardization issues, both sides note the positive results of meetings held on July 28, 1989, between the U.S. and European standardization bodies and reaffirm their commitment to the work of international standardization bodies and to the principle of transparency. • Experts from both sides compare U.S. and European Community systems for conformity assessment, with a view to preparing future discussions on arrangements for mutual recognition of tests and certificates.
Nov. 27, 1989	National Institute of Standards and Technology announces Apr. 3. 1990, public hearing on effectiveness of U.S. participation in international standards activities.
Dec. 21. 1989	EC Internal Market Council passes general resolution giving go-ahead to the proposed *Global Approach to Testing and Certification.* The approach will be used to assess conformity to all *new* approach" directives.

Source: American National Stand -ds Institute and U.S. Department of Commerce.

Apparently in response to the Mosbacher-Bangemann understanding, in June, CEN/CENELEC reiterated that, to the extent appropriate, they will base their work on existing international standards. Where no international standards exist, they agreed to refer new and planned regional standards work to ISO and the IEC, bodies in which the United States also participates. If international standards can be developed within the timeframe mandated by the EC Commission, the bodies committed to adopt the resulting international standard.

CEN/CENELEC also stated that it would open its standards for comments throughout its standards-development process, including when initial work plans are proposed, when initial drafts are published, and when the draft standards are to be voted upon.[124] CEN/CENELEC also agreed to allow technical committees to receive presentations from third-country experts, provided such representations do not result in a delay of the technical committee's work.[125] A meeting held in Brussels under the private sector auspices of CEN/CENELEC and the American National Standards Institute (ANSI) resulted in a number of private cooperative arrangements.ve

Additional progress in ensuring cooperation between the EC's regional standardsmaking bodies and the international standards bodies was also achieved in 1989. CEN/CENELEC and the Secretariats of ISO/IEC agreed to hold semi-annual consultations on their future work programs and reporting relationships between technical committees were also established.[127] In addition, CENELEC agreed to adopt IEC standards at the same time IEC voting takes place and has reportedly agreed to indicate deviations from international standards to make it easier to compare the two sets of requirements.

Effects of 1989 Actions on U.S. Access

The steps taken by CEN/CENELEC in 1989 were viewed as positive by U.S officials and business interests.[128] As a result of the CEN/CENELEC decisions, any interested U.S. party, whether or not a member Of ANSI, may now obtain a monthly status report of CEN/CENELEC standards-drafting activities;[129] obtain draft and final CEN/CENELEC standards, mementos, and catalogs through ANSI; and submit written or oral comments to CEN/CENELEC through ANSI or directly to the Central Secretariat.[130] Indeed, some experts have suggested that the United States now has more access to the EC's standards-drafting process than is currently being used.[131] According to one trade association official, the EC has been responsive to U.S. concerns about the transparency of standards-drafting policies and the "ball is m our court" to test the system.'[132]

A few U.S. firms seem to be taking advantage of the new communications channels. In January 1990, CEN/CENELEC reported that it had 60 subscribers to its monthly update of activities, most from the United States.)[133] The American National Standards Institute reports that ad hoc meetings between U.S. interests and CEN technical committee members have taken place regarding quality systems for medical devices. ANSI also reports that an ad hoc meeting is planned for medical device sterilization and a presentation by the U.S. upholstered-furniture industry is Comments from several U.S. interests regarding draft CEN standards have also been forwarded through the channels set up in 1989. CEN/CENELEC recently reported that it anticipates more comments from U.S. interests as the pace of European standards work quickens over the coming year.[134]

[114] The decision was transmitted to chairmen and secretaries of the technical bodies of CEN/CENELEC by a letter jointly signed by the presidents of CEN and CENELEC and dated June V, 1989.

[115] American National Standards Institute, *ANSI Global Standardization News,* September 1989, p. 30.

[116] For a useful four-paige summalyof the meeting's accomplishments, see Joint ANSI CEN/CENELEC News Release, "U.S.-European Private Sector Vows Cooperation on Standards, Testing, and Certification," Aug. 3, 1%9. Additional meetings are scheduled for Mar. 11-14,1990.

[123] /vlinutes of ISO Executive Board Informal Meeting. Sept. 20, 1989. The adequacy of overall ISO/CEN liaison will be considered by the ISO Executive Board at its Ma y1990 meeting. The cooperation arrangements between IEC/CENELEC are set forth in an agreement dated October 1989 and approved by IEC on July 13, 1989, attached to a Letter to Secretaries of all IEC Technical Committees and Subcommittees, Aug. 31, 1989, from A.M. Raeburn, General Secretary, CENELEC.

[130] Privately, many concede that it would be difficult for the EC to meet Secretary Mosbacher's demand for "a seat at the

[a —Continued]
table." For one thing, it could create problems in terms of "where to draw the line" —Japan, Canada, and Korea are all reportedly interested in being at the table too. Second, it could mean the ad hoc re-creation of the international standards bodies—an unnecessary and potentially counterproductive step.

[133] The monthly CEN/CENELEC report, entitled *Ongoing Review of Activities in European Standards,* is available in the USITC library and is summarized in ANSI's monthly newsletter Standards Action, a benefit of ANSI membership. The CEN/CENELEC monthly report is available for direct subscription from the CEN/UNELEC Central Secretariat, Rue Brederocie 2, bte 5,1000 Bruxelles, Belgium. (For price quotations for subscriptions contact Mr. D. Kuhn, Tel. 011-322-519-6848).

[134] Interested firms are encouraged to contact the American National Standards Institute, 1430 Broadway, New York, NY, 10018, tel. (212) 354-3300. A publication explaining how U.S. firms can effectively monitor and influence CEN/CENELEC standards-drafting work, entitled "An Update on European and International Standards Issues," *ANSI Global Standardization News, vol.* Z was published in January 1990 and is available from ANSI. Finns with particular concerns may also wish to apprise officials at the U.S. ent of Commerce's Single Market Information Service, (2) 377-5V6, and/or National Institute for Standards and Technology,(301) 975-4029, and the Director for Technical Trade Iarriers, Office of the United States Trade Representative, (202) 395-3063.

USITC staff interview with official at the American National Standards Institute, Washington, Nov. 22, 1989.

[a] USITC staff interview with official of the National Association of Manufacturers, Jan. 5, 1990.

USITC field interview with CEN/CENELEC officials, Jan. 8, 1990. The largest proportion of U.S. subscribers are in the medical equipment field, the officials indicated.

[134] U.5 Department of Commerce, briefing paper for public-private delegation to Oct. 4-5,1989, meetings.

The possibility of using the international standards bodies as a means of influencing CEN work was also taken advantage of. When CEN announced that it planned to draft new sterilization standards for medical devices, the U.S. professional association responded by prop to begin ISO work in this area through ANSI. The Association for the Advancement of Medical Instrumentation (AAMI) reports that agreement by ISO to begin work is fairly certain. CEN, meanwhile, has indicated an interest in coordinating work plans and exchanging technical information with AAML The challenge now, AAMI acknowledges, will be in making the system work fast enough to provide meaningful input into the CEN final standards. [135]

U.S. firms also have indirect access to working drafts, through the reporting relationships mlen CEN and ISO Committees established in 19119. [138] A CEN working group in the petroleum area has been accepting US. comments through the ISO observer. The technical committees of CEN and ISO had a joint meeting and agreed to share working documents. [137]

Outstanding U.S. Concerns

Despite these improvements, the U.S. Government has eepteseed concern that U.S. influence over amEN/CENELEC depends to a large degree on indirect access through international standards bodies, and certain feeble= in this tave Eheen reporbetlas Concern about MINEL duplication of work already under way in ISO/IEC has surfaced, notably in the area of refugerationequipmentue Moreover, at least one instance of CEN efforts to replace an internationally agreed standard in favor of its own has been cOnfirMed. [1443] One U.S. official opined that in areas where there has been no work yet on particular standards, it's basically "too late" to internationalize an EC 1992-related standard. However, where there is ongoing work, CEN/CENELEC have reportedly been willing to wait for its fruition. [141]

Timely access to information remains a problem, U.S. industry sources report. [142] Firms without investments in the EC are likely to face continued difficulties. [143] CEN/CENELEC's monthly report on standards-drafting activity has been criticized by some as not being timely, complete, or easy to decipher. [144] Another major unresolved weakness of the system is that non-ANSI members and CEN standards with no corresponding ISO committees are twit well supported. [45] Many smaller U.S. businesses do not have the resources to monitor EC 1992-related developments or to undertake the substantial financial burden of participating

as USITC staff phone cotrremation with repreeentativeof AMC, Feb. 7, 1990.

"" The anangaments *are* spelkd out in ISO Central Semniasiat case noon ofSept. 18, 1989, and in a January *IWO* "Agesement on Endwise Information between ISO and CRI V

US1TC 'toff interview with official at ANSI, Wallington, Nov. 22, 1909.

'es U.S. firms in the lumber, carpet, upholstery, and tactile indunries are ad reportedly difficulty in successfully influencing the international process, according to an informal communication from an official at the US. Department of Commerce on Feb. 21,1990.

[1"] Gary W. Kushnier,A m Vice President, Standards Tectuniogy, ANSI, letter dated Dec. 14, 1989. The Air Condabon mdaltekation Institute expressed concern recent activities, partly because it appeared to depart from its stated policy to avoi igricatice of work at European and international levels, and y because the a vdy was not reported in CEN/CENELE s monthly *Ongoing R mof Activities in EN* Standards. These concerns were transmitted throu ANSI to ISO/IEC. As a result of an IEC inquiry into the tion, CENELEC agreed to cooperate within a new working group in IEC for the preparation of standards in the area of heat pumps, air conditioners, and humidifiers. ISO sent an inquiry to CEN the All alleptions and proposed that an exchange of nication between CEN and ISObe otganized. ARI is *acreadaring* next steps. USITC phone conversation with MU officials, Fels. I, 1990.

[140] ICushnier letter. The standard in question dealt with safety **requitemenb** for power lawnmowers and related testing procedures. The product is to an EC 1992 standards directive. *(See* **USITC, e**ats *EC* Integration, USITC Publication 2filt, fora ' treatment of the directive's requirements and its potential impact on U.S. firms.)

"t USITC staff interview with MST, Sept 11, 1989.

[141] USITC stiff interview, Jan. 4, 1990. Apparently CENCENELEC• technical committees have been instructed that they are not permitted to share early drafts with non-European interests. Theme drafts would provide important dues as to the direction and ultimate outcome of CEN/CENELEC work,, and if provided, would give U.S. sulladditional leadtime to impend. Mso, the ANSI mon *Standards Action* apparently has not reported on certain 1 ted developments, such as CEN's final adoption of the West German toy standard in ce to completing work on a draft ISO standard. communication from the U.S. Department of Commerce, Feb. 9, 1990.

In a field interview with USITC staff on Jan. 8, 1990, a representative of the Belgian Institute for Normalization (IBN) stated that firms that do not actively participate in industbryy federations effectively cannot participate in CEN/CENELEC work, because such trade associations nominate the experts to senre on drafting committees. In an interview on Jan. 11, 1990, standardization efforts in Italy, an official of the lr= Lis standardization institute UNI noted that the drafting proems p_tovides for comments, ostensibly from the public but actually Iran only a selected group of less than 150 interested parties:, including consumer and industry groovy. firms that want to participate in the process should, suggested, seek membership in technical committees rather than rely on the 'public' comment procedure. He noted that UNI prefers to deal with industry associations rather than with individual firma.

[144] U.S. Government Interagency Task Force on the EC Internal Market, *An Assessment of Economic Policy Issues Raised by the Ewen Community Internal Market Program for* 1992, March 1990 (forthcoming), section on standards.

[40] *ANartidpates* through the U.S. National Committee of the IEC. ETSI members are not represented in either forum. Informal communication from the S. Department of Commerce, Office of European Community Affairs, Feb. 28, 1990. In an interview with USITC staff on Dec. 18, 1%9, one trade association official stated that the current mechanisms in place in the United States to arrive at a consensus for U.S. comments on CEN/CENELEC work are too cumbersome. By the time comments work through the existing mechanisms, he said, they may *be* too late to influence CEN/CENELEC work Moreover, if there is no corresponding ISO/IEC activity, the United States would not have a U.S. technical advisory group through which to submit comments from particular U.S. firma.

meaningfully.[148] It has also been difficult for U.S. suppliers to actually get CEN/CENELEC standards. Member bodies publish such standards, not CEN/CENELEC, and delays in publication have been reported. Moreover, the Commerce Department's MST reportedly does not have the budget to purchase CEN/CENELEC standards.[147]

Officials from the U.S. Department of Commerce and the U.S. private sector met with expels from the EC Commission and CEN/CENELEC during October to discuss U.S. complaints.[148] During the meetings, Assistant Secretary of Commerce Duesterberg expressed concern that CEN may not be using ISO standards consistently and noted selected instances when European delegates either refused to begin international work or when there appeared to be a slowdown in international work after CEN committees were formed in the same area.[14]. The U.S. side claimed that U.S. standards developers are compelled to offer full national treatment in standards development by regulatory and judicial requirements.m By contrast, the U.S. side asserted, the EC affords no national treatment to standards experts of non-European countries and has offered only indirect participation, and this may be flawed by the problems noted already. It was agreed that the U.S. Government and the EC Commission would continue to monitor and discuss the effectiveness of mechanisms set up in 1989 to improve the transparency of CEN/CENELEC's standards development process.[151]

The EC believes that the internal rules of CEN and CENELEC have reinforced the implementation of international standards within Europe. The results of CEN/CENELEC work are always communicated to the international standards bodies, the EC Commission claims, and further development of international standardization work is taken into account at the European level. The EC argues that 1992-related standards-drafting activities will have the effect of reducing technical barriers in the EC by limiting the number of member-state deviations from international standards.[152] A "green paper' on the future development of voluntary European standards, which will address CEN/CENELEC and ETSI procedures, is expected in late 1990.

Proposals for Strengthening the Standards Code

Proposals for systematic improvements in U.S. access were tabled in the Tokyo Round Standards Code.[1]sa Some experts have expressed cautious optimism that U.S. concerns about the lack of transparency in regional standards development could be addressed systematically— if not completely — by improvements in the code being discussed during the Uruguay Round. These experts were less sanguine about the prospect for addressing barriers related to regulations formulated in terms of processes and production methods (PPMs). The Code's lack of clarity on that point made it impossible for the United States and the EC to resolve their dispute over hormone treated beef via the Code's dispute settlement procedures, and led the United States to resort to unilateral action under Section 301 of the Trade Act of 1974.[154]

In the code renegotiations, the EC is apparently pushing for greater transparency. in the U.S. standards-drafting system, at both the private and local government level It is also calling for increased U.S. efforts to adopt international standards.[156] A recent statement by the EC Commission suggests that failure by the United States to give on these points may cause the EC to reexamine current U.S. access to CEN/CENELEC.[15]•

Domestic Considerations

Other challenges lie ahead. The pace and complexity of the 1992 program made it imperative for the U.S. Government and private sector to develop effective mechanisms for identifying and

·4[8] See, for example, Thomas J. Duestedierg, Assistant Secretary of Commerce for International Economic Policy, letter to Manuel Peralta, President, ANSI, Sept 18, 1989.

USITC staff interview with NIST, Sept 11, 1989.

"[6] See the Joint Press Communique issued on Oct 6, 1989 'Talks between U.S. and EC Commission Officials on Standardization and Certification.'

'[6] USITC staff interview with the National Machine Tool Builders' Association, Jan. 4,1990; U.S. Department of Commerce, informal communication, Feb. 9, 1990. In the area of machine tools, there was concern that EC member states were blocking the initiation of international work on machinery safety standards, a work effort that had been proposed by the United States in the past but was blocked primarily by European votes. In 1989, in an effort to influence the outcome of CEN standards relating to the machinery safety directive, the U.S. proposed formation of a subcommittee on industrial automation/manufacturing systems safety in ISO. CEN reportedly recently agreed to withdraw its objection for bubation of standards-drafting activity in ISO on safety in industrial automation, but there has been difficulty attracting European particints in the international effort and it is not clear whether CEN will ultimately accept the ISO standard when it becomes available.

[163] One U.S. trade association stated that there is no assurance that comments given to CEN/CENELEC will be considered. CEN/CENELEC do not formally reply to commenters, informing them of the disposition of their comments. In the U.S. voluntary system, the representative continued, ANSI requires standards developers to respond to all comments. USITC staff interview, Dec. 18, 1989.

[161] U.S. Department of State Telegram, Oct. 16, 1989, Brussels, Message Reference No. 13=19, reporting on Oct. 4-5, 1989, meeting in Brussels.

[162] EC Commission, Directorate General for Internal Market and Industrial Affairs, *Completing the Internal Market: The Removal of Technical Barriers to Trade Within the* European *Economic Community: An Introduction for Businessmen in the United States,* Brussels, Apr. 13, 1989, draft, p.5.

[161] Fora discussion of these proposals see ch. 16 of this report.

[164] USITC field interviews with representatives of several countries' Missions in Geneva and the GATT Secretariat, Jan. 12 1990.

[106] USITC field interview, Jan. 12 1990.

[166] EC Commission, DG for Internal Market and Industrial Affairs, *Completing the Internal Market: Removal of Tedtnical Barriers: An Introduction,* Jan. 8, 1990, p. 5.

defending U.S. interests in the EC. The EC's standards agenda was also serving as a catalyst for rethinking how standards should be developed, how they relate to overall industrial competitiveness, and what role governments should play in ensuring that they do not become unfair barriers to trade.

By early 1990, several ideas had been floated for greater U.S. Government-private sector cooperation, including formation of a "national standards council," creating a "national partnership," and establishing a new wivernment advisory group on 1992 standards. On February 1, 1990 the retary of Commerce announced the creation of a new advisory committee on EC 1992 standards, testing, and certification issues. Among other things, the Committee will "provide essential advice regarding the EC '92 program to create a single standards policy; the impact on U.S. competitiveness resulting from the Community's program; and the strategies for improving the coordination and cooperation of U.S. federal, state, local, and private sector standards activities." [157]

The challenge posed to U.S. industry by 1992 also called into question certain aspects of the privately funded and highly decentralized U.S. standards-drafting, product-testing, and lab accreditation system. Some believe that it is ill equipped to deal with the EC's well-organized and far-reaching standards agenda. Others warn that the declining influence of American standards abroad will dampenprospects for future U.S. sales and ultimately diminish the capacity of U.S. firms to retain their technological edge. [168] At stake, they suggest, is not just the EC market, which will emerge after 1992 as the world's single largest, but the growing markets of developing nations, such as Brazil, India, and Saudi Arabia. From this perspective, responding to the 1992 standards may be a far more daunting and difficult enge.

Profile of the U.S. System

A few facts help explain these fears. The private U.S. standards system is entirely voluntary. [159]

More than 250 organizations in the United States are actively involved in drafting standards. The standards developers include scientific and professional societies, trade associations, and bodies whose livelihood is derived from formulating standards. Among the leading organizations involved are the American Society for Testing and Materials (ASTM), the Society for Automotive Engineers (SAE), the Aerospace Industries Association (AIA), the Institute of Electrical and Electronic Engineers (IEEE) and the American Society of Mechanical Engineering (ASME). [180] Funding for U.S. standards-setting organizations generally comes from the private sector, including producing and consuming industries. Very little, if any, money comes directly from the U.S. Government.

The system does have an umbrella body — ANSL ANSI represents the United States in ISO and in the IEC, [161] and is the official liaison body for CEN/CENELEC. ANSI does not draft standards itself, but rather coordinates private sector standards-drafting activities and sets the ground rules for their development. Standards developers may submit standards drafted under • these procedures for acceptance as American National Standards. [112] However, ANSI membership does not include all U.S. standards developers, and only about 20 percent of the private standards developed in the United States have become American National Standards. [103]

U.S. firms have not been particularly active in international standardization efforts. In 1988, for example, the United States ranked fourth in terms of ISO secretariats held, behind France (15.6 percent), the United Kingdom (17.0 percent), and West Germany (17.6 percent). [164] The United States does hold secretariats in many of the more economically significant areas, such as information technology, aerospace, petroleum products, plastics, and fiber optics. Partly because of the lack of U.S. participation, fewer than 30 of the more than 38,700

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[157] The committee's formation was announced in the Feb. 1, 1990, *Federal Register,* vol. 55, No. 22, p. 3440. The committee is slated to hold its first meeting soon.

[158] For example, a recent report from MST suggests that U.S. standards are not being promoted as aggressively as are those of other countries. The report warns that "If U.S. interests are not adequately represented in international standardization forums, then there is a great danger that specifications written for procurements by developing nations will be less favorable to the U.S. in rapidly growing markets.' Patrick Cooke, U.S. t of Commerce, National Institute for Standards and Mrtteg; , *A Review of U.S. Participation in International Standards Activities,* NBSIR 88 3698, January 1988, p. 15.

[159] It is interesting to note that the private sector accounts for fewer than half (43 percent) of the standards existing in the United States today. Ali told, the U.S. Government's share of the United States",89,000 standards was 57 percent as of March 1989. The U.S. Department of Defense alone has developed 37,000 standards; other Federal Government agencies, notably the General Services Administration, accounted for another

t°l —Continued

5,300. Robert Toth, R.B. Toth Associates, March 1989, as cited in Kruger, *International Standardization,* p. 12

[160] For a brief description of these bodies see, U.S. Department of Commerce, NIST, *Standards Activities of Organizations in the United States,* NBSSP 681.

[161] Through the U.S. National Committee of the IEC.

[162] As reported in ANSI's pamphlet, *Questions and Answers About the American National Standards Institute.*

[163] Only about 35 percent of the total number of private organizations that conduct standardization activities in the United States belong to ANSI, according to Kruger, *International Standardization,* p. 11.

[164] Patrick W. Cooke, An *Update of U.S. Participation in International Standards Activities,* U.S. Department of Commerce, NIST, July 1989, p. 10.

privately-developed standards in existence in the United States today are ISO or IEC standards. [1]e[5]

A number of reasons have been cited for the low participation rate of U.S. firms in international standards organizations. First, participating in these organizations can result in substantial expense. Second, foreign markets, until recently, have not been key elements in the business strategies of many U.S. firms. Therefore, often only the biggest and most internationally oriented U.S. companies can justify the expense of participating in ISO and IEC. [1] es Third, some claim that the international standardization process often does not result in a relevant standard in a timely fashion. Others say that many international standards are based on the metric system, embody U.S. technology, [167] or codify existing terminology and measurements.

Standards Systems of US. Competitors

The system stands in sharp contrast to those of other developed and newly industrializing economies. Most of these countries have a single umbrella organization for all their standards-drafting activities and such bodies receive substantial government support, unlike ANSI. The Governments of Japan, South Korea, and Mexico provide all of the funding for their national representative bodies to ISO; the Canadian Government funds 89 percent of its ISO representative's activity; and EC countries also provide substantial funding. [1]U Not surprisingly, such countries have been more active than the United States in ISO and IEC.

Europeans reportedly dominate the proceedings in ISO because they vote together and account for 40 percent of ISO dues.les All told, the United States held 12 percent of the available ISO secretariats and 16 percent of IEC secretariats in 1988. European countries (the EC plus European Free Trade Association) together accounted for 67 percent of the ISO secretariats and 69 percent of the IEC secretariats. [170]

Implications: 1992 and Beyond

The fact that the United States' major economic competitors more actively participate in international standards work means that the EC's assurance that CEN, CENELEC, and ETSI will base their standards on international standards provides little comfort to U.S. firms. Furthermore, the belated interest of some U.S. industries in the international standards system has apparently undermined their effectiveness in using available ISO/IEC channels to protect U.S. interests in the EC. [171] Moreover, the ISO/IEC policy of "one country, one vote' means that EC member states could readily outvote the United States in their international standards decisions.' [72] There is a real possibility that standards developed as part of the 1992 program will become "supeistandards," dominating world commerce, one expert claimed.' [73]

There are also indications that EC member states, Japan, and Korea have been quite active in promoting their standards in developing country markets, --- something which is done sporadically, if at all, by most U.S. standards developers because of their limited financial resources. [175] Some developing countries, such as India and Brazil, are relying heavily on technical experts from national standards institutes in the EC and Japan to develop their own bodies of national stan ds. Indeed France and West Germany's long standing efforts have been characterized as an "engineering Peace

'" Responding to European criticism for the United States' poor track record for adopting international standards made during Oct 4-5 meetings, all four private U.S. organizations (ANSI, ASME, ASTM, IEEE) noted that hundreds of U.S. standards had been adopted in terms of content by ISO and IEC. ASTM noted that in several of its publications they show equivalence to the international standards, and these are tabulated for use in their publications. However, the fact that there is little cross-referencing between U.S. and international standards means that many U.S. firms do not realize that their products actually comply with international standards.

as Kruger, *International Standardization,* p. 14.

[1]'" Notably in photographic materials, information technology, aerospace, petroleum, plastics, oil and gas, and packaging materials.

" Notably, West Germany (20 percent), the United Kingdom (17 percent), France (40 percent), and Italy (25 percent). *ISO Member Bodies,* 5th est, 1985, as cited in Kruger, *International Standardization, p.* 11.

'" USITC staff interview with representative of ASTM, Dec. 21, 1989.

[1]'" Cooke, *An Update of U.S. Participation, p.* 10.

During a field interview on Jan. 12, 1990 with USITC staff, an ISO representative noted that the 1992 program had renewed the interest of some U.S. firms in international standards. He suggested that the United States has little credibility in criticizing the EC, however, given its poor track record of adopting international standards and unwillingness to devote the time and resources needed to participate meaningfully.

[1]'" Bloc voting in ISO/IEC by the national standards institutes of the EC (and EFTA) has yet to materialize, but the EC reportedly intends to seek international acceptance of voluntary European standards developed in line with its InternalMarket [illegible]. U.S. industry is concerned about EC influence over I[illegible]In, particularly the possibility of U.S. representatives being outvoted in that forum.

'" USITC staff interview with R.B. Toth Associates, Jan. 2, 1990.

14 See, for example, Patrick W. Cooke, National Bureau of Standards, *A Review of U.S. Participation in International Standards Activities,* NBSIR 88 3698, Washington, January 1988, pp. 15-16.

'" In oral testimony before the House Science and Technology Committee, July 25, 1989, hearing on standards and U.S. competitiveness, Joseph O'Grady, President, ASTM, said that countries such as West Germany, France, and the United Kingdom promote their standards through financial and other means. In addition to government funding for training of foreign-country standards experts, these countries pay for the stationing of standards experts in such markets, provide documents free of charge, translate documents, provide laboratory equipment, build buildings, and hold seminars to promote use of their standards in third-country markets. The U.S. standards official said that organizations such as his 'cannot begin to compete with the European programs.'

Corps" intended to promote their own exports to Africa and Latin America [178]

Reports of lost markets for U.S. firms in countries such as Saudi Arabia because of discriminatory, European-based standards prompted the Congress to authorize the ant of Commerce's National Institute of Standards and Technology (NIS'T) to organize U.S. participation in such erts. All funding for the pilot program was, however, to come from the private sector. Funds raised have thus far fallen woefully short of levels needed to accomplish the program's goals.'

The System is Broken

The cony of "bad news" and the 1992 challenge from Europe led some analysts to wonder aloud whether the voluntary U.S. standards system was equipped with sufficient resources to effectively serve U.S. commercial interests abroad In today's challenging international environment They claimed that the fragmented nature of the U.S. standards-setting system was making coordination difficult and action slow, dulling the influence of American standards and undermining the competitiveness of U.S. products, both at home and abroad. In some sectors, such as data processing equipment, U.S. suppliers and U.S. technology are the preeminent leaders. But in areas like machine tools and heavy electrical equi t, U.S. suppliers are /mins markets left ri t," one expert claimed. Standards "playa significant role" in this equation, he continued.

At least part of the problem appears to be an unwillingness by the United States to participate in and support standards-drafting activities, both at home and abroad.[17]a According to one standards expert, U.S. suppliers tend to view North America as their primary market, whereas Japanese and EC suppliers look at the world as their market, and use international standards to serve it. U.S. antitrust law, and a landmark decision by the Supreme Court in 1982,[180] have also apparently had a chilling effect on private U.S. standardization activity. To the extent that the U.S. Government is involved in international standards organizations—essentially the treaty organizations such as the Codex Alimentarius Commission, the Consultative Committee for International Telephone and Telegraphy (CCITT), the Organization for Economic Cooperation and Development (OECD), and the United Nations Economic Commission for Europe (ECE) — vagaries of government funding, public policy, and politics have apparently resultedin sporadic or ineffective U.S. participation.[181] The United States is reportedly losing market share—in countries such as Brazil, China, India, the Philippines, and Turkey—because of these problems.[1a2]

Foreign suppliers, particularly those in the EC, complain that the size and complexity of the U.S. system poses a formidable nontariff barrier to non-U.S. firms. Moreover, some believe that the self-funding nature of the system biases it towards big producers, and away from smaller firms, user industries, and consumers.[183] The EC's centralization and harmonization of conformity assessment structures— and its original demand for assurances of "equivalent" guarantees before concluding mutual recognition agreements with the United States — led many to wonder whether a similar system in the United States would provide greater assurance of laboratory competence and make easier the negotiation of mutual recognition arrangements with the EC and other major U.S. trading partners.[184]

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17. Robert F. Legget, Standards in Cana*, December MO, p. 216, as cited in Kruser, *International Standardization,* p. 23.

In The $85,000 raised was about one-third of what would be necessary to send one U.S. technical expert to Saudi Arabia for I year original plans called for three technical =perk to be sent. West Germany apparently has an easier time raising such funds from theprivate sector; It took just 20 days to raise $5 million for an effort to use of German standards and technology in China. Floc a detailed amount of these developments see Kruger, *International Standardization,* pp. 20-2a

17* USITC staff interview with R.B. Toth Associates, Jan. Z 1990.

"s One U.S. Government official involved in international standards activity stated that —

> We're *having ilsramdty getting U.S. industry to show sufficient connnstment and be active enough in the international standards setting process. .. Part of the* reason is *the long history of deferring to a few U.S. companies, and someone,a few m(widuals to carry the day for* us... *But an equally ortmn factor is the 'thirst quarter balance sheet' muddily. This makes it had for companies to justify sending someone off to Geneva to negotiate for three or four weeks when the outcome won't* mean *anything* to *the* company for *four or fax years. And as* =n *does a little belt tightening, it becomes harder and* 6 plonk *activities which correspond to long-haul strategic Interests rather than immediate advantages.*

Remarks of Ambassador Diana Lady Dougan on May 5, 1987, as reported in U.S. Department of Commerce, National Bureau of Standards, *Proceeds*, of Conference on Standards and Trade,* NBSIR 87-3573, June 1987, pp. 7A-25.

1.3 *American Society of Mechanical Engineers v. Hydroid:lel,* 456 U.S. 556 (1982).

'"' See, for exampk, statement by Donald Abelson, Director, Technical Trade Barriers, Office of the United States Trade Representative, Apr. Z 1985, as cited in U.S. Department of Commerce, National Bureau of Standards, *Proceedings of Conference on International Standards,* NBSIR 85-3228, August 1985, p.. 3.

USITC staff interview with R.B. Toth Associates, Jan. Z 1990.

'" The U.S. Federal Trade Commission (FTC) held hearings on standards and certification in the early 19801 and uncovered 'substantiated complaints of individual standards and certification actions that have, in fact, unreasonably constrained trade or deceived or otherwise injured consumers.' Bureau of Consumer Protection, Standards and *Certification: Final Staff Report — April 1983* (FTC, Washington, DC, April 1983), p. 2. In *The ABC's of Standards-Related Activities,* Maureen Breitenberg states that 'In part, problems result from the sometimes substantial costs of participation in standards development, making it difficult (if not impossible) for small firms and non-industry representatives to be active in the process.' Fear of government intervention reportedly prompted changes in the procedures of the private standards developers, including provision for due process and more widespread participation.

1.4 In oral testimony before the House Science and Technology Committee, July 25, 1989, hearing on standards and U.S. competitiveness, an IEEE representative indicated that conformance testing and certification should be considered a

The U.S. Department of Commerce's MST announced in the November 27, 1989, *Federal Register* that it was conducting a public hearing n April 3, 1990, to assess the effectiveness of U.S. participation in international standards activity and to solicit views on how it might be improved. A subsequent communication of December 20, 1989 suggested that thought was being given to strengthening the role of the U.S. government in promoting U.S. standards overseas; funding U.S. participation in international and regional standards forums; and in accrediting testing laboratories, certification bodies, and quality system assessors. The Standards Council of Canada was put forth as a model which might reasonably be emulated in the United States.[185]

The System is Sound

Others claimed that "the quality of U.S. standards is readily apparent since many of our standards are 'de facto' international standards because of their extensive use."[186] Leaders of the voluntary standards community countered criticism of the existing system by suggesting that the United States' private voluntary standards system has substantial strengths, as shown by the U.S. Government's own policy of placing ever more reliance on it for purposes of procurement and defense-related design.[187] They viewed the timing of such skepticism as ironic, given the EC's historic decision to place greater confidence in privately developed standards as part of its 1992 program. Moreover, they warned that, to the extent it undermined the confidence placed in the U.S. voluntary system by international and regional standards bodies abroad and by domestic firms at home, such criticism was counterproductive in view of the system's need to "gear up" in response to 1992.

Market-based work efforts and the self-funding and self-regulating nature of the system were among the system's strengths, many U.S. business representatives claimed, particularly at a time of federal budget constraints. They urged a more active partnership between the Government and the private sector to identify key issues, develop effective strategies, and define their respective roles in meeting them.[188] An enhanced Government role in terms of disseminating information, emphasizing the importance of international standards, supporting small business participation, and funding standards development work was suggested as a useful Government complement to the existing private system.[189]

At the same time, leaders in the voluntary standards community recognized the importance of greater U.S. private sector involvement in international standards. They reported that in response to the 1992 program, they were evaluating the needs of the U.S. private sector for harmonized criteria for testing and certification programs and for accreditation of third-party test labs.[190] They argued, however, that greater international efforts by U.S. industry could only be assured if participants believed that their interests would be fairly considered and that international standardsmaking activities could be sped up to increase their relevance to major developments, such as the EC's 1992 program. (During field interviews with USITC staff, an ISO official acknowledged that the slowness of the international standardization process meant that it was often not an appropriate vehicle for influencing European work related to 1992 standards.)[191] They noted efforts were under way to speed domestic adoption of international standards, to use fast-track procedures to develop international standards, and to change the ISO/IEC voting from the present system to a weighted voting system based on economic significance.[192] Apparently, there is a link between strengthening the United States' relative power in ISO/IEC and increased U.S. funding of those organizations.[193]

The Job Ahead

From the sidelines, it appears that there is widespread agreement about the challenges facing the U.S. and international standards systems in today's global economy. However, there are divergent views on how best to meet them. Should the U.S. Government play a greater role in the standards arena, particularly to the extent that such standards affect the ability of U.S. firms to market their products abroad? If so, how can the Government best complement the existing, private

[185] — *Continued*
vital part of overall U.S. standards policy, noting that there is currently no harmonization of testing and certification in the United States, whereas the EC is harmonizing testing procedures and accreditation schemes.

[186] The proposal apparently originated in part out of concern about the growing aggressiveness of Japan and West Germany inpromoting their standards (and thus their technologies) overseas, and in part out of a fear that the United States' present lack of a coherent structure for conformity and quality assessment might make it difficult for U.S. test results and quality assurance programs to gain recognition abroad, notably in the EC.

[187] Statement by Clarence J. Brown, Deputy Secretary of Commerce, Apr. Z 1985, as cited in National Bureau of Standards, *Proceedings of Conference on International* Standards, NBSIR 85-3228, August 1985, p. 3.

[188] Tne policy decision is contained in OMB circular A119, issued on Nov. 1, 1982.

[189] See, for example, Manuel Peralta, President, ANSI, letter to Under Secretary of Commerce for International Trade J. Michael Farren, Sept 15, 1989.

[190] See, for example, Manuel Peralta, President of ANSI, letter to Rep. Doug Walffen, Chairman, Subcommittee on Science, Research and Technology, House Committee on Science, Space, and Technology, Aug. 22, 1989.

[191] See, for example, memorandum by James N. Pearse, Chairman of the Board to ANSI's Board of Directors, Jan. 16, 1990.

[192] USITC staff field interview, Jan. 1Z 1990.

[193] See, for example, Manuel Peralta, President, ANSI, letter to Thomas Duesterberg, Assistant Secretary of Commerce for International Economic Policy, Nov. 15, 1989.

[194] USITC staff interview with ANSI official, Washington, DC, Nov. 2Z 1989.

voluntary system? Are more federal financial resources required? Is greater government involvement tantamount to greater government repletion of the U.S. private sector? The issues raised are complex, and how they are answered undoubtedly will influence the United States' ability to respond effectively to the challenges and opportunities posed by the EC's 1992 standards program.

EC Progress on 1992-Related Standards in 1989

The EC made considerable progress on its standards agenda during 1989. A total of 137 standards-related measures were acted upon in the year; 45 White Paper initiatives were finally adopted in 1989 and another 36 were formally proposed by the EC Commission. The EC also enacted 25 standards measures not formally part of the Internal Market Program and proposed 31 such measures for consideration.

Sectoral Breakdown

Table 6-2 below is a sectoral breakdown of the directives formally acted upon during the year. However, such an industry breakdown is likely to present a somewhat skewed picture of the actual scope of EC technical harmonization efforts in certain industries.

"Old Approach" Directives

Many industries- notably processed foods, autos, chemicals, pharmaceuticals, and some machinery-are governed by so-called "old approach directives. Technical harmonization in such sectors proceeds more slowly, and requires more directives, since separate directives for each aspect of a particular type of product are usually required. On the other hand, harmonization is far advanced once legislative action is complete, since all technical specifications, test methods, conformity procedures, etc., are contained in the EC directives or regulations and carry the weight of EC law directly.

A number of "old approach" directives were acted upon in 1989, including the directive on cosmetics (adopted Dec. 22, 1989) and units of measurement (Nov. 27, 1989).[195] Other directives acted upon pertained to motor vehicles,[196] tractors,[197] processed foods,[107] chemicals,[108] pharmaceuticars,[100] and agricultural products.[200] The Council of Ministers adopted a common position on nutritional labeling on December 22, 1989.[201] The directive is expected to be finally adopted in the summer of 1990.[202] In July 1989, the Council passed a directive setting stringent emission limits for small cars. EC Commission staff proposals for three remaining automobile standercis were *novelized in December 1989 but had not been fornially submitted to the Council by yearend. A rewriting of the 1970

[195] Unless otherwise indicated,aitinfbrmation in this graph was drawn from the EC Ci:JSThrittee of the American Chamber of Commerce in Belgium, *Countdown2992*, No. 7, January 1990, pp. 63-83 and 95-108.

[196] With respect to motor vehicles, several directives were passed: lateral protection (adopted Apr. 13, 1909), tread depth of tires uly 18, 17 motorcycle reOanment exhaust systems (Mar. 13, 1%9); wen b and dimensions (tree directives, adopted Apr. 27, 1 and July 18, 1989).

[197] With respect to tractors and agricultural machines, three directives on rollover for narrow-track tractors were adopted on Dec. 22,, 1 .

[198] With respect to the Food Law, the directive on definition of spirituous beverages and aranatized wines was on May 29, 1989; foodstuffs for particular uses, May 3, vldbeling, presentation, and advertising of foodstuffs; fruit juices; food inspection; marks identifying the lot to which a foodstuff belongs; and emulsifiers, thickeners and gelling agents; all adopted on June 14,1989; making up by volume of prepackaged liquids (adopted Dec 22, 190Y

[199] With respect to chemicals, the directives on calcium, m_agnesium, sodium, and sulphur content of fertilizers (Apr. 13, 1969), and trace elements in fertilizers (Sept 18, 1989) were adopted. Two directives relating dangerous substances and directives were adopted by the Council at the Dec. 21-22 Internal Market Council. EC Council, General Secretariat, Press Release No. 89/11045, "1382nd Internal Market Council Meeting.; Dec. 21 and 22, 1989, p. 11.

[200] In the area of pharmaceuticals, the directives on ^peietaryr medicinal products, radiophannaceuticals, and products consisting of vaccines, toxins or serums, and were adopted on May 3,1989; the directive on blood passed on June 14, 1%9.

[201] In the area of veterinary and phytosanitary controls, the directive on imports of meat from third countries was adopted on Mar. 31, 1989, harmonization of veterinary controls antra-EC trade and strengthening controls of veterinary regulations were both partially adopted on Dec. 12, 1989.

[202] Council, General Secretariat, Press Release No. 89/11045, "1382nd Internal Market Council Meeting," Dec 21 and 22, 1989, p. 24.

[203] USITC field interview with staff of the EC Commission, Jan. 9, 1990.

Table 6-2
Initiatives/measures formally acted upon In the EC, by sector, 1989

Sector	White Paper		Other	
	Proposed	Enacted	Proposed	Enacted
Agriculture and processed foods	35	20	7	9
Chemicals	0	2	2	6
Pharmaceuticals and medical devices	2	5	1	0
Motor vehicles	0	3	3	9
Other machinery	5	3	2	4
Telecommunications	2	2	1	1
Other	0	1	3	0
Total	45	36	25	31

Source: Complied by the staff of the U.S. International Trade Commission.

framework directive for automobiles is expected to be proposed in 1990 to revamp the Community's procedures for whole-type approval.[203]

Some "old approach" directives do require substantial additional work before they can be fully implemented. The EC Commission, and advisory committees to it, have been delegated substantial responsibilities for developing "positive lists" (e.g., food adcfitives,[204] infant formuU,[206] materials m contact with food).[206] Work on development of such lists is proceeding but appears to be hampered by a lack of adequate staffing at the EC Commission.

"New Approach" Directives

EC-level harmonization has proceeded relatively rapidly for products governed by the "new approach." The EC Commission has formally submitted proposals on nearly all of the "new approach" directives that are part of its Internal Market Program. Several new approach directives were finally adopted during the year: personal protective equipment (adopted Dec. 22, 1989), machinery safety (adopted June 14, 1989) and electromagnetic compatibility (or EMC, passed on May 3, 1989). The Council reached a common position on the open network provision (ONP), active implantable electromedical device, as appliance, and nonautomatic weighing machine directives at the December 21-22 Internal Market Council.[207] A far-reaching directive on mobile machinery was drafted late in the year, and another directive, covering pressure vessels other than simple, was also being prepared.[2ce]

However, a substantial amount of work in drafting E n voluntary standards is required in order to 'vely implement such directives. Moreover, the scope of "new ap .ch" directives is quite broad. Indeed, CEN/ CENELEC reportedly needs to develop a hard core of 2,500 to 3,000 product standards by January 1, 1993, associated with EC legislative requirements.[200]

Progress in this area is difficult to gauge. CEN/CENELEC has already received more than 140 mandates from the Commission for the development of approximately 500 standards associated with the new approach.[210] In telecommunications alone, nearly 250 standards are under preparation, even though the EC itself has passed only about 5 directives pertaining to the industry.[211] CEN/CENELEC are working on some 350-450 standards covering 55,000 types of machines in response to two EC directives;[212] some 300 standards in the construction products area;[213]

USITC *field interview with staff* of the EC Commission, Jan. 9, 1990.

a" Staff of the EC Commission report that they expect to a directive on miscellaneous additives and sweeteners 7mid-1990, and that the fist of approved colorings will not be developed until 1991. USITC field interview with staff of the EC Commission, Jan. 9, 1990.

[204] A directive on additives to infant formula is expected to beprwosed in the spring of 1990. USITC field interview with staff of the EC Commission, Jan. 9, 1990.

[222] A draft directive containing the list of plastic materials that will be permitted to come into contact with food was approved by the Scientific Committee for Food in December 1989, but it has not been approved by the EC Commission for formal proposal to the Council of Ministers. A study has been done on paper products, but no action is expected in the next year or so, according to staff of the EC Commission, field Interview, Jan. 9, 1990.

[2]" EC Council, Press Release No. 89/11045, '1382nd Internal Market Council Meeting; Dec. 21 and 22, 1989, p.17, III and VII.

a" The EC Commission is currently considering proposing a far-reaching directive on all other pressure vessels, including heat exchangers and switchgear. A first draft of the directive has reportedly been prepared, but has not been formally proposed USITC fiefd interview with *staff* of the EC Commission, Jan. 8, 1990.

aw Statement by John Farrell, Head of Division of Standardization and Certification, Commission of the Communities, before ANSI public conference, Mar. 27, Egr an

a.- The EC's open-ended contract with CEN/CENELEC sets the ground rules to be followed in standards-drafting related to the Community's Internal Market Program. Among other things, the contract calls for the issuance of "mandates' by the EC Commission in order to initiate CEN/CENELEC work on particular standards. The mandates are linked to EC funding, set forth all work items and timetables, and generally are issued once the scope and goals of Community legislation are dear. Acceptance of a mandate by CEN/CDIELEC imposes a standstill on all related national standards work, thereby making the relevant technical expertise available for European work. EC Commission officials have indicated that the content of such mandates are not publicly available, but that certain elements, such as the work items and timeframes, could be. USITC field interview, Jan. 8, 1990. CEN/CENELEC reports that most of the mandates issued to date are related to information technology because in that field there is one mandate per standard. Determining the actual scope of CEN/CENELEC work on 1992-related standards is difficult, partly because the body's monthly update does not show which standards under development are related to EC standards directives. Other publications show which work has been mandated. But mandated work may or may not relate to specific directives. Such mandates may have been issued by the EC alone (for legislative or other purposes) linked to action with EFTA. USTTC field interview with C, Jan. 8, 1990.

*" Major areas of standardization work in the telecommunications area include: ISDN, broadband ISDN, mobile radios (GSM finalization of specifications), DECT cordless telephone system, video telephony, packet switching, terminals, faxes. Many are ENVs (provisional standards). ETSI is also working on EDI standards for the EDIFACT system. A mandate *has* been issued on VDU regarding electrical safety. Core network equipment, switching equipment—areas related to public procurement in the "excluded sectors" —will also require a lot of standards. USITC field interview with staff of the EC Commission, Jan. 9, 1990.

[2].- USITC field interview with CEN/CENELEC, Jan. 8, 1990. In the area of machine safety, agreement has been reached on a wide-ranging work program. The target date for completion is June/July 1993. USITC field interview with staff of the EC Commission, Jan. 8, 1990.

a.- In the area of building products, the EC Commission is developing interpretative documents and building code-type standards that will eventually become regulations. CEN/CENELEC is developing voluntary standards for affected products. Mandates have been issued to CEN/CENELEC for some subproducts in the construction products group, but not all. Five mandates have been issued regarding timber, concrete, masonry, roofing, and cement A number of other mandates will be coming forth this year. USITC field interview with staff of the EC Commission, Jan. 8, 1990. CEN/CENELEC reports that CEN's Programming Committee on Building Products has scheduled both mandated and nonmandated work. A total of 300 standards will be developed, including those for timber structures, concrete, masonry, roofing products, cement, water supply, and drainage; 138 standards will be issued in connection with the 5 mandates already issued by the EC. USITC field interview, Jan. 8, 1990.

about 40 standards related to simple pressure vessels;[214] and 50 standards on as appilances.218 CEN/CENELEC are also developing standards for medical devices 2t[8] electromagnetic compatibilit[y].217 and personal protective equipment[2]la In the case of nonautomatic weighing instruments, it is expected that Recommendation No. 76 of the InternationalOrganization for Legal Metrology will be into a European standard before the directive comes into force.[218] The EC Commission itself is drawing up mandatory interpretative documents in the construction products field.=

CEN/CENELEC work is also proceeding in products not goverend by new approach directives. A priority standardization program related to public procurement in the "excluded sectors" of transport, energy, and water was recently submitted to the EC Commission by CEN/CENELEC. EC Commission requests for CEN/CENELEC/ETSI standards in industrially critical areas have mainly concerned the information technology sector. In the mean time, the EC private sector has of its own volition initiated CEN/CENELEC standardization work on foods, advanced industrial ceramics, and Mtegnology.[221]

Implementation

For the most part, the date of implementation of these EC product directives is January 1, 1993. Toys (Ian. 1, 1990), pressure vessels Ouly 1, 1990}, construction products (June 27 1991 , electromagnetic compatibility (Jan. 1, 1992 , personal protective equihen t (hdy 1 , 1992) and ntachinery safety Mec. 31, 1992) are to be implemented earlier. It may be difficult to implement "newapproach" directives if supporting voluntary standards are not available by the directive's entry into force. The EC Commission reports that CEN/CENELEC must speed work up in order to keep to agreed to timetables. ((See F for a status report on CENICENELEC/ETSI work).[222]

Some directives already provide that national standards approved for that purpose may be used if a relevant CEN/CEVELEC standard does not yet exists In the case of simple pressure vessels, where CEN apparently realized it would not have all standards ready on time, the EC recently a directive that would permit, until July 1, t free circulation of products conforming to the current national regulations in force in the member states (Le., mutual recognition of national rt tions).[224] As a practicafmatter, however, the E ommission reports that it is more likely to delay implementation of directives rather than allowing mutual recognition of national standards (unworkable) or selecting one national standard for interim use if harmonized standards are not completed by implementation dates.[225]

The actual situation surrounding the one "new approach" directive already scheduled to go into

[134] The EC directive on simple pressure vessels only desk with unfired simple pressure vessels—compressors and brakin for trucks and trains. IMI/MS0..K have completed standards on simplepress vessels, which are available from ANSI in New York. The EC directive was originally slated to into effect on June 1, 1990. In addition to these standards, has decided that there is a need for 35-40 supporting standards, covering flanges, welding, nondestructive fasteners, and other items. USITC field interview with Jan. 8, 1990.

• A oominon_poMtimi gas appliances directive was weed to an Dec. Z9.. =1=7 IMHK ve accepted a mandate from the EC Commission to develop standards, and 10.15 technical committees ate active in this field. As of September 1989, CEN was already undertaking work at its own initiative on domestic cooking appliances; household refrigerating *appliances;* domestic gmi-fired water heaters; central heating bonen; controls for gm appliances; independent space halm: large (missing) kitchen appnoes tmmg gaseous fuels; elasioner seals in domestic gas appliances; gm heating boners; and gas burners using fans. The mandate issued by the EC Reportedly will subsume that work. British DTI, *Removing Technical : Directives Under Discussion,* September 1989, P-11.

[313] Four cinectives inin to seediest devices are impacted. These *are* aitraWy no ss standards for active implantable elearomediag other active medical devices. A draft mandate has been issued to CENVCENELEC. CENELEC is working on a standard for active implanthbles; CEN is wading on in vitro diagnostics and has created a tedmiral committee. The teduucal committee has well-developed drafts. They have developed a GIP document devices. USITC field interview with antEkEV,Tal 8, 1990.

2" Staff of the EC Commission report_thst_tilry have just received a draft detailed week plan from M4 1W,DM,EC on electromagnetic compatibility. The Commissionis i'tedy looking it over to make sure that everinung is included the mandate. USITC field interview with EC Commission staff, Jan. 0, 1990.

3" The Eur_opesn Commission has reportedly drafted 10 mandates for Ca% generally based on parts of the body to be protected that it sees *as* priority areas (head protection; eye protection; face and eye protection; hearing protection; respiratory hact protection; hand and arm protection; toot and leg protection; protection against drowning; protection against falls from height and for performance of certain activities incorporating one or several safety functions. The EC Commission reportedly ' that the resulting standards will be by June 30, I but further mandates will be drafted. British DTI, "Removing Technical Barriers: Directives Under Discussion, September 1989, p. 8.

a" Ibid., p.14.

[333] "A Mantling committee was set up to advise the EC Commission about elaboration of the directive's essential requirements. It is regnla in character, i.e., not advisory. It votes by weighted majority. The committee was set up in March 1989 and has met six times. It is drafting interpretative documents. Drafts of six to eight key interpretative ts are reportedly in the pipeline. The committee is also deciding upon what certification procedures will apply and identifying 'marginal products,' i.e., those not subject to third-party testing or surveillance. USITC field interview with EC

[8]—*Continued*
Commission staff, Jan. 8, 1990. CEN/CENELEC reports that the first set of interpretative documents are nearly ready in first draft and will be submitted to the standingcommittee. Fire safety will be submitted soon. C EC expect to have the Est set of interpretative documents (all six) available by midyear.

EC Commission, DG for Internal Market and Industrial Affairs, *Completing the Internal Market: Removal of Technical Barriers: An Introduction,* Apr. 13, 1989 draft, pp. 6 and 7.

[222] USITC field interview with staff of the EC Commission, Jan. 8, 1990.

[3] British DTI, *The Single Market,* p. 3.

[4] Com (89) 636 final, Of No. C 13 (Jan. 19, 1990), p. 7.

[8] USITC field interview with staff of the EC Commission, Jan. 8, 1990.

effect is unclear. The directive on toy safety was adopted in 1988, was to be transferred into national legislation by July 1989, and to enter into force on Jan. 1, 1990. As of yet, however, only four member states have transposed the directive into national law.[229] Electric to standards have not been finalized by CENELEC, but the other three standards were ready and references to them published in the *Official Journal.*[227] A Greek standards official reported, however, that as of Jan. 1, 1990, producers and importers are required to put the CE mark on toys on their own responsibility and face fines if products are unsafe.[229]

Some implementation problems in the standards area have already emerged. The EC directive on self-propelled industrial trucks has reportedly resulted in some problems because most trucks produced in Europe today operate at 110 volts, a higher internal voltage than that provided for in the directive (96 volts). Industry has reportedly identified 105 barriers to innovation in the directive.[229] It also appears that member states may be imposing different or more stringent standards on certain products.[239]

Possible Effects

The adoption of common standards by the EC is widely seen by U.S. industry as a major benefit U.S. companies with production facilities in the EC reportedly believe that they will be able to rationalize production across national frontiers to a much greater degree than at present[231] Many service the EC market primarily through their investments there. However, the interests of U.S. and investors are often linked. A third of TE!TIM to the EC is reportedly shipped directly to U.S. affiliates there.= U.S. business remains concerned about possible testing-related barriers in the EC market post-1992, and some are responding by pursuing or expanding investments in the EC.

Many of the U.S. firms that will be affected by these directives are large multinational corporations with long-established production capacity in the EC. Most of these firms are very familiar with the impact of national cultures and regulations on their products. Many report that they have a voice m the development of the standards and regulations proposed by the EC as part of its 1992 program. Such US. firms apparently are fairly effective in informally lobbying the working groups drafting standards in CEN/CENELEC, national standards delegations, Members of Parliament, the EC Commission, and the Council. They often express their views through their EC subsidiaries, joint venture partners, EC-based distributors, or trade associations (who have somewhat better "standing' than a single U.S. firm).[233]

Although a number of important improvements were made in 1989, small and medium-sized firms without offices in Europe still report that they have little access to or influence on the standardsmaking process and could be disadvantaged by such a lack of access when seeking to export to the EC. (Smaller EC producers are also reportedly facing difficulties.)[234] According to GAO, they rely heavily on others for the information they need to make business decisionsregarding the EC marketer Some are ill equipped to rapidly obtain needed information and could have difficulty dealing with new technical requirements or conformity-assessment procedures, particularly to the extent that they involve onsite inspection or production surveillance. Such producers account for a particularly large share of U.S. exports of farm-based agricultural products, processed foods, and machinery. On the other hand, movement to a single set of regulations and one-stop regulatory approval may make the EC market a more viable opportunity for smaller U.S. exporters.

Our analysis this time attempted to take into account all three phases of the standards harmonization process in the EC: (1) legally binding regulations or directives; (2) development of voluntary standards by CEN/CENELEC and ETSI or specific lists of approved products by the EC Commission or member-state authorities, and (3) conformity-assessment procedures. Most of the essential requirements contained in "new approach" directives are nearly universally accepted by all developed countries. Thus most do not, on their face, pose problems for U.S. firms. However, the essential requirements are often vague and are thus subject to varying

[238] West Germany, France, Ireland, and the United Kingdom, according to an informal transmittal by the EC Commission dated Mar. 15, 1990.

[227] USITC field interview with staff of the EC Commission, January!, 1990.

USITC field interview, Jan. 15, 1990.

[233] USITC field interview with CEN/CENELEC, Jan. 8, 1990.

[23-] In a field interview with USITC staff on Jan. 1Z 1990, an official with the Italian Ministry of Industry and Handicrafts stated that in the case of toys, the Ministry had issued rules even before the EC issued its directive, and the Italian rules were based on, although not identical to, CEN standards. Sometimes, as in the *case* ofpacemakers, Italian rules are more stringent than EC law. The Danish auto emissions standard is more restrictive than the EC norm, but pursuant to art 100A of the Treaty of Rome, Denmark is required to justify its &ration, and has not done so.

[10'] See, for example, U.S. General Accounting Office, Report to the Chairman, Subcommittee on International Trade, Committee on Finance, U.S. Senate, Eu-mt *Single Market: Issues of Concern to U.S. Exporters,* GAO/NSIAD-9U0, February 1990, 22.

zit See statement by Glen J. Skovolt on behalf of the National Association of Manufacturers before the House Ways and Means Committee, Jan. 30, 1990.

[233] USITC staff interview with official of ANSI, Washington, Nov. 22, 1989.

[214] USITC field interview with Greek Federation of Industries (SEV), Jan. 15, 1990.

[233] U.S. General Accounting Office, Report to the Chairman, Subcommittee on International Trade, Committee on Finance, U.S. Senate, *European Single Market: Issues of Concern to U.S. Exporters,* GAO/NSIAD-90-60, February 1990, p. 26.

interpretations. Moreover, their lack of clarity may mean that producers, for business rather than regulatory reasons, may decide to *use* harmonized European standards or undergo third-party testing to obtain additional assurance of the safety and acceptability of their products. Such actions will not absolve them of product liability but may provide additional protection in the event of a suit

For "new approach" directives, the detailed European standards and conformity-assessment procedures are likely to ultimately determine whether U.S. access will be improved or threatened. Unfortunately, many questions about how foreign suppliers will be affected by these two phases of the process remain unanswered. In the case of products subject to premarket approval under "old approach directives , it is difficult to tell whether U.S. firms will be disadvantaged until lists of acceptable or unacceptable products are formulated.

Despite outstanding concerns about timely access to information and about the EC's proposed approaches to testing and certification, most U.S. exporters appear to share the EC's assessment that, if the program is conducting in a spirit of openness and expanding opportunity, they could benefit enormously by standards-related actions taken as part of the 1992 program.[238] While the overall thrust of the EC policy does appear to be deregulatory and flexible in character, some problems for U.S. industry have been identified in connection with the 30 particular directives selected for analysis in this report Following is a summary of their possible effects on U.S. exports, trade diversion to the U.S. market, and U.S. investment and operating conditions in the EC.

U.S. Exports to the *EC*

The EC is a significant market for U.S. goods, hence, the outcome of the 1992 harmonization process for standards-related changes is of considerable importance to U.S. firms. U.S. exports to the EC in 1988 were $713 billion, or 23 percent of total U.S. exports during this period. The products of important U.S. export industries such an autos, computers, chemicals, teleCommunications, medical equipment, other machinery, and processed foods that may be affected by EC standards directives represented more than $41 billion in U.S. exports to the EC in 1988. The U.S. Department of Commerce has estimated that almost 22,000 jobs are associated with each $1 billion on U.S. manufactured imports.

The effects of the standards directives analyzed in this phase will not be even for U.S. exporters. Some exporters will be helped by the harmonized standards and approval systems that emerge. By permitting them to manufacture to a single standard rather than to 12 different ones, the 1992 program will enable them to reduce design, engineering, marketing, transportation, and compliance costs currently incurred in producing for export to the various EC national markets. Completing one conformity-assessment procedure will also guarantee their products free access to the entire EC market

Large U.S. exporters of automobiles, chemicals, pharmaceuticals, medical devices, and telecommunications equipment, many of whom also manufacture extensively in the EC, are expected to benefit the most from changes in the EC market Such companies are already used to meeting high standards in the United States and throughout the world. However, divergent standards among the EC member states have held back the competitive potential of U.S. suppliers in these sectors. U.S. automobile manufacturers are encouraged by a mandatory EC-wide type-approval system that will reduce the costs and the administrative burden of complying with separate EC member-state technical requirements *and* will enable U.S. auto producers to increase their sales in the EC market[237] If new EC standards for pharmaceuticals, medical equipment, and telecommunications terminal equipment are not discriminatory, U.S. exports of such products should also increase. However, if new EC standards require costly product design changes, U.S. exports may be hindered, especially those of small firms, which can least afford increased compliance costs.

Other U.S. exporters could be harmed by some of the proposed directives. They will especially be harmed if required certification and testing must be done in the EC, rather than in the United States. Should U.S. firms encounter more onerous standards, testing, and certification requirements in the EC, it is possible that U.S. exporters would lose shares of the EC market to EC-based firms, which presumably would have an easier time obtaining approval and acceptance under the global approach. Duplication of testing and verification procedures that have already been conducted on the same products by testing laboratories in the United States could increase costs for U.S. exporters and cause delays in placing their products on the EC

[236] In its formal comments on the December 1988 public discussion document prepared by the U.S. Government Interagency Task Force on the Internal Market, the EC Commission emphasized the benefit to U.S. supplier's of harmonizing 12 sets of requirements and one-stop regulatory approval, stated that the overall thrust of the 1992 standards agenda was deregulatory in character, noted that by giving manufacturers the option of complying with different standards to demonstrate conformity with "essential requirements," the new approach' was more flexible than existing member-state and EC regulations, and underlined that in many cases the manufacturer itself will be allowed to self-certify conformity to EC technical regulations. In terms of access to the standards drafting process the EC Commission stated that the Community offers reasonable possibilities, in accordance with international obligations, for third party involvement in these processes." Mar. 16, 1989, pp. 7-8.

[237] USITC field interview with staff of the EC Commission, Jan. 9, 1990.

market If EC-based firms are not similarly affected by these new requirements, U.S. exporters could suffer a decline in their competitive position and in actual sales levels.

Diversion of Trade to the U.S. Market

For many products, there should be little or no diversion of trade by other countries to the U.S. market as a result of the directives. In a number of cases U.S. standards are equivalent to or exceed standards proposed by the EC directives. This is particularly true for the automobile, pharmaceutical, chemicals, medical equipment, and telecommunications industries. Foreign producers unable to meet EC standards are unlikely to be able to meet U.S. standards and so will not be able to divert their products to the United States.

However, in other product areas, such as construction products, foodstuffs, plastics, paper, and blood products, diversion to the U.S. market is a real possibility. More stringent standards on plywood construction, for example, could increase costs considerably for third-country suppliers who manufacture to totally different standards, including those used in the United States. Consequently, if EC regulations and standards prevent the building-products industries of Canada, Chile, Mexico, and Southeast Asia from exporting to the EC, the United States could become a more important market for their products. New rules related to the production of quick-frozen foodstuffs may require U.S. and third-country exporters to invest in costly new manufacturing equipment As a result, some third-country competitors may divert sales to the U.S. market rather than make additional investments. More restrictive standards for materials used in contact with foodstuffs could cause diversion to the U.S. market of third-country exports.

U.S. Investment and Operating Conditions in the EC

The adoption of common standards and certification systems should generally improve business operating conditions in the EC for both EC and third-country firms. However, the EC's proposed policy on testing and certification has reportedly resulted in U.S. firms' giving serious consideration as to whether they should develop, produce, and test products in the EC. Some U.S. firms are reportedly responding by pursuing, investment in the EC, or expansion of existing EC facilities.[238] U.S. manufacturing holdings in the EC were officially valued at $65 billion in 1988 — half the total of all U.S. companies manufacturing abroad.

[23]. USITC staff interview with official of the National Association of Manufacturers, Jan. 5, 1990.

Overall, U.S. investment is expected to increase in the EC as a result of the EC's new standards, testing, and certification policies. At least some of this investment is tied to increased growth opportunities associated with the 1992 program. The business operating conditions of large U.S. manufacturers of automobiles, pharmaceuticals, chemicals, and medical equipment, that currently have significant investment in EC manufacturing operations, are expected to generally improve as a result of the new EC standards-related policies. Increased consolidation and rationalization of some of the wide-reaching activities of these firms should enable them to cut costs and achieve more streamlined and efficient operations. Investment and merger activity is expected to increase in the EC market in these industries with involvement by both U.S. and EC firms. Improved business operating conditions resulting from directives establishing a more 'open' EC telecommunications environment should also lead to increased investment by U.S. telecommunications services and equipment suppliers.

Less favorable operating conditions for U.S. exporters of construction products, foodstuffs, blood products, TV programming, and certain machinery may cause these firms to increase their direct investment in the EC market This will enable these firms to reduce testing costs, improve delive ry times, and increase their influence on EC stan dards and testing policy. Other U.S. companies may abandon the EC market simply because their products are regulated out of the market or new restrictions are so stringent that profits can no longer be earned there. A generic directive on general product safety would be likely to discourage U.S. investment in sectors or products not covered specifically by other directives because of increased uncertainty for producers with regard to product safety liability and the costs such uncertainty entails. The directive is also likely to discourage U.S.-based insurance companies from offering product liability insurance in the EC.

Industry Analysis

A total of 204 enacted or proposed directives and regulations were examined in this phase of the investigation. All measures formally proposed by December 31, 1989 that were considered standards-related were divided into major categories and individually reviewed. The majority of the measures analyzed were amended versions of the measures reviewed during the first phase of this investigation, however, some were proposed for the first time in 1989.

As in the earlier investigation, all measures analyzed were categorized on the basis of the industry sectors most likely to be affected. Certain measures, however, are expected to have an effect on more than one industry sector. For example, the directives on food additives and on materials in contact with foods may primarily effect the

agriculture and processed-food industries, but also affect the plastics products, chemical, and paper industries. Though not exhaustive, the sectoral breakdown gives a sense of the types of U.S. industries which could be impacted by standards-related directives in the 1992 program.

The industries identified as substantially affected by EC 1992 standards during 1989 were (1) agriculture; (2) processed foods and kindred products; (3) chemicals; (4) pharmaceuticals and medical equipment; (5) motor vehicles; (6) other machinery; (7) telecommunications; (8) construction products; and (9) miscellaneous. A separate category was established for directives which will have an overarching impact on 1992-standards implementation: those pertaining to product liability, general product safety, and testing and certification.

The directives selected for individual write-ups were chosen because they illustrate some of the major issues identified as possible sources of concern for U.S. industry and because of the assessment of their potential impact on U.S. exports and investment in the EC. In addition, several directives were chosen because of their "precedential value." For example, a write-up on toys is presented because it is the EC's first new approach" directive to become operational and could provide clues about how future directives might be implemented. Among the directives covered in this report are inspection, motor vehicle emission standards, approval of medicinal products, registration of pesticides, and the harmonization of standards for telecommunications services and equipment Brief outlines of the industry sectors which might be affected by these directives are provided below, followed by detailed write-up for some 30 particular directives.

Agriculture

Overview

The European agricultural industry is similar in structure to its U.S. counterpart, being generally composed of many small-volume primary producers (farmers) who are, for the most part, individual entrepreneurs, and relatively few processors, mostly publicly owned companies. In the EC, however, many are part-time farmers and are typically even smaller volume • • • ucers than those in the United States. EC • processors generally are not primary producers, although some major processors, notably meat rs, are farmer-owned cooperatives. EC farmers often specialize in one thing, such as milk, meat animals, or vegetables, but some raise more than one crop. Many of the major agricultural processors in the EC, such as Unilever, Grand Metropolitan, and Hanson, are multinational diversified food products companies and are among the largest food products companies in the world:

In part because of the EC's Common Agricultural Policy, the EC has chronically produced excess supplies of some agricultural products, notably dairy products, meat, poultry, supr, and wheat In order to dispose of them, the EChas provided financial support to exporters, thus making EC agriculture more export oriented than it otherwise would have been In 1988, agricultural exports from the EC totaled $109 billion, approximately three times the value of U.S. agricultural exports during that period. U.S. imports of agricultural products from the EC during 1988 were valued at $4.1 billion, or 20 percent of total U.S. agricultural imports in 1988. Among the leading import items from the EC are meat, alcohol, and dairy products. Among the EC suppliers are France, Italy, and Denmark

U.S. exports to the EC during 1988 were valued at $7.3 billion, representing 21 percent of all such exports.= Among leading exports to the EC are animal feeds, oilseeds, and unmanufactured tobacco. Among leading export markets are the Netherlands and the United Kingdom.

U.S. investment in primary agricultural production in the EC is thought to be negligible, although detailed data concerning such investment are not available. Data concerning U.S. investment in food processing in the EC are included in the "Processed Foods, Tobacco, and Alcohol" section of this chapter. EC investment in U.S. primary agricultural production (farmland) is ratherlimited, accounting for less than 1 percent of U.S. farmland.= There also has been some limited EC investment in U.S. livestock • and poultry production.

Some EC agricultural producers, including subsidiaries of U.S. multinationals operating in Europe and some U.S. agriculture interests, including both associations representing general agricultural interests, such as the American Farm Bureau, and those representing specific commodity interests, such as the American Meat Institute, the National Cattlemen's Association, the American Soybean Association, National Corn Growers Association, and the Corn Refiners Association are carefully monitoring developments in the EC. However, some such groups have demonstrated little interest. Several representatives have expressed general skepticism about the likelihood of the EC liberalizing market access for non-EC countries in view of previous EC actions. However, some representatives have indicated that, in general, harmonized regulations may well be better than different regulations in various EC member states.

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[23] U.S. Department of Agriculture (USDA), *Agricultural Outlook,* September 1989.

[24] USDA, *Foreign Ownership of U.S. Agricultural land Through December 31, 1988,* April 1989.

A principal concern for U.S. farm-based agriculture has been the EC's policies applicable to imports of meat from countries, such as the United States, where the *use* of certain growth stimulants (hormones) is authorized in raising meat animals. The EC's policies have resulted in a near prohibition on U.S. exports of meat to the EC. Another principal concern for U.S. farm based agriculture has been the EC's so-called third country meat directives that limit EC imports of meat to those from plants that the EC finds have inspection systems at least equal to those applicable to EC plants. Some U.S. interests contend that these EC programs have been administered unfairly, and that this has resulted in loss of markets. These interests also contend that EC rule making is arbitrary and lacks transparency.

A general concern expressed by many U.S. interests and specifically by the Animal Health Institute (AHI) is the use of the so-called "fourth criterion." The "fourth criterion" allows for decisions, such as the prohibition of Bovine Somatotropin (BST) for socioeconomic reasons. The AHI contends that decisions such as the use of BST should be based of the scientific criteria of safety, quality, and efficacy which are apparently the first, second, and third criterion. The U.S. Secretary of Agriculture reportedly objected to the use of the fourth criteria during a discussion with EC officials in September 1989.[241]

There has been some discussion in the EC concerning establishment of a food agency that would provide for an inspection and control service. Some observers contend a more likely possibility is a food agency providing for harmonization of EC member-state inspection and control services. In early March 1990 Information was received that the Agricultural Council adopted a directive under which veterinary controls at intra-Community borders will largely be abolished from 1992, but replaced at point of departure, with the continuing possibility of random checks at borders where fraud or disease are suspected. All animal products that come under the EC's harmonized veterinary rules will be covered. The United Kingdom, Denmark, and Ireland, who apply apolicy of slaughter rather than vaccination, will be able to maintain their derogation to continue checks on live animals until the EC itself moves away from vaccination in its policy on foot-and-mouth disease.[242]

For the farm-based agriculture sector, a total of approximately 48 directives and developments during 1989 were analyzed for this report Many of the developments dealt with control (including contingency plans for outbreaks of animal diseases) and eradication of animal diseases. Many such directives were applicable only to intra-EC trade and appeared to be generally comparable to U.S. regulations and contingency plans applicable to animal diseases. Almost all such directives appeared to be -attempts to harmonize conditions and regulations among EC member states. Other developments dealt with health issues applicable to plants, eggs, and milk, and their situation is comparable to that for animal diseases. Another group of directives concerning documentation of purebred animals was applicable only to intra-EC trade, and appeared to be generally comparable to U.S. documentation practice. Of the directives analyzed, those selected as being potentially of interest to U.S. industry included the so-called third-country meat directives, the growth stimulant (hormone) directive, the BST development, and the directive concerning pesticide residues on fruits and vegetables.

Directives that are "ones to watch" are the directive concerning animal embryos, directives concerning poultry meat, and directives concerning use of quality marks. Representatives of the International Embryo Transfer Society report that exporters to the EC have not had enough experience with the directive, which was published in September 1989, to have an opinion but that in general it seemed reasonable and workable. Their concern is how certain language, which they describe as vague, will be interpreted and enforced.[243] The EC also has stated its intention to introduce a directive in 1990 concerning quality marks for agricultural products and processed foods, a development which will bear watching.

BST

Background

Bovine somatotropin (BST) is a naturally occurring protein that stimulates lactation in cows. BST can be produced synthetically and, when injected into cows, causes them to increase milk production as much as 25 percent In the EC (and the United States) use of BST, as of January 1990, was limited to scientific research.[244] The subject *Proposal For A Council Decision Concerning The Administration Of Bovine Somatotrophin [sic]* (Com (89) 379 final, September 27, 1989), if adopted, would prohibit indefinitely or until a certain date the use of synthetically produced BST in the EC. In debating the ban on BST, the EC Commission is considering a "fourth criterion" of social and economic need for judging approval of production-enhancing substances, including hormones, antibiotics, and other products. If accepted, the criterion would subject new technologies to an additional test beyond safety, quality, and efficacy on the basis of science and technology.

[241] Official submission to USITC from AHI, Dec. 18, 1989.
[242] *1989 Intradepress,* p. 95.
[243] Telephone conversation with representative of the International Embryo Transfer Society, Nov. 21, 1989.
[244] It is unlikely that the FDA will make a final decision as to the use of BST by the United States before the middle of 1990. *EC Commission Information Memo* (Sept. 13, 1989).

Some interests representing dairy farmers in the EC have expressed concern that the use of BST will be detrimental to the competitive position of small-volume producers and will hasten the long-term consolidation in the dairy cattle sector. Inasmuch as a large share of dairy farmers in the EC, especially in West Germany, are small-volume producers, and the EC has traditionally supported small volume agriculture producers, in part, for employment and cultural reasons, there may be institutional opposition to BST. Also, the EC has experienced chronic and expensive surpluses of dairy products and some observers question the advisability of a product that increases dairy production. Some consumer and animal rights interests have expressed opposition to BST, and some dairy farmer, processor, and retailer interests have expressed concern about consumer acceptance of milk produced from animals that have been injected with BST.

In August 1989 the EC postponed implementation of a moratorium, reportedly in response to U.S. Government pressure. On September 13, 1989, the EC adopted a proposal for a 15-month evaluation period, instead of a moratorium, allowing for scientific studies of BST and consultations with third countries. In early March 1990, the ITC received information that the European Parliament's Agriculture Committee has adopted the Halpert report on BST. The report goes one step further than the proposal for a temporary moratorium by calling for a ban on BST until detailed research has shown its socioeconomic and environmental consequences and its effect on the health of animals and consumers.

Anticipated Changes

Adoption of the original proposal would apparently preclude the commercial use of the subject BST in the EC.

Possible Effects

U.S. exports to the EC

Adoption of the proposal would apparently preclude exports or sales of BST to the EC. In addition, officials of two U.S.-based animal health products companies that produce BST and the AHI, a trade association representing animal health products companies, contend that adoption of the proposal may lead to prohibitions on imports into the EC of certain animal products from countries where the use of BST is authorized. Many agricultural producers and food processors, both within and outside the EC, believe that regulating new products on the *basis* of potential economic or social impact could be used to ban virtually any technological innovation. If the United States approves the use of BST and the EC bans it, the United States would lose about $25 million annually in dairy product exports.[245] However, as described below, it a that U.S. exports of BST itself to the EC wouldcice17be rather limited, as it is apparently the intention of U.S. BST producers to supply the EC market through their plants located in Europe.

Diversion of trade to the U.S. market

There appears to be no reason to think that, as a result of EC actions, BST or related products will be diverted to the United States. BST is permitted currently in the United States for a limited number of purposes and in a limited number of locations although the Food and Drug Administration approval process is ongoing. Some interests in the United States have expressed concerns about industry concentration, surplus production, and consumer acceptance comparable to those concerns expressed in the EC.[246]

U.S. investment and operating conditions in the EC

Officials of Eli Lily and Co. and Monsanto report that their companies have each constructed a plant (one in the United Kingdom and one in Austria) to produce BST for sale in the EC. Lack of authorization to sell BST for commercial purposes has resulted in, and continues to cause, economic loss inasmuch as the companies have been unable to operate their plants as planned.

Officials of the AHI report that they very roughly estimate the potentiafworld market for BST to be $500 million, with the EC accounting' for one-third to one-half of the total.

U.S. Industry Response

The two U.S.-based companies that produce BST and the AHI have objected to the BST sales prohibition specifically and the use of the fourth criteria in general. One of the companies and the AHI have provided the International Trade Commission with copies of their general press releases explaining their positions concerning BST. The AHI reports that the U.S. Government (the United States Trade Representative and the U.S. Secretary of Agriculture) in discussions with the EC in September took a position corresponding with that of the AHI and the animal health products companies.

Meat: Hormones, Inspection

Background

The EC member states have had different health and sanitary inspection systems and regulations for meatpacking plants, and it was deemed advisable to establish uniformity within the EC through the subject directives to facilitate trade and assure human and animal health safety. Also, to provide for equal treatment, the directives are to

[245] *Europe 1992, GATT, & Food* Safety, p. 36.
[246] *USDA, BST and the Dairy Industry,* October 1987.

require that imports be limited to those from plants that have health and sanitary inspection systems and regulations that EC veterinary officials have found to be at least equal to those of the EC. The criteria for the health and sanitary inspection systems and regulations, and the plants found to be in conformity and thus authorized to ship meat to the EC, are part of what are generally referred to as the third country meat directives.

Also, through other directives, the EC, effective January 1, 1989, essentially prohibited imports of animals and meat from countries, such as the United States, where the *use* of certain growth stimulants (hormones) is authorized. EC policy concerning growth hormones stemmed from a directive prohibiting the use of growth-promoting hormones in farm animals used for food production, which the EC published on December 31,1985.[247] The ban was to take effect on January 1, 1987.[248] The directive included a complementary import prohibition, but a transition period of 1 year was allowed, making the ban effective on January 1, 1988, for imports from third countries. The only exception to the ban for both imports and domestic livestock applied to certain therapeutic purposes.

In the opinion of the United States, the directive was not based on scientific evidence and constituted an unjustifiable restriction to trade. The EC relied on compliance with another rule, the "residue directive,[249] which aims to control the levels of chemicals in meat This goal is similar to that of U.S. regulations, but the procedures for ensuring the safety of meat are different The EC directive requires greater tracking of individual animals through more analytical testing. The U.S. livestock production system does not presently have an animal identification system that would meet EC criteria.[250]

According to the EC, scientific evidence showed that consumption of meat from animals treated with growth hormones was dangerous to human health. However, before issuing the hormone directive, the EC had established a scientific working group (the Lamming Commission) to examine any harmful effects to health from five hormonal substances. In 1982, the Lamming Commission cleaned the three natural hormones under study and was reportedly near clearing the two synthetic hormones when the EC Commission canceled their meetings.[251] The EC admitted at one point that the ban was based on political and not scientific grounds.[252]

In January 1987, the United States requested consultations with the EC under the standards code.[253] Several rounds of consultations yielded no satisfactory results. The United States then requested the Code Committee to investigate the matter.[254] The EC maintained that the hormone ban is a regulation based on a PPM, which is not covered by the code, except under article 14.25, a dispute-settlement provision. The EC asserted that to invoke this provision the United States must prove that the EC intentionally circumvented the code by using a PPM. The EC also opposed any dispute settlement under this article before a purely legal review of the circumvention issue. The United States rejected all of these arguments citing, among other things, the impossibility ofproving intentionality and the lack of support for this interpretation in the negotiating history of the code.[255]

In July 1987, the United States requested the formation of a technical experts group, which would examine the scientific aspects of the case. The EC blocked the request in the Code Committee, stating that what was required was an initial review of the code's applicability to PPMs. Only after the analysis of the code's applicability had been completed should a review of the technical issues take place, the EC argued, contrary to the code's dispute-settlement procedures.[256]

In December 1987, the EC placed the ban into effect, but delayed third-country implementation until January 1989. The United States then threatened to take retaliatory measures.[257] In

[247] *Directive 85/649.*

[246] The United Kingdom was given an extension until January I, 1989. The United Kingdom brought a case before the Court of Justice against the EC Council for the adoption of *Directive 85/649,* challenging the legal basis on which the EC Council had adopted the directive. In Case 68/86, the Court annulled the directive for purely formal reasons, and it was subsequently adopted in identical form. For more information on Case 68/86, see Barents, *Hormones and the Growth of Community Agricultural Law: Some Reflections on the Hormones Judgment (Case 68/86), vol. 1* (1988) *Legal Issues of European Integration, p. 1.*

a" Directive 86/469.

[262] This is because the majority of meat exports from the United States to the EC are in the form of offal, a byproduct of animal carcasses. U.S. offal exports originate from many plants throughout the country and, until shipment, there is no way to determine which particular livers, hearts, kidneys, and the like from millions of carcasses will be exported.

[261] FAS Memo, p. 3.

[262] 'Meat With Hormones: EC Complaint Concerning Increasing United States Tariffs," *GATT Focus,* Newsletter No. 59, January 1989, p. 3.

[222] Art. 14.1.

[2]" If no solution has been reached after bilateral consultations, the committee meets at the request of any party to the dispute. art. 14.4.

[222] According to the Office of the United States Trade Representative, the negotiating history shows that the United States believes art. 14.25 was included in the code so that PPMs could be the subject of complaints under the code's dispute-settlement provisions. *The* EC does not appear to disagree with this However, the EC views complaints as being limited to committee determinations of "circumvention" (including proof of intention). With proof of circumvention, the PPM would have to be rewritten in terms of the characteristics of the product, at which point the measure would be subject to full code coverage.

[226] Art. 14.9 provides that if no mutually satisfactory solution has been reached by the committee within 3 months of the request for committee investigation, then "upon the request of any Party ... the Committee shall establish a technical expert group."

[2] -- After the EC blocked dispute-settlement proceedings, the United States took action under sec. 301 of the Trade Act of 1974, targeting $100 million in EC exports for potential retaliation.

December 1988, the EC announced that it would implement the ban for third countries on January 1, 1989. The United States responded by implementing its retaliatory measures. [259]

Anticipated Changes

As a result of the developments, EC member states will presumably enforce uniform health and sanitary inspection systems and regulations, and apply uniform regulatory treatment to imports of meat Also, the developments related to growth stimulants apparently will continue to preclude their use, as such, in the EC.

Possible Effects

U.S. exports to the EC

The developments concerning health and sanitary inspection systems and regulations for meat plants reportedly have restricted, and apparently will continue to restrict, U.S. exports of meat to the EC, as representatives of U.S. interests report that it is very difficult to obtain approval to ship meat to the EC.[259] **As a result of the developments related to growth stimulants, the EC has effectively almost prohibited imports of animals and most meat from countries, such as the United States, where the use of such growth stimulants is authorized (except for those limited quantities authorized by Directive 89/356 and the imports authorized by Directive 89/356 will probably only partially ameliorate the situation).**

Representatives of U.S. trade associations estimate that in the absence of unfair trade restraints, U.S. exports of meat to the EC would amount to about $100 million annually,[269] **which is still probably less than 5 percent of the EC market**

Diversion of trade to the U.S. market

It does not appear that the developments are likely to lead to a diversion of trade to the U.S. market Many of the ma jor current third country exporters of meat to the EC do not use the subject growth stimulants.

U.S. investment and operating conditions in the EC

The developments do not seem likely to alter U.S. investment in the EC, which in any event is believed to be minimal.

[2]-- The EC Commission has pointed out that EC and U.S. officials are cooperating, by way of a high-level task force established in 1989, to develop arrangements for the export of U.S. hormone-free meat to the EC. Some such shipments have occurred. The EC further states that EC veterinarians have approved the production methods of over 350 U.S. meat exporters. ***European Community News,*** No. 38/89, Oct 31, 1989. The EC *has* produced a pamphlet entitled ***Information for US Cattle Producers Wishing to Produce Cattle for Export of Bovine Malt to the EC*** (June 26, 1989).

we Telephone conservation with officials of the Meat Export Federation, December 1989.

[22]- Telephone conservation with officials of the USDA, November 1989.

LI.S. Industry Response ·

On July 14, 1987, the Meat Industry Trade Policy Council (composed of the American Farm Bureau Federation, the American Meat Institute, the National Cattlemen's Association, the National Pork Producers Council, and the U.S. Meat Export Federation) filed a complaint with the United States Trade Representative (USTR) under section 301 of the Trade Act. The complaint charged that by using health and sanitary regulation under its so-called third country-meat directive, the EC imposes an "unjustifiable and unreasonable restriction" on U.S. exports of meat by limiting the number of plants certified to ship meat to the EC.

By the end of 1987, only about 90 of some 1,400 U.S. meat plants and cold storage facilities (and no high-quality beef plants) had been certified under the third-country meat directive. Because many U.S. plants remained to be certified, U.S. and EC officials agreed to delay application of restrictions under the third-country meat directives until April 1, 1988. On March 31, 1988, the EC announced that 67 U.S. meat plants (including 8 high-quality beef plants) and 70Cold storage facilities were certified to ship meat to the EC. U.S. Government officials have indicated that the EC regulations are still too restrictive and that the United States will pursue further liberalization of trade under the 301 action. Subsequent to March 31, 1988, only a few additional U.S. plants were authorized to export meat to the EC. By December 20, 1989, approximately 125 meat plants were authorized to export to the EC. [261]

The Meat Industry Trade Policy Council has urged USTR to renew the section 301 investigation of the European Community's discriminatory third country directive. In a letter dated August 2, 1989, the American Meat Institute and other members of the Trade Policy Council argued that even with substantial cooperation from U.S. packers, only a few slaughter plants qualified under the strictly interpreted third country meat directive requirements. The slaughterhouses approved by the EC typically invest millions of dollars in altering facilities and processes. All of these expenditures and approvals for beef slaughter plants became irrelevant with the imposition of the EC's hormone directives.

The Trade Policy Council contended that, in an effort to reduce U.S. retaliation to the EC hormone directives, the EC has now authorized some meatpacking plants that do not comply with the third country meat directives to export to the EC. According to the Council, this is a new example of the European Community's nonuniform enforcement of the costly requirement that it has applied to major U.S. packing houses.

[221] ***Commission Decision Corn(89) 2305,*** December 1989.

Background

This directive (Com(88) 798) proposes that the EC establish maximum levels of pesticide residues for fruits, vegetables, and certain other products of plant origin sold in the EC. Because of the differences in climate and of fruits and vegetables grown, the individual member states have different standards with regaid to pesticide residues. The process of harmonizing these practices into a single code has met with much controversy.

The rules in this directive do not apply to nonfood items or products intended for export They refer only to post-harvesting treatment of fruits and vegetables and not to sowing or planting. Future directives will provide more specific information on the permissible levels of pesticide residues and their enforcement.

Anticipated Changes

This proposal, if approved, would result primarily in two important changes in the EC fruit and vegetable trade. First, member states would be required to adhere to the prescribed maximum level for pesticide residues. Previous EC legislation has already set maximum residue levels for some pesticides; however, member states currently have the authority to permit higher tolerance levels for products traded within their own territory.[262] This directive would eliminate that authority. Member states would be able to set lower (i.e., more stringent) tolerance levels within their own territory, if new evidence indicated that the maximum level permitted in the EC at that time was not safe. The EC Commission would then examine the member state's claim and make a determination for the EC as a whole. Second, the directive states that all fruits and vegetables containing pesticide residues must bear the indication "treated with" followed by the common or chemical name of the pesticide. This indication would be required not only at the wholesale but at the retail level, which is a major departure from current practice in most member states.

Possible Effects

U.S. exports to the EC

Although the harmonization of EC pesticide residue levels should facilitate trade in fruits and vegetables within the EC, this directive, along with any subsequent directives concerning pesticide residues, has the potential to interfere with U.S. exports to the EC. Government and industry sources have commented that the EC is inclined to establish tolerance standards for certain pesticides at a significantly lower level than those in the United States. In addition, U.S. regulations do not require producers to present any indication of pesticide treatment at the retail level. At the wholesale level, a certificate of pesticide applications is required to accompany all fresh produce to prevent duplicate treatment by the handler.

In 1988, the United States exported approximately $227 million in fruits and vegetables (including fresh, chilled, frozen, dried, and otherwise prepared or preserved) to the world, and the EC accounted for approximately $44 million of that total, or 20 percent Citrus fruits accounted for the largest share of fresh produce exports to the EC, and dried fruits and vegetables accounted for a significant portion of the remaining exports. Canada and Japan are typically the two largest markets for U.S. exports of fruits and vegetables.

Diversion of trade to the U.S. market

There is little likelihood that the adoption of this proposal would cause a significant increase in U.S. imports of fruits and vegetables from third-country suppliers. Although the EC may set some pesticide residue levels below the maximum allowed in the United States, there are still other pesticides for which the EC has higher tolerance levels than does the United States. For this reason, third-country suppliers are not likely to consider the U.S. market a more liberal alternative for their fruit and vegetable exports that are rejected by the EC.

US. investment and operating conditions in the EC

This directive should not have a significant impact on U.S. investment and operating conditions in the EC because there is little U.S. investment at the farm level in fruits and vegetables in the EC. At the processing level, U.S.-owned processors based in the EC could be at a disadvantage if they purchase their fruit and vegetable inputs from non-EC suppliers who do not have to abide by EC pesticide regulations; however, U.S.-owned subsidiaries purchasing inputs from European growers should not be at a disadvantage relative to EC processors who purchase inputs from similar sources.

LI.S. Industry Response

U.S. industry sources contacted have expressed concern over the likelihood of negative consumer reaction to pesticide labels in the EC. One source stated that consumers are likely to view the pesticide references as a warning, thus creating a disincentive to purchase. Many European growers and processors are also against this proposal, according to the same source.[263] Another source stated that pesticide residues and their effect on

[262] *Council Directive 76/895, Of* No. L 340 (1976), as last amended *by Council Directive 88/298, Of* L 126 (1988).

[263] Written transmittal of Northwest Horticultural Council to USDA, December 1989.

human health are predetermined scientifically and that any reference of their use would have no meaningful informational value to the consumer.[264]

In addition to labeling, some sources are concerned over the kind of methodology that the EC will use to determine safe residue levels. The contention here is that the EC Commission seems too receptive to public interest groups whose claims are not based on scientific evidence. One firm stated that only informed scientific opinion should be allowed to influence toxicological decisions, and that any effort to accommodate uninformed consumer opinion would result in unfaiibarriers to trade.[265] One U.S. industry source expressed concern over the fact that EC producers are allowed to exceed maximum residue levels, provided that their fruit and vegetable products are intended for export.[266]

Processed Foods and Kindred Products

Overview

The EC processed foods and kindred products industry is similar in structure to the U.S. industry. However, the situation varies by member state and by product. The largest firms are located in the northern member states, while the more southern member states' industrial structures are characterized by smaller enterprises.[267] The majority of the production and trade within the EC market is done by large firms that are horizontally and/or vertically mtegrated.[268] The highest degree of corporate concentration is found in the production of sugar, edible oils, coffee, chocolate, instantproducts, and spirits.[280] Conversely, the milk, flour, canned fruits and vegetables, and meat preparation industries are much less concentrated.[270] Many of the larger companies have foreign subsidiaries.

The U.S. Department of Commerce reports that 8 of the 10 largest food processing companies in the EC are U.S.-based multinational corporations. In 1987 they sold almost 28 billion dollars' worth of goods in the EC.[271] U.S. direct investment in food and kindred products manufacturing in the EC was $7.4 billion by the end of 19 8 8—more than double the level of investment in 1981.[272] U.S. cigarette companies also have substantial investments in EC production facilities and are estimated to account for over 30percent of the EC cigarette market U.S. processed-food exports to the EC are estimated to have totaled more than $600 million in 1988.[273]

The EC Commission, in consultation with member-state health authorities, has been delegated substantial authority for evaluating food safety issues. The EC Commission relies on a network of advisory committees to carry out its responsibilities under the Food Law. In 1974, the EC Council created the Scientific Committee for Food (SCF) to advise the EC Commission on food safety and to provide objective evaluations on foods.[274] This committee is the EC's official reviewing body for all processed-food-related actions. However, the final legal act of approving such actions is by the EC Council. The opinions prepared for the SCF are largely based on reports previously carried out at the national level.[275]

To assist with the work of developing new food standards, the EC Commission established the Food Advisory Committee (FAC).[278] The FAC is composed of representatives of consumer groups, unions, farmers, industries established in the EC, and trade and catering establishments. EC subsidiaries of U.S. processed-food companies are permitted to sit on the FAC, however, U.S. exporters are not

Several proposals for a more formal system of evaluating food safety issues at the EC-level are reportedly under consideration. Senior officials in the member states have agreed in principle that a cooperative system among national institutes should be established and further discussions are in progress as to how this will be arranged. According to Mr. Paul S. Gray, Head of the EC Foodstuffs Division, a cooperative system will not only benefit the manufacturer but will also enable scarce scientific resources to be used more effectively.[277]

In 1989, the concept of a European Food Agency that would function as an inspection and control service was again a popular topic of discussion. No specific proposals have yet been made on this subject However, Council Directive 89/337 calls for

[264] Written transmittal of Blue Diamond Growers to USDA, December 1989.

[265] Written transmittal of Northwest Horticultural Council to USDA, December 1989.

[266] Based on conversation with California Tomato Growers Association.

[267] External Affairs and International Trade Canada, *1992 Implications of a Single European Market,* December 1989, p. 17.

In the past 2 years, over 400 mergers and acquisitions have occurred in the West European food and drink industry. One-third were cross-border, and five of the acquisitions each cost more than $1 billion. *Financial Times,* Jan. 29,1990.

[268] Ibid.

[270] Ibid.

[271] U.S. Department of Commerce, EC *1992: A Commerce Department Analysis of European Community Directives, vol. 2.* SIM1S No. L-137, pp. 31-32.

[272] U.S. Department of Commerce, *Survey of* Current *Business,* August 1989, p. 69.

[273] Estimated by USITC staff.

[274] *Council Dectswn* 74/234, *01* No. L 136 (May 20,1974).

[275] Member states generally use bodies similar to the SCF to make safety assessments on such questions as the admissible daily intake of food additives or the components of food-wrapping materials. These bodies are either independent committees or quasi-governmental institutes (which are, like the FDA,) independent from political influence. Petitions for food-related actions are normally submitted by these bodies to government scientists or scientists from national institutes who analyze them and prepare draft opinions for the various committees.

[277] *Council Decision 80/1073, 01* No. L 318 (Nov. 26,1980).

[277] Paul S. Gray, EC Commission, *Completing the Internal Market: Taking Stark,* p. 9,

a feasibility study. Most observers are dubious of the possibility of replacing the current member-state inspection systems with an EC system.va A more likely scenario is that the European Food Agency would become a small organization that would supervise inspectors in the member states to insure uniformity in training, qualifications, laboratory standards, and technical practices in use throughout the EC.[279] Establishing a food inspectorate could relieve pressure on EC Commission officials, make the inspectors independent of the EC Commission, and insulate them from outside interest groups.

On October 24, 1989, the EC Commission published a communication on the free movement of foodstuffs in the EC.[260] The communication is an examination by the EC Commission of the principles on which Community food law is based, a reminder to member states of the decisions of the Court of Justice in support of the free movement of foodstuffs, and a guide to future policy developments.[28'] The communication foresees the need for further EC Community-level measures to provide a framework for the approval and mutual recognition of quality labels and the recognition of quality products and products of a characteristic or traditional origin.[282]

The EC Commission has determined that EC legislation on foodstuffs should be limited to provisions justified by the need to protect public health, to provide consumers with information and protection in other matters, to ensure fair trading„ and to provide for the necessary controls. The EC is proposing three types of processed food-directives as part of the 1992program. Seven of the proposals are referred to as framework horizontal directives because they lay down the philosophy and controls for particular areas, including official inspection of foodstuffs, the use of additives, labeling, contact materials, irradiation of foOds, and food for particular nutritional uses. Other processed-food directives include specific horizontal directives (which discuss the application of the framework directives to the specific categories of food) and vertical directives dealing with particular commodities or products.[283]

In the area of Processed Foods and Kindred Products, 32 directiveS, proposals, amendments, and/or corrigenda were analyzed during this phase. The majority of these proposals dealt with the harmonization of disparate national laws, rules, and regulations affecting the labeling, presentation, content, production, and advertising of processed foods, beverages, and tobacco products. A number of these directives appear to have little potential impact, since the U.S. producers already meet or exceed the proposed standard, or because there is little or no U.S.-EC trade in these products. The directives often merely codify existing practices.

In general, large U.S. multinationals (especially those with EC subsidiaries) should be in a position to benefit from the creation of a single EC internal market in the processed-food sector, since gains in efficiency and cost reduction should be significant Representatives of EC- and U.S.-based firms and trade associations in the agriculture and food product industry interviewed by the USITC staff indicated that they typically gain access to the standards-development piocessby lobbying. They lobby EC working groups involved in the preliminary stages of standards development and member-state representatives to the Council involved in the latter stages of EC approval of directives or regulations.[264] However, the situation may be different for small and medium-sized U.S. companies. Although they will generally benefit from cost reductions, they are, when acting alone, essentially cut out of the EC rulemaking process. Some report that they are likely to encounter commodity-specific export problems (e.g., distilled-spirit producers).[295]

On the basis of analyses of the directives included in the Processed Foods and Kindred Products category, seven directives or groups of directives were selected for a more detailed analysis because of the types of issues they raise for the United States and because they appear to be among those most important to U.S. Interests. These include the official control of foodstuffs; food additives; quick-frozen foodstuffs for human consumption; infant formulae and follow-up milks; maximum tar content of cigarettes; definition, description, and presentation of spirit drinks; and articles intended to come into contact with foodstuffs. Analyses are presented below for each of the directives or directive groups. Directives in two other areas that were not selected for individual writeups, but may be of future importance, are those concerning: (1) labeling, presentation, and advertising of foodstuffs, including foodstuffs

ri• U.S. Department of State Telegram, 1989, Rome, Messs ge Reference No. 25885.

vw Ibid.

am EC Commission, Communication, 01 No. C *Z71* (Oct 24, 1989).

""Communicabon On the Free Movement of Foodstuffs Within the Community' *Eunsbrief,* Nov. 10, 1989, p. 58.

at The basis of Eefood law policy is to combine harmonized rules on foodstuffs with the principle of mutual recognition of national standards and regulations for matters that do not require EC legislation. Member states may develop their own rules on the production, composition, .packaging, and presentation of foodstuffs in the absence of EC rules. Mutual recognition requires member states to admit imports of products that are produced, and marketed, under another member state's rules. Ibid.

a> EC Commission, *Completins the Internal Market 1992• A Nero Community Standards Policy,* (Brussels, 1988), p. 45.

USITC staff meetings in Europe with the American Soybean Association; Federation de !Industrie de l'Huilerie de la CEE; Commission des Industries Agricole et Alimentaire de l'Union des Industries de la CEE; the M&M/Mans Co.; Waren-Verein der Hamburger Borst e.V.; Southern Pine Marketing Council & Western Wood Products Association; and American Plywood Association.

[265] Phone conversation with a representative of the Distilled Spirits Council of the United States, Inc., Oct. 17, 1989.

treated with ionizing radiation; and (2) those relating to animal feedingstuffs.

The foodstuff labeling directives have the potential to create short-term disruptions in U.S. food product exports to the EC.[288] However, in the long run, it is that both EC and non-EC food suppliers fVTIcpteeni from the harmonization of 12 different labeling rules into a single set of requirements. Some of the proposed labeling requirements, such as mandatory listing of ingredients, are already required in the United States. Processed foods (e.g., canned and frozen foods, cookies, etc.) are one of the main product categories that could be most affected by labeling requirements. In recent years, average U.S. exports of these products to the EC are estimated to have exceeded $600 million annually. With regard to irradiation and irradiation labeling, U.S. firms should be able to comply with the new standards, although there could be some resistance to the retail-labeling requirement because of its perceived negative impact on consumers. Overall, these standards would permit irradiation of more types of foodstuffs than is permitted in the United States.

U.S. exports to the EC of all feedingstuffs are large (averaging over $300 million in recent years). However, most of these feedingstuffs consist of unmixed feed ingredients and as such would not be affected by the directives analyzed this time.[287] U.S. exports of mixed (compound) feedingstuffs to the hich are covered by the directives) are estimated from information obtained from industry sources to be valued less than $100 million annually. The EC member states, for reasons of perishability and transportation costs, tend to import bulk, unmixed commodities like oilseed meal, grain, and grain substitutes, and then mix these products close to the point of sale. Moreover, individual EC member states have often used their compound feed regulations and laws to close off their own markets from competition with other member states,zsa Consequently, feedingstuff directives that tend to be trade liberalizing within the EC would have a positive effect on those U.S. feed companies processing meal within the EC. What may be of future concern is the list of feed ingredients that will be banned from such feedstuffs. However, at this time, no list has been developed.

Official Control of Foodstuffs

Background

The purpose of the subject directives (Directives 89/397 and Com(89) 225 Final 76) is to provide a general framework for the harmonization of laws regarding control and inspection of foodstuffs. In the past, trade within the EC has been fragmented by the lack of a harmonized code for manufacturing, packaging, marketing, and inspecting foodstuffs. The term foodstuffs encompasses virtually every food category. EC member states have at times used the differences in national laws to discriminate against foodstuffs from other states. By 1992, the EC hopes to eliminate these technical barriers by creating one single market for all foodstuffs. Codifying the laws on food control and inspection is one element in achieving this aim.

Anticipated Changes

According to the directives, the control of foodstuffs will include four primary components: (1) inspection of production facilities and processes, raw materials and ingredients, semifinished and finished products, materials that come into contact with the food, cleaning processes, labeling practices, and preserving methods; (2) sampling and analysis of foodstuffs in designated laboratories; (3) inspection of staff hygiene; and (4) examination of written and documentary material. These measures are to be performed regularly and when noncompliance is suspected. Parties subject to inspection will have the right of appeal, the procedures of which will be determined by each member state. In June 1991, the EC Commission is scheduled to complete a detailed report to the European Parliament and the EC Council on how the above operations will be carried out The report will address training of inspectors, quality standards for laboratories, and the establishment of a Community inspection service for the exchange of information among member states.

Directive 89/397 states that inspections will be conducted "on site" and "on the premises"; however, neither directive indicates how imports will be treated. Industry and government sources suggest that the inspection of imports will take place at random and at the border, which is consistent with current practice. Thus far, the EC Commission has not indicated whether it will endorse the inspectionpractices of other countries. At this time, the United States has a small number of agreements with certain EC member countries for the mutual recognition of inspection programs. Known as "memoranda of understanding" or MOUs, these agreements cover two areas: (1) dry milk products, for which the United States has signed MOUs with Belgium, Denmark, and the Netherlands; and (2) good laboratory practices,[289] for which there are

ass The directives analyzed on foodstuff labeling include 89/395, 89/398, Com (88) 4M final 155, and Corn (88) 654 final.

al" The directives analyzed on animal feedings-tuffs included 89/23, 89/583, 89/125, Com (88) 303, and 89/6703.

²•• Phone conversation with a representative of Cargill Inc., Dec. 23, 1989.

a -Good laboratory practices' refers to regulations on testing new drugs, devices, and food additives on laboratory animals. The•U.S. FDA must apptvve of a country's laboratory standards before an MOU can be signed.

agreements with France, West Germany, Italy, and the United Kingdom.[299]

Possible Effects

U.S. exports to the EC

The directive is ambiguous in regard to its impact on U.S. exports, as the EC has not yet established how imported products will be inspected. According to the U.S. Department of Commerce, it is likely that initially onlylaboratories located in the EC will be authorized to inspect food.[29] This restriction places in doubt all existing MOUs that are in effect between the United States and individual EC member states.

Japan and Canada are the two primary markets for U.S. exports of processed foods, but the EC is also significant, accounting for 10-15 percent of U.S. exports in any given year. In 1987, U.S. exports to the EC of processed foods totaled over $500 million.[292] In 1988, the decline in the U.S. dollar relative to most EC currencies was one of the primary causes of the increase in U.S. processed food exports to an estimated $600 million.

Diversion. of trade to the US. market

As the EC has not yet established how imported products will be treated, it is difficult to ascertain whether trade will be diverted to the U.S. market nevertheless, it is unlikely that third-country producers will increase their exports to the United States as a result of this directive. In the United States, the Food and Drug Administration (FDA) also inspects domestic food manufacturers and samples approximately 5 percent of imported food products at designated FDA laboratories. According to industry and Government sources, U.S. ins on standards either meet or exceed EC standards, thus limiting opportunities in e U.S. market for foreign suppliers who are unable or unwilling to comply with EC inspection procedures.

U.S. investment and operating conditions in the EC

U.S. investment in EC food processing is quite large, amounting to $7.4 billion in 1988.[2]m The enactment of a Communitywide food inspection program should not have a negative effect on U.S. cerations in the EC. In fact, both U.S.- and ECowned subsidiaries should find it easier to comply with one set of food inspection standards as opposed to 12 different sets. The development could create new opportunities for EC-based U.S. food processors whose ptoducts have been previously prohibited from a particular member-state market. This directive, nevertheless, attempts only to codify food inspection laws and provides little or no information on how inspections will be executed. The way in which these inspections are actually performed will determine the effects of this directive on U.S. investment in the EC.

U.S. Industry Response

Trade sources indicate that U.S. multinational corporations with subsidiaries in the EC are optimistic about the opportunities created by a single EC market Although it is projected that EC food regulations will become more restrictive as they align with the laws of the more advanced EC member countries, cost savings derived from having a uniform code should outweigh the expenditures resulting from having to meet more stringent requirements. In the case of U.S.-based producers, however, the new requirements could discourage exports to the EC, since the majority are small-and medium-sized firms having limited financial resources to adjust to new requirements in production surveillance, plant registration, and other inspection procedures. These firms are also excluded from attending meetings of the EC Food Advisory Committees, which is where most of the debate over EC food regulations takes place. U.S.-owned subsidiaries in the EC, however, are allowed to attend these meetings.[291]

Food Additives

Background

The purpose of this directive (Directive 89/107) is to establish a framework for the use of food additives in the manufacture, processing, treatment, packaging, and storing of food in the EC. A food additive is defined as any substance "not normally consumed as a food itself and not normally used as a characteristic ingredient of food. . .(the inclusion of which results] in it or its by-products becoming directly or indirectly a component of such foods." Annex 1 of the directive lists 24 categories of food additives, and annex 2 states the general criteria for their use. Processing aids, pesticides, flavorings, and nutrients (including vitamins and minerals) are not considered food additives for the purposes of this directive.

By June 1990, all EC food producers will be required to begin making adjustments to use only those food additives deemed to be scientifically safe by the EC Commission. Sources indicate that it could be at least another year before the EC

Aso 'Foreign Memoranda of Understanding (MOUs)' prepared by the International Affairs Staff Office of Health *Affairs,* U.S. FDA, Sept. 1,1989.

2-1 U.S. Department of Commerce, *EC 1991 A Commerce* Detainment Analysis *of European Community Directives, vol. 2,* SIMIS No. 1-137, pp. 31-32.

as Ibid., p. %it.

2-3 U.S. Department of Commerce, *Survey of Current Business,* vol. 69, No. 8, August 1989, p. 69.

284 U.S. Department of Commerce, *EC 1992: A Commerce* Deportment *Analysis of European Community Directives,* vol. 2, p. xiv.

completes its list of authorized food additives. Although several hundred food additives have already been approved as safe, the conditions of their use (including how much and in what foods) have not been determined. In addition, some additive categories, such as food colorings, are controversial and are not likely to be settled within the next year.[296] The EC plans to publish the entire list of authorized food additives later in a comprehensive directive.

Anticipated Changes

This directive is likely to have an impact on both EC and non-EC food producers who use additives in the products they market in the EC. To begin, Government and industry sources believe that the EC has a much broader definition of the term "food additive" than does the United States, which means that the directive could have an impact on more food additives used in the United States. In addition, the EC has chosen a "positive" list approach, which means that the use of any additive not on the list is strictly prohibited. This is in contrast to a "negative" list approach, which would allow the use of additives not on the list and would give more latitude to food processors. When the EC Council has completed the list, the EC member states will be required to allow the marketing of all food additives on the list by December 1990 and to prohibit the use of all food additives not on the list by December 1991. The directive also specifies ways in which an EC member state can petition to have an additive appended to the list, provided that it is proven safe for consumer use. A member state can also suspend the use of a particular additive on the list, if it develops new evidence showing that the additive is dangerous to human health. In both cases, the EC Council will determine whether the claims made for or against a particular additive are scientifically sound. All member states will be required to adhere to the Council's final determination.

Possible Effects

U.S. exports to the EC

Until the EC Council publishes its final list of food additives authorized for use, the specific effects of this directive on U.S. exports to the EC cannot be assessed. However, industry sources have given several reasons why the proposal could be damaging to U.S. exports in the long run. First, thepositive list approach can prohibit the use of additives that are little known in Europe but that have been favorably tested in the United States. Second, the lists are not developed in an open environment where U.S. exporters — the majority of which tend to be small and medium-sized firms—can participate. Finally, the directive does not provide any channels through which a non-EC supplier can petition to have a particular additive approved.

It is not possible to determine specifically which U.S. food-manufacturing industries will be affected by this directive because food additives can be used in a large number of food products. According to the U.S. Department of Commerce, U.S. exports of food products (including meat products; dairy products; preserved fruits and vegetables; grain mill products; bakery products; sugar and confections; fats and oils; beverages; and miscellaneous foods) were valued at $12.5 billion in 1987 and $15.9 billion in 1988.[296] Sources estimate that the EC's share of this total is between 10 and 15 percent U.S. exports of processed foods to the EC were esimated at over $600 million in 1988. Processed foods account for a large share of products containing food additives.

Diversion of trade to the U.S. market

According to industry sources, the likelihood that this directive would encourage third-country suppliers to divert food exports to the United States is small, because there are only a few countries other than the United States and the EC member states that use a wide range of food additives in their products. Furthermore, the United States has very high standards with regard to the use of food additives. In the United States, a substance is "generally recognized as safe" (GRAS), if it has been favorably tested by a group of experts "qualified by scientific training and experience to evaluate its safety," or if it has been accepted as safe for food use since before January 1, 1958. Pesticides, color additives, animal drugs, and substances approved prior to the U.S. Food, Drug, and Cosmetic Act, the Poultry Products Inspection Act, or the Meat Inspection Act are not "GRAS" and must receive FDA approval before they can be used in or to process foods.[297] In short, the stringency of U.S. standards for food additives would not provide much opportunity for foreign suppliers who are unable or unwilling to comply with EC standards.

U.S. investment and operating conditions in the EC

The effect of this directive on U.S. investment in the EC, if any, would be to increase investment U.S. multinational corporations contacted commented that it is generally easier to accommodate changes in EC food regulations at their EC-based, rather than their U.S.-based production facilities when such changes affect their products. The overwhelming trend in the U.S. food processing industry has been to invest in production overseas, rather than to export from the United States. In the EC, U.S. direct food manufacturing investment rose from $3.7

[265] USITC field interview, with staff of the EC Commission, Jan. 10, 1990.

[2"] U.S. Department of Commerce, *1989 U.S. Industrial Outlook: Prospects for Over 350 Industries,* SIC 201-209, p. 39-2.

[21..] U.S. Department of Commerce, *EC 1992• A Commerce Department Analysis of European Community Directives, vol. 2.* SIMIS No. L-131, p. 22.

billion in 1981[299] to $7.4 billion in 1988,[299] accounting for over half of all direct U.S. investment in overseas food manufacturing.

U.S. Industry Response

The International Food Additives Council has indicated that their main concern with this directive is the lack of available channels through which non-EC suppliers can express their views. They are concerned about the "positive" list approach and feel that it is far more restrictive than what is required. There is also concern that the EC may attempt to use this list as a nontariff barrier to U.S. imports of food products. Other U.S. food processors that use food additives in their products do not appear to be concerned with the directive at this time.

Quick-Frozen Foodstuffs for Human Consumption

Background

The purpose of this directive (Directive 89/108) is to establish a set of rules governing the production and marketing of quick-frozen foods in the EC market Currently, each EC member state has its ownretations regarding quick-frozen foods, which led to situations of trade discrimination within the EC. The directive defines quick-frozen foodstuffs (QFFs) as food products "which have undergone a suitable freezing process known as 'quick-freezing' whereby the zone of maximum crystallization is crossed as rapidly as possible..." The process usually requires subjecting the food to liquid nitrogen or a blast of carbon dioxide gas. This differs from "block-freezing," in which food items, already packaged for retail sale, are pressed together in large blocks and frozen for a period of several hours. In both cases the products must be shipped to their destination within a recommended temperature range to prevent thawing. Block freezing is cheaper, suitable for more foods, and used widely throughout the United States. The directive does not propose that all products marketed as frozen be subject to ultra-rapid freezing. The directive does require, however, that all products marketed as quick-frozen meet certain specifications. Ice creams and other edible ices are not regarded as QFFs.

Anticipated Changes

The implementation of this directive (scheduled for July 10, 1990) is likely to bring about several changes, both in the production and marketing of QFFs in the EC. With regard to production, the directive requires that the temperature of the product must reach -18°C (about -1 °F) during the freezing process throughout all points of the product This temperature was chosen because, according to the directive, it is the point where "all microbiological activity likely to impair the quality of a foodstuff is suspended. Higher temperatures are permitted during transport and retail storage, provided that they do not exceed 6°C, (about 43°F). Since many EC food processors in the less-developed member states do not have the equipment to achieve this temperature during freezing, the directive allows for a period of about 2 years in which existing equipment can be used until the end of its normal lifetime.

The directive also specifies the way in which QFFs must be marketed. For example, no item intended for sale to the ultimate consumer can be marketed as "quick frozen" unless it meets the -18°C requirement during freezing. In addition, all QFF labels must bear a date of minimum durability ("best if used by" date), a recommended storage temperature, a batch indicator, and a message not to refreeze after defrosting.

In contrast, the U.S. Food and Drug Administration has no comparable law covering such specifics as mandatory freezing temperatures and shelf-life dating. These decisions are generally left to the discretion of the individual producer. However, the FDA does require that all frozen food manufacturers comply with regulations on good manufacturing practices (21 CFR Part 110 on manufacturing, packing, and holding of human food) and that the products not be permitted to thaw during shipping and retailing.=

Possible Effects

U.S. exports to the EC

This directive could deter QFF imports from the United States and other foreign suppliers. Although all producers should benefit from the unification of EC laws regarding QFFs, there is concern among U.S. producers that the proposed requirements will not improve product safety and will only be used as nontariff barriers to trade. The EC could possibly deny market access to U.S. producers on the basis that there are no legal temperature requirements in the United States.

In 1988, U.S. exports of all frozen foods rose by 14 percent, to a total of $410 million, according to the Department of Commerce. Japan accounted for 41 percent of the total, and Canada for an additional 20 percent Estimates place the EC's share at approximately 10 percent of U.S. frozen foods exports. The share of U.S. exports to the EC consisting of QFFs is reportedly small and would be likely to include certain high-quality vegetables and fish products.

[21] Ibid.,

[29] U.S. Department of Commerce, *Survey of Current Business, vol. 64,* No. 8, August 1989, p. 69.

[300] U.S. Department of Commerce, *EC 1992: A Commerce Department Analysis of European Community Directives, vol. Z* SIMIS No. L-130, pp. 20-21.

Diversion of trade to the U.S. market

Given the information currently available, it is likely that other foreign suppliers of QFFs to the EC will be inclined to divert their exports to the U.S. market after the implementation of this directive. The United States has no comparable standards for QFFs and could be regarded as a more liberal market alternative. Other major world producers include Canada, and to a lesser extent, Japan, Taiwan, other Southeast Asian countries, and South America. U.S. imports of all frozen foods were valued at $137 million in 1988.[301] Imports of QFFs could increase from any of the above sources.

U.S. investment and operating conditions in the EC

This directive has the potential to .alter U.S. investment portfolios and business operating conditions in the EC. U.S. frozen-foods producers will either have to comply with the mandatory temperature and shelf-life-dating requirements or not sell QFFs in the EC at all. U.S. firms operating plants in the EC may have to invest in new ultra-rapid freezing equipment and develop new labels in order to continue operations in the EC. In any case, there are many European-owned firms that will also have to make changes in their plants and equipment, so U.S. firms operating in the EC will not be at a disadvantage relative to their EC-based competitors.

U.S. Industry Response

The U.S. frozen foods industry has expressed concern over this proposal through informal channels. The American Frozen Food Institute (AFFI) has noted that the EC standards differ substantially from the codes developed by Codex Alimentarius (a subsidiary of the World Health Organization and the U.N. Food and Agriculture Organization), whiCh has 135 member countries subscribing to its food guidelines, including the United States and the 12 EC member states. AFFI mentions two key areas of conflict

1. The mandatory ultra-rapid freezing technique requiring a temperature of -18°C is inappropriate for certain foods. The AFFI suggests that freezing should occur "at a speed appropriate to the product," which can be determined safely and responsibly by the producer.
2. The mandatory shelf-life requirements are unnecessary for some frozen foods. The selection of an expiration date would be arbitrary and could lead to trade discrimination.

In general, the AFFI believes that the EC appears to be unusually concerned with the regulation of frozen foods. The AFFI also believes that the specificity of these QFF regulations serves no purpose other than as a nontariff barrier to imports because there is no evidence to indicate that they will improve product safety or quality.

Infant Formulas and Followup Milks

Background

Attempts to answer the concerns of consumer groups regarding the safety, quality, and efficacy of infant formulas and followup milks= led to the proposal of this directive (Proposal (86)564 Final). Among other criteria, the directive is to give due consideration to EC Council Directive 77/94 on the approximation of the laws of the member states relating to foodstuffs for particular nutritional uses, particularly the nutritional requirements for infants as established by generally accepted scientific data.

Anticipated Changes

Member-state laws dealing with compositional and labeling requirements for infant formulas and followup milks are to be changed. Further, provision exists in the directive for the member states to address those principles and aims of the International Code of Marketing of Breast Milk Substitutes dealing with marketing, information, and responsibilities of health authorities.

Possible Effects

U.S. exports to the EC

The positive list contained in the directive is regarded by the U.S. Department of Commerce as more restrictive, in terms of composition ofproduct, than the positive list associated with the U.S. Infant Formula Act.= The U.S. Infant Formula Act (PL96-359) does not limit the types of oils used as ingredients in infant formula, whereas, the EC directive bans the use of sesame oil, cotton oil, and fats containing more than 8 percent transisomers of fatty acids. The U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA) are concerned that the EC directive does not express any scientific reasoning for banning the above-named oils.

Largely because of relatively high transportation costs, U.S. producers report that they do not export infant formula or followup milks from the United States to the EC, except for a limited quantity of special-order infant formula.[302]

[301] U.S. Department of Commerce, *1989, U.S. Industrial Outlook Prospects for over 350 Industries,* SIC 2037 and 2038, p. 39-2.

[302] Followup milks are foodstuffs intended for particular nutritional *use* by infants aged over 4 months and constituting the milk element in a progressively diversified diet of this category of persons.

[303] U.S. Department of Commerce, *EC 1992: A Commerce Department Analysis of European Community Directives, vol. 1* and Z May 1989, p. 15.

Telephone conversations with officials of Ross-Abbott Laboratories, American Home Products, and Nestle SA.

Although they acknowledged that economics can change, they generally agreed that it is doubtful that they will export these products from the United States to the EC in the foreseeable future. Rather, they will continue to produce the products in their plants operating in a number of the member states of the Community. The spokesman for American Home Products reported in a telephone conversation that the three multinationals producing infant formula in the United States and in the EC built their plants in the EC so as to satisfy EC regulatory requirements for infant formula. The spokesman also reported that should changes occur in the future in the EC requirements, the plants undoubtedly will comply with the changes.

Diversion of trade to the U.S. market

The Infant Formula Council reported that the stringent requirements of U.S. law make the U.S. infant formula industry the most heavily regulated of all U.S. food-processing industries.[306] The council doubted that any foreign-produced infant formula would meet the criteria that would enable it to be diverted to the U.S. market

US. investment and operating conditions in the EC

Data are not available on U.S. investment in infant formula and followup milk operations in the EC. Three of the five known U.S.-manufacturers of the products produce infant formula in the EC, namely, Ross-Abbott Laboratories, American Home Products, and Carnation USA (a holding company of Nestle SA). The producers report annual EC sales of infant formula in the billions of dollars. Nestle SA, a holding company of a Swiss firm, is believed to supply 35 to 40percent of the European market for infant formula.[30]e Each of the three manufacturers that produces the product in the United States and the EC has locally operated plants in several of the EC member states.

U.S. Industry Response

The U.S. industry reports that is has built plants to produce infant formula in a number of the EC member states and in accordance with the EC requirements. Should these requirements change at a later date, the formulations used in those plants will undoubtedly be changed so as to comply with these new requirements. To date, there have been no known significant compliance problems and none are anticipated. Largely because of transportation costs, the U.S. industry believes it will continue to produce infant formula in its plants located in the EC rather than export this product from the United States to the Community.

According to the U.S trade association, the Infant Formula Council, the differences in the EC directive and the U.S. Infant Formula Act could arouse consumer concerns about the safety of the product in either the United States, the EC, or in both. The oils banned by the EC directive currently are not used in infant formula in the United States or the EC. U.S. producers of those oils fear that the directive, as it now stands, might prevent use of such oils in infant formula at a future date. One of the U.S. producers of infant formula that also produces the product in the EC (Ross-Abbott Laboratories), speculated that the ban on the use of those oils might be related to the surplus butter situation that has existed in the EC, i.e., the EC Commission might prefer that the Communities' surplus production of cow's milk be used as an ingredient in infant formula and followup milks rather than manufactured into butter and sold to the EC intervention agencies.

Largely in response to the concerns of the FDA, as set forth in a formal letter sent to the EC in January 1990, the FDA, USDA, and the Infant Formula Council anticipate that the EC will issue a clarification directive on infant formulas and followup milks.[307] The issuance of this new directive would suggest that the EC may not have given full consideration to all of the current scientific evidence in the process of adopting the directive relating to infant formulas and followup milks. Additionally, the circumstances would indicate that scientific and technical cooperation among EC and U.S. regulatory authorities, and benefits from an exchange of mutual experience in the areas of food and medicine, resulted in the adoption of sounder regulations in the EC, greater flexibility for producers, and, above all, more nutritional formulas for infants.

In its letter to the EC Commission, the FDA outlines the results of its technical review of the EC report of the Scientific Committee for Food entitled, "The Essential Requirements of Infant Formulas and Follow-up Milks Based on Cow's Milk Proteins." Of concern to the FDA was the lack of evidence for the EC prohibition of sesame oil, cotton oil, and fats containing more than 8 percent transisomers of fatty acids as ingredients in infant formulas. The FDA continued that the EC prohibition of these ingredients in infant formulas appeared to be based on very limited information. Cited were other examples of what the FDA considered to be the generally restrictive nature of the EC regulatory approach. According to the FDA, this may inhibit future modifications of infant formulas, particularly modifications that might result in them more closely resembling human milk.

[306] Telephone conversation with officials of the Infant Formula Council, Atlanta, GA.

[304] Telephone conversation with officials of Nestle SA.

[30'] Fred Shank, Ph.D., Director, Center for Food Safety and Applied Nutrition, FDA, letter to Mr. Paul Gray, Head, Division of Foodstuffs, Directorate-General III/B, EC Commission.

A joint press statement by the EC Commission and the U.S. Mission to the European Community, dated November 13, 1989, announced the first in a series of twice-yearly meetings between the FDA and senior officials from the EC responsible for food and pharmaceutical regulation. According to the press release, both sides were gratified that scientists and experts from the United States and the European Community now have aregular forum in which to exchange information and • matters of mutual interest The resultant broadening of the scientific base was seen as enabling both sides to exercise more effectively their role of public protection.[3438] It is in connection with these developments that an expected clarification directive from the EC regarding infant formulas and followup milks is anticipated.

Maximum Tar Yield of Cigarettes

Background

On February 4, 1988, the EC Commission transmitted to the EC Council its initial proposal for a directive on the maximum tar yield permitted in cigarettes. The Economic and Social Committee adopted its opinion on the proposal on July 7, 1988, and the European Parliament adopted its opinion on the directive on May 25, 1989. The amended proposal takes these opinions into account, and also, as a result of discussions since the submission of the initial proposal, makes improvements in the wording and on technical questions[309] The corrigendum corrects an error relating to the required compliance date. The directive indicates that the differences between laws, regulations, and administrative provisions of the member states on the limitation of the maximum tar content of cigarettes constitute barriers to trade and impede the establishment and operation of the internal market Accordingly, the directive requires that those obstacles be eliminated and the marketing and free movement of cigarettes be made subject to uniform rules concerning maximum tar content, which take due account of public protection.=

Anticipated Changes

Member states will be required to comply with uniform EC rules relating to the maximum tar content of cigarettes marketed in the EC. The proposed directive is slated to be implemented within 18 months after notification and approval. A period of 2 years is allowed for the sale of existing products that do not comply with the new requirements. The amended proposal primarily makes wording and technical procedure (testing) changes to Directive 87/720. The proposal does amend article 7, so that it now reads, "Member States may not, *for consideration of the limitation of tar yield of cigarettes,* prohibit or restrict the sale of products which conform to this Directive." It does not change the maximum required tar yield of cigarettes marketed in the member states from Directive 87/720 (not greater than 15 mg on Dec. 31, 1992, and not greater than 12 mg on Dec. 31, 1995). It is unknown what specific member state laws are to be changed; however, comments in the most recent amendment indicate that in most member states, the 15 mg requirement has already been reached, or progress has been made to reach that limit

In November 1989, a new draft proposal was agreed upon by the EC Health Council, which amends the previous proposal's maximum tar content limits.[311] Trade sources report that the old levels were amended because of strong dissension from Greece. The new proposal would introduce maximum tar yields on cigarettes in two stages. The first would set a maximum tar content level of 15 mg to be reached by December 31, 1992. The second deadline is for a maximum content of 12 mg by the end of 1997. Special provisions would apply to Greece. Under these provisions, Greece would have until the end of the year 2006 to reach the 12-mg limit; interim limits of 20 mg, 18 mg, and 15 mg would be applicable at yearend 1992, 1998, and 2000, respectively. Greece was given special consideration because it produces cigarettes with a much higher tar yield than other member states. The special arrangements for Greek producers would not affect the sale in Greece of low tar cigarettes produced in other member states.

Possible Effects

U.S. exports to the EC

Official statistics of the U.S. Department of Commerce indicate that in 1988, total U.S. exports of cigarettes amounted to about $2.6 billion, about $750 million of which were shipped to EC countries. Belgium-Luxembourg accounted for about 97 percent of the value of total U.S. cigarette exports to the EC. Trade sources report that a substantial amount of these exports are subsequently transshipped to other markets outside of Europe and that direct U.S. exports of cigarettes to the EC (other than those that are transshipped) account for a very small portion of the EC market (due to a 90-percent common customs tariff). Consequently, the directive is unlikely to appreciably affect direct U.S. exports to the EC. However, it is estimated that U.S. manufacturers account for more than 30 percent of the EC market for cigarettes, if U.S. companies' manufacturing subsidiaries inside the EC are included as suppliers. Trade sources have indicated to the USITC staff that a portion of this production does consist of cigarettes that

[30°] U.S. Mission to the European Communities, Press Release, November 13, 1989. The next meeting is slated to be held in Washington, DC, on Mar. 29-30,1990.

me EC Commission, Com (89) 398 final, *01* No. 184 (July 23, 1986), p. 19.

[3i°] EC Commission, Corn (89) 398 final amends proposal Corn (87)720 (which was analyzed in the initial report, USITC Publication 2204). Com (89) 398 final cancels and replaces Corn (89) 398.

[3"] 'Minimum Tar Content — Cigarettes,' *Eurobrief,* Nov. 24, 1989, p. 70.

would exceed the 12-mg tar limit. U.S. cigarette companies have indicated their opposition to this directive; *however,* they have not indicated the extent to which their EC cigarette production, sales, or both might be adversely affected. The European Parliament argued that the 15-mg limit would affect 48 percent of cigarette sales in Europe 312

Diversion of trade to the U.S. market

Trade sources indicate it is unlikely that any major third-country supplier will divert cigarettes originally intended for the EC market to the U.S. market because of this directive.

U.S. investment and operating conditions in the EC

U.S. firms are known to have substantial investments in the EC; however, the level of this investment is unknown. Total U.S. direct investment in the EC food and kindred products sector is reported by the U.S. Department of Commerce at $7.4 billion in 1988. Trade sources report that U.S. manufacturers primarily supply the EC cigarette market through production facilities inside the EC.

U.S. Industry Response

The U.S. industry is opposed to this directive and has expressed its concerns to various U.S. Government agencies and officials of the EC. Officials of Philip Morris Inc and R.J. Reynolds Tobacco Co. have indicated to USITC staff that they are opposed to any restriction on their right to market historically lawful tobacco products in the EC. They believe the proposal to be arbitrary and discriminatory since it is directed exclusively at manufactured cigarettes. Philip Morris believes the proposal is without substantive scientific foundation and that the proposal could result in changes in consumers' smoking habits.

Spirit Drinks

Background

This regulation, (Council Regulation 89/1576) one of the 1985 White Paper measures, was adopted by the EC Council in May 1989 on the basis of an EC Commission proposal first tabled in 1982 and modified in 1986. The regulation states that since there are no specific Communitywide rules governing the definition, description or presentation of spirituous beverages, and given the economic importance of these products, it is necessary, in order to assist the functioning of the common market, to lay down common provisions on these subjects. Although the regulation became effective on December 15,1989, it provides for a 2-year transition period to facilitate a **switchover from national to community** rules for these products.

Anticipated Changes

The regulation creates Communitywide standards for certain spirit drinks.[313] Minimum alcoholic strengths by volume are established. However, the regulation allows member states to establish higher minimums. It also provides stipulations regarding quality (e.g., the conditions for adding ethyl alcohol) and presentation (e.g., labeling). A list of geographic designations (annex II) ma be used in lieu of or in combination with the ifi**c spirit drinks defined. A Community system is to be established to verify documents of authenticity for the spirit drinks in annex II of the regulation. Imports from third countries bearing a** **phical designation or a name other than** **y listed may qualify for protection throw concessions granted by the Community either under GATT or under bilateral agreements.**

Possible Effects

US. exports to the EC

In 1988, total U.S. exports of the products affected by this regulation amounted to about $159 million, about $41 million of which was shipped to EC countries.[314] It is estimated that the U.S. share of the EC market is less than 0.5 percent In general, the directive's requirements covering the definition, description, and presentation of most spirituous beverages are not significantly different from past member country rules.

However, the directive could seriously affect the marketability of U.S. blended whisky in the EC. The directive requires that whisky be matured for at least 3 years in wooden casks. U.S. regulations provide no minimum age requirement for blended whisky, although they do provide for certain labeling requirementsregarding the age of whiskeys used in the blends. In addition, the EC regulation requires that whisky (among other spirits) may not bear in any form whatsoever in its presentation its generic name if it contains added ethyl alcohol. Many U.S. companies produce spirit blends composed of 20 percent or more on a proof gallon basis of straight whisky or whiskeys blended

[312] "Greek Support For Tar Directive Seems Certain With Concessions On Tinting," *European Report,* Nov. 8, 1989, p. 6.

[313] The specific spirit categories include rum; whisky or whiskey; grain spirit; wine sprit; brandy or weinbrand; grape marc spirit or grape mare; fruit marc spirit; raisin spirit or raisin brandy; fruit spirts; cider spirit, ciderbrandy, or perry spirit; gentian spirit; fruit spirit drinks; juniper-flavoredspirit drinks; caraway-flavored spirit drinks; aniseed-flavored spirit drinks; bitter-tasting spirit drinks or bitter; vodka; liqueur; egg liqueurtadvocaaVavocat/Advokat; and liqueur with egg.

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

with neutral spirits (i.e., ethyl alcohol).[315] These products are recognized and authorized by U.S. regulations. Consequently, these requirements would impose a ban on U.S. exports to the EC of some the top-selling blended whisky brands. U.S. exports of these blended whiskeys to the EC are estimated from information obtained from trade sources to have been about $6 million in 1988.

Industry sources report that U.S. exports to the EC may also be affected by annex 1(2) of the regulation, which sets forth the characteristics of ethyl alcohol of agricultural origin and requires a minimum alcoholic strength of 96 percent by volume (192 proof). U.S. regulations provide for a minimum strength for alcohol or neutral spirits of 95 t by volume (190 proof). Vodka is defined in S. regulations as neutral spirits, which must be distilled at or above 190 proof. Consequently, should these spirits be distilled above 95 percent by volume (190 proof) but at less than 96 percent by volume (192 proof) as required under the EC spirit regulation, the spirit would not be eligible for entry into the EC as vodka. In 1988, the value of U.S. vodka exports to the EC was approximately $1 million. The Administration is reportedly attempting to use the 2-year transition period (i.e., until December 14, 1991) to find solutions to these problems with the EC.[318]

The minimum alcohol content for rum, vodka, and gin of 37.5 percent by volume as set forth in article 3 differs from U.S. regulations, which require a minimum alcohol strength of 40 percent by volume for these products. Article 3 also provides a minimum alcohol content for brandy of 36 percent by volume, whereas the minimum alcohol content for this product under U.S. regulations is 40 percent by volume. These differing standards may cause problems in the exchange ofgoods, though they are not likely to hinder U.S. exports to the EC.

Diversion of trade to the U.S. market

It does not appear that any major third-country supplier will be hurt significantly as a result of the regulation's implementation. Consequently, third country export diversion to the U.S. market is not expected.

U.S. investment and operating conditions in the EC

Industry sources report that various U.S. companies have investments in the EC spirits industry (e.g., bottling facilities, etc.); however, the level of this investment is unknown. Total U.S. investment in the EC food and kindred products sector is reported by the U.S. Department of Commerce at $7.4 billion in 1988. The portion of this investment accounted for by spirits is believed to be small. However, industry sources indicate future and present investment levels could go down, primarily as a result of the regulation's treatment of U.S. blended whisky.

U.S. Industry Response

The U.S. industry is opposed to certain provisions of Council Regulation 1576/89, and has, through its trade association, expressed its concerns to various U.S. Government agencies and officials of the EC. The Distilled Spirits Council of the United States, Inc. (DISCUS), a national trade association representing the suppliers of over 85 percent of the distilled spirits sold in the United States, provided comments to the USITC's staff regarding Council Regulation 1576/89. DISCUS is concerned that differing U.S. and EC requirements, relating to such issues as minimum alcohol content, minimum aging requirements for whisky, and whisky blending requirements may result in trade problems. For example, some of the top-selling brands of U.S. blended whisky would be denied entry into the EC market because of the EC standards requirements.[317] DISCUS is also concerned that the EC spirits relation omits any reference to Bourbon whis despite such a reference in previous drafts of the regulation. U.S. regulations provide standards of identity for Scotch whisky, Irish whisky, and Cognac, and identify these products as distinctive products of their respective countries. DISCUS reports that Mexico, France, Canada, and Portugal ize Bourbon whisky as a distinctive product of the States and argues that Bourbon and Tennessee whisky should be accorded similar treatment by the EC in its final spirits regulation; otherwise, they say, amendments to U.S. regulations should be considered.

Materials and Articles in Contact With Foodstuffs

Background

Directive 89/109 is part of the EC's comprehensive effort to insure that its population is adequately safeguarded from substances that could endanger human health. This framework directive will result in more explicit (vertical) directives, which will outline specific requirements concerning particular materials and articles in contact with foodstuffs. Article 3 of this directive appears to provide an opportunity for the EC to adopt a variety of standards related to the articles on the positive list that may be inconsistent with existing U.S. standards.

[3]-- Phone conversation with a representative of the Distilled Spirits Council of the United States, Inc., Oct 17, 1989.

[3]-- Informal communication from the U.S. Department of Commerce, Office of European Community Affairs, Mar. Z 1990.

[317] See previous section on 'U.S. Exports to the EC.'

Anticipated Changes

The directive calls upon the EC's Scientific Committee for Food to formulate a list of substances that are acceptable for use in materials and articles in contact with foodstuffs. This "positive list" approach is inherently more restrictive than a negative "unacceptable list" approach. Regulated by this directive will primarily be materials and substances used in food and beverage packaging applications, food and beverage serving applications, or both types of applications. A number of U.S. industries could be affected by this directive including pulp and paper, chemicals, plastics, glass, ceramics, metals and alloys, certain wooden products, and a host of other miscellaneous industries associated with food and beverage packaging and serving applications. Currently, West Germany is believed to have the highest existing standards for materials and articles in contact with foodstuffs. Newly adopted EC-wide standards would more likely come up to the level of West Germany's existing standards rather than descend down to the level of other EC members, although this is not a certainty.

Possible Effects

Some industry sources believe that this directive could be trade discriminatory for certain U.S. exporters.[318] If paper and paperboard food-packaging products meet FDA requirements but are not acceptable in the EC, then a trade barrier for U.S. exports of paperboard packaging products could be created. Also, U.S. exports of commercial ceramic tableware to the EC could be restricted if the EC should adopt excessively strict lead-release standards. U.S. exporters of plastics, resins, and other synthetic or natural polymers or monomers are unlikely to be affected.

There is a possibility that certain domestic industries might have to pay twice for third-party testing—once in the United States and once in the EC—as a result of this directive. If mutual recognition agreements are not established, this testing could be cost prohibitive to some U.S. exporters (i.e., primarily in the pulp, paper, and paperboard area). Both the domestic pulp and paper industry and the domestic plastics, resins, polymers, and monomers industry expressed this concern.

U.S. exports to the EC

Large multinational chemical companies export to the EC about $840 million annually of plastics, resins, and other synthetic or natural polymers or monomers.[319] This amounts to about one-fifth of all such U.S. exports to worldwide markets. The portion of these exports that are utilized in food-packaging applications is not known.

The new EC standards for plastics, resins, polymers, and monomers in contact with foodstuffs are similar to those adopted in the United States. Therefore, the net effect of this directive on domestic exporters of these products is estimated to be negligible.

The paper and paperboard food-packaging sector's exports to the EC could be sharply curbed as a result of the increased cost of added testing or new restrictions on certain papermaking inputs that were previously acceptable in exported paper and paperboard food containers. The domestic pulp and paper industry believes that it will be left "out" of the decision loop when specifics concerning this framework directive are addressed, whereas their primary competitors for the European market, the non-EC Nordic countries, are "in" this decision loop. U.S. papermakers are alarmed that this situation could give the Nordic countries a significant headstart over U.S. paper and paperboard exporters in obtaining and maintaining a foothold in an EC market with newly adopted regulations and standards.

Paper and paperboard food-packaging materials fall within four five-digit SITC numbers: 64139, 64181, 64189, and 64210; however, these four SITC numbers encompass a much broader grouping within the pulp and paper industry than per and paperboard food-packaging materials. The USITC staff estimates that U.S. exports to the EC of the actual paper and paperboard food-packaging materials in question were valued between $55 million and $60 million during 1988. These U.S. exports are estimated to have increased at an average annual rate of slightly more than 20 percent over the past 4 years. The Netherlands is estimated to have accounted for about three-quarters of U.S. exports of paper and paperboard food-packaging materials to the EC during recent years.

The commercial tableware industry is also concerned with this directive. They cite the potential detrimental impact on the U.S. industry of proposed stricter lead .release requirements as providedfor under article 3 and the unclear labeling guidelines under article 5. Domestic producers are concerned that lead-release standards stricter than current U.S. standards will make it difficult for them to exports to the EC.

Diversion of trade to the U.S. market

Certain suppliers of commercial ceramic tableware (e.g., firms in China, Mexico, and Italy) may well have difficulty meeting new, more stringent EC lead-release standards and may subsequently attempt to divert certain tableware exports to the United States. Existing exports of Nordic pulp and paper should not be appreciably diverted from the United States in order to service the EC market U.S. exporters of plastics, resins, and other synthetic or natural polymers or monomers are unlikely to be affected by this directive.

[318] The American Paper Institute has expressed this position in formal correspondence and in informal telephone conversation with USITC staff.

[319] Estimated from official statistics of the U.S. Department of Commerce.

U.S. investment and operating conditions in the EC

The USITC staff estimates that the entire U.S. pulp and paper industries' investment in the EC is between $2.5 billion and $4.0 billion. The U.S. pulp and paper industries' investment attributed to the paper and paperboard food-packaging sector is obviously less. Nonetheless, many of the domestic pulp and companies exporting paper and paperboard food-packaging grades are also exporting other grades of pulp and paper to the European market The investment of the multinational chemical companies producing plastics, resins, polymers, and monomers will probably remain unchanged. The U.S. investment of other beverage and food-packaging and serving industries and the commercial ceramic tableware industry is unknown, but it is believed to be notably less than the U.S. pulp and paper industry's investment in the EC.

U.S. Industry Response

The American Paper Institute (API) believes that if the EC adopts specific standards and procedures that are more stringent than U.S. standards, the paperboard food packaging sector of the domestic pulp and paper industry could experience adverse effects in the form of reduced exports to the EC. The API contends that if paper and paperboard food-packaging products that meet FDA requirements are not acceptable to the EC, then a trade barrier to U.S. exports would be created.

Furthermore, the API is concerned that if domestic papermaking technology (or any food-packaging or serving technology) allows new "improved" substances to be developed for domestic paper and paperboard food packaging applications, these "improved" papers and paperboards would — because of the slowness of processing applications for adding new materials to the positive list — be restricted in the EC market The API also envisions potential problems with substances that are not on the EC's "positive" list when there is no reasonable likelihood of these substances' migrating from the packaging material onto the foodstuff. The API's view is also shared by the Society of the Plastics Industry and the U.S. wood products industry. The API suggests that substances with no likelihood of migrating from the packaging material onto the foodstuff, even though they are excluded from the "positive" list, be considered usable to some degree. There are a myriad of materials in the pulp and paper sector that could fall into this category — inks, glues, waxes, and additives, etc. The API has expressed its hope that the EC standards would develop a "de minimis" concentration level (as opposed to a zero-tolerance level) for substances contained in packaging materials not on the EC's approved list of materials.

The API is also concerned about new EC testing procedures. It is conceivable that a specific paperboard could pass a very stringent U.S. test (e.g., less than "x" parts per billion of substance "a") but fail a less stringent EC test because, instead of testing for parts per billion, the EC may opt to test for a simulated reaction or condition. In summation, the U.S. pulp and paper industry and the domestic commercial ceramic tableware industry are fearful that this directive could become a technical trade barrier to their exports.

On the other hand, several industry sources tied to plastics, resins, polymers, and monomers think that this directive has some beneficial effects. They state that it will be less burdensome to conform to one set of EC standards rather than the many existing standards applied in each country. However, one industry source was alarmed at the prospect that the EC might formulate new specific plastic standards as opposed to adopting some of the already-existing member-state standards.

Chemicals and Related Products

Overview

The European chemical industry, like its U.S. counterpart, is a diverse vertically and horizontally integrated global industry producing everything from petrochemicals to specialty chemicals. Of the top 12 chemical companies worldwide, 10 are European. The European chemical market is characterized as a group of small domestic markets with large differences in domestic policies on energy, transportation, product labeling, and the environment, hence, most European chemical companies with world-scale plants are by necessity export oriented.

In 1988, chemical exports from the EC (excluding internal EC trade) totaled $135 billion, which was approximately four times the value of total U.S. chemical exports during that period 320 Intra-EC trade (i.e., trade between member states) of chemicals and related products was valued at about $79 billion in 1988. U.S. imports of chemicals from the EC during 1988 were $8.9 billion, or 45 percent of total U.S. chemical imports for 1988. Certain commodity and specialty synthetic organic cnemicals accounted for the majority of the products imported.

U.S. exports to the EC during 1988 were valued at $8.4 billion, representing 26 percent of all such exports. The principal products exported were certain commodity and specialty synthetic organic chemicals. For many U.S. chemical firms, total foreign sales represent a significant net profit annually. Exxon, one of the world's largest chemical companies, for example, leads all other U.S. firms in foreign revenue, with 72 percent of Exxon's total sales in 1989 coming from foreign sources.[321]

[32-] 'U.S. Chemical Companies Ponder Europe After 1992: *Chemical and Engineering News,* Nov. 6, 1989, pp. 7-13.

[321] "Heart Cut," *Chemtech,* November 1989, p. 644.

U.S. investment in the European chemical industry (excluding pharmaceuticals) is over $23 billion, with the major portion of these investments in the industrial chemicals and polymers and resins area (63 percent of the total value), followed by detergents, cleaners, and toilet goods (16 percent), and agricultural chemicals (3 percent).[322] U.S. companies with production facilities in the EC include large companies such as Dow, Dupont, Exxon, Monsanto, Nalco, Rohm and Haas, Amoco, and Arco as well as other moderately sized and small U.S. firms.

The EC has an almost identical amount of investment in the United States totaling an estimated $28 billion.[323] European firms investing in the United States include Bayer, Hoechst, BASF, Henkel, and Huls (West Germany); ICI, Courtaulds, and Unilever (the United Kingdom); Akzo (the Netherlands); Rhone-Poulenc and Atochem (France); and, Montedison (Italy).

EC chemical producers, including subsidiaries of U.S. multinationals operating in Europe, and U.S. chemical producers are all carefully watching the direction of EC 1992 harmonization. U.S. industry spokesmen admit that the way in which a U.S. chemical firm will be impacted by the changes produced by EC 92 legislation may be different for firms with production capacity in the EC compared with those firms only exporting to the Community.[324]

However, most agree that the harmonization of certain regulations will be beneficial to the industry as a whole. One U.S. firm with production facilities in the EC estimates that because the proposed deregulation of transportation will make possible the free movement of goods across borders, the firm will save about 7 percent per year in transportation costs.[325] Deregulation of energy is also of prime concern to the chemical industry, which is a highly energy-intensive manufacturing sector. For one U.S. multinational, this energy savings could amount to around $50 million annually.[32]s

The principal concern for the U.S. industry is the EC's attempt to streamline and harmonize its different national standards concerning environmental and health regulations and the testing and certification of products sold in the EC and of the facilities manufacturing these products. Greater harmonization would appear to be beneficial to all U.S. companies serving the EC market However, U.S. companies without EC production capacity feel that if the standards and regulations are developed without their participation, the resulting standards and regulations could be trade discriminatory.

In a recent meeting with the USITC staff, two representatives of the Chemical Manufacturers Association (CMA) gave an example of the present voluntary plant certification procedures in place in EC nations. The facility in question is a multiproduct plant located in the United Kingdom, producing intermediate chemicals sold in the European market The certification involved the management and environmental fitness of the facilities, and did not affect product specifications directly. After the U.S. subsidiary prepared and submitted the extensive paperwork necessary for preliminary examination by the British Standards Institute (BSI), a team of inspectors was dispatched to the facility for an indepth onsite investigation of plant machinery calibration and maintenance records and procedures, waste-stream treatment and release monitoring, worker safety and training, and general management of other plant records and reporting. According to the CMA spokesmen, the cost of this investigation, including the travel expenses of the BSI investigators, was significant and the entire procedure took a little over 1 year to complete. In order to maintain certification, a less extensive annual inspection is required, the cost of which again must be paid by the company being inspected. The certification standards against which the plant process management was compared were the European quality assurance standards (EN 29000).

The CMA's concern is that when the EC-92 standards are in place all U.S. chemical plants serving the EC market will be required to undergo similar quality-assurance certification, including plants located in the United States. However, it is not known whether the current set of international standards will be supplemented further by the EC, or whether certification by other bodies similar to the BSI would be recognized for purposes of such actions. Another CMA concern is the high costs that may be levied on U.S. plants in order to comply with the certification requirements. One U.S. multinational chemical producer has told the CMA that in order to do just the paperwork necessary for each of its U.S. plants to comply with the present ISO standards, the manpower requirement would be 6 worker-years per plant In addition, the BSI is presently the principal European standards body involved in quality assurance certification; hence costs to have plant facilities certified in sites far removed from the United Kingdom could be prohibitive.

Other regulations and registration procedures dealing with items such as pesticides, food additives, and materials in contact with foodstuffs could impose additional restrictions on certain chemicals and chemical products which would limit the number of U.S. products acceptable in the EC market Although the EC will set certain minimum

[322] Estimated from official statistics of the U.S. Department of Commerce.

[323] Foreign Investment in the U.S. Chemical Industry Continues Steady Climb,' *Chemical and Engineering News,* Apr. 25, 1988, pp. 7-10.

[324] Ibid,, pp. 9-10.

[328] 'IC s Getting Ready Now — for 1992,' *Cheri al Engineering,* October 1989, pp. 30-35.

'EC '92 No Fortress for Chemical Trade,' *Chemical Marketing Reporter,* Nov. 13, 1989, pp. 9,16-17.

standards regarding specific chemicals and chemical products, the member nations will be permitted to superimpose certain other restrictions after notifying the appropriate EC Commission body of their reasons for such actions.[327] No instances where this has occurred are known at this time. As specific EC environmental and public health and safety regulations are not yet near completion, it is too early to estimate the extent to which they will vary from established member-country regulations and standards or how U.S. interests may be impacted.

For the chemicals and related products sector, a total of 27 directives were analyzed for this report. Most of these directives dealt with labeling and handling dangerous materials, handling toxic waste products, labeling certain fertilizers, detergent and cleaning products, harmonizing laws relating to cosmetic products, registering and certifying, certain pesticides, and establishing an EC environmental protection agency. Almost all of these Directives are part of the "old approach" to the harmonization process. Of the 27 directives analyzed, 2 were selected as being potentially of interest to U.S. industry. These directives were the establishment of the EC environmental protection agency, and the registration procedures for plant protection products.

Registration Procedures for Plant-Protection Products

Background

This proposal (Com(89) 34 Final) was developed to harmonize regulation and registration of fungicides, herbicides, plant-growth regulators, and other pesticide products throughout the European Community. Currently, there are no Communitywide procedures for pesticide registration. Rather, each member state determines the products used, concentration levels, and on which crops pesticides may be applied. Eventually, the various national pesticide registration laws could be superseded by this proposed directive.

Anticipated Changes

The present proposal creates a two-tiered registration process for new active ingredients that will be introduced into the EC. Products already in use will be allowed to remain in use for 10 years (art. 8 (3)). The proposed directive will also allow member states to use nonregistered pesticide ingredients fora period of 3 years (art. 8 (2)). Finally, member states will be permitted to use nonregistered pesticide products for a period of 120 days under special circumstances (Art. 8(1)). However, 10 years after implementation of this proposed diredive, all pesticide active ingredients used in the EC, whether new or in use when this directive was implemented, must be registered.

The proposal allows each member nation to regulate the formulation and use of pesticides within its own country. However, the directive only allows member countries to register products whose active substances appear on a so-called "positive list," which has not yet been created (annex I of Com(89)34). Products to be included in the list will be determined by the Standing Committee on Plant Health, whose members will be chosen by the EC Commission. After reviewing a technical dossier that supplies information necessary to evaluate foreseeable risks, the committee will determine whether or not a product will be accepted. A comprehensive list of the information and testing procedures that must be considered for inclusion in the dossier is supplied in annex II of Com(89)34. Staff from the U.S. Environmental Protection Agency indicated that the proposed European procedures are comparable to those used in the United States. However, the proposed directive does not indicate which procedures the committee will require for inclusion in the dossier nor how the procedures will be chosen.

Once one member state has registered a pesticide formulation that includes a new active ingredient, other member states are required to accept this registration, unless plant health or environmental conditions are not comparable in the regions concerned. This has been referred to as the concept of "mutual recognition" and is discussed in article 10 (1). However, the proposal does not determine what constitutes comparable environmental and plant health conditions. A 1976 directive, also attempting to establish harmonized EC pesticide registration procedures, was not approved because of an inability to establish a working definition of comparable plant health and environmental conditions.

Possible Effects

U.S. exports to the EC

It is not immediately clear how this proposal will affect U.S. exports in the long run; however, this directive should have no immediate effect on U.S. exports of pesticide products already registered in the EC. On the one hand, the proposal could add another level of regulation for new products entering into the EC. As a consequence, small U.S. companies with limited financial resources might face greater difficulties registering new products in the EC. On the other hand, a front-end, single-source registration for the entire EC could eventually reduce the costs of registering active ingredients separately in each member state. Although pesticide registration costs are borne by

"Report on ANSI and CEN/CENELEC Meeting July 2S, 1989, Brussels, Belgium," *ANSI Global Standardization News,* American National Standards Institute, September 1989, p. 36.

as U.S. Department of State Telegram, Oct. 16, 1989, Brussels, Message Reference No. 13270, reporting on Oct. 4-5, 1989 meeting in Brussels.

all suppliers, whether or not the company is located within the EC, a small exporting company with only one or two products might obtain easier access to a larger market under this directive. Under the current system separate registrations are required in each country. Although basically trade liberalizing, this proposal requires that a registrant (either the manufacturer, importer, or distributor) must have a permanent office in the European Community. These costs might offset the lower costs associated with a single source registration. Some smaller exporting companies might be precluded from the EC market if the number of their products or the volume of their sales does not warrant establishing an office in the EC.

Diversion of trade to the U.S. market

U.S. law requires comprehensive registration of pesticides sold in this country (with the possible exception of certain biological pesticides), whether or not produced in the United States[329]. Therefore, it does not appear likely that foreign pesticides not accepted in the EC will be diverted to the United States.

U.S. investment and operating conditions in the EC

Implementation of this directive will most likely have little effect on existing U.S. investment in the EC. U.S. multinationals frequently alter their product to satisfy the laws and preferences of a host country. To the extent that this directive will produce a harmonized set of regulations, it will improve the operating conditions of U.S. companies in the EC. Many U.S. companies are, in fact, either subsidiaries of large European multinationals or large U.S. companies with operations in the EC. These companies are members of European agricultural trade associations and they most likely will have input into the implementation of the proposal.

U.S. Industry Response

Industry spokespersons are concerned that "to a large extent, the (proposed) directive merely adds a layer of additional bureaucracy to registration procedures currently operating in Member States whilst at the same time allowing Member States the ability to maintain the status quo in terms of data requirements and final regulatory control of pesticide products. "[330] They are particularly concerned about the costs of registering formulations among the member states, and how the issue of "mutual recognition" of comparable environmental and plant health conditions will be resolved. They believe that a country can easily apply for derogation under Article 10(1) but the burden of proof falls on the company that wishes to sell a product in the country in question.

Greenpeace interprets the procedures for derogation in article 10(1) quite differently than do the agricultural chemical producers. Members of Greenpeace registered a formal objection with the EC Environmental Ministers indicating they are concerned with the concept of "mutual recognition" as stated in article 10(1).[331] Since member states must recognize the registration of other countries and since there are differences in environmental regulations among the various nations, Greenpeace members feel that pesticides could enter the Internal Market through the country with the lowest standards. They further stated that "if a member does not want to accept a pesticide registered by another member state for environmental health reasons, it has to prove its case for a derogation. The onus of proof should not be on the member state wishing to reject a pesticide."[332] Therefore, "mutual recognition of national registrations can only be accepted if all Member States have to follow the same strict and unambiguous rules in the evaluation of a pesticide."[333]

EC Environmental Agency

Background

The proposed directives, Com(89) 303, Com(89) 542, and Com(85) 3387, evolved out of the continuing awareness of the European Community's need to develop a clearer and more coherent environmental policy. The original proposal (Com(85) 3387) established an experimental program to gather, coordinate, and ensure the consistency of information on the state of the environment and natural resources within the Community. This program was adopted fora period of 4 years beginning on January 1, 1985, and was funded at 4 million ECU (approximately $4 million in 1989 dollars). Proposal 89/542 modifies directive 85/338 by extending the length of the experimental program from 4 to 6 years and by increasing the level of funding from 4 million ECU to 113 million ECU. Proposal 89/303 modifies the original directive by establishing a European Environmental Agency (EEA) and by establishing a European Environmental Monitoring and Information Network.

[*21] The law is currently authorized under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), implemented under title 40 of the Code of Federal Regulations and enforced by the Office of Pesticide Programs of the U.S. EPA.

[330] "Gifap Position Paper on the Amended Proposal for a Council Directive Concerning the Placing of EEC-Accepted Plant Protection Products on the Market p. i, June 1989. Gifap is the International Group of National Associations of Manufacturers of Agrochemical Products located in Brussels.

[331] Klaus Lanz, 'Registration of Pesticides in the European Community, A Critique of the Commission's Proposal for a Council Directive Concerning the Placing of EEC-Accepted Plant Protection Products on the Market, November 1989; Susan E. Milner, European Policy Advisor, Greenpeace Pesticide Project, Letter to the EC Environment Minister, Nov. 28,1989; Susan E. Milner, letter to Members of European Parliament, Nov. 29, 1989.

[332] Ibid., p.

[333] Ibid., p 5.

Anticipated Changes

The new agency is scheduled to begin operations in 1991 and will be composed of members from all 12 EC member states. It will also be open to all European countries that wish to join, including those of Eastern Europe. Initially, the EEA will have no legal powers comparable to those of the U.S. Environmental Protection Agency (EPA). For example, it will neither have the power to harmonize legislation in environmental matters, nor will it be able to assess fines when environmental laws are broken. Rather, its primary responsibility will be to collect and collate data on the European environment and ensure that these data are made available to the public. It will also provide scientific and technical support leading, eventually, to the goal of environmental protection. However, there has been no decision as to which areas of environmental protection the EEA will be involved in (e.g., toxic wastes, air quality, water quality, product registration). In the first year, the agency will concentrate on establishing a location (out of some 44 proposals), naming a director, writing a charter, and creating a budget

The major deterrent to creating an agency with more legal powers is that there are significant discrepancies in environmental quality among the member states. West Germany, Denmark, and Holland have well-developed environmental protection policies, whereas Greece, Portugal, Spain, and, to some extent, Italy have less developed environmental protection rules. These policy differences, for which there are no immediate solutions, present difficult problems for the EC. On the one hand, the immense cost of improving the quality of the environment in some European countries would cause a financial drain on the economic development of those individual countries as well as on the European Community. On the other hand, lowering environmental standards throughout the EC could cause significant harm to the environment and quality of life in the more industrialized and densely populated countries.

Despite the inherent difficulties in developing and implementing a unified body of environmental regulations, in February 1990 the European Parliament called for the proposed EEA to play a regulatory role within the EC. Parliament, following the recommendations of its Environmental Committee, indicated the EEA should have wider powers than originally pro by the European Commission. The pro 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's 'green label' for environmentally friendly products. It is quite possible that these modifications to the original bill will generate political debate, delaying the EEA's approval for several months.

Possible Effects

It is possible that the EEA will implement many forthcoming environmental regulations particularly those relating to manufacturing facilities in the EC. The U.S. companies most likely affected by a harmonized environmental policy are the chemical and related-products companies with operating facilities in the EC. However, until a set of environmental regulations are in place and the EEA is empowered with regulatory authority, it is difficult to predict the effects of a European harmonized environmental policy on such companies. One immediate effect will be an increase in data dissemination costs for companies operating in the EC.

U.S. exports to the EC

This directive could be trade liberalizing provided that a unified body of environmental law is enacted. U.S. firms are experienced in meeting relatively strict U.S. environmental regulations and could be more able to comply with strict European regulations and, thereby, be more competitive in European markets. If the regulations chosen are unduly costly to implement, then EC companies both domestic and foreign-owned could lose market share to imports. However, should adopted regulations be less strict than those in use in the United States, U.S companies exporting to the EC could lose market share to less environmentally conscious foreign suppliers. No immediate differential treatment is expected to arise between large and small U.S. companies exporting to the EC because of these directives.

Diversion of trade to the U.S. market

' Since the United States enforces strict environmental regulations, it is not likely that exports precluded from entering the EC would be diverted to the United States.

U.S. investment and operating conditions in the EC

Initially, U.S. companies operating in the EC may have to supply the EEA with data on their operations; but, since these data-gathering activities are likely to be enforced uniformly throughout the Community, they should be nondiscriminatory. In addition, U.S. companies are frequently required to modify their products and manufacturing operations to meet local environmental regulations. A single set of regulations should reduce the administrative burden required of U.S. companies operating in the EC to comply with environmental standards.

U.S. Industry Response

In general, U.S. companies operating in the EC feel that a unified body of regulations would be beneficial since it would establish a single set of operating parameters throughout the EC. Most of these companies operating in the EC are members of

local trade associations that will have some input into how the regulations will be implemented. However, there is some concern that the growing environmental movement in the EC could result in more stringent regulatory requirements and force release of sensitive business information.

Pharmaceuticals and Medical Devices

Overview

Pharmaceuticals

The world pharmaceutical industry is multinational in character, with a large share of production concentrated in the EC and the United States. In 1987, it was estimated that world sales of pharmaceuticals were valued at approximately $127 billion. The three largest companies in the industry in 1988, in terms of sales, were Merck (based in the United States), Glaxo Holdings (based in the United Kingdom), and Ciba-Geigy (based in Switzerland). These firms accounted for 4 percent, 3 percent, and 3 percent of world pharmaceutical sales, respectively3[34]

This ranking changed in 1989 as several mergers and acquisitions were completed3[36] Such activity is continuing in 1990, as indicated by the negotiations currently under way between Rorer (United States) and Rhone-Poulenc (France) 3[3°] Restructuring is said to be necessary for companies to continue operating in view of the rising costs of research and development (R&D), the need to continue innovation in expectation of an increase in market share held by generic firms, and the increasing ability to market pharmaceuticals on a worldwide basis.[337] It has been suggested that the industry is entering into a "period of consolidation" and that it could eventually be dominated by "a small number of larger R&D based companies.[338] In addition to mergers, firms are also developing joint marketing agreements to better market their products3[36]

The EC pharmaceutical industry comprises approximately 2,100 firms. According to data reported by the European Federation of Pharmaceutical Industries' Associations (EFPIA), production by the industry in EFPIA member countries in 1987 was valued at $52.0 billion, compared with $37.8 billion in shipments by the U.S. industry.[340] Total EFPIA exports of pharmaceuticals in 1987 were valued at $18.4 billion, or approximately 35 percent of production. EFPIA countries supplied approximately 85 percent of the $12.2 billion of pharmaceuticals imported by EFPIA countries in 1987. Exports from the 12 EC member states to the United States in 1987 were valued at $1.4 billion and represented approximately 5 percent of the U.S. market in that year.

EC member state imports of such products from the United States were valued at $1.3 billion, accounting for about 48 percent of total U.S. exports of these products. The top three EC markets for U.S. exports of pharmaceuticals in 1987 were West Germany (23 percent), Italy (20 percent), and the United Kingdom (14 percent). Related-party transactions accounted fora moderate share of these exports since many major U.S. pharmaceutical firms have subsidiaries located in the EC.

U.S. pharmaceutical investment in the EC in 1986 was estimated to be valued at $14 billion 3" Most of the U.S. subsidiaries operating in the EC manufacture their product locally. As such, a large share of U.S. exports of pharmaceuticals is composed of bulk chemicals that will be processed and/or packaged in the European facility.[342] Production and R&D facilities are generally concentrated in a few countries. Formulation facilities, however, can be decentralized and are therefore likely to be located in the country whose market is to be served. This decentralization provides better market supply and, in some cases, has reportedly been taken into consideration by national authorities when approving prices. U.S. pharmaceutical firms currently account for approximately 25 percent of the EC pharmaceutical market, Swiss firms account for about 10 percent, and the remainder is said to be supplied by firms based within the EC.[343]

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am 'Test Tube Tribulations,' *Financial World,* May 30, 1989, p-

[313°] These indude the mergers of SmithKline Beckman (United States) and Beecham (United Kingdom); Squibb and Bristol-Myers; and Marion and Merrell Dow. A current estimate=SmithKline Beecham second in size to Merck.

[SIB] Poulenc is also expected to acquire a 40-percent share of Roussel Udaf from the Government of France pending appeoval of Hoechst (West Germany), the majority shareholder in (54 percent). *Business Weds* Feb. 5, 1990, p. 39. Rhone-Poulenc's acquisition is considered solely 'a financial investment; with no involvement in management. *Frankfurter Aligemeine,* Nov. 18, 1989, p. 16.

[s37] 'Pharmaceuticals,' *Financial World,* May 30, 1989, p. 54 +; 'Chemical Business; *Chemical Marketing R .vorter,* November 1989, pppp. 29-30.

--- Jane Doehecty and Katrina Labaere, "Tbe Pharmaceutical Industry: Preparing For the Nineties," *EC Bulletin,* No. 84, September/October 1989, p. 13.

[aW] EutoAlliance, for example, a group Intended to coordinate drug-product development and that may, eventually, license drugs from the United States, Japan, or both, for the EC market, comprises threepharmaceutical firms in the EC (Lafon (France), Merckle (West Germany), and Alfa-Schiapparelli-Wasserman (Italy)). Membership in

[M-] *-Continued*
EuroAlliance is expected to increase as more privately held firms join in an effort to take advantage of operating as a larger p, according to an article in *Chenucal Marketing Reporter* (Nov. 13, 1989, p. 44).

[3•°] The EFPIA represents the pharmaceutical industry in Europe and is a federation of the national pharmaceu tical industry associations in 16 European countries. These countries are as follows: Austria, Denmark France, Greece, Italy, Norway, Spain, Switzerland, Belgium, Finland, West Germany, Ireland, the Netherlands, Portugal, Sweden, and the United Kingdom.

[-1] Estimated from the official statistics of the U.S. Department of Commerce.

[M-] Pharmaceutical Manufacturers' Association, *Statistical Fact Book,* 1988, p. 12.

[M-] Winter, Sloan, and others, *Europe Without Frontiers: A Lawyer's Guide,* p. 273.

In 1988, worldwide sales of the U.S. pharmaceutical industry were valued at $50 billion, compared with $40 billion in 1987.[344] According to statistics prepared by the Pharmaceutical Manufacturers Association (PMA), more than one-third of the revenue accrued from U.S. sales of ethical pharmaceutical products in 1987 was the result of overseas sales. Sales by overseas subsidiaries of U.S. firms are said to b_e_g, rowing at a faster rate than domestic sales.[345] PMA states that member companies generated more sales through manufacturing overseas than they did through exports.[345] The next-largest foreign market after the EC in 1987 was Japan, accounting for 22 percent of total such U.S. exports. U.S. exports accounted for an estimated 2 percent of the Japanese market in 1987.

Generic competition is beginning to increase in the EC. Generics currently account for an estimated 5 percent of the EC market, compared with 12 percent of the prescription market in the United States. In the United IGngdom and West Germany, sales of generics are said to account for 13 percent of the individual markets. One generic company in West Germany is expected to be a market leader in the next few years. Generics also have a strong position in the Netherlands. According to industry sources, there is less of a generic industry in the southern countries because the prices are not high enough to make such an industry profitable.[347]

As in the chemicals sector, producers of pharmaceuticals in the EC, including subsidiaries of U.S. multinationals operating in Europe, are all watching the direction of the ongoing harmonization for 1992. To date, representatives of the pharmaceutical industry have been actively involved in the directive-drafting process and, in general, their overall reaction appears to be positive. The primary effect of many of these directives would be to put into EC law provisions that are already in effect at the member-state level. In addition, it is. thought that many of the changes should result in a premarketin_g approval process that is easier to use and more effiaent[348]

Concerns about certain aspects of the harmonization procedure, however, still exist As one source states, "Washington and American business must continue keeping abreast of and be involved within the Community's legislative and administrative process. Only thus can ... inevitable mistakes, and basic oversights as well as misunderstandings be . . . rectified."[349] The industry's four major concerns about the establishment of a single market, as derived from current reports and from interviews with representatives of several firms operating in the EC, are (1) the creation of a single-market authorization procedure, (2) existing national pricing/ reimbursement systems, (3) the restoration of effective patent terms for pharmaceuticals in the EC, and (4) recently enacted duty-suspension guidelines.[350]

Two separate issues that are not directly standards related but that are viewed as important to the industry are patent-term restoration and duty suspensions for products imported into the EC. The issue of patent-term restoration is presented later in this chapter. In regard to duty suspensions, industry sources expressed concern with the new EC guidelines on the granting of duty suspensions for certain EC imports. The new EC guidelines are generally perceived to be more stringent than past practices. The issue is viewed as being increasingly important to the industry but varies in terms of priority from company to company, given the industry's concerns about the creation of the single-market authorization procedure, pricing, and patent term restoration. One source, for example, indicated that the revenues gained through increased market exclusivity resulting from patent restoration would be more significant to his company than those accrued through duty suspensions, whereas others indicated that revenues derived from duty suspensions are significant to their companies' operations. U.S.-based firms, as would be expected, are following this issue closely. EC-based firms are beginning to view the situation more closely, considering thepotential reciprocity of such issues with the United States.[351] A. number of products originating in the EC currently enter the United States duty free under temporary duty suspensions. Industry representatives are expected to seek to resolve the issue in the GATT Uruguay Round seeking a multilateral agreement, given that the guidelines are already in the effect in the EC.[352]

Medical Devices

The EC and the United States were the two largest markets for medical devices in 1987. The EC market, estimated at $7.4 billion, was the leading foreign market for U.S. medical equipment and supplies in 1987.[353] U.S. exports of these products to

[3]-- U.S. Department of Commerce, 1988 *U.S. Industrial Outlook,* p. 16-1.

Ibid., p. 18-1.

" PMA, 'Facts at a Glance,' *Statistical Fact Book,* August 1988, p. 10.

USITC field interviews in the EC with representatives of EC-based and U.S.-based multinational firms and

zrPnent Department of Cо17.1 iitims during ■ UrD ■ f dus ass um 199a Report; Winter 1989-90, p. 2.

[34o] According to a wntten communication to USITC staff from a representative of a U.S. based multinational pharmaceutical firm.

[300] USITC field interviews in the EC with representatives of EC-based and U.S.-based multinational firms and representatives of industry associations during Jan. 8-19,1990. It should be noted that the concerns listed are not ranked as to priority.

[361] USITC field interviews in the EC with representatives of EC-based and U.S.-based multinational firms and representatives of industry associations during Jan. 8 -9,1990.

[332] Ibid.

[333] Estimated by USITC staff from official statistics and other information of the U.S. Department of Commerce; X-ray and medical equipment accounted for approximately 50 percent of U.S. exports of medical equipment to the EC; surgical and medical instruments, approximately *Z7* percent; surgical appliances and supplies, about 19 percent; and dental equipment accounted for the remaining 4 percent.

the EC were said to account for about 16 percent of the EC market.[3] According to U.S. trade statistics, five countries received approximately 80 percent of total such U.S. exports to the EC.[355] The total share of the EC market held by U.S. firms, including both exports and production by their EC-based subsidiaries and joint ventures, amounted to over 50 percent.

In 1988, the United States had almost a neutral trade balance with the EC in these products. U.S. imports and exports were each valued at approximately $1.3 billion.[3] The traditional trade surplus that the United States enjoyed with the EC declined through 1986 and then began to improve in 1987. The decline in the U.S. trade surplus through 1986 was attributed primarily to the increased regulation of such products in the EC.

As with pharmaceuticals, many leading U.S. firms producing medical equipment have established subsidiaries in the EC, including Abbott Laboratories, General Electric, and Varian. These subsidiaries are said to have accounted for an estimated 60 percent of EC production of medical equipment and supplies in 1987-88 and an estimated 35 percent of EC consumption of these products (the latter figure includes production by joint ventures). Direct U.S. investment in the EC medical-device market was valued at about $1 billion in 1988.[357]

In the United States, the FDA is responsible for regulating medical devices under the 1938 Federal Food, Drug, and Cosmetic Act and amendments thereof in 1976.[355] Medical devices are classified in three main classes in the United States, on the basis of safety and efficacy. These three classes are subject to varying degrees of controls. In general, the FDA can —

1. Require that businesses involved with medical devices register their establishments and list their devices annually;
2. Impose regulatory requirements (standards or premarket approval) in proportion to the degree of risk of a device; and
3. Impose other general controls on all devices to assure safety and effectiveness.

In addition, the FDA has the authority to inspect establishments in which devices are manufactured, processed, or packed, whether or not these establishments need to be registered.[359] Voluntary consensus standards for these products in the United States are developed by private standards organizations, such as Underwriters Laboratory and ASTM, in conjunction with industry and consumers.

In the EC member states, devices are currently subject to standards set by national public organizations. Medical devices in the EC and in the United States are grouped along product lines. The degree of control exercised varies both along product lines and among member states.[360]

The Directives

The directives covering the pharmaceutical industry and the medical devices industry issued prior to January 1, 1990 were analyzed for this report.[38] Of these, three directives were of significant interest to the two industries. They are the already-adopted "Transparency Directive and its impact on pricing/reimbursement systems, the "extending" directive dealing with blood products, and the directive covering active implantable medical devices. The last directive is significant in that it is the first of four directives covering medical devices and it is likely to indicate how these products will be handled. The following individual subsections focus on these issues in more detail In addition, sections are included on the planned directives for the creation of a single-market authorization procedure and on patent restoration, both of which are expected to be formally proposed soon.

Transparency Directive

Background

Pricing controls on pharmaceutical products marketed in the EC are implemented by almost all of the member states. Examples of such controls include: (1) direct price or profit controls; (2) official price approval required before any marketin& (3) prior price approval for health service listing or reimbursement; (4) a positive reimbursement list; and (5) the exclusion of some products from reimbursement, but not others. Decisions on pricing by public authorities are said to be influenced by "factors such as investment commitment, employment impact, and export potential.[352] This system of setting prices, in some

[3] Estimated by USITC staff from official statistics and other information of the U.S. Department of Commerce.

[3a] The major markets for U.S. medical equipment and supplies within the EC during 1987-88 were West Germany (25 percent), France (16 percent), the Netherlands (15 percent), the United Kingdom (16 percent), and Italy (10 percent).

[306] Ibid.

[317] Estimated by USITC staff from official statistics and other information of the U.S. Department of Commerce.

[356] 21 USC sec. 301 and the following.

[3011] "Regulation of Medical Devices by the Food and Drug Administration," *Federal Policies and the Medical Devices industry,* P. 98.

[38] USITC field interviews with public sector representatives in the United Kingdom and West Germany, Jan. 15-17, 1990.

[361] The directives analyzed included those covering the operation of pharmacists and drug wholesalers in the EC and the harmonization of prescriptionpolicies in the EC. According to a recent issue of *Eurobrief, (vol.* 2, No. 8, p. 95), three directives covering these issues were recently tabled and will be discussed by the Council. If adopted, they could be effective as of Jan. 1, 1992. The three directives are Com(89) 607, on the wholesale distribution of medicinal products for human use; concerning the legal status for the supply of medicinal products for human use; and on the labeling of medicinal products for human use and on package leaflets.

[362] Docherty and Labaere, The Pharmaceutical Industry," p. 13.

cases, can be discriminatory in that it can favor local companies and/or effectively force companies to locate company facilities or functions in a particular country, in spite of continuing overcapacity in the EC.[363] In view of this, and following formal complaints by the pharmaceutical industry, the EC developed this directive (89/105), which was to become effective as of January 1, 1990. The directive imposes transparency guidelines on national pricing authorities and systems.

Anticipated Changes

The directive requires member states imposing price or profit controls to publish the criteria used in mating pricing decisions and provide the reasons for issuing said decisions.[38] In addition, the directive sets time limits for making pricing decisions. In cases where a company believes that a national authority has not followed these requirements, the directive gives the company the right to take action in a national court against that authority.

Possible Effects

U.S. exports to the EC

This directive, in conjunction with the other directives, is expected to be liberalizing in terms of U.S. trade with and access to the EC market It is not expected that U.S. exports of finished, dosage-form pharmaceuticals to the EC will be negatively affected.

Diversion of trade to the U.S. market

The overall impact of the directive is expected to be trade liberalizing. As such, exports of pharmaceuticals to the EC by countries other than the United States are not expected to be diverted to the United States. It is more likely that third countries will enter the market, according to industry sources. Japanese firms, for example, are reportedly actively seeking to enter the EC market, either through increased trade or investment [35]

U.S. investment and operating conditions in the EC

Industry sources believe that this directive will apply in the same manner to both EC-based and U.S.-based pharmaceutical firms operating in the EC, as well as to firms of other countries operating in the EC (i.e., Switzerland and potentially Japan). U.S.-based companies are well established in the European market and, according to some sources, might be better placed than many EC-based firms to take advantage of the opportunities presented by the harmonization of the market since U.S.-based firms already routinely operate in and between all 12 member states. Increased investment by companies not already operating in the EC, however, could have a negative effect on all firms operating in Europe by increasing competition.ue

The pharmaceutical industry in the EC is not expecting significant rationalization to occur. It has been suggested that formulation facilities (not considered a large cost component) may be closed, consolidated, or both, in individual member states as a result of the Transparency Directive. Location of some of these facilities in particular member states has been linked unofficially with being granted favorable pricing treatment [367] Under the Transparency Directive, such overt forms of discrimination are expected to be reduced. One industry source has suggested that companies might begin to produce certain dosage forms in particular member states, rather than having various dosage forms of a product formulated in each member state.[3038]

Significant bulk pharmaceutical production capacity rationalization, however, is seen as unlikely, given the relatively small economic benefits that would result and the already hi gh phical concentration of such facilities in the C. Rationalization is generally viewed as an on going process within the pharmaceutical industry. Increases in such activity after 1992 are expected as a result of mergers, joint ventures with firms in third countries, and, perhaps, the "Green" movement, but should not necessarily be viewed as a result of the harmonization of the market [370] Marketing

ma Ibid.; U.S. Bureau of National Affairs "Major Obstacles Remain in Path Toward Single Market, *1992—The External* Impact *of European Unification, Oct.* 6, 1989, p. 9; Winter, Sloan, and others, *Europe Without Frontiers,* p. 2T7.

[3"] The member state concerned is required to inform the EC of the following: (1) the method used to define jitofitability; (2) the range of target profit currently permitted; (3) the criteria according to which target rates of profit are accorded; (4) the criteria according to which the individual responsible for placing medicinal ucts on the member-state market will be able to retain profits over the given target; and (5) the maximum percentage profit any persons responsible for placing medicinal products on the member-state market can retain above their target in that member state.

[366] USITC field interviews in the EC with representatives of EC-based and U.S.-based multinational firms and representatives of industry associations during Jan. 8 -9,1990.

am ibid.

an Ibid.; Docherty and Labaere, 'The Pharmaceutical Industry; p. 13; U.S. Bureau of National Affairs, 'Major Obstacles Remain in Path Toward Single Market,' p. 9.

aaa USITC field interviews in the EC with representatives of EC-based and U.S.-based multinational firms and representatives of industry associations on Jan. 15, 1990.

[aeli] A representative of an industry association stated in a USITC field Interview in the EC during Jan. 8-19,1990, that the production costs for pharmaceuticals are low, when compared with other industries, and, therefore, economies of scale wouldn't result in important economic benefits. This was also the g,eneral opinion of other representatives of EC-based and U.S.-hased industry in USITC field interviews during that period.

[370] Docherty and Labaere, "The Pharmaceutical Industry," p. 13.

facilities are expected to be maintained in each of the 12 member states after 1992 since it will still be necessary to deal with national authorities. Over time, however, the size of these facilities could be reduced.[371]

U.S. Industry Response

Both U.S. and EC industry sources generally view this directive as beneficial. They believe that the directive will reduce discriminatory practices, particularly overt national practices associated with factors such as investment, that have been associated with some past official pricing decisions. Industry welcomes the fact that the directive will provide companies with a means of redress if discrimination is perceived. Industry sources did suggest that companies are unlikely to take the government of the country in which they are operating to court since any company that does so could be subject to some form of retaliatory measures, given the purchasing strength of the national authorities.

Industry sources believe, however, that this directive addresses only a small part of a much larger problem — the continued existence of disparate national pricing/reimbursement systems. These individual systems result in different prices for these products in each of the member states, with higher prices generally existing in the northern countries and lower prices in the southern countries. Industry sources indicate that the differences in price among the member states result from a number of factors, including differentials such as reimbursement systems, distribution margins, exchange rates, inflation rates, VAT rates[372] and the standards of living in individual countries.[373] This price differentiation, in turn, results in increased parallel trade, trade barriers, or both.= It is generally accepted that the revenues accrued from parallel trading do not pass to the government or to the consumer but are retained by the parallel trader. Lower prices for products also hinder the development of research-based industry in particular member states. In addition, in some member states, products cannot be placed on the market until an officially approved price is agreed on. This delay can result in potential loss of market share and revenue. Sources believe that free circulation of products in the EC will not be possible without market-based pricing. They have stated that economic and regulatory issues cannot be solved separately but must be approached in tandem.= Otherwise, the pharmaceutical industry could be "seriously damaged."[378]

The EC is not expected to address the problem of pricing/reimbursement controls before 1992, leaving such decisions in the hands of the member states. The European Court of Justice has reportedly decided several times that member states can control the price levels ofpharmaceuticals in their own country. As the EC indicated in 1986, "In the absence of Community provisions, member states are free, each within their own territories, to adopt legislation to control prices of pharmaceutical products, provided that such legislation does not hinder the free movement of goods within the Community."[377] Member states have additional leverage in making pricing decisions since individual national health care authorities are the major purchasers of prescription pharmaceuticals in the EC. Up to three national Ministries are said to administer the approvaVpricing/ reimbursement process in any member state.= If a product is not eligible for reimbursement in a given country, it will not be prescribed, effectively excluding it from the national market even if it has received marketing authorizations.=

Ways in which the pricing/reimbursement system can be modified include the total removal of price/reimbursement controls; the har- monization of both prices and reimbursement systems at an EC level; or allowing companies to price new pharmaceutical products at "realistic" levels, albeit with harmonized reimbursement systems. The EC has reportedly suggested the possibility of increasing the level of patient participation in payment for prescription products (i.e., copayments). The success of this proposal would vary from country to country, depending both on the standard of living in the particular country and the willingness of the consumer to contribute more than the traditional amount= Industry sources have proposed that companies could offer discounts to nations with lower standards of living; set prices that would vary by a set percentage from country to country; or set a uniform price across the EC, in ECU, that would then be set in local currencies. It was also suggested that national authorities could

"' USITC field interviews in the EC with representatives of EC-based and U.S.-based multinational firms and representatives of industry associations during Jan. 8-19, 1990.

[372] The standard VAT rate for pharmaceuticals, for example, can range from 14 percent, in West Germany, to zero, in the United Kingdom.

[373] USITC field interviews in the EC with representatives of EC-based and U.S.-based multinational firms and representatives of industry trade associations during Jan. 8-19, 1990.

[374] Ibid.

[375] Ibid.

[376] The Association of the British Pharmaceutical Industry, *Blueprint for Europe: The Views of the UK Pharmaceutical Industry on the Single* European *Market in 1992,* p. 16.

an Winter, Sloan, and others, *Europe Without Frontiers,* p. *277.*

[377] For example, according to industry sources, depending on the member state involved, the Ministry_ of Health would oversee product approval, the Ministry of Economic Affairs would control pricing, and the Ministry of Social Affairs would regulate reimbursement

[378] U.S. Bureau of National Affairs "Major Obstacles Remain in Path Toward Single Market,' p. 8.

[379] In *some* countries, consumers are used to paying just a flat fee per item prescribed. All other costs are reimbursed.

tie reimbursement levels to the therapeutic class of a product.[381]

The setting of an "average' EC price for individual products is considered unrealistic by the industry. This price would probably be set at a median level between the highest and lowest prices. Such a price is perceived as being disadvantageous to both manufacturers and consumers. Consumers living in countries with lower standards of living would not be able to afford the higher priced product, whereas companies oirating in countries that traditionally have had hi er prices could lose revenue that could be used various programs, including the funding of R&D efforts.

The pharmaceutical firms in countries with higher prices for pharmaceuticals generally have well-established and ongoing R&D efforts compared with the firms in countries with lower priced products. According to statistics from the Pharmaceutical Manufacturers Association, 15 of revenues earned by U.S.-based firms from domestic and export sales were reinvested in R&D in 1987= EFPIA has stated that 13 percent of the value of the production of its members was invested in R&D. France, Switzerland, the United Kingdom, and West Germany incurred R&D expenses of approximately $5.2 billion, or about 76 percent of the EC total in 1987. It has been suggested that any changes in the business climate in the EC that significantly restrict R&D efforts could result in a decrease in the international competitiveness of the EC pharmaceutical ill[illegible]r2.[384] For example, current concerns about rese[illegible] in the area of genetic engineering in some countries has slowed such work and may reduce future innovation in these countries.=

Efforts to control expenditures by national health authorities are expected to increase the market for generic products.= For example, West Germany— traditionally a country with high prices and free pricing — recently enacted the "Health Reform Act" (HRA). Prior to the HRA, physicians were subject to controls on their prescription volume, both in terms of quantity and value. The HRA fixes reimbursement levels for products that are off patent and that have a relatively high volume at a level between the generic price and the original manufacturer's price (reputedly closer to the former than the latter). The HRA, however, does not set an absolute price.

Phase 1, which has already been implemented, sets the reimbursement level for about 10 products. Additional products will be included in future stages within phase 1. In phase 2, the definition will be broadened to include pharmacologically similar products that have the same mechanism of action. Phase 3 will be still broader, encompassing products that are different compounds but that are in the same therapeutic class.[387]

Under the HRA, the original manufacturer has the option of reducing the product to the reimbursement level or charging the customer extra. In addition, it is the responsibility of the prescribing physician to explain to the customer that the product does cost extra and explain why it is being prescribed. According to industry sources, original manufacturers attempted to lower their prices to a level just above that being reimblused.[388] They found, however, that the consumer who was used to receiving 100 percent reimbursement opted more often for the generic product. The West German pharmaceuticals industry is said to have estimated that its sales will decrease by approximately $1.1 million. In addition, a representative of the industry association has stated that smaller companies will suffer more than the larger ones because the latter companies can offset such losses by increasing sales in other countries=

Phases 2 and 3 are of most concern to the manufacturers because they are expected to result in the lowering of the reimbursement price for products that are still under patent protection.= Manufacturers in other EC member states are concerned that other countries in the EC might adopt policies similar to the West German policy. The United Kingdom is said to be restructuring its National Health Service. Since last year, the prescribing patterns of physicians have been recorded and those of individual physicians are compared with the average.= The results of the which are more imminent than the harmonization of the single market, will probably be considered when or if the issue of pricing is approached on an EC level.

The Creation of a Single-Market Authorization Procedure

Background

Three procedures have been used for approving the marketing of pharmaceutical products in the EC since 1987:

301 USITC field interviews in the EC with representatives of EC-based and U.S.-based multinational firms and gr[illegible]tatives of industry trade associations during Jan. 8-19, 1990.

[illegible]. "Facts at a Glance; p. 18.

[illegible]. *EFPU in Figures: 1986-87,* (1988), p. 19.

[illegible]sk Heinz Redwood, *The Price of Health,* 1989, pp. 45-46; "Phannaceuticals, 1989," *Chemical Mmiceting Reporter,* Mar. 20, 1989,p. SR10.

[illegible]. 'Paranoiacs Have Reason to be Wary, *Financial Times,* Dec. 19,1989; U.S. Bureau of National Affairs 'Major Obstacles Remain in Path Toward Single Market," Oct. 6, 1989, p. 8.

USITC field interviews in the EC with representatives of EC-based and U.S.-based multinational firms and representatives of industry associations during Jan. 8-19, 1990; Pharmaceuticals '89,' p. SRIO.

[illegible]. USITC field interviews in the EC with representatives of EC-based and U.S.-based multinational firms and representatives of industry associations during Jan. 8 -9,1990.

[illegible]. Ibid.

[illegible]. "Pharmaceuticals '89; p. SR12.

USITC field interviews in the EC with representatives of EC-based and U.S.-based multinational firms and representatives of industry associations during Jan. 8-19, 1990.

[illegible]. "Pharmaceuticals '89," p. SR12.

1. The Community "concertation" procedure for biotechnology/high technology medicinal products (which was enacted July 1, 1987);
2. The "multi-State" procedure providing for partial mutual recognition of national authorizations obtained after November 1976 (the process was first introduced in 1986); and
3. Purely national procedures, which are said to remain the ones most frequently used.

Under the current multi-state procedure, a manufacturer first obtains a marketing authorization in one member state (see fig. 6-6). The manufacturer then must submit a multi-state application for marketing approval to at least two other member states, as well as notifying the Committee for Proprietary Medicinal Products (CPMP). The application must include the original dossier, a copy of the marketing authorization expert summaries, and the assessment report from the originating member state. The member states have 120 days to either make their decision or to raise objections. If there are objections, the CPMP considers the objection and then delivers its opinion, which is not binding on any member state. It is said that the CPMP currently has no capacity to undertake an independent scientific evaluation at the Community level. The member states then have 60 days to consider the opinion of the CPMP and to decide whether or not to grant the marketing authorization. The actual authorizations issued can vary from country to country, depending on factors that include any necessary safety precautions, the indications noted, and any contraindications.=

Applications for biotechnology and "high-tech" products are approved through the "concertation procedure" (see fig. 6-7). The application is presented to a national competent authority. This authority notifies the CPMP, acts as rapporteur, and prepares an evaluation. The company sends the CPMP a copy of the dossier, the expert's reports, and any existing drug monitoring reports and then submits to as many member states as possible copies of the dossier and the expert opinions. The decision by the CPMP has to be sent to the company and the member state 30 days before the latter's decision is due (the member state that is acting as rapporteur has 120 days to decide whether to grant a marketing authorization). It is not required that any member state that receives an application wait for the CPMP decision. The original data in the dossier for any product approved through the "concertation" procedure receives 10 years' protection from a second application, starting from when the first national marketing authorization was issued.=

Anticipated Changes

In order to create a single market in 1992 and to allow for free circulation of pharmaceutical products in the EC, a single-market authorization procedure has to be created that would be valid within all 12 member states. Under the proposal drafted in the last few months of 1989, there would be three avenues by which a company could product approved. The first of these is a cen procedure that would use a reinforced version of the CPMP and would be mandatory for biotechnology products and optional for high-technology products or new-chemical entities. Applications for authorization will be submitted directly to a European Medicines Agency. This agency will consist primarily of the reinforced CPMP and the Committee for Veterinary Medicinal Products (CVMP), supported by an administrative and technical secretariat. This secretariat will have appropriate logistical support and will benefit from substantial scientific support provided by the competent authorities of the member states. The opinions of the CPMP and the CVMP will subsequently be transformed into decisions valid throughout the territory of the Community.[3]

The second route would be a decentralized procedure involving binding multistate approval. The objective of the decentralized procedure is to permit a marketing authorization granted by one member state to be extended to one or more other member states by means of the recognition of the original authorization. In the case of serious objections, and after the exhaustion of all possibilities fora bilateral resolution of the problem, the CPMP/CVMP will give a binding opinion.= Countries using the multistate procedure would be able to choose the country in which they wish to act as rapporteur by submitting one application. When multiple applications are submitted, the country that first receives the application would be the rapporteur. The choice of country as rapporteur is potentially important because some member states are perceived by the industry as processing such applications faster than others. At the conclusion of (the centralized and decentralized] procedures, the opinions of the CPMP/CVMP will be transmitted to the applicant, the EC Commission, and the member states. In the absence of serious objections from the member states within 30 days of transmission, the EC Commission will adopt a decision to implement the opinion of the committee. If objections are

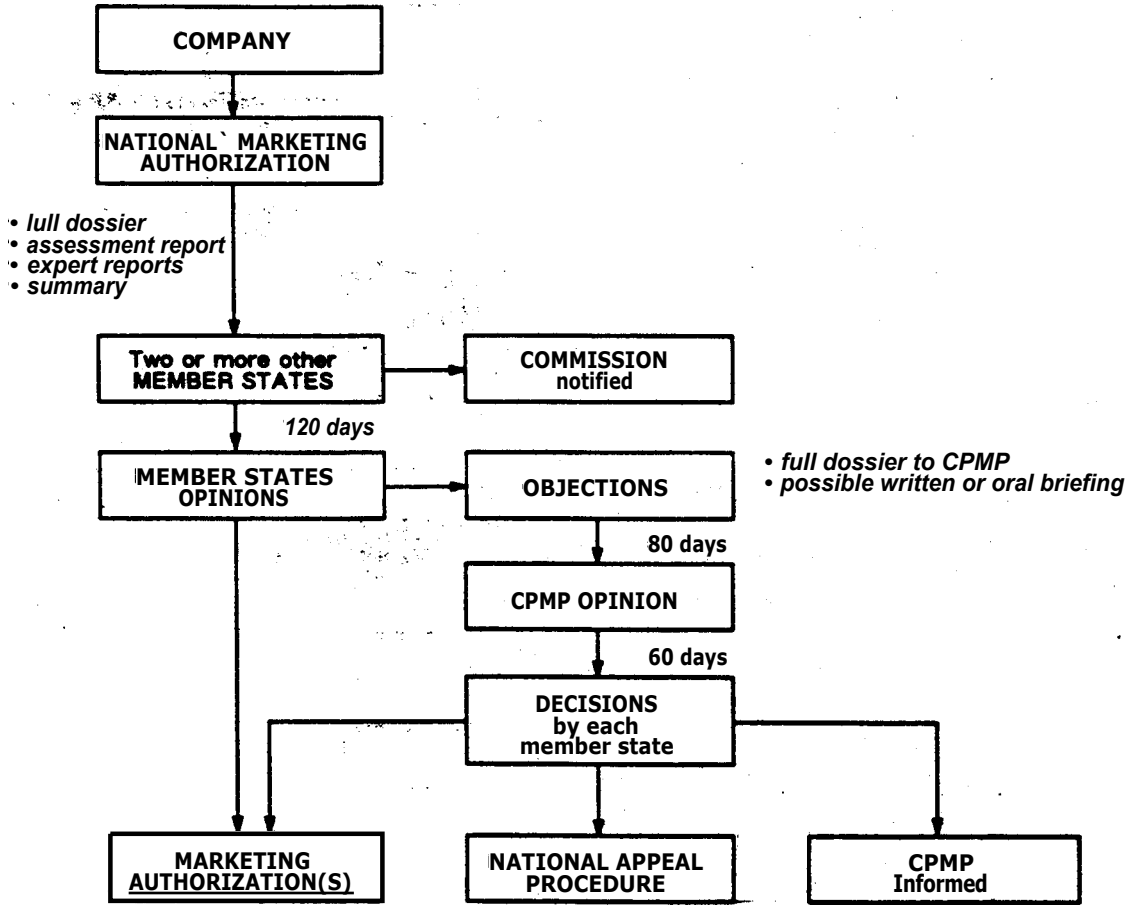
[3-2] U.S. Bureau of National Affairs, Major Obstacles Remain in Path Toward Single Market: p. 8; ***A Brief Guide to the EEC Directives Concerning Medicines,*** p. 13.

[3-3] Ibid.; Data submitted in support of a marketing authorization application by an innovative company cannot be used to support the application of a second company during this time period.

[3-4] EC Commission, ***Future System for the Authorization of Medicinal Products Within the European Community*** (Discussion Document), 111/8267/89 rev. Z December 1989, p. 3.

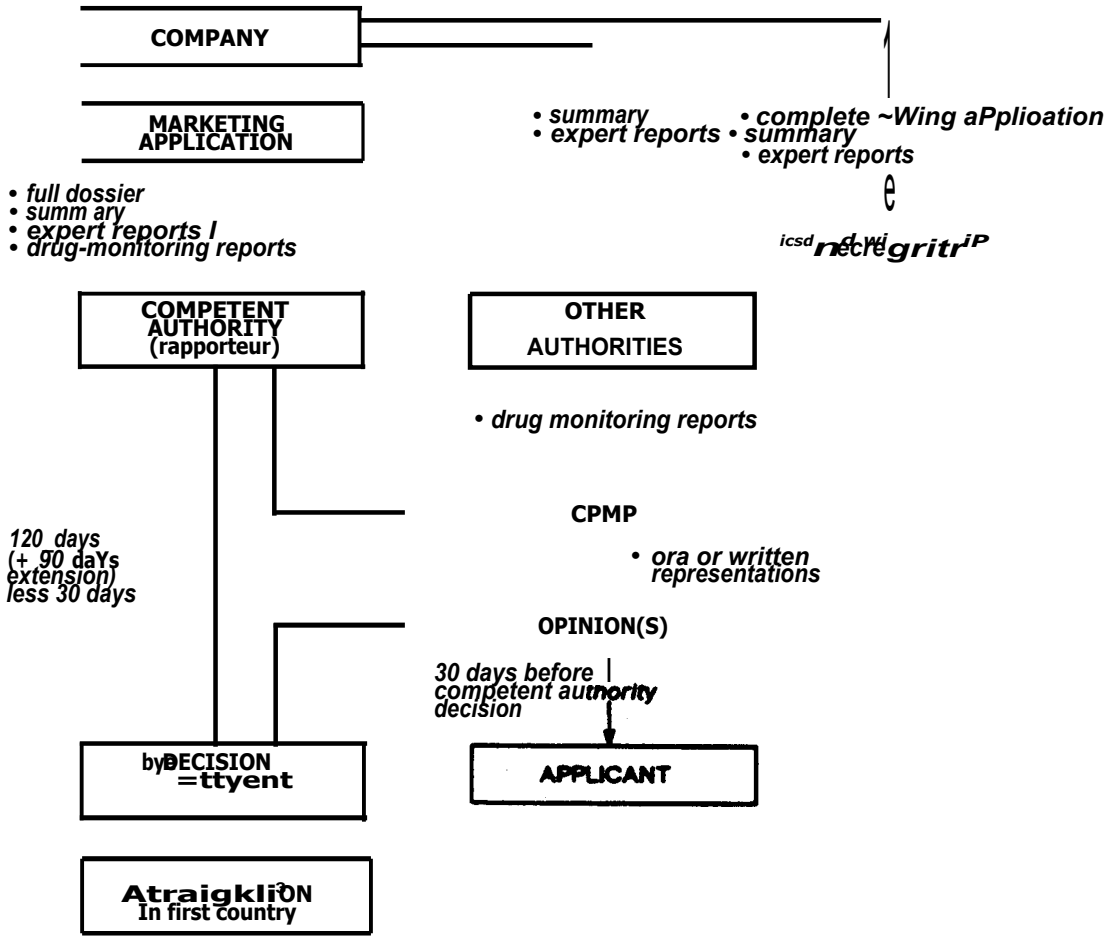
Ibid

Figur* II-4
CPMP multistate application procedure (113/570) for new drug approval



Source: European Federation of Pharmaceutical industrfes' Associations.

Figure 6-7
"Blo/HIgh-tech" conoertatlon procedure (87/22) for new drug approval



Source: European Federation of PharmaceuticalIndustries! Association,.

received, the Council will reach a decision within 3 months, by a qualified majority.[3]

The third would be a national route that would be limited in principle to products intended for consumption in an individual member-state market The facility of purely national authorization procedures will remain for companies too small to avail themselves of the internal market and for products of local interest The procedures for granting marketing authorization will remain unchanged.w

Possible Effects

This directive, in conjunction with the other directives, is expected to be liberalizing in terms of U.S. trade with and access to the EC market It is not expected that U.S. exports of finished, dosage form pharmaceuticals to the EC will be negatively affected. It is believed, however, that third-country companies will find it easier to deal with one registration procedure than twelve. This is considered to be particularly true for Japanese firms which are currently expressing interest in entering the EC markets* It is not expected that exports of pharmaceuticals to the EC by countries other than the United States will *be* diverted to the United States.

U.S. Industry Response

The objective of achieving a single uniform EC marketing authorization is not easily accomplished, given that the industry is subject to stringent regulations. Representatives of both the U.S. and the EC pharmaceutical industry have been actively involved in the directive-drafting process. Two options that had been considered prior to this proposal were the creation of a centralized system, which was generally pm-dyed as more likely to become overwhelmed with applications, or a strengthened, binding, mutual-recognition system. The current multistate procedure, however, according to industry sources, has not been as successful as originally anticipated. Industry representatives generally believe that the current proposal, a combination of the two options, offers a number of benefits, including (1) the ability for companies seeking premarketing approval to have a choice as to approval routes;s* (2) the availability of a binding decision through the multistate procedure; and (3) the use of independent assessor within the multistate procedure. As with any proposal that is still being discussed, however, there are some concerns and outstanding issues.[4*]

The first of these concerns is the recognition of a need to have a transitional period during which the old system is operational while the new system is being implemented. This would allow for a fall-back system in case the new, untested system develops unexpected problems or is overwhelmed, in its initial phase of operation [101] The length of such a transitional period, however, has not been determined. The suggestion was made that two years before the end of any transitional period the EC should open discussions on the effectiveness of the procedure. It has been postulated that eventually, as more products are approved through the centralized procedure, the centralized route will become the primary procedure used for approving products, since new formulations of the already approved products would apparently have to be approved by the same route as the original.

Secondly, in order to have a binding decision, industry believes that the decision should have a scientific basis. Currently, the CPMP consists of representatives of the individual member states. In order to minimize any potential bias that might be the result of a decision reflecting national interests, it is recommended that the reinforced CPMP be composed of a panel of scientific experts to evaluate scientific criteria and a panel of national representatives to handle the administrative details. The panel of experts could be chosen from a large pool of nominations by member states-[4]w

Thirdly, the concern exists that the central agency might create regulations based on an "addition" of the most stringent regulations in each member state rather than a "harmonization" of dons. This could have a significant effect on in igenous production. Companies whose products did not meet these standards might not be able to market the products in the EC. Fourth, concern has been expressed as to whether the projected number of people allotted for the secretariat (approximately 100 people) would be sufficient to keep the system running smoothly. More resources might be necessary.

Other outstanding issues that have been identified include a country's right to work with an EC agency, an appeals mechanism, and the possibility of mutual recognition with third countries such as the United States and Japan. According to industry sources, talks are said to be under way between the EC and the United States

[3"] Ibid.
ay Ibid., p. 13.
[3"] USITC field interviews in the EC with representatives of EC-based and U.S.-based multinational firms and representatives of industn' associations during Jan. 8-19,1990; Dochertrud Labaere, 'The Pharmaceutical Industry,' p. 13.
rig to industry sources, the ability to maintain the optimal amount of flexibility in approval routes is very important to the industry.

400 USITC field interviews in the EC with representatives of EC-based and U.S.-based multinational firms and representatives of industry associations during Jan. 8-19, 1990.
[43'] An industry source has suggested that any overburdening of particular countries acting as rapporteur would sort itself out by supply-and-demand (i.e., if one slows down, applications will be submitted to other countries).
[402] Ibid.

and the EC and Japan in regard to the "internationalization" of standards. Certain bilateral agreements already exist between some member states and the United States in regard to Good Manufacturing Practices and Good Laboratory Procedures. Such agreements have yet, however, to be concluded on an EC-wide basis.

Patent Restoration

Industry sources have expressed significant interest in the development of a directive through which the effective patent life of a pharmaceutical product could be extended. Under the 1973 Munich Convention, to which most Western European countries are signatories, "the innovator is entitled, in return for disclosure, to 20 years exclusivity over his invention:[14]w In the case of pharmaceuticals, however, much of that period is expended in development of the product (i.e., industrial product development; clinical testing and trials; and product approval by health authorities). A=rding to indusny sources, the average length of the effective patent life of a pharmaceutical has declined to 10 years and 10 months, as a result of the average development time increasing to about 10.6 years:so' This decline in the period of market exclusivity of a product reduces the amount of time during which a company may recover its investment in the product Therefore, industry sources have indicated that modification of the period of marketing exclusivity is considered to be an important issue. A recent publication states that manufacturers in the EC are 'particularly pleased" that the EC is approaching issue.[406] It should be noted that the United States, in an effort to resolve this issue domestically, has enacted legislation that allowed for the extension of the effective patent life of a product by up to 5 years, depending on the amount of time lost during regulatory review.

Early drafts of the proposed directive concerning patent restoration call for the creation of a "Certificate of Restoration of Patent" (CRP), which many regard as a device other than a patent The CRP, based on legislation recently introduced in France, would automatically take effect when a patent expires and would cover the particular indications registered for the product at the time of expiration. According to industry sources, the additionalperiod of market exclusivity would vary, but would be capped such that the sum of the effective patent life of the product and the added time would not exceed 16 years. With the assumption that the proposal would be applied to new products, it was suggested that older products might be subject to a transitional phase in which a limited number of years would be added depending on the year in which the product was patented. The introduction of a device that is not a patent would avoid having to amend the Munich Convention. This proposal was originally going to be put forth as a regulation, but according to various sources, is now expected to be issued as a directive. Some concerns about the current proposal voiced at a member-state level include the length of the additional term, and the possible emergence of monopolistic suppliers once this device is in effect, forcing smaller suppliers out of the market[407]

Blood Products

Background

Directive 89/381, one of the "extending directives" in the health care area, extends the pharmaceutical directives and tions to products made from human bk Products derived from human blood are subject to additional requirements beyond those applicable to pharmaceuticals in general because of their potential for causing allergic/antigenic reactions and transmission of viral disease, particularly sertim hepatitis and Acquired Im munodeficiency Syndrome.

Anticipated Changes

Directive 89/381 establishes a framework applicable to the manufacture and trade of human blood products. Whole blood, plasma, and blood cells are specifically excluded from applicability of this directive, although the concerns and principles set forth relating to self-sufficiency and "ethical treatment" of blood donors apply to these products also.

The directive incorporates World Health Organization (WHO) guidelines and the European Pharmacopoeia by reference. This directive and the associated guidelines and standards encourage national and EC self-sufficiency in human blood products and reliance on voluntary unpaid donors and establish a mechanism for reporting progress toward these goals to the EC Commission.

Labeling standards for blood products are also established in the directive. Product content and composition must be in conformity with rules established by the European Pharmacopoeia, currently under review by a committee established by the Council of Europe. Manufacturing processes and facilities must be approved and inspected, as necessary, and samples of each batch of product may be required to be submitted for official testing before distribution. Official process-and-facility

[403] EFPIA, *Memorandum on the Need of the European Pharmaceutical Industry for Restoration of Effective Patent Term for* Phanniteutkals, p. 3.

[404] Ibid., p. 7; USITC field interviews in the EC with representatives of EC-based and U.S.-based multinational firms and representatives of industry associations during Jan. 8-19, 1990

[403] U.S. Department of Commerce, "Manufacturers Give Mixed Reviews to EC Pharmaceutical Program," *Europe Now: A Report,* Winter 1989-90, p. 2

[403] USITC field interviews in the EC with representatives of EC-based and U.S.-based multinational firms and representatives of industry associations during Jan. 8-19, 1990.

supervision by any member state is mandatorily acceptable with regard to the product in any other member state.

Possible Effects[408]

U.S. exports to the EC

If achieved, self-sufficiency in human blood products would obviate the need for imports from other countries, such as the United States. Required reliance on unpaid donors would preclude distribution of U.S. blood products because most U.S. commercial products are derived from paid donors. (Whole blood, collected and distributed by the American Red Cross and other blood banks, is obtained primarily from unpaid voluntary donors in the United States. Blood products are manufactured from outdated whole blood; however, the major source of blood for manufactured products is a separate, commercial collection system.)

The American Blood Resources Association (ABRA), the principal trade association representing the U.S. blood products industry, estimates that U.S. exports to the EC are approximately $300 million per year, about half of which might be directly subject to this directive.

Diversion of trade to the US. market

The United States is the largest supplier of blood products in the world. If the EC achieves self-sufficiency in blood products, there could be considerable surplus capacity worldwide, unless demand growth elsewhere were substantial, as it could be if open-heart surgery or kidney dialysis, for example, became as 'copular abroad as here. Other suppliers to the EC might attempt to divert blood products shipments to the United States but large increases are unlikely because of competition from the well-established U.S. industry.

U.S. investment and operating conditions in the EC

U.S. firms operate manufacturing facilities in Europe, but they do not account for a major proportion of indigenous EC supply. National self-sufficiency and reliance on unpaid voluntary donors may impede imports of U.S. plasma designated for further processing in Europe, but there is no indication that U.S. firms operating in Europe would be excluded from sharing in the European blood supply system. Any changes in the cost of raw materials associated with this evolution of the EC blood-supply system would appear to apply equally to EC and U.S. firms operating in the EC, so U.S. firms should not be competitively disadvantaged.

[408] The information and analysis in this section *was* derived_principally from USITC staff interviews with the FDA and its Division of Biologics.

U.S. Industry **Response**[409]

ABRA, the principal trade association representing commercial blood banks and blood products manufacturers, is concerned that either EC self-sufficiency or reliance on unpaid donors would effectively exclude U.S. products. Before the ,directive was issued, the U.S. industry lobbied successfully to have the principles of self-sufficiency and reliance on unpaid voluntary donors reduced from a requirement to a long-term goal. However, ABRA believes neither goal is likely to be achievable and that the EC will not apply import restrictions unless and until a fully adequate supply of complying blood is available.

Medical Equipment

Background

At present, there are substantial differences among EC member states in their technical specifications for medical equipment and in their administrative procedures for inspecting and authorizing sales of medical devices. Some countries, such as West Germany, place greater emphasis on product testing whereas other countries, such as the United Kingdom, focus more on total quality assurance in the production of medical devices.") The British system is similar to that employed by the U.S. Food and Drug Administration in that it places a great deal of emphasis on Good Manufacturing Practices (GMP).[411] In France, samples of electromedical devices must be submitted to the government for performance testing and inspection as a precondition for receiving marketing approval[412], Finally, many EC countries require adherence to international standards, some of which cover a broad range of medical devices (horizontal standards) and some of which are product specific (vertical standards). Differences in standards and regulatory approval procedures fragment the EC market and add to costs by forcing producers who wish to sell in other member states to either modify their products or subject them to different national testing and certification procedures.[413]

U.S. medical firms are broadly represented in the EC market Large U.S. manufacturers of medical devices, such as Baxter Travenol, Abbott Laboratories, Bard, Beckman Instruments, Johnson and Johnson, Litton, General Electric, Varian,

[409] The information in this section was obtained primarily by USITC staff interview with American Blood Resources Association.

[410] Health Industry Manufacturers Association, letter to USITC staff, Nov. 15,1989.

[411] Ibid.

[412] Mika 0. Reinikainen, "Radical Change in European Medical Device Standards; *Medical Device & Diagnostic Industry,* January 1990, pp. 38-40; Michael Calingaert, *The 1992 Challenge From Europe: Development of the European Community's Internal Market,* National Planning Association, pp. 108-110, 1989.

[413] Ibid.

Hewlett Packard, Medtronic, and Cordis, supply the EC market both through exports and from subsidiaries and joint ventures in the EC. Smaller U.S. producers of such devices—including Abbey Medical, Intermagnetics, Stryker, Neurom , Medfusion Systems, Symbion, Storz Instrument Company, and Walpak— supply the EC market primarily through exports.

Major competitors to the U.S. firms in the EC market include Siemens AG, Dornier, Pausch, and Erbe Elektrometlizin of West Germany; Thomson-CGR (General Electric), Sopha, and ,Ek Medical of France; General Electric Corp.[414] (Picker) and EBI Medical Systems of the United Kingdom; Villa, Merate, and Alfa Procol of Italy; and Delft, and Pie Medical of the Netherlands. Other competitors in the EC market include Brown Boveri Company and Schoch Electronics (Switzerland), Scanditronix (Norway), GEC Australia (Australia), and Toshiba, Hitachi, Olympus, and Nakamura Japan).[415]

Anticipated Changes

The EC is currently in the process of drafting four directives to harmonize essential requirements and conformity-assessment procedures for medical equipment. These directives cover active implantable electromedical devices, active (non-implantable) electromedical devices, nonpowered sterile devices (including nonactive implants), and in vitro diagnostics (tests made outside the body). The directives will set forth "essential requirements" and charge CEN and CENELEC with responsibility for drawing up voluntary technical standards. Relevant EC medical trade associations are participating in the process of establishing standards and were also involved in providing input to the EC Commission on draft directives.

The purpose of the proposed directives is (1) to guarantee the safe use of the medical equipment, (2) to harmonize conformity assessment procedures (regulatory approval processes), and (3) to encourage harmonization of technical standards. Under these directives, "essential safety requirements" (ESRs) must be met before medical devices can be approved. Depending on the product type, the manufacturer will have the option of certifying compliance by either (1) certifying conformity of production on the basis of conformity to harmonized standards drawn up by CEN or CENELEC or (2) certifying conformity through another route, such as evaluation of the manufacturer through compliance with Good Manufacturing Practices (GMP) and surveillance through a central agency or notified body. Once compliance has been demonstrated, the medical device will bear a "Cr mark, guaranteeing the medical device access to the market in all EC member states.

A proposed directive on active implantable electromedical devices was published in the Official Journal of the European Communities in January 1989[418] and, if adopted, its provisions are expected to serve as a precedent for subsequent directives covering the three other major categories of medical goods. Aproposed directive on active nonimplantable efectromedical devices is expected to be published later in 1990[417].

Possible Effects

US. exports to the EC

On balance, the proposed directive on active implantable electromedical equipment should be trade liberalizing. By harmonizing the various mandatory requirements and conformance procedures with respect to these devices, the directives should enable EC and third-country firms to reduce costs associated with compliance to different individual EC country requirements, to benefit from economies of scale, and to increase productivity. This in turn should increase the competitiveness of the exports of efficiently operated EC and third-country companies in the EC market However, discriminatory standards, lack of transparency in the single regulatory approval process, and duplicative testing and certification requirements could significantly inconvenience U.S. firms and lessen the competitiveness of their exports in the EC market

Small and medium-sized U.S. manufacturers of medical products that supply the EC primarily through exports could be hurt the most by trade discrimination resulting from the directive.[418] These firms have little or no influence on the EC industry groups involved in drafting the proposed directives on medical devices. Moreover, such firms often develop and market highly specialized products for which international standards have not been developed. Such products are the subject of new standards developed by CEN and CENELEC, EC standards bodies that provide little opportunity for U.S. industry input

U.S. exports of medical equipment and apparatus increased by more than 20 percent, from an estimated $1.3 billion in 1984 to $1.6 billion in 1988.[419] Exports of such goods to the

[414] The General Electric Corp. in the United Kingdom (GEC) is not related to the U.S. General Electric Co. (GE).

[415] John Anderson, "America and European Standards —The Crossroads,' *Medical Devke Cr Diagnostic Industry,* April 1989, pp. 14-20.

[416]'s Com (88) 717 final, Of No. C 14 Clan. 18, 1989), p. 4.

[417] "News in Brief: Electromedical Devices," *Eurobrief,* vol. 2, No. 7, Dec. 8, 1989, p. 82.

[418] Health Industry Manufacturers Association, letter to USITC staff, Nov. 15, 1989.

[419] Estimated by USITC staff on the basis of official statistics and other Information of the U.S. Department of Commerce; and information provided in a letter dated Nov. 15, 1989, from the Health Industry Manufacturers Association. U.S. exports of active implantable electromedical equipment are covered by EC Directive 88017. These exports amounted to $180 million or slightly more than 12 percent of total U.S.

EC represented over one-third of total U.S. exports of medical devices during that period.[420] The U.S. exports represented 7-8 percent of total U.S. shipments of such devices and about 15 percent of EC consumption of medical equipmerit[421] West Germany, France, the Netherlands, the United Kingdom, and Italy accounted for about 80 percent of such exports.[422] The United States maintained a surplus in the trade of medical goods with all EC countries except West Germany.[423]

Diversion of trade to the US. market ,

Japan is a major supplier of medical devices to the EC market EC imports from that country accounted for approximately 12 percent of EC consumption of medical devices in 1988. A large proportion of the medical goods supplied by Japanese firms consist of high technology electromedical instruments and imaging devices.[24] If Japanese suppliers were to be hurt by the provisions of this directive, some of its exports couldbe diverted to the U.S. market However, U.S. industry experts do not believe that U.S. imports from Japan will increase appreciably by such a development U.S. imports of medical equipment from Japan amounted to over $600 million in 1988.[425]

US. investment and operating conditions in the EC

The directive should generally benefit U.S. investment in the EC. U.S. firms that have invested in manufacturing facilities in individual EC member states may find it easier to market their products in other EC countries. The improvement will enable them to benefit from manufacturing scale economies and reduced costs in meeting harmonized regulatory standards and safety requirements. Such firms may find it advantageous to consolidate and rationalize some of their operations since it will no longer be imperative to maintain a manufacturing presence in important member-state markets such as France, West Germany, and the United Kingdom. Instead, they can evaluate other factors, such as wage and utility costs, which may favor locations in Portugal or Spain.

Direct U.S. investment in the EC medical-device market amounted to about $1 billion in 1988.[426] Products manufactured by EC subsidiaries and joint-venture partners of U.S. medical device manufacturers accounted for an estimated 35 percent of EC consumption of medical equipment and apparatus.[427] Thus, the total share of the EC market held by U.S. firms, including both exports and production by their EC-based subsidiaries and joint ventures, amounted to over 50 percent of total EC consumption.

Industry officials believe that as the EC approaches full integration, investment and merger activity by EC and foreign-owned subsidiaries should increase. In August 1987, the U.S.-based General Electric Corporation (GE) completed a deal with France's state-owned Thomson S.A. in which GE obtained Thomson's medical imaging business. In 1987, the Dutch manufacturer Philips announced it would merge its medical division with Picker International to form one of the largest medical equipment companies in the world. However, several obstacles have prevented completion of the deal. Picker International is owned by the General Electric Corporation of the United Kingdom.

U.S. Industry Response

In general, U.S. industry officials support the creation of harmonized EC standards and a single regulatory approval system for medical devices[428] Nevertheless, they are concerned that certain provisions of the proposed directives could be trade discriminatory. Because the CEN and CENELEC standards setting process does not provide direct channels for U.S. industry input, new EC standards may require costly product design changes forsome non-EC suppliers, thus making it harder for such suppliers to export to the EC.[429]

Also, U.S. industry officials state that if U.S. firms are to benefit from a single EC regulatory approval process for medical products, the systems must be mutually recognized and used by all EC member countries. Moreover, the system must be transparent and provide equal access to non-EC companies. Of particular concern to U.S. manufacturing firms in the United States and exporting to the EC is whether U.S. testing and certification will be recognized in the EC or whether these must take place in the EC. If most U.S. medical

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"° _*Continued*

2Zt of medical devices in 1988. Pacemakers, classified under file B No. 709.1605, accounted for about one-half of the value of U.S. exports of active implantable electromedical devices. The remaining exports of implantable devices are accounted for by products represented under various other schedule B nu ers pertaining to elecizomedical goods. Although separate provisions for pacemakers and other active implantable electromedical devices are not made at the five-digit RTC level, trade in such devices ted roughly 11 to 12 percent of total U.S. trade under SIT number 77410, electromedical apparatus.

'3° Estimated by USITC staff on the basis of official statistics and other information of the U.S. Department of Commerce.

421 /bid.

422 ibid.

422 Ibid.

424 Based on USITC staff conversations with U.S. and EC businessmen by telephone and in general fieldwork at various times during 1987-89, and on official statistics of the European Community.

421' Based on official statistics of the U.S. Department of Commerce.

422 Estimated by the USITC staff on the basis of official statistics of the U.S. Department of Commerce.

4" Ibid.

422 Vice President, Health Industry Manufacturers Association, letter to the Director of European Affairs, U.S. Department of Commerce, Oct. 17, 1989.

42° USITC staff interviews and telephone conversations with officials and committee members of NEMA during October 1989.

products must be shipped to the EC to be tested for conformity with EC standards, then the adverse impact could be dramatic for nearly all U.S. firms, especially smaller U.S. exporters.

Other concerns of U.S. industry officials include: (1) the protection of company proprietary information during testing and certification; (2) lack of coordination among the four proposed medical device directives with regard to product definition and risk classification; (3) overlapping product coverage that may result in certain types of medical devices' being covered by more than one directive; (4) the validity of existing Memoranda of Understanding (MOU) between the U.S. FDA and the governments of individual EC member countries such as West Germany, the United Kingdom, and Italy. These MOUs presently facilitate approval in those countries of medical devices approved by the FDA; and (5) EC certification and registration programs for quality assurance programs, including design requirements even though relevant ISO standards for medical devices do not contain such requirements.

Motor Vehicles

The EC is the world's largest market for passenger cars, with 1989 registrations exceeding 13 million. EC exports of autos represent approximately F$_o$zrcent of total EC exports of manufactured The auto industry directly employs about .7 million people, or about 8 percent of EC manufacturing employment; however, about 10 percent of the jobs in the EC directly and indirectly depend on the automobile sector.

The EC auto industry is confronting growing pressure from within and without because of the potential for growth. Capacity utilization in the industry is expected to remain around 85 percent throughout the 1990s, and the market is to grow by about 1-2 percent annually. 7:Plan producers have increased profits substantially over the past few years, with profits growing from 2.14 billion ECU in 1986 to Tbillion ECU in 1987, and more than ECU 10 billion in both 1988 and 1989.[430] The EC auto industry has experienced some rationalization as outdated and inefficient manufacturing facilities (about 7-10 percent of existing capacity) were replaced, and restructuring of the industry is expected to continue into the 1990s.[431]

U.S. manufacturers exporting to the EC and those with manufacturing operations in the EC view the EC market in the 1990s as offering increased opportunities. U.S. automakers currently have manufacturing facilities in the EC and plan to expand their facilities over the coming decade. Ford and General Motors have substantial investment in manufacturing facilities, along with automotive-component manufacturing operations, engineering centers, and distribution networks. In 1988, Ford Motor Co. had sales of $1.7 billion in the EC. Ford is reportedly planning to spend $7.5 billion in Europe over 5 years to maintain its position. Ford held a 1988 market share of 11.3 percent in 1988, placing behind Volkswagen and Fiat (tied for first), and Peugeot Group.[432] General Motors has six assembly plants and 19-vehicle component plants in Europe. General Motors' 1989 income in the EC was $1.8 billion, amounting to nearly half of GM's total worldwide income of $4.2 billion. General Motors' market share in Europe rose to 11.2 percent in 1989, up from 10.5 percent in 1988.[433] During 1988, Chrysler established 564 automobile dealers in Europe, and will have approximately 875 dealers functioning by the end of 1989.[434]

In addition, U.S. automakers are increasing their market presence through acquisitions and joint ventures. In 1989, Ford acquired Britain's Jaguar for $2.38 billion. General Motors purchased half of Sweden's Saab for $600 million.[435] Also, Chrysler plans to manufacture in Europe through a joint venture with Renault The EC auto industry has also experienced a growth in investment by Japanese auto producers, as Japanese automakers shifted production facilities to the EC in anticipation of increased restrictions in the 1990s.

The analysis for this section focuses on type approval of motor vehicles and motor-vehicle emission standards. The EC is now moving towards a single set of compulsory regulations in the field of motor vehicles and EC-wide whole-type approval. This marks a major move towards harmonization in the auto industry, and is closely linked to the EC's decision on how to handle member state residual quantitative restrictions on Japanese cars post-1992. Motor vehicles currently undergo approval in each member state to either national technical regulations or mixed national EC-wide regulations.

The EC adopted new motor-vehicle emission standards by passage of two directives in 1989. Directive 89/458 set a shorter compliance cycle and stricter emission standards for vehicles with an engine size of 1.4 liters or less. Directive 89/491, changed previously passed directives pertaining to sound-level requirements, fuel consumption, and engine power, as well as emission pollutants from motor vehicles.

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[430] U.S. EC Mission memorandum, Apr. 22, 1988.

[431] EC Commission, *Panorama of EC Industry,* p.14-1.

[432] *Ward's Automotive Yearbook,* p. 84.

[433] Steven Prokesch, 'GM Europe: How to Get Something Right,' *New York Times,* Feb. 4, 1990, p. 3-1.

[434] Louise Kertesz, 'Keepingup With the 'New' Europe," *Automotive News,* Apr. 17, 1989, p. 30.

[435] Michelle Krebs and Richard Johnson, "Saab and GM Both Benefit From 50-50 Deal,' *Automotive News,* Dec. 18, 1989, p. 1.

Both directives represent a shift from "optional" to "total" harmonization in the area of emissions. As noted previously, optional harmonization means that member states are not permitted to refuse circulation to products that conform to technical requirements set forth in the EC directives. In the case of total harmonization, member states are obliged to only permit products conforming with the directive to be placed on the market "Old approach" directives normally involve optional harmonization, because they effectively "freeze" technology and design requirements at a given point in time. This may pose a barrier to innovation, particularly given the EC's slowness in adopting mold approach" directives. However, because of the liability implications of relying upon nonmandatory regulations, the EC has decided to move in the direction of "total harmonization" in the auto sector as part of its overall 1992 standards effort[438]

The overall impact of these directives on U.S. auto producers is positive. Total harmonization will benefit U.S. suppliers because a single set of regulations is easier to comply with. Uniform EC-wide mandatory standards would reduce manufacturers' production costs and administrative burdens. EC-wide whole-type approval would facilitate the importation of motor vehicles into the EC. At the same time, U.S. suppliers, including General Motors, would prefer to have the option of relying upon production surveillance by laboratories located in the United States to demonstrate conformity to EC requirements, instead of undergoing type-testing, or production surveillance by laboratories located in the EC.

In addition, the newly introduced, stricter emission standards benefit U.S. producers of auto parts since these standards closely resemble the emission requirements already in force in the United States. U.S. exports of mobile-source control technologies could increase as a result of the new emission standards introduced by these directives. Nevertheless, U.S. industry concerns remain over high shipping costs of assembled exhaust systems, as well as the unresolved matter of testing and certification.

Type-Approval

Background

Currently, automobile producers have the option of submitting their vehicles for technical approval (homologation) under either a national or mixed national-EC approval system. Models or prototypes of motor vehicles must unde iio an approval procedure in each country to certi that the type of vehicle meets national technical requirements. Subsequently, the manufacturer or importer is provided with a certificate indicating that the vehicle has been homologated in the subject country. Once the model of the vehicle has been approved, vehicles can then be registered in that country. A member state importing a vehicle can require that a vehicle certified as passing national technical requirements in another country must undergo a check for conformity in the importing country. These procedures have resulted in increased costs and administrative burdens on the part of member states, manufacturers, and importers.

The mechanism whereby type-approval is granted was the subject of Council Directive 70/156 of February 6, 1970, on the approximation of the laws of the member states relating to the type-approval of motor vehicles and their trailers to be applied in respect of each type of vehicle.[437] According to this directive, the approximation of national laws relating to motor vehicles involves the mutual recognition of member states of the inspections carried out by each of them on the basis of common provisions (EC directives), and calls upon all member states to implement these requirements. The certification authorities in the member states are all government agencies. Each member-state agency responsible has approved one or more public or private testing laboratories to conduct associated tests. Member states are not required to accept the test results of other member states' designated laboratories.

Because 3 of the required 44 vehicle standards directives have not been approved, cars sold on the EC market are not required to be wholly type-approved. Moreover, the 41 previously adopted standards directives are optional. EC member states may impose these requirements or impose national technical regulations for cars sold in their own markets. Thus, there exists a blend of national and EC-and-national regulations. Right now there are "partial homologations" for parts or functions of a vehicle. If these partial homologations are based on EC requirements, the member state authority must accept them. But the exclusive and final say as to whether to type approve a car is in the hands of the national authorities.

The three remaining vehicle standards directives, which cover windshields, tires, and weights and dimensions, were blocked in the 1970s by France under the assumption that approval of all 44 directives would result in increased imports in its market France sought to use national technical regulations to make the importation of autos from Japan into its market more difficulty Currently,

[43]s USITC field interview with staff of the EC Commission, Jan. 10, 1990.

[437] Of No. L 42 (Feb. 23, 1970), p.1

[439] USITC field interview with staff of the EC Commission, Jan. 10, 1990.

the United Kingdom, France, Spain, Italy, and Portugal impose import restrictions on automobiles from Japan. At the same time, Japan informally and voluntarily limits total annual exports of automobiles to the EC to approximately 1.2 million cars.

Since 1958, an optional system has also operated following an international agreement under the auspices of the Economic Commission for Europe (ECM) of the United Nations. The ECE focuses on the definition of common technical criteria for partial homologation, and mutual recognition of these standards.[436] Not all EC member states are signatories to the ECE, nor is the United States (which participates as an observer) or Japan. There are 77 ECE motor-vehicle standards, and signatories to the ECE are not obligated to adopt ECE standards.[440] However, some member states have adopted some of these standards. An auto manufacturer may choose homologation under an EC directive, a country's national regulations, or an ECE standard if there is one and the country has adopted it. The EC is not itself a signatory to the ECE, but the EC Commission proposed to the Council of Ministers in late 1989 that the EC itself become a member.[441]

Anticipated Changes

By 1992, the EC plans to adapt a mandatory and exclusive EC-wide type-approval system for motor vehicles. Under this system, manufacturers would be required to obtain certificates of conformity valid for registration in all member states that state that the vehicle, model of vehicle, or automotive part satisfies harmonized technical requirements adopted by the EC. These technical standards, which have been contained in EC directives, include, but are not limited to, directives pertaining to emissions, lights, weights and dimensions, noise, and safety requirements. Testing and certification would be carried out by member state-authorities or their designated representatives in EC testing laboratories, or in U.S. manufacturers' facilities.

The EC expects to issue a draft proposal on whole type-approval in 1990 and to eventually move from optional to total harmonization of all auto-related technical regulations imposed at the EC level. The goal is to incorporate the 44 separate vehicle standards regulations set forth in EC directives into one set of mandatory EC-wide regulations. The EC Commission's goal is to complete the whole set of directives called for in the 1970 directive by 1992. In the case of passenger cars, there are 3 "missing" directives pertaining to safety glass, tires, weights and dimensions. The remaining three standards directives were reportedly forwarded by the EC Commission to the Council in December 1989 but have not yet been published in the *Official* Journal.[442] However, further technical harmonization in the EC, through adoption of the remaining three auto standards directives, is linked to the resolution of the issue of imports from Japan post-1992.[443] For a discussion of quantitative restrictions imposed by the EC on imports of automobiles from Japan, see chapter 11 of this repo

Possible Effects

U.S. exports to the EC

U.S. exports of new passenger automobiles to the EC increased from $116 million (10,070 units) in 1986 to $247 million (18,322 units) in 1987, and then to $438 million (33,915 units) in 1988. U.S. exports of passenger cars stood at $416 million (31,852 units) during the period January to November 1989.[444] General Motors is seeking increased sales of North American-built vehicles in the EC but will probably not ship more than 100,000 vehicles annually during the 1990s.' Ford, like GM, has solid auto-manufacturing operations in the EC, and is likely to export no more than 100,000 vehicles annually to the EC. GM and Ford would be more likely to increase production in their EC plants. Chrysler is returning to the EC, after having been absent since 1980 when it experienced financial difficulties. Chrysler, which does not have manufacturing facilities in the EC, exported 31,000 vehicles to Europe in 1988, and 1989 shipments are estimated at 51,000 vehicles. By 1992, Chrysler plans to reach exports to the EC of 100,000 vehicles annually.[4"]

The EC's 1992 plan for the automobile industry does not allow for self-certification of automobiles. Suppliers are permitted to self-certify when supplying the U.S. market, and U.S. suppliers would like to do so in the EC market as well. The United States accepts self-certification by EC manufacturers of vehicles that meet U.S. standards. U.S. producers are seeking an agreement with the EC whereby U.S. manufacturers could self-certify that the vehicle meets EC technical requirements, without having the burden of exporting automobile models or parts to testing labs in the EC or assuming the cost for an EC-designated representative to witness the test in the United States."?

4.2 USITC field interview with staff of the EC Commission, Jan. 9, 1990.

"-a "An Open Meeting for CMS,' *Target* '92, No. 1, 1990.

"-a Compiled from official statistics of the U.S. Department of Commerce.

446 Prepared statement of John Krafcik, Research Associate, International Motor Vehicle Program, MIT, before the Subcommittee on Europe and the Middle East and Subcommittee of International Economic Policy and Trade Committee on Foreign Affairs, U.S. House of Representatives, Washington, DC on Mar. 24, 1989, p. 9.

4" Kertesz, 'Keeping up With the 'New' Eurom' p. 30.

447 EC Commission, *A Single Community Motor Vehicle Market,* Dec 19, 1989, p. 2.

41- USITC staff phone conversation with official of the U.S. Department of Transportation, Jan. 5, 1990.

"o "Cars: Council to Consider Commission's Request for Brief," Eurwean Report, No. 1537, Nov. 4, 1989, p. 4-10.

44' USITC staff phone conversation with representative of Ford of Europe, Jan. 18, 1990.

Currently, certification for EC standards may be carried out in two ways: (1) the vehicle model or automotive parts may be exported to the EC for testing and certification in a member state, or (2) tests can be carried out in the United States at the U.S. manufacturer's facilities and witnessed by an EC-designated representative at the U.S. manufacturer's expense. U.S. motor-vehicle manufacturers in practice often have the vehicle models tested in the EC and circulate the certification documents to the other member states, which recognize that member state's approval. The manufacturer may submit the product for additional testing in other member states to comply with national regulations. According to U.S. manufacturers, these testing and certification procedures are costly and time consuming.

There is discussion in the EC regarding the implementation of a derogation to the full type-approval for vehicles manufactured in low volumes. Type-approval for such small lots may be burdensome administratively and would not be economical for such producers. Although type-approval may be advantageous to firms that sell a large quantity of any given model in the EC market, it is expensive and time consuming. Some producers may find burdensome a requirement that cars be type-approved, because the size of shipments would not warrant the up-front cost and time. The EC Commission reports that some options being discussed to handle this problem include "lot" approval and individual approvals. However, testing requirements might need to be changed because some EC directives currently call for destructive tests. The EC Commission is still attempting to define acceptable lot sizes and the maximum size of such exceptions to mandatory type-approval. The EC Commission is also examining whether such exceptions will have only national validity or EC-wide validity.[448]

Diversion of trade to the U.S. market

It is unlikely that diversion of trade to the United States would occur should the EC replace the optional national or mixed national-EC standards-approval system with a mandatory and exclusive EC-wide type-approval system for automobiles by 1992. U.S. motor-vehicle standards, in some areas, such as emissions and weights and measures, are equal to or more stringent than those standards imposed by the EC for EC-wide approval. The EC type-approval system would facilitate the importation of motor vehicles into the EC because of uniform EC-wide standards requirements. Thus the difficulties encountered because of divergent national regulations, including high cost and administrative burdens, would be removed. In addition, the U.S. market is characterized by overcapacity, low sales, and high inventory, and does not currently offer an attractive market for third country exporters.

U.S. investment and operating conditions in the EC

A full EC-wide type-approval would benefit U.S. manufacturers by reducing the amount of duplication in testing and certification for vehicles entering more than one member state.[449] Full EC-wide type-approval may result in lower costs associated with automobile production because of the harmonization of styling and engineering. Additionally, mandatory and exclusive whole type-approval to "old approach" directives would reduce automobile manufacturers' risk of liability. The "new approach" was rejected unanimously by EC member states, because of fears by automobile producers that it would increase their liability exposure. Under the EC's product liability directive 85/374, manufacturers are absolved of liability if they adhere to EC or any other mandatory technical regulations.[450]

On the other hand, full type-approval may result in higher production costs for manufacturers when a member state's current national regulations are less stringent than the approved EC-wide requirement In this case, under full type-approval, manufacturers would be required to produce cars for all member states markets to a higher standard than currently in place in some member states (e.g., emissions, noise, safety).[45']

U.S. Industry Response

U.S. auto manufacturers have opined that they will find the EC an attractive and easier market in which to sell cars as a result of the directives. Mandatory and exclusive EC-wide type-approval would reduce costs and administrative burdens and, combined with the removal of national quotas, would offer greater opportunities for U.S. manufacturers exporting to the EC and for U.S. producers located in the EC. U.S. automobile manufacturers also indicate that, while they encourage an EC-wide type-approval for autos, an option for national type approval be maintained for companies with low volume, narrower market interests.[452]

Emissions

Background

In 1970, Directive 70/220 established standards for measuring air pollution from all motor vehicles. In 1980, followed by several adjustments to the

[446] USITC field interview, Jan. 9, 1990.

[444] Statement by John P. Smreker, Chrysler Corp. on behalf of Motor Vehide Manufacturers Association of the United States, Inc., U.S. Government Interagency Working Group on EC Standards, July 26, 1989, pp. 3-4.

[46°] USITC staff meeting with an official of DG III, EC Commission, Jan. 9, 1990.

[461] USITC staff phone conversation with representative of General Motors, Jan. 19, 1990.

[462] Statement by John Smreker, p. 4.

"original" 1970 directive, the EC Commission published Directive 88/76 to set a timetable for the member states to meet the amended provisions of Directive 707220. In 1989, Directive 89/458 was put forth to include cars with an engine size below 1.4 liters, and establish a shorter timetable for member states to meet

Another emissions-related line of directives has been developed since 1970. These directives deal with various issues, such as sound-level requirements, radio interference produced by spark-ignition engines, fuel consumption, and engine power, as well as emission pollutants from motor vehicles, including emission pollutants from diesel engines. The culmination of these directives is Directive 89/491, which amends certain annexes of the previously passed directives.

Anticipated Changes

The technical requirements of Directive 89/491 are not significantly different from those of previously passed directives, especially as they pertain to emission standards. The passage of this particular directive, however, is significant to the extent that it represents a shift from optional to total harmonization. The 13 different requirements in the area of emissions are effectively incorporated into a single standard that EC manufacturers and non-EC suppliers will be required abide by if they wish to market cars in any member state market

Directive 89/458, introduced both a shorter timetable and stricter emission standards pertaining to motor vehicles with an engine size of 1.4 liters or less —an estimated 50 percent of the total vehicle population of the EC. The amendments contained m this directive require further reductions in both carbon monoxide emissions and the combined mass of hydrocarbons and in nitrogen oxide emissions as compared with those already set forth in Directive 70,220. In addition, the compliance cycle for smaller cars, of 1.4 liters and less, was moved up to January 1, 1990 (phase 1), July 1, 1992 (phase 2), and December 31, 1992 (phase 3). Emission standards for larger cars—those with an engine size larger than 1.4 liters—representing another 50 percent of the total, remain on schedule for the time being, although there are indications that the compliance timetable for this vehicle population could be compressed as well.

The EC Commission issued a detailed opinion in June 1989 on future mandatory standards on emissions for cars 1.4 liters and below. By Jan. 1, 1993, only one standard will be in effect Member States will have to adopt harmonized EC standards as their only national regulation on emissions requirements. Between 1990 and 1993, optional harmonization will be in effect, but member states will be permitted to offer encouragement for purchases of cars which comply with the new EC emission requirements. Member-state fiscal or other financial incentives to encourage purchases of cleaner-burning cars shall only be on the emissions standards contained in the July 1989 directive, however.[453] They can also advance implement the directive. Germany has reportedly made the new requirements effective on January 1, 1990.

Possible Effects

The overall impact of these directives on U.S. auto producers is positive. Total harmonization will benefit U.S. suppliers because a single of standards is easier to comply with. The newly introduced, stricter emission standards also benefit U.S. producers since these standards closely resemble emission requirements already in force in the United States.

U.S. exports to the EC

U.S. exports of mobile-source control technologies could increase as a result of the new emission standards introduced by these directives. U.S. suppliers of these products can benefit, especially those that already have an established European distribution system in place. U.S. exports of catalytic converters, for example, amounted to $3.8 million in 1988 and are estimated to reach $22.6 million in 1989, representing a six-fold increase. Potential independent suppliers/exporters of these products include Arvin Industries and the Tenneco Division of Walker Manufacturing. Exporters note, however, that export potential is limited because of high shipping costs. Shipping is expensive because customers generally require catalytic converters to be shipped as a unit welded to the exhaust system. To circumvent such shipping costs, most suppliers, including General Motors' ACG Europe, already manufacture these items on site. Borg Warner Automotive and Dana Corp. (engine and fuel system components) and Eaton (emission controls, sensors) are examples of incumbent producers in the U.S. market who have the wherewithal to increase sales to the European market

Diversion of trade to the US. market

No diversion of trade to the U.S. market is likely to occur. U.S. emission standards are similar to those the EC is currently introducing. Therefore, third-country suppliers will face similar requirements on entering the U.S. market as those that might conceivably cause them to relinquish their sales to the EC market Moreover, U.S. manufacturers are the world leaders in developing and producing mobile-source control technologies. Were any trade diversion to occur to the U.S. market, U.S. suppliers (especially captive producers) would probably be in a solid position to compete with foreign manufacturers in the U.S. market

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[463] USITC field interview, Jan. 9, 1990.

U.S. investment and operating conditions in the EC

U.S. suppliers have well-established operations in the EC. These directives, therefore, are likely to benefit U.S. investment in the EC because EC-based U.S. affiliates will have few difficulties adjusting to the new emission standards. EC manufacturers, as well as non-EC suppliers, have already made the necessary changes to meet the requirements of the previous directives.

Current U.S. investment in the EC includes General Motors' European operations of its Automotive Components Group (ACG). ACG's AC Rochester and its subsidiary in the United Kingdom plan to quadruple production of catalytic converter systems m the EC, to 1.3 million units a year by 1993. Currently, AC Rochester United Kingdom supplies GM's Opel car plants on the Continent Other customers might soon include Renault, in addition to GM subsidiaries like Opel and Vauxhall.

These directives are also likely to encourage U.S. investment in the EC because of the lure of a larger EC market for these products. U.S. manufacturers of emission control systems generally express an interest in expanding their presence in Europe and additional U.S. suppliers also currently evaluate the EC market for future investments. Walker Manufacturing and Arvin Industries, Inc. are two examples of exhaust-system makers who are increasing their presence in the European market

U.S. *Industry Response*

There seems to be a consensus in U.S. industry circles that early exploitation of the newly created demand for U.S.-like emission-control technologies is a key factor in gaining market share. U.S. suppliers are generally supportive of the new EC emission standards. Concerns have been voiced by General Motors and others, however, regarding testing and certification. The worst case scenario in their view would be to be required to test in European labs, according to EC test specifications, and under EC supervision. A more desirable alternative would be to have a surveillance program in place in the United States. This program would call for an EC representative to be on location to witness testing in U.S. labs, according to U.S. test specifications, near the manufacturing site.

Other Machinery

For the purpose of this report, a total of eight machinery-related directives, proposals, and amendments were analyzed. Three of these proposed directives and amendments—machine safety, mobile and lifting machinery, and forestry and agricultural tractors—are likely to affect the bulk of U.S. producers of nonelectrical machinery who sell in the EC.

In today's global economy, nearly all U.S. producers of machinery have turned to exporting their products and investing in foreign markets to increase market share or to ensure international competitiveness. U.S. companies with major production facilities in the EC include Cincinnati Milicron, Gleason Works, Caterpillar, Hyster Co., J.I. Case, Deere and Co., and Ford-New Holland. Based on the Commerce Department's Bureau of Economic Analysis' Survey *of Direct Investment Abroad, the* total assets of U.S. affiliates that manufacture nonelectrical machinery in the EC were estimated at $49 billion in 1987.

The European Community represents a large export market for numerous U.S. makers of products such as machine tools, agricultural and forestry tractors, industrial trucks, construction equipment, and mobile and lifting machinery. In 1989 these five manufacturing sectors accounted for approximately $5.9 billion in U.S. exports to the EC. Unlike the majority of EC-based exporting firms, many U.S. companies who export to the EC are small-and medium-sized firms. Many U.S. companies that ship products directly to Europe do not maintain a facility there, and work through an established EC-based distribution network [454]

The EC is the third largest market for machine tools in the world. West Germany is the largest consumer of machine tools in the EC. West German consumption represented, on average, 42 percent of the EC total over the last 8 years. Italy, followed with 17 _percent the United Kingdom with 16 percent; France, with 15 percent; and Spain, with 5 percent.[456]

The machine tool industry in the EC is characterized by small and medium-sized businesses. Industry sources indicate that approximately 30 broad categories of machine tools are produced by 1,403 companies in the EC. Italy has an estimated 450 producers; West Germany. has 390 (mostly larger companies); the United Kingdom has 200; France has 148; and Spain has 144. West Germany's production represented an average of 54 percent of the EC's machine tool output; Italy, 19 percent; the United Kingdom, 12 percent; France, 9 percent; and Spain, 4 percent. [458]

The majority of agricultural and forestry tractors sold by U.S. manufacturers in Europe are currently produced in EC member countries. Indeed, American multinational firms currently account for an estimated 40 percent of total EC production. U.S. firms have in recent years transferred a large part of their production capacity to the EC in an effort to increase their market share, and to benefit from economies of scale that a single EC market will create.

Major European companies have branched out from large automaking groups (Fiat, Renault, and Daimler-Benz) and are presently major producers of tractors. Producers of these machines often manufacture custom-made tractors that feature

[454] USITC staff interview with the Association for Manufacturing Technology, Jan. 4, 1990.
[458] e EC Commission, *Panorama of EC Industry 1989,* p. 13.
[456] Ibid.

many comfort and safety features commonly found in autos. West Germany is the largest manufacturer and exporter of agricultural machinery in the EC.
• Industry sources indicate that exports account for 56 percent of its total output The majority of these exports are destined for developing nations.

In recent years, Japan has become a major third-country supplier to the EC of small and medium-sized tractors used largely for gardens, parks, and golf courses. Major Japanese producers in the EC include Yanmar and Honda, which export mainly to the United States. Poorly represented in the EC, Japanese firms are forging links with North American manufacturers in the hopes of capturing a larger share of the EC market[457]

The EC accounts for one-quarter of the total world industrial truck (foddift) production. According to industry sources, the total market for industrial trucks in the EC is 2.3 billion ECU ($1.9 billion).[4]se Major EC producers include: Linde and Jungheinrich (West Germany), Lansing and Lancer Bros. (United Kingdom), and Fiat (Italy). These five major producers account for 75 percent of total EC production. West Germany and Italy are the two largest consumers of these products in the EC. [469]

U.S. exports to the EC of all nonelectric machinery account for approximately 25 percent of the total value of U.S. exports. The creation of European wide technical standards may affect more U.S. machinery companies than any other EC-92 related issue. The principal concern for U.S. producers of machinery is not the directives' essential requirements themselves, but how they will be impacted by far reaching product standards currently being developed by CEN. Although CEN has promised to base much of their work on international standards, few such standards exist because regulations regarding machine safety vary widely throughout the world. Several producers of machinery such as machine tools and forestry tractors indicate that their products can be considered specialized machinery designed for exclusive markets. According to U.S. industry sources these types of machinery should not be covered by EC requirements for type-testing. Additional industry concerns include the EC's proposed policy toward testing and certification, and the potential problems that may develop regarding product liability.

U.S. industry is also concerned that some countries, such as West Germany and France, will try and impose their own standards through CEN and CENELEC, thereby erecting nontariff barriers against imports on the entire EC market There is particular concern over West Germany's role given their tough technical standards and the fact that Germany plays a strong role in both CEN and CENELEC — with DIN heading some 40 percent of their committees.[4]

The scope and magnitude of the new machinery safety directive, adopted into law on June 14, 1989, is vast Nearly 55,000 types of machines will eventually be covered. In 1989, CEN had a total of approximately 230 technical committees and working groups responsible for developing product standards. CEN spokespersons indicate that between 30 and 40 technical committees are active in developing various specific machine safety standards, with a target date of completion of no later than July 1993. The technical committees and working groups exclusively cover industrial standards in such product areas as machine safety, lifting and loading equipment, agricultural and forestry tractors, simple pres vessels, and gas appliances.[48'] ThoughCEtandards work is proceeding simultaneously on all types of machinery, spokesperso indicate that various aspects of the standards would likely be placed in technical annexes. This plan would allow CEN some flexibility since items put in the technical appendixes could be changed without having to change the entire standard and "building blocks" could be added as they become available.

In the case of mobile machinery, the EC Commission decided in 1989 not to finalize an earlier proposed directive. Instead the EC has proposed to amend the finalized machine safety directive to include all agriculture, construction, mining, and lifting machinery (e.g., forklift trucks). Some of these products are currently covered by specific old approach directives. Although they broadly support the newly proposed directive, U.S. industry producers of these types of machinery fear that they will likely be more vulnerable to product liability lawsuits if its wording is not changed.[462]

Agricultural and forestry tractors are subject to "old approach" directives, and are specifically excluded from the machine safety directive. In 1989, The Commission proposed an amendment to the previously-passed directives which outlines the necessary provisions for the implementation of the EC type-approval procedures of individual tractor parts. Furthermore, the proposed amendment will modify present specifications for testing procedures with respect to design and performance requirements for front-mounted rollover protection structures and expand the number of tractors subject to testing.

[467] Ibid.
[4"] The value of 1 ECU to the U.S. dollar was 1.1942 on Jan. 5, 1990, according to *European Report.*
[4"] EC Commission, *Panorama of EC Industry 1989,* pp. 11-15.
[4S0] Ken J. Korane, *Machine Design,* Jan. 25, 1989, p. 65.
[44"] USITC staff meetings with CEN officials, Jan. 8, 1990.
[4"] USITC staff interview with officials of Caterpillar Inc., Jan. 11, 1990.

Machinery Safety

Background

The purpose of Directive 89/392 is to harmonize national regulations concerning safety of certain types of new machinery during manufacture and in use. Through this directive, the EC Commission seeks to improve the level of workplace safety attained by the member states and eliminate barriers to trade resulting from the disparity of member states' laws relating to machine safety.

Anticipated Changes

The directive was adopted by the EC Council on June 14, 1989. The following changes to the original proposal, which was discussed in the USITC's utitial report, are reflected in the directive as adopted —

(1) **A stricter certification procedure** is required for certain types of machinery having a higher risk factor;

(2) Member states must ensure the free movement of machinery not bearing the CE mark which is to be incorporated into other machinery;

(3) Machinery which is covered by other safety directives shall be exempt from this directive;

(4) Certain other machinery is also exempted, namely that covered under Directive 73/23 relating to low-voltage electrical equipment; and

(5) Machinery for working wood and similar articles is subject to the directive, whereas the earlier proposal excluded these types of machinery.

The directive does not include lifting equipment or mobile machinery, although a proposal to expand its scope to include such machinery is currently under discussion.

Member states will be required to change their national laws to incorporate the safety requirements contained in this directive, i.e., the directive requires total harmonization of national regulations. Specifically, the machinery covered under this directive must satisfy the essential health and safety requirements listed in Annex B. The requirements pertain to the potential dangers to operators and other exposed people within a danger zone." In addition to the machine itself, the directive concerns the materials used in the construction of the machine itself, lighting, design for handling purposes, controls, stability, hazards related to moving parts, fire, noise, vibration, radiation, emission of dust and gases, and maintenance. It also contains specific provisions for certain types of machinery, such as woodworking machinery.[483]

[483] British DTI, *Machinery Safety.*

For most types of machinery, the machine safety directive permits manufacturers or their authorized representative in the EC to declare that their products conform to the EC requirements. To declare conformity, these manufacturers must complete an EC conformity certificate, maintain a file concerning the technical construction of the machine, and affix the appropriate CE mark to the product. However, there is a stricter certification procedure for certain types of machinery, such as woodworking machines, certain of metalworking machines, and plastics and rubber molding machinery (all those listed in annex 4 of the directive), that are considered to have higher risk factors.

If this higher risk machinery is manufactured in accordance with EC standards, the manufacturer must submit a technical file on the machine to a notified certification body. The manufacturer then has the choice of (1) declaring that the machine conforms to the EC requirements; (2) requesting that the certification body verify that the relevant EC standards have been correctly applied; or (3) submitting an example of the machinery to an inspection body for type-examination. If the machinery is not manufactured in accordance with relevant EC standards, or if there are no such standards, the manufacturer must submit an example of the machinery for EC type-examination before it can be marketed in the EC.[484] It is still unclear how non-EC- manufactured products will be tested.

In an effort to aid machinery designers 'in developing safe machinery for occupational and private purposes, CEN's Technical Committee published a draft standard entitled "Safety of Machinery, Basic Concepts, General Principles for Design" (prEN292) in May 1989. This standard defines various safety concepts and specifies general principles and techniques (other than those dealing with the electrotechnical aspects of machinery, as CENELEC develops these standards) that the committee believes should be adopted by manufacturers to ensure safety in all machinery. This draft standard describes hazards generated by machinery, develops strategies for formulating safety measures, examines factors that may be used to assess risk, and explains how Asks can be reduced throughproper design. The standard is to be used as a basis for the preparation of safety standards relating to specific types of machinery. This standard has been submitted to CEN members for preliminary vote. Many expect it to be passed shortly.

At present, CEN has 30-40 technical committees and working groups developing machine safety standards. For a listing of the CEN/CENELEC technical committees working on standards

[484] U.S. Department of Commerce, "Summary of Machine Safety Directive,' *EC 1992: A Commerce Department Analysis of European Community Directives, vol. 1,* SIMIS No. 1-128, May 1989.

related to machinery safety, as of February 1990 (see figure 6-8). These committees are developing four *grpes* of machine safety standards-A, B1, B2, and C:[466] 'A" standards concern basic principles and safety concepts covering all types of machinery. "Bl" standards concern specific aspects of safety which are of relevance to a large number of machines, such as lighting and noise. "B2" standards involve devices that may be used on various types of machines, such as lasers. "C" standards concern detailed safety requirements for a special machine or group of. machines. See appendix F.

[4]" See app. F.

Possible Effects

U.S. exports

U.S. suppliers, many of them small, generally serve the EC market by direct export U.S. exppoorts to the EC of the products that could *be* by this directive are estimated to have totaled $3.9 billion in 1988. The major U.S. exporters to the EC and direct investors in the EC for the above-mentioned products are shown in table 6-3 below. Leading U.S. exports of machinery affected by the present Machine Safety Directive (891392)-those with over $100 million in U.S. exports to the EC-were as follows in 1988:[403]

m• Compiled from official statistics of the U.S. Department of Commerce.

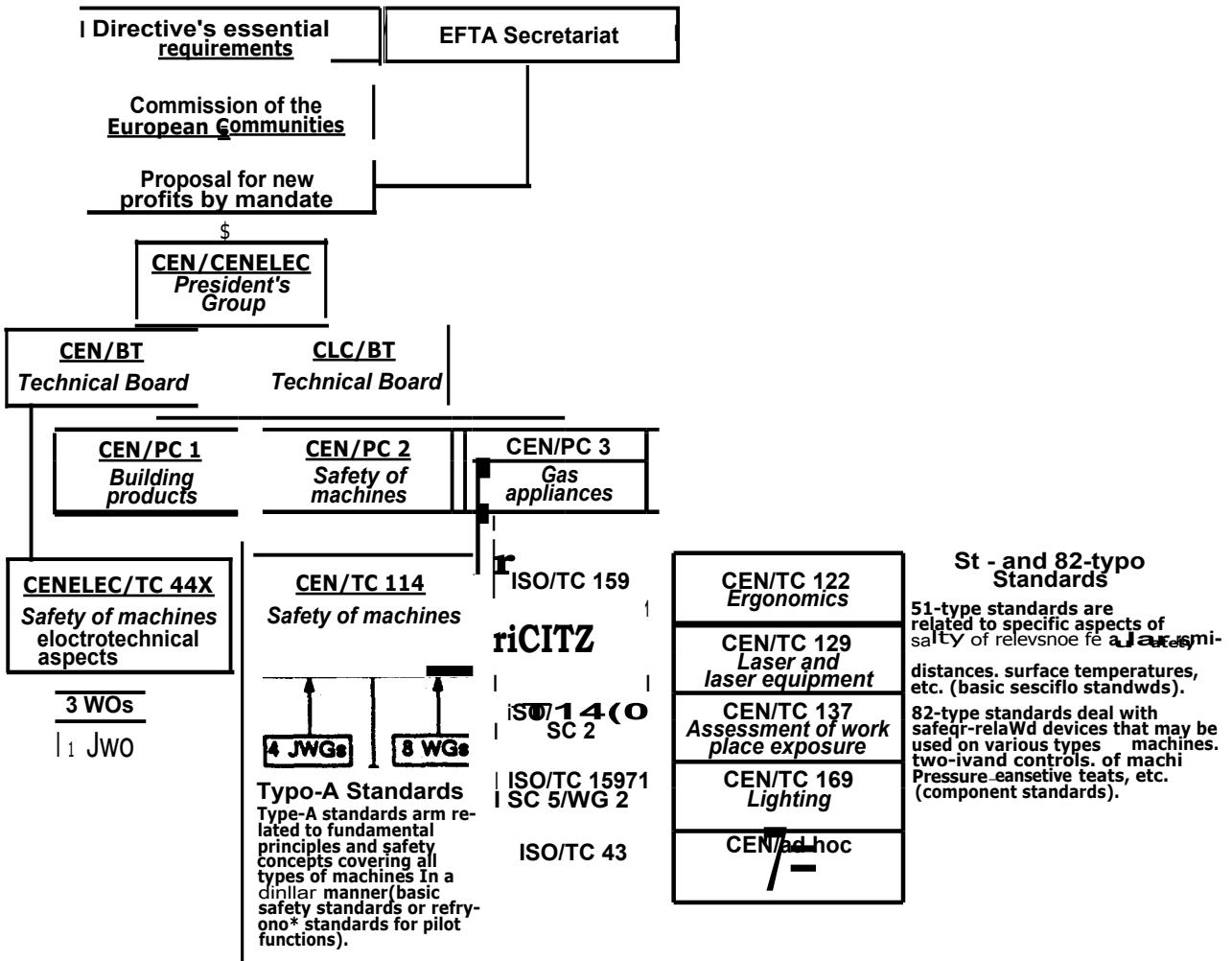
Table 8-3
Machinery: Major U.S. exporters to and direct Investors In the EC, 1988

Product	*Major U.S. exporters*	*Major U.S. direct investors*
Metakvorking machinery	Harding* Bros.. Inc.	- Cincinnati Milacron
	Moore Special Tool Co.	Gleason Corp.
		Bridgeport Machine Inc.
	Gleason Corp.	Cross Manufacturing. Co.
	Landis Grinding Machines	
	Cincinnati Milacron	
Afr-conditioning and refrigeration machinery	Snyder General	Snyder General
	The Tram Co.	The Tram Co.
	Carrier Corp.	Carrier Corp.
	Bristol Compressors	
	Amana	
Printing machinery	Martin Automatic, Inc.	Bald[win] II Technology Corp.
	Electra Sprayer Systems	Rockwe international
		Eastman Kodak
Food industry machinery	FMC Corp.	George Meyer & Co.
	Commercial Manufacturing and Supply Co.	

Source: Officials with the U.S. Department of Commerce. National Machine Tool Builders' Association, the Air Conditioning and Refrigeration institute, and the National Printing Equipment and Supply Association.

Product	*Principal*	*Value of U.S. exports to the EC*
Metalworking machinery	United Kingdom, West Germany	$923 million
Akt-conditioning and refrigeration machinery	West Germany, Italy	$392 million
Printing machinery	United Kingdom, Netherlands	$216 million
Food industry machinery	United Kingdom, Netherlands	$139 million
Packaging machinery	United Kingdom. West Germany	$130 million

Figure 6-6
EC technical harmonization activities In the field of machine safety



Source: National Machine Tool Builders' Association, CEN.

Most U.S. exporters believe that they will benefit from this directive. Harmonization of differing national standards concerning machinery safety should, U.S. suppliers report, make it easier for U.S. exporters to market their products in the EC. In addition, U.S. exporters maintain that they should not have difficulty designing products to comply with the health and safety requirements of this directive. U.S. producers serving the domestic market are subject to strict U.S. product liability laws and thus must already ensure the safety of their machines. However, the National Machine Tool Builders' Association (NMTBA) and the National Electrical Manufacturers Association (NEMA) are concerned that the Machine Safety Directive may leave U.S. manufacturers at a disadvantage because in many technical areas ISO standards have not been developed. This can be traced to the fact that safety of machines is generally subject to differing national regulations. Thus, ISO voluntary standards on safety were not viable. According to one representative, if there are no ISO standards, European standards are developed in one of three ways: (1) industry or professional associations prepare documents and send them to CEN/CENELEC for consideration as a European standard; (2) the draft standard is prepared on the basis of existing national standards in the EC; or (3) the experts develop standards themselves. If there is no ISO standard, one has to work with CEN b7

For example, U.S. . manufacturers were concerned that there might be a problem regarding future standards relating to industrial automation for which there were no ISO standards. Itappeared that the Europeans wanted to implement CEN standards for this particular area on the basis of existing member-state national standards. U.S. manufacturers believed it could be difficult to conform to CEN standards based on these national standards. As a result, U.S. manufacturers successfully lobbied to start an international ISO work program in this partiCular area.

Some trade associations are also concerned over the possibility that individual nations will be allowed to impose additional safety requirements, as well as local and national "sub-marks" on machinery. Still others are concerned that problems could result from the various interpretations of the directive by member states. The NMTBA maintains that annex 5 of the directive, regarding documentation of machinery, could lead to product liability exposures beyond those now in the United States. For example, one of the requirements in annex 1 under point 1.1.2 requires that "Machinery must be supplied with all the essential special equipment and accessories to enable it to be adjusted, maintained, and used without risk." However, all industry sources contacted claim that it is impossible to ensure that a company's machinery will be risk free. - One.can minimize risk but cannot eliminate it, they say.

In addition, the lack of information on testing and certification procedures for U.S. exports has exporters concerned. The Machine SafetyDirective does not address the issue of accrediting non-EC inspection bodies. U.S. exporters are concerned about the expense of having to have European inspectors travel to the United States to certify machinery under the directive. Some U.S. exporters fear that the EC may not accredit non-EC labs to rforrn EC-conformity tests. U.S. products would have to be sent to a testing facility in the EC, thus substantially increasing U.S. exporters' inspection costs. As a result, some U.S. exporters allege that they may no longer be able to export their products to the EC. According to the NMTBA, many machinery manufacturers sell custom- type that are fairly large and expensive to sfup. As a result, they would have problems with type approval requirements, if they had to have products tested by an EC lab.

U.S. exporters are also concerned over the development of standards covering totalquality management (ISO 9000, CEN 29000 standards). ISO 9000 standards were approved by CEN as European standards. Total quality management (TQM) would require in-line inspection of the production process to ensure that products consistently conform to the relevant performance and safety standards. U.S. organizations, such as Underwriters Laboratories, are just beginning to offer this type of program. Again, U.S. exporters are unsure as to whether the Europeans will accredit non-EC labs in the United States, such as Underwriters Laboratories, to register their quality-assurance schemes.

Diversion of trade to the U.S. market

This directive will probably not increase U.S. imports from third- country suppliers, since foreign manufacturers that export to the United States are also subject to stringent U.S. product-liability laws. Third-country suppliers include Japan, Taiwan, Mexico, and Canath.[488]

U.S. investment and operating conditions in the EC

U.S. firms, such as Cincinnati Milacron, Snyder General, FMC Corp., which already have investments in the EC, view this directive as a positive development. They are reviewing their marketing and distribution systems to see how they can be rationalized with major cost savings anticipated. In order to assess future business operating conditions in the EC, one must know more about how European testing and certification procedures will apply to machine safety. Based on

•I" USITC field interview with the Belgian Institute for Normalization, Jan. 10, 1990.

mml USITC telephone interview with representatives of the National Machine Tool Builders' Association and the Air-Conditioning and Refrigeration Institute.

the Bureau of Economic Analysis' *Survey of Direct Investment Abroad, the* total assets of U.S affiliates that manufacture machinery (other than electrical) in the EC were estimated at $49 billion in 1987.

U.S. Industry Response

By and large, most U.S. manufacturers have indicated that they will be able to comply with most of the essential health and safety requirements set forth in this directive. However, several U.S. manufacturers, particularly exporters who do not have facilities in the EC, have some concerns: (1) the EC's lack of transparency or openness in developing standards, (2) the lack of timeliness with which U.S. trade associations receive drafts of standards being developed, (3) the lack of information on procedures for non-European producer certification (most U.S. manufacturers would like to have U.S.-based laboratories accredited by the member states), and (4) the possible disadvantages facing U.S. manufacturers concerning safety requirements in areas in which ISO standards were not developed.

Mobile Machinery

Background

The proposed directive ((89)624) was put forth by the EC Commission in an effort to ensure uniformity of health, safety, and operating regulations for mobile and lifting machinery among EC member states.[4]ss The EC Commission has decided not to finalize the previously proposed directive on mobile machinery, ((88) 740), but to amend the finalized machine safety directive (89/392) to include mobile *and* lifting machinery. Specally, the proposed directive (89) 624 will be added to annex I of the machinery safety directive (89/392) to create one full directive covering safety requirements for all agriculture, construction, mining, and lifting machinery. At present, the EC Commission has formally proposed the amendment to the EC Council:[1]Th

This directive would repeal several directives, including those pertaining to the marking of wire-ropes, chains, and hooks, those pertaining to rollover protection structures (ROPS) and falling-object protective structures (FOPS), and directives on small industrial trucks. The two other directives concerning industrial trucks, (86/663 and 89a40), were adopted by the EC in 1989. However, it is expected that these two directives will be rescinded when this amendment to the Machine Safety Directive is adopted and that all industrial trucks will then be included under the Machine Safety Directive (89/392). Finally, both CEN Working Group 1 (Earthmoving Machinery) and CEN Working Group 5 (Road-building Machinery) have proposed draft ISO-based general health and safety standards for mobile machinery that meet the essential requirements provision found in amendment (89) 624 to the machinery safety directive.[471]

Anticipated Changes

For most types of machinery, this amendment to the Machine Safety Directive permits manufacturers or their authorized representatives in the EC who meet CEN standards to declare that their products conform to EC requirements. To declare conformity, these manufacturers must complete an EC conformity certificate, maintain a file concerning the technical construction of the machine, and affix the CE mark to the product.

However, there is a stricter certification procedure for higher risk machinery, such as motorized hoes, motorized cultivators, vehicle lifts, and hydraulic-powered roof supports. If this higher risk machinery is manufactured to European standards, the manufacturer or its authorized representative in the EC must either (1) send a technical file to a notified body for its retention; (2) forward that file to such a body for that body to (a) verify that the specified standards have been correctly applied and to (b) draw up a certificate of adequacy for the file; or (3) submit an example of the machinery for EC type-examination. In all cases, the EC manufacturer or its authorized representative must draw up an EC declaration of conformity and affix the appropriate CE mark to the machinery. Manufacturers of lifting mechanisms must mark their devices either with a ring or a plaque (e.g., for cables) with the name of the manufacturer, the material composition, working load and stress limits, and the CE mark.

France, West Germany, and the United Kingdom all have national laws covering the safety of mobile machinery that will (most probably) need to be harmonized with this directive: namely, the French Safety Decree, the West German Code of Practice, and the Health and Safety at Work Act in the United Kingdom.[472] EC member countries are

"" Mobile machinery includes loaders, industrial trucks, graders, dumpers, agricultural and forestry tractors, hydraulic shovels, drills, and other machinery that may be self-propelled, towed, pushed, or carried by other mobile machinery or tractors. ***Proposed Direct,* (89)*** 624 defines lifting machinery to include locomotives, brake vans, roof supporters, garbage trucks, vehicle lifts, trailers, cable cars, chair lifts, and other machinery designed and constructed to transport persons. Lifting mechanisms such as pulleys, chains, cables, eyehooks, lifting beams, shackles, and drums are also included in the proposed directive.

[470] U.S. industry sources indicate that the first meeting of the CEN working group on the amendment was scheduled for Feb. 7-8,1990. A series of working group meetings will take place throughout the rest of 1990, until the amendment's first reading to the European Parliament. U.S. industry sources do not anticipate a final directive on the amendment on mobile machinery (89) 624) until 1991. Correspondence from Caterpillar, Inc., ***Feb.*** 1, 1990.

[47'] CEN/TC 151/WG 1 N proposed December 1989; CEN/TC 151/WG 5 N proposed November 1989. (Available from USITC staff.)

[472] USITC staff interview with representatives of Caterpillar Inc.

likely to be constrained to follow the technical specifications set out in previous EC directives until harmonized safety standards specific to mobile and lifting machinery are developed by CEN and CENELEC.

U.S. industry sources indicate that manufacturers of construction and mining equipment will still be obligated to comply with the previously finalized EC directive (86/662) concerning noise emission standards for hydraulic excavators, wheel and track-loaders, and compactors in order to ensure safe emission levels in the ulterior of the units. Apart from this one exception, U.S. sources indicate that all standards for mobile machinery are expected to be developed by CEN/CENELEC under authority of the proposed Directive (89) 624 amending Machine Safety Directive 89/392.

Possible Effects

U.S. industry sources indicate that the proposed Directive (89) 624 will not have a significant effect on the majority of U.S. exports covered by this directive. U.S. producers of construction, mining, and agricultural machinery (large and small) both export to and have longstanding investments (an estimated $1 billion to $2 billion) in Europe, investments that most likely will not be affected to any significant degree by this directive.

US. exports to the EC

U.S. exports to the EC of the machinery covered under this directive reached between $1 billion and $2 billion in 1989. U.S. industry sources indicate that an estimated 65-70 percent of U.S. exports of mobile machinery to Europe are accounted for though intracompany trade, e.g., parts sourcing, supplies for distributors, and so forth. U.S. producers of mobile machinery particularly of front-end loaders, backhoes and shovels, and excavators, hold an estimated 28-30 percent of the EC market for these products.

Major U.S. producers manufacture and distribute virtually hundreds of mobile machinery and parts products in Europe, encompassing a wide range of sizes and uses. U.S. industry sources indicate, for example, that the U.S.-produced small front-end loaders are extremely popular in Europe. U.S.producers, including Caterpillar, Dresser, Gehl, John Deere, Case, Ford, and others, export and produce this machinery in the European market.[473] In fact, 4 of the top 10 U.S. pport markets for this machinery are Belgium, West Germany, Spain, and France. Total U.S. exports of front-end loaders to Europe reached $90.8 million in 1988 and an estimated $96.3 million in 1989.[474]

The U.S. construction machinery firms that export to and manufacture in Europe already meet internationally recognized voluntary standards. In addition, for nearly all products affected, most manufacturers believe that the directive does not require new product design. However, the U.S. industry is concerned that a particular clause in proposed Directive (89) 624 that may have a significant impact on the design and manufacture of hydraulic excavators, loaders, and dumpers. In particular, the EC will require ROPS on all these items exported to or manufactured in the EC. U.S. producers of mobile machinery do not currently manufacture ROPS for their machinery because they do not believe them necessary to the equipment's function or safety. U.S. industry sources point out that the boom attached to the machinery cited by the EC moves vertically and will act as a natural brace against rollovers.[475] Key U.S. industry representatives and officials of the EC Commission are currently discussing the EC's proposed ROPS requirement in terms of design feasibility and of liability.

U.S. exporters of industrial trucks (forklifts) have indicated that this amendment is not expected to alter the level of U.S. exports. U.S. exports of industrial trucks to the EC totaled $37 million in 1988. U.S. exporters to the EC include Clark, Crown, Hyster, Yale, and Taylor Machine Works among others. The United Kingdom and the Netherlands were the principal EC markets for U.S. exports of industrial trucks. However, several U.S. manufacturers did indicate that U.S. exports may be negatively affected during 1992-96, depending on the application of certain standards. The proposed amendments require member states to adopt and publish laws and regulations by January 1, 1992, that are necessary to comply with the amended Machine Safety Directive, with the provisions to become effective by December 31, 1992. Specifically, member states may allow the sale of industrial trucks that are in conformity with the national standards in force in their countries before December 31, 1992, until December 31, 1994, for machinery to which the essential health and safety requirements of points 1 and 2 of annex 1 apply and until December 31, 1996, for machinery to which the essential health and safety requirements of points 1, 2, 3, and 4 of annex 1 apply. However, sources believe that member states may require producers of industrial trucks to comply with their respective national standards as well as with the essential health and safety requirements of this directive during 1992-96.[478]

Several U.S. exporters have indicated that they are also concerned about the "transitional period" provided for in the directive during which "manufacturers will have to certify the conformity of their mobile machinery directly with the essential health and safety requirements of the directive

[473] Telephone interviews with representatives of Caterpillar Inc., Dresser Industries, Inc., and John Deere and Co., February 1990.

[474] Estimated by USITC staff.

[475] The one exception to this, however, is the miniexcavator. The miniexcavator is one of the mobile machines that pivots laterally without a boom and thus does not have the same structural protection as does the larger machinery.

USITC staff interview with representatives of Caterpillar Inc. and Hyster Co., February 1990.

without the availability of standards to enable a uniform interpretation of these requirements.' Several of the smaller U.S. exporters claim that they are reluctant to export industrial trucks during this period as they are concerned over possible liability problems. They are also reticent to increase their exports until they can determine if, in the long run, their products could be adapted to the European standards at a reasonable cost They believe that uncertainty over the standards and testing procedures works against efforts to increase exports. Exporters are particularly concerned over the lack of specific information on conformity assessment procedures.

Diversion of trade to the U.S. market

The majority of U.S. industry sources contacted (three of four) did not believe that there would be any diversion of trade in mobile and lifting machinery to the U.S. market as a result of the directive. The U.S. market for mobile and lifting machinery is already mature and well saturated. However, several U.S. manufacturers of industrial trucks expressed some concern that U.S. exports of industrial trucks to destinations other than the EC may be affected by Japanese exports. Many Japanese industrial truck manufacturers have established facilities in the EC in order to benefit from EC 1992. Some U.S. manufacturers believe that this will create excess capacity for industrial trucks in Japan because the Japanese currently supply a significant percentage of the European market from Japan. As a result, the Japanese will be avidly searching for other foreign markets for their industrial trucks. Approximately 12 percent of the EC market is supplied by Japanese exports of industrial trucks. In comparison, U.S. imports of industrial trucks totaled $200 million in 1988 and accounted fora much larger share of the U.S. market (approximately 35 percent).[477]

U.S. investment and operating conditions in the EC

According to several U.S. industry sources, U.S. construction machinery producers' investment in the EC is not likely to be significantly affected by the proposed directive. U.S. business operating conditions in the EC are most likely to become increasingly dependent on timely information. The smaller U.S. producers which export to (and do not manufacture in) the EC will need to familiarize themselves more fully with European practices and requirements as they position themselves to access the EC market

Major U.S. industry producers indicate that the EC market for mobile machinery is likely to become increasingly competitive, with the result that the large U.S. and European producers of this machinery will compete for asmaller share of the EC market alongside the major Japanese producers, such as Komatsu and Hitatchi. Small "niche producers in the member states may also be more successful.

U.S. manufacturers of industrial trucks do not expect this amendment to alter U.S. investment plans. However, the uncertainty regarding testing and certification requirements gives U.S. manufacturers of industrial trucks a greater incentive to increase U.S. investment in the EC.[478] Major U.S. investors in the EC for this product area include Hyster Co., Caterpillar Industrial Inc., Clark, Crown, and Yale.

U.S. Industry Response

Many large and medium-sized producers are attempting to comply by January 1, 1992 with the requirements set forth in directive (89) 624. The proposed directive is still under discussion in the EC, and several U.S. producers are actively engaged in dialog with EC officials on several key points, namely the ROPS standard and the perceived ambiguity of the proposed directive. They are also working with CEN to influence technical standards yet to be defined for mobile and lifting machinery.

Officials of Caterpillar, Inc. are concerned in particular with a possible product liability problem arising as a result of language found in parts of (89) 624 such as "complete safety", "without risk", and "any risk" used in wording essential requirements for mobile machinery. EC Commission officials have responded by stating that the "Preliminary Observations" in annex I of the amending directive provide for the "state-of-the-art" and therefore, essential requirements for mobile machinery will be ultimately tempered by what is considered "state-of-the-art' at the time of consideration.

Notwithstanding these concerns, the majority of U.S. producers contacted regarding the proposed mobile machinery amendment support its passage. In particular, Caterpillar, Inc (because it has spearheaded discussions on mobile machinery issues between the EC Commission and U.S. construction-machinery manufacturers) indicates above all that the directive will be beneficial to the global construction-machinery industry and necessary for a single and unified European market[479]

U.S. industrial-truck producers with European operations will seek to ensure that their national organizations voice their concerns regarding their participation in standards setting, the standards in effect during the "transitional period," and their uncertainty over the testing and certification requirements.

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[477] Compiled from official statistics of the U.S. Department of Commence and from representatives of Hyster Co.

[478] Telephone interview with officials from Hyster Co., Jan. 17, 1990.

[479] Correspondence from Caterpillar Inc., Feb. 1, 1990.

Agricultural and Forestry Tractors

Background

Com(88)629 and Com(88)640 are proposed amendments to Directive 89/402. Directive 89/402 outlines the provisions necessary for the implementation of EC type-approval procedures for individual tractor parts. The proposals cover approval procedures for front-mounted rollover protection structures (ROPS) on forestry and agricultural tractors. Agricultural and forestry tractors are tly excluded from the proposed Machine Directive (89)392.

At this time, the amendments to 89/402 have not been passed into law. In January of 1990, member states objected to the agricultural and forestry directive m its present form.[480] Member countries complained that the directive was much too detailed and much too design oriented. Members requested that the directive be modified to permit more flexibility for producers.

Anticipated Changes

The proposed amendments will modify present specifications for testing procedures to demonstrate compliance with design and performance requirements for ROPS. They also expand the number of tractors subject to testing to include tractors weighing between 4.5 and 6 tons. By U.S. industry standards, the proposals cover small tractors of a kind not generally used for mass cultivation purposes in the United States.

Possible Effects

U.S. exports to the EC

Industry sources indicated that these amendments to Directive 89/402 will not have a significant long-term effect on U.S. exporters. Industry sources also indicate that EC definitions of agricultural and forestry machinery, including tractors, as provided for in directive 74/150 are in conflict with ISO definitions as set forth by the ISO technical committee governing machinery design specifications. U.S. exporters will be affected in the short run as they convert from ISO standards to the proposed EC standards. EC standards are presently spelled out in other directives.

The majority of the tractors sold by U.S. manufacturers in Europe are currently produced in EC member countries. At present, the EC is the second-largest export market for U.S.-made agricultural and forestry tractors. However, industry officials report that the majority of U.S. exports to the EC consist of larger tractors, which will not be affected by either Directive 89/402 or by the proposed amendments. The changes will apply only to smaller tractors-those weighing under 6 tons. U.S. exports of agricultural and forestry tractors to EC countries covered by these amendments amounted to $52.4 million in 1988, or 19 percent of total U.S. exports. Major U.S. ucers active in the EC include J.I. Case, Deere & o., International Harvester, and Ford. Forestry tractors manufactured and sold in the United States are considered by domestic manufacturers to be specialty machines. These machines are substantially different from those used in the EC. Forestry tractors such as skeeters, felluers, and bunchers have been singularly designed and modified for the needs of the U.S. forestry industry and therefore have limited export potentiaL[481]

Diversion of trade to the U.S. market

A diversion of trade from the EC to the U.S. market will be unlikely because of the pro amendments to Directive 89/402. Major third-country suppliers of agricultural and forestry tractors include Kimber-Jack, Massey-Ferguson Ltd., Mitsubishi Agricultural Machinery, Shibaura Machinery, Iseki, Yanmar Noci Co., and Kubota Ltd.

U.S. investment and operating conditions in the EC

Many U.S. producers of agricultural and forestry tractors are multinational manufacturers with substantial investments in the EC. U.S. investments in the EC are not likely to be affected by these proposed amendments. U.S. subsidiaries located in EC countries may have an easier time merging these changes into their design and performance requirements. U.S. manufacturers with subsidiaries active in the EC may also be in a better position to expand their product line and market share by complying with the directives.

U.S. Industry Response

The proposed directive concerning agricultural and forestry tractors will not have an adverse long-term affect on either U.S. .producers or exporters. U.S. producers with facilities in the EC will not have much difficulty in complying with the directive and the amendments. Industry officials are more concerned that EC directives may be used as a pretense to restrict their access to the EC market and to build internal barriers to foreign products. The industry opposes any EC effort to alter existing international standards. According to U.S. producers, adequate ISO testing standards for agricultural machinery are already in place.

Construction Products

Background

In 1989, EC production of lumber and wood-based panels amounted to approximately 55 million cubic meters. Total EC production of industrial roundwood products, which includes lumber, wood-based panels, and many other wood-based, construction-type products,

[4410] USITC staff interviews with officials of Caterpillar Tractor, Deere & Co., and the Farm & Industrial Equipment Institute.

4., Ibid.

amounted to roughly 90 million cubic meters, valued at about $9 billion. Industry experts in Europe have estimated the current size of the European building materials market at roughly $138 billion:[482]

The leading EC producers of industrial roundwood are France and West Germany, each accounting for about 30 percent of total EC production. France produces primarily softwood and hardwood lumber but also is the home to the only EC softwood plywood mill. That mill has a total production capacity of about 125,000 cubic meters. France is a net importer of softwood plywood, with imports in 1988 of about 72,000 cubic meters. West Germany produces primarily softwood lumber and particleboard. West German production of particleboard accounted for about 1 percent of EC particleboard production in 1989.[483]

The major EC markets are supplied in large by EFTA-country producers, primarily S en, Finland, and Norway. In 1989, imports supplied about 28 percent of West Germany's lumber needs and about 15 percent of its particleboard needs. EFTA producers supplied about 16 percent of West Germany's lumber consumption, whereas the United States supplied only 1 percent. Most of West Germany's particleboard imports were supplied from European sources. The French lumber market, which accounts for about one-third of the total EC lumber market, is concentrated in the softwood sector. Imports account for 15 percent of total lumber consumption in the French market EFTA producers supplied about 7 percent of French lumber consumption, whereas the United States supplied only 1 percent's'

Anticipated Changes

The new approach Construction Products Directive (89/106), scheduled to be implemented by June 27, 1991, is intended to insure that construction products sold in the EC market are "fit for their intended use" and meet certain general safety criteria. Construction products include those products which are produced for incorporation in a permanent manner in construction works, including both buildings and civil engineering works, in so far as the essential requirements of the directive contained in Annex 1 relate to them. The essential requirements apply to construction works, not to construction products as such, but they will influence the technical characteristics of those products.[488] Products affected by the directive include timber, concrete, masonry, and steel as well as installations and equipment and parts thereof for heating, air conditioning, ventilation, sanitary purposes, electrical supply, and storage of substances harmful to the environment, and prefabricated construction works which are marketed as such.'[8]

The directive contains six essential requirements that must be met in all appropriate instances. The essential requirements refer to (1) mechanical resistance and stability, (2) safety in case of fire, (3) hygiene, health, and the environment, (4) safety in use, (5) protection against noise, and (6) energy economy and heat retention. Interpretative documents, covering each of the six essential tequirements, are currently being developed by chnical committees of the Standing Committee of the EC Commission. The interpretative documents will serve as a bridge between the essential requirements and building codes (see fig. 6-9), explaining how to transfer requirements in the directive national regulations while taking into account the special situations in each country.[48] The interpretative documents will be binding on member states and are needed to explain how the essential requirements of the directive can be MOM

The EC Commission will direct CEN, through mandates developed by the Standing Committee, to develop European Technical Specifications, including European harmonized product standards and European technical approvals:ma Harmonized standards are those technical specifications adopted by CEN in response to such mandates. European technical approval, which may be issued in the absence of harmonized standards, is a favorable technical assessment of the fitness for use of a product for an intended use, based on fulfillment of the essential requirements for building works for which the product is used.

There are six technical committees under the Standing Committee, one for each of the six essential requirements (fig. 6-10). The technical committees are comprised of representatives and technical experts from each Member State.[488] Drafting panels, comprised of experts from member states chosen by the EC Commission, working under the technical committees have been assigned the task of preparing the draft interpretative documents. An EC Commission staff person chairs all six technical committees and the drafting panels

CEN Conference Proceedings, *The European Harmonization ofConstruction Products,* June 5-6, 1989.

ma USDA, Foreign Agricultural Service, Wood *Products: International Trade and Foreign Markets,* January 1990.

" Derived from USDA, Foreign Agricultural Service, *Wood Products: International Trade and Foreign Markets,* January 1990, and United Nations Food and Agriculture Organization data.

"" British DTI, *The Single Market, Standards, Construction Products,* April 1989.

" EC Council of Ministers, *Statements for Entry Into the Minutes,* Dec. 16, 1988.

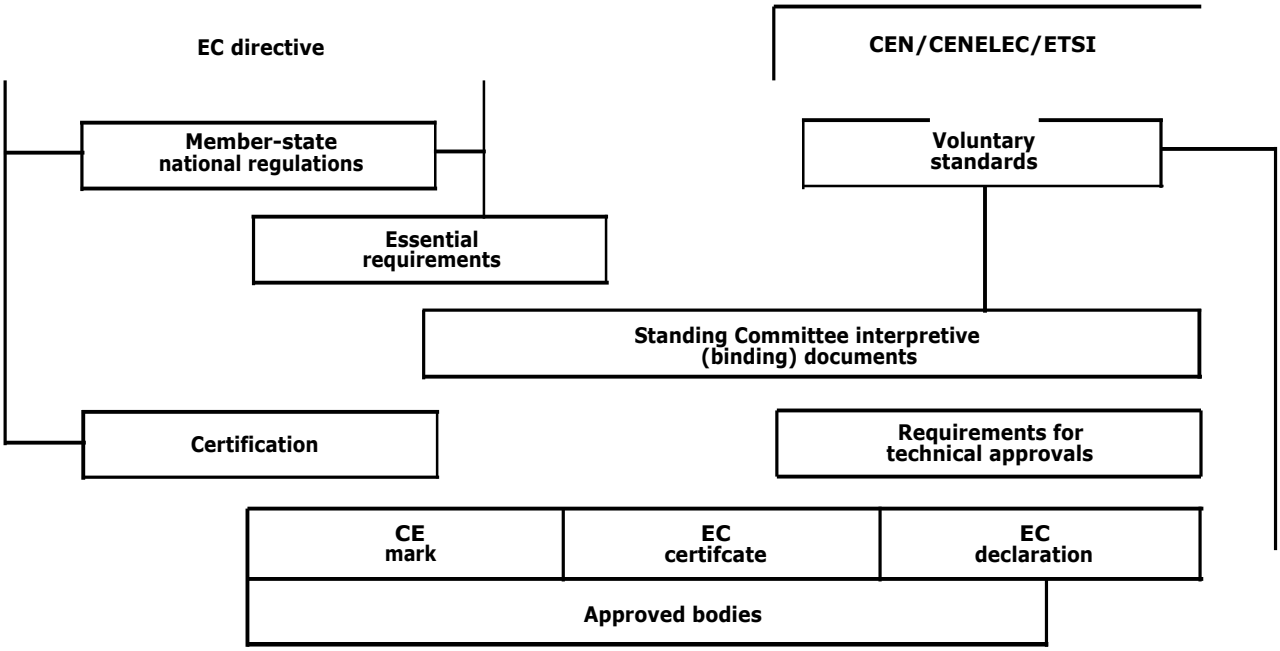
USITC staff meeting in Brussels with staff of CEN/CENELEC, Jan. 8, 1990.

" British Department of the Environment, *Euronews Construction,* Issue No. 8, October 1989.

411111

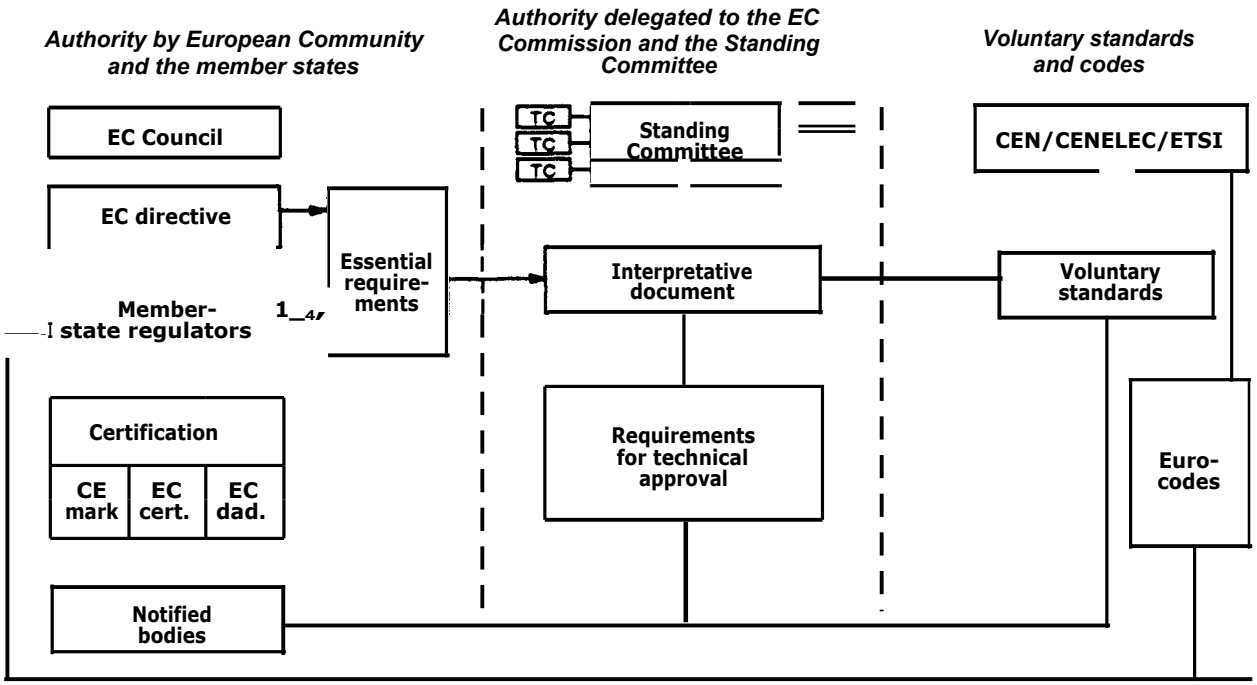
" Meeting of the staff of the USITC with staff of the Belgian Institute for Normalization, Jan. 10, 1990, Brussels.

Figure 6-9
EC technical harmonization in the construction-products area



Source: CEN.

Figure 6-10
EC technical harmonization In the construction-products area: authority by EC -and member states, authority delegated to the EC Commission, and voluntary standards and codes



Source: CEN.

under the technical committees. The technical committee (TC) on mechanical resistance and stability has had two meetings, the TC on safety in case of fire has scheduled their first meeting for February 1990, the TC on hygiene, health and the environment has scheduled their first meeting for March 1990, the TC on safety in use has had one meeting, and the TC's on protection against noise and energy economy and heat retention have not had any meetings.[491] It is expected that five of the six draft interpretative documents will be ready by the June 1990 meeting of the Standing Committee.

The directive requires that certain construction products must be either manufactured in compliance with harmonized European standards or manufactured in compliance with a European technical approval. Currently, CEN has established a number of technical committees and working groups to draft the necessary standards that relate to the Construction Products Directive (a list of all technical committees and working groups in CEN working on standards appears in app. F). CEN is also in the process of reviewing and, where deemed necessary, rewriting Eurocodes Nos. 1-8 (dealing with common unified rules for different types of construction and common safety requirements and with structures composed of concrete, masonry, steel, and timber) and transforming them into European standards. Member states will be required to use the European standards when applying their own national building regulations.

Certain "minor" products, although subject to the directive, may be placed on the market on the basis of a simplified declaration of conformity to the essential requirements as provided by the manufacturer. Products other than "minor" are required to undergo more extensive conformity assessment procedures. Article 13 and Annex III of the directive state that the Standing Committee and the EC Commission will classify products or families of products according to criteria in Article 13. Those classified "minor" will be subject to simplified declarations of conformity. Manufacturers can also self-declare conformity for other products, but must have an approved factory production control system in place (see Annex III, parties). Third-party testing of the product itself is one option (second possibility) only. The first and third possibilities involve approved body certification of the manufacturers factory production control system *only* (not the product). An EC Standing Committee for Construction will oversee member states' certification procedures. The EC will designate internal bodies to certify all manner of construction products for safety, hygiene, and manufacture for intended use.

For those products that require third-party testing and certification, specified "notified bodies" will certify that such products are manufactured in accordance with the _ European technical specifications as developed by CEN. The bodies involved in the conformity assessment procedures are designated by the member states and notified to the Commission and the other member states. However, the ultimate responsibility for conformity to the essential requirements will continue to fall on the manufacturer of the product. It is expected that the notified bodies will in most instances be private institutions, although some countries are leaning towards public institutions.[492] Thus far, there are no provisions under which third-country organizations may become notified bodies.

Possible Effects

This directive generally should lead to a moderate degree of trade liberalization because it could create a more unified, transparent market, wherein suppliers need not meet multiple product standards fok each member state, although they would still have to meet multiple building (or construction) regulations for each member state. The unified standards would enable U.S. exporters to focus their marketing efforts on a more unified EC product base. The degree to which trade is liberalized, however, depends to a large extent on the nature of certification procedures that might ultimately be applied to third country imports. Because of the breadth of the Construction Products Directive across many diverse industries, meaningful statistics are difficult to derive. They are also somewhat misleading because the exact coverage of the directive as it relates to specific products is undeterminable. The EC market for wood products covered by the directive is estimated at $9 billion, roughly 6 percent of the world market, with imports from non-EC sources of about $13 billion and net imports of about $700 million.[493] By comparison, the $31 billion U.S. market accounts for about 22 percent of the world market for industrial roundwood.[494]

U.S. exports to the EC

Wood products are the leading articles exported to the EC that are likely to be affected by the Construction Products Directive. In 1988, U.S. ex • • its of wood products to the EC amounted to $ • 1: million, of which 92 percent was in the form of further processed wood products such as lumber, veneer, plywood, hardboard, particleboard, and other panel products[sits] All told, U.S. exports of articles covered by the Construction Products Directive amounted to about $1 billion in 1988.

461 Meeting of the staff of the USITC with staff of the EC Commission, Jan. 8, 1990, Brussels.

402 Meeting of the staff of the USITC with the staff of the British Department of the Environment, Building Regulations Division, Jan. 15, 1990, London.

4" Data derived by the staff of the USITC from various U.S. Foreign Agricultural Service country reports.

4 • Estimated by the staff of the USITC from UN Food and Agriculture Organization data.

486 Compiled by the staff of the USITC from official statistics of the U.S. Department of Commerce.

The forest products industry is concerned that the product standards and the codes being developed to implement the directive could seriously affect U.S. exports to the EC. Specifically, firms are concerned that they will not have timely access to the work of the CEN/CENELEC standards drafting committees and will only receive documents produced by these groups at a point in the process too late to provide meaningful input; the industry is also concerned that the European standards will be drawn in such a manner as to be potentially detrimental to U.S. exporters. EFTA-country producers are currently positioned to encourage the establishment of European standards that benefit them, possibly to the detriment of U.S. exporters. In addition, if products certified in third countries need to be reexamined and certified in the EC it would add significant costs and delays in delivery time to many products.

In the case of forest products, U.S. lumber could simply be regraded according to European standards upon entry into the EC. However, U.S.-produced plywood would most likely not be eligible for regrading in the EC, because the EC notified body could not ascertain the application of the glue lines between the various plies of the plywood.[496] Fortunately for U.S. exporters of plywood, most of the product is used in packaging and crating and in concrete-forming uses which are not likely to be affected by such testing.[497] U.S. producers of more specialized products (laminated beams and timbers for projects such as bridge construction, that often require individual engineering certification, rather than on-line production-process certification by standardized equipment) might also find the EC market further restricted. They would have to meet the certification requirements of the interpretative documents. The products that would definitely be affected by the European standards include structural and nonstructural timbers (primarily boards and dimension lumber), wood-based panels, and wood-based articles containing preservatives or adhesives. U.S. producers of hardwood and softwood lumber and plywood would be most harmed by any trade discrimination. The $800 million worth of exports of such products to the EC compose a small but vital part of $4.4 billion export market for such U.S. products.[496]

On the other hand, if non-EC certification is accepted, U.S. producers of commodity-type products, such as lumber and plywood, which are already certified by recognized independent bodies within the United States, would receive the most benefit, since their products lend themselves to uniform grading and certification as an integral part of the manufacturing process, at least to some extent by automated scanners. As indicated above, it is as yet undetermined whether or not any U.S. bodies will be able to test or certify U.S. products as notified bodies; this will depend on the results of negotiations regarding the mutual recognition of testing results.

The potential effect on most other building materials industries affected by the directive appears to be far less, at least in the near term, given the relatively low level of trade with the EC. Exports of concrete and cement to the EC, for example, totaled $1.2 million in 1988; similarly, exports of ceramic products (i.e., brick and floor and wall tiles) totaled $1.2 million, while exports of steel (i.e., structural shapes, hot rolled bars, and certain related products) totaled about $10 million. In each of these instances, exports to the EC represented less than 1 percent of total industry shipments. A wide range of other products, such as heating and cooling systems, may be affected by the directive (see app. F), but the impact of the directive on such producers is unclear at this time.

Diversion of Trade to the U.S. market

If EC regulations prevent the building-products industries of Canada, Chile, Mexico and, to a lesser extent, Southeast Asia, from exporting to the EC, the United States would become a more attractive market for their products. In the case of Canada, which also ships large quantities of lumber and, to a lesser extent, plywood to the EC, producers could well divert most of any lost share in the EC to the United States.

U.S. Investment and Operating Conditions in the EC

U.S. investment in the EC in facilities producing building products other than forest products appears to be negligible. In the case of forest products, U.S. investment in the EC building-products industry is limited primarily to wholesale operations, not to manufacturing operations in the EC.[411]* Establishment of unified European standards for use in national building regulations will provide U.S. firms with an incentive to locate manufacturing facilities within the integrated EC market. For example, U.S. lumber manufacturers may find it advantageous to export logs or flitches to the EC for remanufacturing within the EC in order to avoid shipping lumber or other products that cannot be demonstrated to meet EC standards. Until third-country products are eligible for certification in the third countries, firms with EC operations will be better positioned to serve the EC than third-country firms. Passage of the European standards, without EC accreditation of U.S. notified bodies, would likely lead to higher levels of U.S. investment in the EC, as U.S. firms would be better able to produce and receive approval for

[496] Meeting of the staff of the USTTC with Danish industry experts, Jan. 12, 1990, Copenhagen, Denmark.

Meeting of the staff of the USITC with representatives of the American Plywood Association, Boise Cascade Corp., and Georgia-Pacific Corp., Jan. 9-15, 1990.

Compiled by the staff of the USITC from official U.S. Department of Commerce data.

[411] Meeting of the staff of the USITC with staff of the U.S. Mission to the European Communities.

commodity-type products into that market at lower cost through direct investment rather than by exporting.

U.S. Industry Response

Thus far, representatives of the U.S. wood products industry have been more vocal in its concerns about the directive than its counterparts in the concrete, masonry, steel, or other construction products industries. The lack of concern from these industries in part reflects the perceived vagueness of the directive and the relatively low level of interest these industries have in exporting to the EC market

In the case of forest products, representatives of the U.S. construction products industry indicate that the directive is without good definition and is too general to base an industry response on. Various industry organizations are unable to determine the extent of the directive in order to assess what will be the effects, if any, on their industry. The U.S. forest products industry's primary obstacle at present is lack of timely access to information about the work of the CEN technical committees and the working documents produced by these committees at a point in the process at which a meaningful response can be made.= Also, U.S. industry officials are concerned about potential testing-related barriers in the EC. Like EFTA producers, U.S. suppliers would prefer the option of self-certification over third-party testing and certification. If third-party testing is required, the U.S. industry would like the EC to permit acceptance of U.S.-generated tests. However, the U.S. industry is concerned about possible EC conditions for the reciprocal recognition of test results.

The U.S. lumber and plywood industries in particular have indicated concern about the use of European standards as a means of preventing the effective entry into the EC of certain U.S. wood products. Industry officials are concerned that producers in EFTA countries, through their involvement in CEN, are drafting the European standards, where possible, to make North American lumber a less cost-efficient alternative. This can be done through implementing standard classes for lumber wherein typical North American dimensions are segregated from typical Scandinavian dimensions on a prescriptive and size basis rather than on a performance basis.[501] EFTA producers are viewed by some industry officials as trying to have the EC Commission develop preferred size classes rather than strength classes. U.S. plywood exporters are concerned that the French softwood plywood industry, which now consists of one mill that is incapable of producing sufficient quantities to meet the needs of the EC, will assist in the drafting of European standards that discriminate against North American softwood plywood, perhaps in favor of other more common European panel products, such as fiberboard and oriented strand board.[502]

With respect to other industries involved with construction products, discussions with industry sources suggest a degree of support for the directive and the codes being developed. In the case of ceramic tiles, activity associated with the directive is viewed as a welcome step toward uniform product and installation standards that will help improve the overall market for tile products worldwide. Concrete and cement industry representatives who are following the code-drafting process, although unsure of the effect new standards might have on trade, are interested in the results of the code-drafting, as such results may suggest areas in which U.S. standards might be modified. Steel industry representatives are aware of the EC-92 initiative and are interested in its outcome. However, the industry exports little steel to the EC for use in construction, and apparently will not do so unless there are significant shifts in the terms of the trade (to the extent they affect relative costs) between the two regions. One company contacted that has exported to the EC, however, is encouraged by the efforts to harmonize the standards, as it would facilitate its marketing efforts. Representatives of the industry that fabricates steel products for use in buildings and other structures are interested in the work being done in the EC, and are participating in the code drafting in an advisory capacity.

Telecommunications

The EC telecommunications equipment industry is highly concentrated with five large firms accounting for an estimated 65 percent of the market However, despite the market concentration, the industry is undergoing a period of restructuring in anticipation of 1992. Major EC firms are positioning themselves to supply the telecommunications markets of the 12 member states as these markets are liberalized and the development of EC-wide telecommunications standards enables firms to manufacture to a single standard rather than to 12 differing national standards. Major EC telecommunications equipment manufacturers include Alcatel, Siemens, and GEC-Plessey.

The EC market for telecommunications network equipment is supplied primarily by major EC firms that have traditionally benefited from the buy-national policies of the Post, Telegraph, and Telephone administrations (PTTs). U.S. producers are competitive in the EC merchant market for data

[ea°] National Forest Products *Association, Statonent for the Raved,* U.S. Department of Commerce hearing, July *V,* 1989.

ec't USITC staff meetings in London with Southern Pine Marketing Council and Western Wood Products Association, Jan. 15, 1990.

Meeting of the staff of the US1TC with American Plywood Association representative in Antwerp, Belgium, Jan. 9, 1990.

communications equipment because of their technological lead in these products. Japanese and Southeast Asian firms are competitive in the supply of fax terminals and home-terminal equipment, respectively.

Nevertheless, trade and investment data indicate that the EC is a significant market for U.S. telecommunications firms. The EC market for telecommunications equipment totaled an estimated $18 billion in 1988.[503] U.S. exports of telecommunications equipment to the EC were valued at $1.3 billion, representing 21 percent of the total value of U.S. exports of $6.5 billion in 1988.[504] U.S. investment in the EC in the radio, television, and communications industries, which includes the telecommunications industry, was almost $10 billion in 1986.[505] U.S. firms that have established a presence in the EC market include AT&T, Northern Telecom, IBM, and Motorola.[508]

In the field of telecommunications, the EC is liberalizing its markets for equipment and services. In the Green Paper on Telecommunications, Com(87) 290, the EC noted the importance of the telecommunications sector for both its size as an industry and its function as a means of transport for information. The rapid technological changes taking place in the telecommunications industry made it essential that the EC ensure that it would be able to benefit from the adoption of new technologies. To this end, goals have been established for the development and implementation of new technologies and services such as integrated services digital networks (ISDN) and pan-European cellular communications. Telecommunications equipment markets are also being opened to provide customers with greater product choice. Competition in telecommunications services is being introduced, and the telecommunications administrations are being restructured to separate the functions of regulator from that of market participant.

The standards-setting process in the EC for telecommunications is undergoing substantial change. EC-wide standards for telecommunications terminal equipment and services are being developed by the European Telecommunications Standards Institute, ETSI. ETSI was established through an agreement by the directors of the European Conference of Posts and Telecommunications, CEPT, which also passed the responsibilities of its five technical committees on standardization to ETSI. ETSI has four goals: (1) to facilitate the integration of telecommunications infrastructures, (2) to assure the interworking of future telecommunications services, (3) to achieve the compatibility of terminal equipment, and (4) to create new pan-European telecommunications networks. ETSI aims to achieve these goals by the quick establishment of valid technical standards for telecommunications and the related fields of broadcasting and office information technologies.

ETSI has 160 members, including telecommunications administrations, equipment manufacturers, user groups, and research bodies. There are 12 technical committees, with over 1,000 technical experts who meet to work on the various standardization tasks. All ETSI members are represented in the technical assembly, which decides on the annual work program.

ETSI's first priority is to set European standards. ETSI will coordinate its activities with the International Telecommunications Union and its two global standards bodies, the CCIR and CCITT, but will establish its own regional standards when the CCIR and CCITT do not act quickly enough to develop global standards for emerging technologies. The increasing pace of technological change in the telecommunications field may make the task of developing global standards more difficult, thus resulting in differing and incompatible regional standards. This is a potential problem for U.S. telecommunications interests that wish to serve both the U.S. and European markets.

The products and services covered in this section include telecommunications equipment and services and broadcasting activities. There were six EC Council actions in 1989 (proposed or passed directives, resolutions, or decisions). The directives discussed were considered to have a significant potential impact on U.S. industry interests in the EC. The standards-related directives analyzed follow the "new approach" by setting out essential requirements which are to be further elaborated by the appropriate technical bodies.

The directives analyzed in this section include the directive concerning the type-approval of telecommunications terminal equipment and the directive concerning the establishment of an internal market for telecommunications services through open network provision (ONP). Also, the directives on the coordination of member states' activities concerning television broadcasting activities and electromagnetic compatibility were analyzed.

The directives on type approval for telecommunications terminal equipment and on ONP are expected to have beneficial effects on the ability of U.S. firms to do business in the EC. By allowing telecommunications terminal equipment to be type approvedfor sale in all member states, U.S. firms should be able to manufacture and market their products at lower cost than by attempting to meet 12 different standards and undergoing separate approval processes. The ONP directive will require that the telecommunications authorities (TM) in the member states make the network infrastructure available to private sector

[503] Ibid., p. 173.

[504] USITC, *Effects of EC Integration,* USITC Publication 2204, p. 4.43.

[505] U.S. Department of Commerce, Bureau of Economic Analysis ... Abroad, 1987 table ... Europe Economic Outlook *by Sector,* (n.p., January 1989), pp. 174-183.

suppliers of competitive telecommunications services on the same basis that the TM offer it to their own subsidiaries. The directive seeks to prevent the TM from exploiting their monopoly position as the owner/maintainer of the network.

The Broadcasting Directive has been a major topic of bilateral dispute. It calls for a majority proportion of television transmission time, exclusive of news, sports events, games, advertising, and teletext services, to be reserved for European works where practicable. , The directive also places limits on televised advertising, affecting the duration of advertising, the number of times advertising can interrupt a program, the product or service being advertised, and the content of the advertising.

Open Network Provision

Background

The proposed directive ((89)325) is part of the process of harmonization and liberalization in the telecommunications sector started by the Green Paper on Telecommunications, Com(87)290. One of the aims in establishing an internal market for telecommunications services is the freedom to provide services throughout the EC once a telecommunications service supplier is authorized to supply or legally supplies services in a member state. The proposed directive lays down the criteria for establishing open network provision (ONP) conditions. These conditions will describe the conditions of access to the network infrastructure for competitive telecommunications service providers, such as those offering value-added telecommunications services, and the conditions that national telecommunications authorities/ carriers are to follow in providing access to the infrastructure.

Anticipated Changes

The proposed directive will harmonize a set of principles and conditions for ONP in order to avoid conflicts in the provision of telecommunications services, in particular the transfrontier provision of services. ONP principles are intended to aid in promoting competition in the telecommunications services sector. ONP conditions can include harmonization with respect to (1) technical interfaces, including the definition and implementation of network termination points; (2) usage conditions, such as maximumprovision time, minimum contractual period, quality of service, maintenance and fault reporting, conditions for resale of capacity, shared use, third-party use, interconnection with public and private networks, and access to frequencies as required; and (3) tariff principles. ONP conditions are to be defined in stages, with future directives relating to specific areas, such as leased lines, packet- and circuit-switched data services, integrated services digital network (ISDN), voice telephony, mobile services, and broadband network resources. The move to ONP is to be made in stages because of the differing technical and administrative situations in the member states. The proposed directive also establishes a formal method for public comment on the development of ONP conditions; previously, no formal process for public comment was available.

The ONP principles, when established, are not to be used to limit the provision of telecommunications services to the national telecommunications authorities, thus limiting both competition in and the development of new services. However, it is recognized that certain telecommunications services will continue to be provided by the national telecommunications authorities for reasons of security, maintenance of the telecommunications network, or both. Accordingly, the telecommunications services to be reserved for provision by the national telecommunications monopoly are to be limited, most likely to voice telephone services.

Possible Effects

U.S. exports to the EC

The proposed directive on ONP relates to conditions of access to the telecommunications network infrastructure for the provision of new telecommunications services. U.S. telecommunications service providers do not export such services per *se to* the EC; however, U.S. telecommunications service providers have established operations in the EC, and other large U.S. firms presently lease circuits from the telecommunications authorities in the member states. Both of these groups have an interest in the establishment of ONP conditions. IBM, EDS, and GEIS, U.S. firms with operations in the EC, use the telecommunications network to provide services. The size of the EC market for telecommunications services, such as value-added services, was estimated to be approximately $1.6 billion in 1988, with an expected growth rate of 25 to 30 percent per year.[937]

Diversion of trade to the US. market

The proposed directive sets out a process for establishing ONP conditions that will give private telecommunications service providers access to the network infrastructure on a competitive basis. Presently, almost all telecommunications services in the EC are provided exclusively by telecommunications authorities. The opening up of the network infrastructure in the EC to other suppliers of telecommunications services and the development of new competitive tele- communications services is likely to increase the level of activity of all firms in the EC rather than divert any trade to the United States.

[937] Herbert Ungerer, EC Commission, *Tdeconnnunications in Europe* (1988), p. 55.

U.S. investment and operating conditions in the EC

The level of U.S. investment in the EC should rise with the development of ONP conditions that allow for competitive access to the telecommunications network infrastructure. The United States has one of the most open and competitive telecommunications services markets in the world, and U.S. providers have had to operate on a competitive basis because of this openness. U.S. telecommunications service1,roviders could be expected to have a competitive advantage in foreign markets because of their experience in an open market Thus, with the liberalization of telecommunications services in the EC in conjunction with the establishment of ONP conditions, U.S. providers should be able to enter the EC market, provide new competitive telecommunications services, and capture a significant share of the market for competitive telecommunications services.

U.S. Industry Response

The U.S. industry believes that the proposed directive is a positive step toward the achievement of the goals set out in the Green Paper. The U.S. industry is also pleased that the directive establishes a formal basis for public participation in the process of developing ONP conditions. The industry feels that this directive is important because it sets out principles and the process for the subsequent development of ONP. However, the industry believes that the directive (and the entire process) will best achieve the goal of promoting new and competitive telecommunications services if it focuses on providing access to the telecommunications infrastructure under fair competitive conditions.

To this end, the U.S. industry feels that the following specific principles should be adopted. Telecommunications authorities in the member states should provide access to network service features separately when there is substantial user demand for such features and should not require that users purchase a package of features that may include some they do not want Requiring customers to purchase features for which they have no use in order to obtain those features that they want will lead to network inefficiencies and increased costs. Telecommunications authorities should make network infrastructure available to other providers under the same terms and conditions as they themselves use to offer nonreserved services. If the telecommunications authorities begin providing nonreserved services, which make use of particular network service features, those network service features should be made immediately available to third parties on the same terms and conditions. If third parties are restricted in their use of the telecommunications infrastructure to prevent them from providing unauthorized reserved services, such restrictions should be limited to those necessary to maintain network technical integrity. Also, such restrictions should be in the form of regulations and not technical standards.

The industry feels that regulations should stipulate that private firms that offer competitive telecommunications services may not make their service networks available to their customers for telecommunications services, such as voice telephony, that are reserved for the telecommunications authorities. They prefer this approach rather than attempting to rely on some technical limitation to achieve such restrictions. Technical restrictions could limit the variety of services that can be offered.

Tariffs related to ONP should be cost based, U.S. firms say. The industry feels that the cost of ONP services to the customer should reflect the actual cost to the telecommunications authority of providing the service tariffs on ONP features should not be set for non-cost-based reasons, such as to maintain network revenues. ONP conditions should be imposed only on those entities that provide reserved telecommunications services — generally the telecommunications authorities—and not on private firms which offer competitive telecommunications services. Private firms are subject to competitive market forces and, therefore, are not able to engage in practices, such as cross-subsidization, which were to be uncompetitive by the Green Paper. e industry feels that these principles will help in establishing that the purpose of ONP is to open the telecommunications network infra-structure to fair competition.

Industry concerns with the proposed directive include the seemingly disproportionate impact that the telecommunications authorities will have on the development of ONP by virtue of their participation as members of the Senior Officials Group on Telecommunications (SOG-T), which will be drawing up the annual list for ONP priority areas. The industry is also concerned that, although public participation in the ONP process is established by the directive, the comments of interested parties will only be solicited after a report on an ONP priority area has been issued. They fear that users would thus not be allowed to formally participate in some of the crucial stages of the ONP process. The industry feels that public input should be solicited at each stage, from the consultations between the EC Commission and the advisory committee drawing up the annual list of ONP priority areas through the submission of proposed ONP conditions to the committee for comment.

Telecommunications Terminal Equipment

Background

Council Directive 86/361 introduced the initial stage of mutual recognition of type-approval for

telecommunications terminal equipment and anticipated full mutual recognition of such approvals among the member states. Such equipment includes telephone sets, modems, and private branch exchanges (PBXs). The Green Paper on Telecommunications (Com(87)290) viewed full, mutual type-recognition of terminal equipment as vital for the development of a competitive Communitywide market in terminal equipment. Council Resolution 88/C 257/01, of June 30, 1988, on the development of a common market for telecommunications services and equipment also considered full, mutual recognition of type-approval for terminal equipment a major goal. All of these documents have recognized that the telecommunications sector is one of the industrial mainstays of the European Community and that the terminal equipment sector is a vital part of the telecommunications sector.

Anticipated Changes

Proposed directive (89)289 would require member states to take the necessary steps to ensure that the terminal equipment placed on the market complies with the essential requirements laid down in the directive. These requirements include user safety, safety of employees of public networks, protection of the network from harm, and the interworking (i.e., compatible functioning) of terminal equipment with network equipment for the purpose of making or charging connections. ETSI will develop harmonized voluntary European standards that ensure the compliance of such equipment with the directive's essential requirements. Some of the harmonized standards that are developed by ETSI will be made mandatory by the EC Commission in consultation with a newly established Approvals Committee for Telecommunications Equipment (ACTE).

Terminal equipment is to be certified as in conformity by either an EC type-examination or an EC declaration of conformity. Manufacturers may indicate that their equipment is in conformity and give itthe "CE" mark of conformity, but the directive appears to require that all equipment be first type-approved by "notified bWks," which have been designated by the member states for this purpose. In the absence of harmonized standards, a certificate of conformity issued by a "notified body" in one member state that indicates that the terminal equipment conforms to the national conformity specifications of a second member state is sufficient and the second member state shall not impose a requirement for repetition of tests.

Possible Effects

U.S. exports to the EC

Total U.S. exports of telecommunications equipment classified in heading 8517 of the Harmonized System (electrical apparatus for line telephony or telegraphy) were valued at $1.8 billion in the first 10 months of 1989. During that period, U.S. exports to the EC were valued at $495 million; thus the EC accounted for slightly more than one-quarter of U.S. exports.sce Many of the items classified in heading 8517; such as telephone sets, key telephone systems, PBXs, and modems, are considered terminal equipment, and more than half of the value of U.S. exports to the EC would likely be subject to the type-approval process for terminal equipment described in the directive. The directive could have a positive effect on U.S. exports to the EC by streamlining the approval process. U.S. manufacturers presently have a technological advantage in data communications products such as data PBXs and mutliplexers. Type-approval for terminal equipment could help U.S. firms maintain and improve upon their market position.

A common standard for terminal equipment that was applicable in all EC member states would probably make it easier for U.S. manufacturers to design and produce equipment for that market and U.S. manufacturers would be likely to enjoy some economies of scale in production. The possibility exists that some "bodies" may be "notified" *in* the United States (i.e., U.S. labs may be allowed to certify that equipment meets the EC specifications), but the EC has stated that this will happen only after the EC has concluded a formal arrangement with the United States.

Diversion of trade to the U.S. market

Currently, the United States requires that telecommunications terminal equipment meet a "no harm to the network" standard. Also, manufacturers are allowed to self-certify that their products meet this standard rather than having to be certified by a testing body. The supply of telecommunications terminal equipment is open to competition in the United States, and many foreign firms sell terminal equipment in the U.S. market, including the major EC telecommunications equipment manufacturers. Given that the objective of the directive is to open the EC market for terminal equipment, it is unlikely that the directive would cause a diversion of trade to the United States.

U.S. investment and operating conditions in the EC

U.S. investment in the EC would be likely to increase and operating conditions would improve if U.S. firms did not have to comply with requirements set out by 12 separate telecommunications authorities. Although this directive is likely to improve U.S. operations in the EC, it is difficult to separate out its individual contribution when viewing the overall liberalization taking place in the telecommunications sector in the EC.

a" Data are from official statistics of the U.S. Department of Commerce.

U.S. Industry Response

The U.S. industry endorses three central elements of the directive. First, the full mutual recognition of type-approval of terminal equipment is essential to the establishment of a single internal market for terminal equipment. Full mutual recognition can eliminate barriers to trade in terminal equipment Second, the industry endorses the principle of the "declaration of conformity" procedures thatiorovide for self-certification by manufacturers. Third, the industry supports the provision in the directive under which "notified bodies" in the EC would recognize documentation issued by appropriate bodies in third countries, when agreements to do so existed between the EC and third countries. Such action would be mutually beneficial for trade in terminal equipment The industry does believe, however, that some modifications in the directive would allow manufacturers to expedite bringing their products to market and to better exploit new and emerging technologies.

U.S. industry concerns with the directive include aspects of the certification process and the extent of equipment coverage. The documentation required by the directive appears to be unnecessarily broad, going beyond that needed to determine an item's conformity with the essential requirements. The proposed "EC surveillance" calling for onsite inspections of facilities and documents would be so costly as to deter manufacturers from employing the self-certification procedures outlined in the directive, thus negating one of its potential benefits. The definition of "terminal equipment" is overly broad and covers a variety of devices and components that have no bearing on the essential requirements set out in the directive. Finally, the inclusion of "interworking" within the essential requirements could slow down the conformity process and stifle innovation. The industry feels that limiting the essential requirements to user safety, safety of network personnel, and protection of the network from harm would be sufficient

Electromagnetic Compatibility

Background

Most EC countries have rules protecting their radio and television airwaves from unacceptable levels of electromagnetic disturbance. The concept of Electromagnetic compatibility (EMC) refers to the ability of a device to function satisfactorily in its electromagnetic environment without introducing intolerable electromagnetic interference (EMI) to anything in that environment The EMC concept is more general than the radio frequency interference concept that is the basis of U.S. regulation in this area since the EMC notion covers all electromagnetic phenomena in an environment, whether such phenomena are the result of airborne radiation, such as radio transmissions, or conduction, such as data transmission networks or electricity distribution networks.

Currently, there is little harmonization of EMC requirements among the EC member states. According to an explanatory memorandum from the EC Commission, the laws of the member states regarding EMC exhibit striking differences that hamper trade and innovation. In addition, costs are incurred in the manufacture of diversified products and delays are caused by the repetition of tests. These obstacles make it difficult for EC companies to achieve economies of scale. Such problems also delay the development of public infrastructures such as telecommunications networks. Finally, barriers to trade in television sets and video recorders put up by several member states have been justified partly by the lack of harmonization with respect to EMC.

Anticipated Changes

The directive (89/336) defines essential protection requirements applicable to apparatus liable to cause electromagnetic disturbance and those that are likely to be affected by such disturbances. Thus, the directive covers not only emissions, but immunity to emissions as well The directive also establishes among EC member states a mutual recognition system that is intended to be provisional. The EC intends to have CENELEC establish, draft, and create harmonized standards at the European level with respect to EMC. Products complying with the standards will be assumed to comply with the essential protection requirements spelled out in the directive.

The coverage of the proposed directive is very broad, including such products as domestic radio and television receivers, industrial manufacturing equipment, mobile radio equipment, mobile radio and commercial radiotelephone equipment, medical and scientific apparatus, information technology equipment, domestic appliances and household electronic equipment, aeronautical and marine radio apparatus, educational electronic equipment, telecommunications networks and apparatus, radio and television broadcast transmitters, and lights and fluorescent lamps.[500]

Member states are to take appropriate measures to ensure that electronic and electrical equipment complies with the harmonized essential requirements for EMC.[510] However, until CENELEC can develop) harmonized emissions and immunity standards for all types of equipment, national standards will apply. To ensure that EC member states do not abuse their authority, each country is required to send a list of its EMC and immunity standards to the EC Commission. The EC will select from such standards the ones it believes satisfy the essential requirements. The selected standards will be published in the *Official Journal*, and manufacturers will be able to select the appropriate immunity and emission standards to which their products are to be tested.

e" National Electrical Manufacturers Association, 'Update on the European Community's Single Internal Market Provia&ECnis ,_*No.* i., rashuicnttn, August 1989.

Safety Telecom Regulations for Europe,' *Compliance Engineering,* Summer 1988.

Although it would appear that a manufacturer's "certificate of conformity' (essentially a system of self-certification) would for the purposes of the directive be sufficient in most cases, some believe that a higher level of protection against arbitrary actions of the customs officials of certain member states can only be achieved by having the equipment tested by one of the EC notified laboratories.[511]

Possible Effects

U.S. exports to the EC

This proposal could have both positive and negative implications for U.S. exports. For most manufacturers of computer equipment, the directive will have two major effects. First, there will be mandatory emissions and immunity specifications in some countries, such as France and the United Kingdom, where none currently exist On the other hand, the directives will end requirements in other countries, such as West Germany, that certain equipment undergo third-party testing and approval.[512] The directive could also apply to certain medical equipment, machine controllers, and other products exempted from electromagnetic interference requirements in the United States. Asa result, these industries might have to redesign their equipment for the EC market For manufacturers of electromedical equipment, no current CENELEC standards exist for either emissions or immunity. Therefore, national measures are likely to apply to at least some kinds of electromedical devices, such as x-ray and imaging equipment For manufacturers of telecommunications equipment, self-certification will not be an option, and such equipment will have to be tested by one of the EC notified laboratories.

The directive should have little immediate effect on the trade in products that may emit EMC and that are also covered by EMC requirements in the United States. In the long run, however, a common standard should represent an overall improvement from present regulations and conditions. Harmonized EMC standards could make U.S. firms more competitive by enabling those subject to EMC testing to establish centralized EC operations, rather than operating plants in various countries. Overhead costs and other costs could be reduced through such consolidations, making the firms more competitive.

If EMC standards are established with reasonable thresholds, the process would become simpler and more transparent, thus making it possible for non-EC firms to have their equipment certified for sale in all 12 member-states markets at once. However, if EC member states do not recognize the testing and certification of electronic and electrical equipment by U.S. laboratories, U.S. firms will be disadvantaged in the EC because such equipment will also have to be tested in the EC before it can be sold.

The EC is the most important overseas market for U.S. exports of most of the equipment and apparatus that may be affected by this directive, including electromedical and x-ray equipment, computers and related data processing machines, radio and television communications equipment, and telecommunications equipment U.S. exports of electromedical and x-ray apparatus that may be affected by the EMC directive amounted to about $800 million in 1988.[513] Such exports consisted of products ranging from x-ray apparatus, CT scanners, magnetic-resonance devices, pacemakers, and other equipment in which the U.S. industry is the world leader.[514] U.S. exports accounted for about 20 percent of EC consumption of such equipment Major U.S. firms that produce this equipment include General Electric Medical Systems, Litton Industries, Varian Associates, Medtronics, and Cordis. Their major EC competitors are Siemens AG, Dornier, and Electromedizin of West Germany; Thomson-CGR of France; Philips of the Netherlands; and Picker International of the United Kingdom. Major Japanese suppliers to the EC market include Toshiba, Hitachi, and Olympus.

U.S. exports of computers and related automatic data processing machines to the EC amounted to $10.71oillion in 1988, slightly less than one half of total U.S. exports of such equipment to the world in that year. The principal U.S. suppliers to the EC are IBM, Digital Equipment, Unisys, and Apple Computer. The principal EC suppliers are Siemens and Nixdorf[515] of West Germany, Philips of the Netherlands, Groupe Bull of France, and Olivetti of Italy. IBM considers itself to be a European company given its substantial investment, manufacturing, and research and development presence there. Fujitsu, Nippon Electric, and Hitachi are important Japanese suppliers of computers to the EC.

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511 ibid.

6·· In many product areas, commonly accepted standards are in place that pose few, if any, problems for US. firms. For example, in the case of computers, CENELEC has issued a harmonized emission document that is a CENELEC version of CISPR publication 22, which covers information technology equipment The emission limits for computer equipment are slightly stricter than the limits covered by the relevant FCC regulations in the United States.

6·· Based on official statistics of the U.S. Department of Commerce.

fi'• Based on telephone conversations and meetings with U.S. businesspeople during general fieldwork during 1987-89, and on official statistics and other information of the U.S. Department of Comme

ntly acquired Nixdorf.

U.S. exports of radio and television communications equipment (excluding home-type equipment) to the EC increased by 68 percent, from $64 million in 1988 to $109 million in 1988.[6] Major U.S. suppliers include AT&T, General Electric, GTE, Harris Corp., E.F. Johnson, and Motorola. Major competitors to U.S. firms in the EC market include Alcatel and Thomson (France), Philips (Netherlands), and Siemens (West Germany). Major Japanese suppliers include Fujitsu, Matsushita, Mitsubishi, NEC, OK!, Sony, and Toshiba.

The total value of U.S. exports of telephone and telegraph equipment to the EC increased steadily from $818 million in 1984 to $13 billion in 1988, or by 64 percent[517] Major U.S. suppliers of telecommunications and transmission equipment include AT&T, General Electric, and Northern Telecom.[518] Major West European competitors in the EC market include Siemens, Alcatel, Ericsson, GEC-Plessey, Thomson, and Italtel which traditionally have benefited from buy-national policies of the 12 major telecommunication authorities in Europe. NEC and Fujitsu are the leading Japanese suppliers of telecommunications equipment

Diversion of trade to the US. market

Japan is very competitive with the United States in the products that could be affected by the EC directive on EMC. Therefore, any discrimination against Japanese products resulting from the EC directive on EMC could result in diversion of Japanese exports to the U.S. market However, industry and trade officials believe that the provisions of the directive are likely to principally serve only as a nuisance to Japanese producers and will not si cantly change current trade patterns among U. ., Japanese, and EC producers.

U.S. investment and operating conditions in the EC

U.S. firms have invested significantly in EC manufacturing for the major products that could be affected by the directive on EMC. According to one trade report, U.S. firms accounted for an estimated 46 percent of the EC market for computers and related equipment in 1987, through exports or by local production in the EC[519] Major U.S.-based producers of electronic goods and manufacturers of telecommunications equipment such as General Electric and AT&T, also have extensive production operations in the EC. In addition, manufactures of subsidiaries and joint ventures of U.S. medical equipment firms accounted for about 25 - percent of total EC consumption of x-ray and electromedical devices and apparatus.[520] Thus, through both exports and local production in the EC, U.S.-based firms accounted for almost one-half of total EC consumption of the medical devices that could be affected by the EMC directive.

In the long run, U.S. investment should increase as EMC standards become standardized since products certified for sale by one EC member state could be sold in any other member state without further testing. U.S. firms should be able to rapidly adopt the harmonized EMC standards and compete effectively with EC firms. If EMC standards are administered uniformly and U.S. testing laboratories are given mutual recognition, U.S. firms could gain market share in the EC, resulting in additional investment there. If they are not, U.S. industry officials say further investment could be hampered.

U.S. Industry Response

Officials of U.S. testing laboratories have commented that the "essential requirements" described in the EMC directive are so broad that they provide no guidance on how compliance with the directive can be demonstrated. They also criticize provisions of the directive that prescribe placing the name of the laboratory that performed any testing of a product next to the European Communities' required "CE" mark. These officials say this practice may discriminate against U.S. manufacturers, who otherwise would be eligible to self-certify a product, by forcing them to seek testing by a European notified laboratory in order to obtain consumer acceptance of their products.

For officials of the. Health Industry Manufacturers Association and the National Electrical Manufacturers Association, a major problem with the directive is that it does not exempt medical equipment U.S. regulations currently do not require medical uipment itself to demonstrate EMC. Rather, U.S regulations require such equipment to be located in a facility that is shielded from other equipment for which it may cause EMI. In the United States, the Federal Communications Commission has exempted medical devices from the regulations for other electromagnetic equipment This is because the U.S. Food and Drug Administration has regulations in effect that require medical and x-ray equipment to be located in a shielded area which also prevents it from interfering with other equipment Although there is a provision in the EMC directive that may permit subsequently adopted directives on medical devices to supersede this directive with regard to such products, it is not expected that the medical device directives will be adopted before the EMC directive takes effect. Therefore, in the interim, U.S. producers of medical devices are threatened with

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

[517] Ibid.

[518] Northern Telecom is a subsidiary of Northern Telecom in Canada.

[519] *Datemation,* June 15, 1988, p.15.

[a] In 1988, General Electric purchased the medical systems division of the French electronics conglomerate Thomson.

the possibility that they may be required to become involved in costly redesigns of their medical devices before the devices can be sold on the EC market

Television Broadcasting

Background

This directive (89/552) was adopted in order to eliminate obstacles to broadcasting across the boundaries of EC countries, to limit the volume of non-EC-based programming broadcast in the EC, to set controls on the amount and content of advertising during broadcasts in the EC, and to encourage theproduction of EC-based programming. The directive stemmed in part from EC concern with the large volume of U.S. programming in EC broadcasting and in part from a pence lion of a need to protect European culture. T was originally proposed in April 1986 as Com(86)179/05. It was amended in May 1989 (Com(89)247 final), and was adopted October 3, 1989, incorporating the amendments.

Member states are to bring into force the laws, regulations, and administrative provisions necessary to comply with the directive not later than October 3, 1991. The directive is based upon the European Convention on Transfrontier Television (ECTT), which binds member states of the Council of Europe and other states party to the European Cultural Convention to provisions very similar to those of the directive. More than 20 European countries constitute the Council of Europe and have already signed the convention.

The directive as originally proposed included a procedure for settling disputes over the broadcasting of copyrighted material, but the directive as adopted does not address copyright disputes. An opinion on the directive by the Economic and Social Commission[521] stated that a separate EC directive regulating copyright should be established, and that such a directive should rule out any recourse to statutory licensing.

Anticipated Changes

The directive as adopted calls upon the member states to reserve a majority proportion of transmission time, exclusive of news, sports events, games, advertising, and teletext services, for European works "where practicable and by appropriate means." In addition, 10 percent of transmission time and budgets is reserved for European works from independent producers.

European works are defined as (1) those made by one or more producers established in one or more member states; (2) those whose production is supervised and actually controlled by one or more producers established in one or more of the member states; or (3) those for which the contribution of co-producers of those states to the total coproduction costs is preponderant and for which the coproduction is not controlled by one or more producers established outside those states.

Four countries in the EC already have quotas on the foreign content of television broadcasting — France, Italy, Spain, and the United Kingdom—that range from 40 percent, in Italy, to about 13 percent, in the United Kingdom.[522] The EC directive will establish limits in countries that had no limits previously. There are indications that not all members of the EC will actively pursue the actual implementation of this directive.

However, it is likely that some members of the EC will set more restrictive limits than those imposed by the directive. For example, in early December of 1989, France issued a decree that established stricter rules on TV quotas and definitions of European and French-language productions. English-language films and productions shot by French producers will no longer be counted as French. The French law's stringent definitions of what is a European production includes a clause forcing, two-thirds of total production costs to be spent in Europe. Stricter temporary requirements on French language production have been imposed, but they will be phased out by 1992. An obligatory percentage of annual turnover that each TV network must spend on original production was established. A separate provision concerning only TV production, to be in force until 1992, states that the production must be made by a company whose president, director, or manager, as well as the majority of its board members, are French, European, or have resided in France for more than 5 years. The French rules also stipulate that the production must be made by French actors speaking in French, unless a special exemption is granted by the broadcast regulatory agency CSA. Postproduction and lab work must be done in France, and overall 25 percent of the production cost must be incurred in France. After 1992 the definition of a French TV production reverts to the same definition given in the directive for a European production except that it must be shot in French from an original French script The decree must go before a French High Administrative Court, and aspects could still be modified.[523]

Possible Effects

U.S. exports to the EC

The directive will not be trade liberalizing. The directive will encourage limits on the amount of programming from non-EC sources that can be broadcast within the EC. Although representatives of the EC have said the quota is politically binding but not legally binding, representatives of the U.S. industry believe that the quota will be enforced. These sources indicate that, even if a specific quota is not enforced at this time, it will set a precedent for

[521] ECSC, 'Opinion on a Council Directive on Television Broadcasting Activities," 01 No. C 159 (June 26, 1989) p. 67.

[522] Motion Picture Association of America, Inc.

[523] "French Tighten Film, TV Quota Screws,' *Variety,* Dec. 4, 1989.

establishing quotas. The directive will *be* trade discriminatory by requiring that a production use authors and workers residing in EC member countries, or that it originate in European third countries party to the ECTT in order to be considered European. Works not produced by EC com es but produced largely by authors and workers residing in the EC shall be considered European works to the proportion of the cost of contribution of EC co-producers.

U.S. suppliers of television broadcast materials do not currently reach or exceed the limit that would be set by this directive. According to a French research firm, 68 percent of European shows are currently made in Europe. Eighty-three percent of the shows telecast in West Germany are European, and more than 60 percent of shows telecast in France are French made. In Luxembourg, the only country in the EC where the broadcasting of EC productions falls below the 50-percent level, 48 percent of the shows are European. U.S. industry representatives noted that French TV and video producers were a strong lobbying force for the directive.

U.S. exporters will not benefit as a result of this directive. It is generally recognized that the United States produces the greatest volume of material with high production values suitable for television broadcasting. With the vowing number of commercial broadcasters in the EC, it is expected that they will seek more quality programming to fill broadcasting time and to generate audiences in order to sell advertising time. The new broadcasters do not have adequate libraries of ming materials and may find it difficult to fi l airspace and comply with the directive.

U.S. television productions typically lose money when they only serve the U.S. market Industry sources cite as an example that a half-hour situation comedy may cost a studio approximately $570,000 to produce. However, the network that is scheduled to broadcast the comedy will typically pay the producer $425,000, resulting in a studio loss of $150,000. The studios producing these television films anticipate making up the loss by selling to the syndication market and to foreign markets. However, only about 1 out of 15 series are ever successfully sold into syndication.

U.S. producers of television films have an advantage in serving, in a single language, a large, homogeneous market Although the entire European market for television programming is larger than the U.S. market, European television producers are constrained by the need to produce programming for smaller, more heterogeneous mar ke, with different language requirements. Most of the cost of a U.S. production has already been recovered before it is sold in Europe. It is difficult if not impossible for a European party to produce a television series at a price competitive with a U.S. series whose costs have largely been recouped.

Although it may be easier for members of the EC to broadcast across national borders because of the directive, U.S. companies and interests are adversely affected at many levels. Limits on non-EC programming will effectively mean limits on advertising revenues generated by non-EC programming. DILS ey compr isomseuch United ê a mgla Bell regional companies have been investing in cable TV and satellite networks in Europe, and will depend on advertising revenues to recoup their investment

U.S. producers had originally been concerned that the directive would limit the choices the producer would have in the release of the products Such limitation would run counter to current industry practice, whereby film producers determine the schedule by which a film is released and the schedule for each film may be different in order to maximize profits. However, article 7 of the final directive is intended to protect the rights-holders fora period of at least 2 years after the initial showing of the cinematographic work in the EC. The final directive specifies that a movie cannot be broadcast within 2 years of its theatrical release unless otherwise agreed upon between its rights-holders and the broadcaster. In the case of cinematographic works coproduced by the broadcaster, this period shall be 1 year.s[2]s

Diversion of trade to the US. market

According to U.S. industry sources, the world's leading producer of television programming as measured in hours is Brazil, and the largest producer of filmed entertainment for theatrical release is India. However, neither of these countries exports in any significant volume to either the EC or to the United States, and it is unlikely that the situation will change because of this directive.

U.S. investment and operating conditions in the EC

As noted above, U.S. companies such as United Cable, ESPN, Disney, and some Bell regional companies have been investing in cable TV and satellite networks in Europe, and they depend on advertising revenues to recoup their investments. If these new technologies and services are not viable because advertising revenues are restricted, the U.S. investor will suffer. Cable networks such as CNN have made considerable investments to export their network services and rticipate in the new European market CNN is entirely an advertiser-supported service and, as such, is highly vulnerable to EC restrictions.

[66] *Television Without Frontiers,* the Green Paper on television broadcasting within the EC, had intimated allowing immediate, cross-border, cable retransmission of copyright-protected programming that was already being broadcast anywhere in the EC. This recommendation was roundly criticized by copyrightholders.

[62] Article 7 of the final directive stipulates that —

Member States shall ensure that the television broadcasters under their jurisdiction do not broadcast any cinematographic work, unless otherwise agreed between its rights holders and the broadcaster, until two years have elapsed since the work was first shown in cinemas in one of the member States of the Community; in the case of cinentatqraphic works co—produced by the broadcaster, this periodshall be one year.

U.S. producers have been investing in EC producers for at least a decade, and the directive is likely to encourage further investment This investment must be at a level subordinate to EC producers if these joint efforts are to be considered European works. However, U.S. producers report that t11ey are unlikely to accept minority positions because of the tremendous investment and risks associated with television and movie production. Industry sources contend that if they are taking the risk of investing in a production, they deserve to reap the benefits of that investment

Europe operated 28 television stations in 1980, increasing to 68 in 1989, and soon after 1990, it is expected to have 100 stations in operation. Industry sources claim there will be an extra 200,000 hours of air time available each year, of which an estimated 16,000 hours will be prime-time sitcoms and drama. The French Government indicates that Europeans can only make 2,500 hours of "prime-time fiction" to fill these hours and must buy the remainder. The most likely source for additional programming is the United States.

U.S. Industry Response

U.S. companies such as NBC are talking to potential partners in the EC; other U.S. companies have already established partnerships. However, industry sources indicate that these investments are not the result of the directive but were in process before the directive was first discussed. U.S. companies hold majority positions in many of their investments in the EC, and while they are likely to be willing to increase their investment in the EC, they are not likely to give up control

U.S. producers are mixed in their predictions for the long-term effects on the U.S. industry. Some feel that because of the growing demand for programming in the EC, and for U.S. mming in particular, the directive may not have a negative effect on the U.S. industry. Others feel that any directive that limits the options of U.S. producers in the EC is detrimental They feel that such a quota as called for in this directive may set a precedent for other countries' broadcasting industries and perhaps for their theatrical industries as well.

Shortly after formal adoption of the directive by the EC in early October 1989, the United States filed a GATT challenge to the directive's majority-EC-content provision. This provision calls for EC television stations to reserve a majority of their broadcast time "where practicable and by appropriate means" for works of EC origin. The U.S. complaint was lodged under GATT Article XXII, which provides for bilateral consultations on any dispute that affects the General Agreement's operation. After internal discussion among the member states, the EC agreed to proceed with talks under GAIT auspices.

U.S. objections to the majority-EC-content proviso are three-fold. First, the United States Trade Representative contends that this provision is a local-content requirement that effectively constitutes a quota, thereby violating GATT Article XI's prohibition on nontariff trade restrictions. Second, the United States asserts that the directive, if implemented as written, would grant preferential treatment to works produced by non-EC members of the Council of Europe and deny the U.S. equally favorable treatment Such a situation would run counter to the GATT's most-favored-nation principle, which stipulates that when one country grants a trade preference to another country, it must extend the same preference to its other trading partners without compensation, assuming all are GATT signatories. Third, the United States alleges that the treatment to be accorded EC works under the directive is clearly preferential and therefore represents a blatant violation of the national-treatment principle, which prohibits discrimination between foreign and domestic goods. According to this provision of the GATT, once imported goods have crossed a country's bonier and cleared customs, they must be treated the same as domestically produced goods.

The European Community's reply to U.S. protestations over the directive includes three arguments: (1) the directive is not legally binding as far as the majority-EC-content provisions are concerned; (2) broadcasting is a service rather than a and is therefore exempt from GATT rules; and 3) in the Canada-United States Free-Trade A ent, the United States explicitly agreed to t treatment for "cultural products" than for other goods and services.[526]

The initial round of U.S.-EC consultations was held in Geneva on December 1, 1989. These discussions focused principally on the "goods vs. services" issue, with the United States asserting that the directive results in discrimination against the importation, sale, and use of films-goods that can only be used in conjunction with broadcasting, a service. The EC responded that the artistic content of TV film (a service) is of greater importance than the physical good itself. EC officials further maintained that any injury to U.S. film imports under the directive would likely be small in comparison with losses from film as a service.

The EC proposed holding further discussions on a bilateral basis, i.e., outside the GATT. The United States submitted a list of questions on the meaning and likely implementation of the directive and stated that it would consider the EC proposal for bilateral consultations. The United States made clear, however, that it would reserve its right to pursue all available options in the dispute, both inside and outside the GATT.

[526] See, for example, "European Community Adopts TV Without Frontiers Directive; *European Community News,* No. 33, Oct. 4, 1989.

The U.S. delegation believes the EC has entered into the negotiations in good faith and generally views the first round of talks as positive.[527] Further action will be considered after EC officials have supplied answers to the questions presented by the United States in Geneva. A reply from the EC was expected by the end of January. Options likely to be considered by the United States include —

1. Holding further article XXII consultations on new information provided by the EC;
2. Asking for article XXIII consultations;[529]
3. Requesting formation of a dispute settlement panel; and
4. Pursuing article XXII talks or requesting a dispute-settlement panel while continuing discussions under article XXII.[529]

Miscellaneous

The directives contained in the miscellaneous manufactures sector affect consumer products such as toys (where the directive on the safety of toys is viewed as a prototype for safety issues in other industries) and package travel, including package holidays and tours. A proposed directive amending laws on personal protective equipment is not discussed in this section, but issues relatin to this directive are covered in the "Worker section of the report

Safety of Toys

Background

One of the goals of the EC 1992 program is to facilitate the marketing of products by harmonizing Community regulations and procedures for testing and certification. The disparity of toyer safety laws among member states has been an area of concern. This directive (88/378) is meant to harmonize member states' toy safety laws.

In March 1985, the Commission of the European Communities began work on a new toy safety directive.[531] The directive—the first to be drafted according to the so-called "new a roach" —entered into force on January 1, 1990. The directive establishes essential requirements for toys and requires member states to implement the toy safety directive in national legislation by January 1, 1990. To date, however, only four member states have done so.s[32] Other EC countries are reportedly far from implementing national legislation. Italy, for example is believed to be 3 years from transposing the directive into national law.[533]

The EC has authorized CEN to revise the existing European standard titled EN 71, parts 1 and 2, to include the essential safety requirements described in the directive. CEN first pro ═══ draft revision of the CEN standard EN 71 in 1987. The CEN EN 71 standard for the safety of toys consists of three parts: part 1 covets mechanical and physical properties, part 2 covers flammability properties, and part 3 covets migration of certain elements. Electric toys are covered under Committee for European Electrotechnical Standardization (CENELEC) standard HD 271 S 1, which deals with the safety of household electrical appliances, including electrical toys, using power supplied at lower than 24 volts. The CEN EN 71 toy standards reportedly are similar to U.S. toy standards. Products conforming with the CEN and CENELEC standards are presumed to comply with the essential requirements of the directive. A final draft, prepared and approved by CEN in March of 1988, was finally adopted on July 25, 1989. - -

Article 5 of the directive states that a reference list of EC harmonized standards would be published in the *Official Journal of the European Communities* so that member states' private standards bodies may transpose the CEN/CENELEC standards into national standards. The reference numbers of the harmonized standards were published in the EC Commission communication 89/C 155/02, dated June 23, 1989. The British national standard (BN 5665, pls. 1-3: 1989) exactly follows the toy standards in CEN EN 71.

The responsibility for certifying that toys meet EC safety standards falls on the first supplier," that is, the manufacturer, importer, or an authorized representative established within the EC, who is first responsible for introducing the toy into the EC market Assurance of compliance with essential requirements set out in annex 2 of the diecive

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[527] Information provided bq USTR's General Counsel for 1992 issues in a Dec. 11, 1989, telephone conversation.

[529] GATT Article XXIII deals with nullification or impairment of trade benefits. Pursuing this option would be a clear step beyond simply holdin; consultations.

[529] USTR's counsel laid particular emphasis on the right of the United States to request GATT consultations on any subLect, even if that subject is not specifically covered by the GATT.

[531] A toy, as defined by the directive, is any product or material designed and clearly intended for use in play by children of less than 14 years of age.

[532] The first draft was published as *Amended Proposal for* a Council *Directive on the ... of the Laws of the Member States Concerning the Safety of Toys,* OJ No. C 343 (Dec. 21, 1987), p. 2.

[533] West Germany, France, Ireland, and the United Kingdom, according to an informal transmittal from the EC Commission dated Mar. 15, 1990. The British standard was published by the British Standards Institute, 'British Standard, Part 1, Specification for Mechanical and Physical Properties.' *SafetZlroys' BS 5665,* December 1988, p. 1.

Based on information obtained through the Toy Manufacturers of America from the British Toy and Hobby Manufacturers Association.

ex Annex 2 of the directive, 'Essential Safety Requirements for Toys," was the original framework used to generate the toy standards required by this directive. The annex covers "general principles' ancf"particular risks" with regard to the toy safety directive. The 'general Fsrinciplee section is concerned with what represents a risk to safety, and with what degree of risk should be commensurate with the ability of the user to cope. The discussion of "particular risks' includes a list of generalized physical properties, flammability, and chemical migration properties that the toy safety standards were to address.

may be obtained in two ways. For toys that conform with harmonized European standards the directive permits self-certification — that is, toy firms may themselves test and assure that their toys comply with minimum requirements of the directive. Toy manufacturers may use any testing laboratory they choose, and toy firms may also test and document compliance with safety standards themselves.

For toys not conforming with harmonized Euro standards, toy fists must obtain • cation of compliance by submitting a sample of the toy for testing to an approved, EC-based, notified testing or certification body. This reportedly may present problems in countries where such testing laboratories have not been designated or approved. Most countries, though, are expected to have numerous such labs. The United Kingdom, for example, has approved 10 testing laboratories to date as competent to conduct tests associated with ensuring conformity of products to the directives' essential requirements. Such toys might include those containing novel materials or qualities or those in a new category.

Beginning on January 1, 1990, toy producers demonstrating conformity with the directives' requirements are to affix to their toys the "CE" mark. The first supplier is to be responsible for maintaining documents within the EC attesting to the conformity of the toy to the harmonized standard. These documents are to include (1) a detailed description of materials; (2) a description of the means of manufacturing (3) the addresses of the places of manufacture and storage; (4) copies of documents submitted to an approved body; and (5) a test certificate for the sample. The directive requires that the name and address of the first supplier and the "Cr mark be printed or affixed on the toy or consumer package.

All toys entered into the EC after January 1,1990, when the directive entered into force, must bear the "CE" conformity mark. There are, however, provisions in the directive permitting sell-through of existing toy stock after the effective date, providing the seller has proof that the stock entered into the EC prior to January 1, 1990. Although these toys need not bear the "CE mark, they must meet all the applicable safety requirements set forth in the directive.

CEN toy safety standards are complete, and no new standards are expected to be introduced. However, because certain aspects of CEN's new safety standards are unclear, they may generate controversy. Problems regarding interpretation of the standards are expected to be resolved quickly, however, and the industry does not expect them to generate significant legal actions.

[Sie] The newly developed harmonized toy safety standards were created to address the general safety requirements covered in annex 2 of the toy safety directive.

Anticipated Changes

A major change anticipated as a result of this directive is the increase in recordkeeping requirements for toy manufacturers, importers, and their authorized representatives in the EC. Toy labeling practices will also require revision. Warning language is required for (1) certain toys that are not intended for children under 36 months of age; (2) toys that contain dangerous substances; (3) toys such as skateboards for children; and (4) toys that are intended for use in water.

Possible Effects

Overall, the effect of the directive on large firms with infrastructure already in place is expected to be minimal. The effect on certain small U.S. firms, however, will be more significant in terms of both benefits and disadvantages. As noted previously, the "first supplier" will be required to keep on file within the Community the appropriate documents showing conformity with the Toy Safety Directive. This is expected to place a disproportionate burden on small exporters and manufacturers that currently do not keep these types of records in Europe. However, most large toy manufacturers and importers currently maintain this type of documentation on file within the Community and do not expect problems with this requirement

On the other hand, harmonized toy safety regulations throughout the EC will reduce uncertainty over toy safety requirements and is expected to make marketing of toys easier in the EC market This greater certainty will be especially beneficial for small firms that often do not have an infrastructure in place to deal with various member states' safety requirements. However, because most U.S.-produced toys sold in the EC are manufactured by the larger toy firms, the overall effect on the U.S. toy industry is expected to be minor. The highly competitive nature of the international and domestic toy industries and the high cost of developing and introducing new toys have made most small toy manufacturers noncompetitive within the larger toy markets. Further, toy retailers are hesitant to give up shelf space to products made by small to manufacturers, the popularity of whose toys may be perceived as risky. Because of these aspects, most small U.S. toy firms are forced into very specific domestic market niches and they generally export relatively few toys.

U.S. exports to the EC

U.S. exports of toys and models classified under SITC 894.23 to the EC accounted for 22 percent of all U.S. to exports in 1988. U.S. exports of these goods to the EC rose from $25 million in 1984 to $55 million in 1988. Total U.S. toy exports rose from $158 million to $245 million during the same period. U.S. exports of dolls classified under SITC 894.22 to the EO rose from $834,000 in 1984 to $1.5 million in 1988, whereas total U.S. doll exports declined from $8.7 million to $8.4 million during the period sae

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

The level of U.S. toy exports to the EC is not expected to be significantly affected by the benefit of dealing with more standardized regulations governing the safety of to Nor are U.S. toy exports to the EC expected to drop significantly because of the change in record keeping requirements or the new toy-labeling requirements for toy firms. Most U.S. toy firms ship directly to the EC from their subsidiaries in Asian countries.

Benefits and obstacles that will result from implementing the directive will mostly affect small toy firms doing business in the EC. The directive itself is not expected to be trade discriminatory to U.S., or other countries', suppliers because all manufacturers are expected to be treated similarly. However, the directive requires that toys not manufactured in accordance with the referenced CEN standard EN 71 be tested by an approved EC-based testing laboratory. This requirement may result in delays in marketing these toys, increased burden and cost to manufacturers, and increased potential for compromise of proprietary business information. Obtaining safety certification may be more difficult for non-EC-based suppliers to obtain, because of their lack of proximity to EC-based testing facilities.

Diversion of trade to the US. market

The implementation of the Toy Safety Directive is not likely to change the level of U.S. toy imports. No major third-country suppliers to the EC are expected to be injured by the implementation of the directive, nor are imports from third-country suppliers to be diverted to the United States. Imp tentation of the directive is not expected to significantly alter the marketing plans of manufacturers in countries currently exporting to Europe.

US. investment and operating conditions in the EC

The implementation of the Toy Safety Directive is not likely to alter levels of U.S. investment in the EC, nor will it significantly benefit or harm existing U.S. investment in the EC. Investment in the EC for many of the large to firms consists of distribution centers and national headquarters. The potential administrative burden resulting from this directive is, if anything, expected to result in minimally higher costs to these EC-based establishments. However, implementation of this directive is expected to neither encourage nor discourage future U.S. investment in the EC.

Implementation of the Toy Safety Directive is expected to alter U.S. business operating conditions in the EC to some extent. The directive will probably increase the administrative burden placed on toy manufacturers by requiring them to maintain testing and other records on file. These records, kept by the importer of record, must be available to appropriate EC authorities. This burden is not expected to be significant because most large manufacturers reportedly already maintain such documentation within the EC.

U.S. Industry Response

Toy industry representatives state that the directive is not expected to cause significant injury to the domestic toy industry, because the requirements do not appear to be unduly restrictive. Although the new regulations and standards are in some cases more restrictive than typical national standards had previously been, they are similar to current voluntary U.S. toy safety standards.

The Toy Manufacturers of America (TMA) responded to a request for comments by the U.S. Government's Interagency Task Force Working Group on EC Standards on July 26, 1989. In its formal submission, the TMA stated that although the directive will have minimal effect on most segments of the U.S. toy industry, the directive has shortcomings and has initiated confusion among toy producers and retailers.

The TMA is concerned about several points. First, maintaining product information within the EC on each toy is of questionable value, and the use of costly and time-consuming independent EC-based laboratories is restrictive to toy firms. Second, the certification process for new toys not covered by CEN standard EN 71 could delay the introduction of new toys, thus increasing the potential of copyright infringements and shortening the product's life cycle. Third, the requirement to include the name and address of the first supplier in each consumer package is a costly and unnecessary burden. Fourth, the requirement for a consumer-packaging warning on toys not intended for children under 3 years of age may be unnecessary.

The lack of clarity within certain areas of the CEN standard has led to apprehension and the confusion within the industry. For example, included in the foreword to CEN standard EN 71 is the statement, "Legal requirements exist in particular countries." This statement has been interpreted by some in the industry to mean that the directive does not interfere with, or supersede, laws concerning safety of materials that may be a constituent part of other consumer articles, including toys. Foam stuffing in France, for example, is reportedly subject to more stringent general safety regulations than it is in West Germany. Although the toy safety directive restricts member states from enacting toy safety provisions more severe than those set forth by the directive, manufacturers fear that member states may enact broader or more severe laws regarding the safety of certain constituent materials that may also be included in toys.

One U.S. manufacturer expressed concern that other aspects of CEN standard EN 71 are vague and subject to interpretation. For example, CEN EN 71 part 1, section 3.1, states that "Toys shall be so

designed and manufactured as to meet the requirements of hygiene and cleanliness in order to avoid any risk of infection, sickness and contamination." Industry representatives expressed concern that the term 'any risk of contamination" could be taken too literally and that national authorities could interpret them differently, causing significant impediments to marketing,

The U.S. toy industry believes that most areas of dispute between member states' national authorities and toy makers will be the result of the lack of clarity in certain areas of the toy standards referenced by the directive. The industry believes, however, that these areas of dispute will be settled to the satisfaction of most parties through either legal or political means.

The TMA recommended that U.S. firms take mater initiative in the future in assisting in the formulation of CEN standards. U.S. firms and associations should, according to the TMA, offer constructive advice concerning the development of standards to EC standards-setting organizations, especially those dealing with consumer issues.

Package Travel

Background

Tourism represents 53 percent of the gross domestic product (GDP) of the European Community and is becoming increasingly important to the EC's economy.[537] National laws governing travel and tour packages vary widely within the EC. The United Kingdom and West Germany reportedly offer substantial protection for consumers of travel and tour packages. In contrast, Spain and Portugal have more lax laws. Travelers to Spain and Portugal have complained that tour information is often inaccurate and that tour/travel operators frequently fail to meet the terms of their contracts.

This directive ((89)348) aims to protect consumers of travel/tour packages against false advertising, the failure of travel agencies to provide the services contracted, and inconsistency in travel services within the EC. It is also designed to safeguard the reputation of travel service providers and to simplify the operation of travel/tour operator services throughout the EC. The pursuit of these goals is expected to encourage the further growth of tourism throughout the EC.

Anticipated Changes

This directive will harmonize EC members' laws on package travel and tours, which now vary substantially from member state to member state. EC member states will adopt a set of minimum criteria such as protection against unjustified price increases, compensation for significant inconveniences or for failure to adequately perform agreed services, and a requirement to provide accurate and clear information about package tours.

The EC directive on tour/travel packages that was amended in July 1989 does not change the principal objectives of the original directive. However, the amended directive imposes more stringent consumer protection requirements and applies to all package tows of longer than 24 hours or that include one night away from home. The language of several sections of the directive has been revised to ensure that travel/tour operators meet their contractual obligations and to delineate the tour/travel operator's financial and legal obligations if agreed services are not provided. For example, article 4, sec. 7(c)ii now states that if a travel/tour operator's failure to provide services constitutes nonfulfillment of the contract, "full compensation must be paid" (emphasis added). In addition, the amended directive prohibits the price a in a travel package contract from being changed in the last 20 days before departure and, before that, for only a limited number of reasons, such as large scale exchange rate fluctuations.

Possible Effects

U.S. exports to the EC

This directive is not expected to directly create new trading opportunities for non-EC suppliers. However, it should enhance the attractiveness of the EC for tourists and thereby eventually expand the market and create new business opportunities for both EC and non-EC suppliers. American Express, the only U.S. supplier that actually has offices in the EC, will not enjoy any special benefits. However, it should have a competitive advantage because it already enforces its own consumer protection standards that are comparable to those specified by the directive. Other U.S. suppliers, such as Maupintour, should not be directly affected since they do not have offices in the EC, but instead, contract out tours with local European representatives. However, companies such as Maupintour can be expected to profit from the overall expected expansion in the EC tourism market

Diversion of trade to the U.S. market

This directive is not trade discriminatory because it applies equally to EC and non-EC suppliers. However, penetration of the EC market by new non-EC suppliers should cost more because of the directive's insurance and liability requirements. Also, if a third-country supplier were hurt by the directive, its diverted exports would not be expected to enter the U.S. market Travel/tour packages are not the type of export that can be easily diverted from one country or region to another.

L.J. Lickorish, "European Tourism 1992—The Internal Market,' Tourism *Management,* June 1989, p. 100.

U.S. investment and operating conditions in the EC

Standardized consumer protection should enable large U.S.-based travel/tour operators, especially those that conduct business in most major European cities, to grow with the expanding European market and to enjoy even greater economies of scale and efficiency in operation. These operators should thus easily be able to maintain or increase their already substantial share of several EC members' tourism markets (table 6-4).

Only the smaller U.S. travel agencies and tour operators could possibly *be* hurt by the directive, because they may be less able to absorb the increased operating costs associated with the directive's insurance and liability requirements. However, since most (if not all) of the U.S. tour operators that have business in the EC are large and have already voluntarily adopted their own consumer protection iolans, it is doubtful that any U.S. industries will be hurt.

U.S. Industry Response

Representatives from the National Tour Association, Inc. and the U.S. Tour Operators Association (USTOA) expressed no concern about the directive as originally written. Their opinion has not changed despite the revisions made in the latest version of the directive. Although a spokesperson for USTOA recently pointed out that the directive puts the entire responsibility for the travel/tour package on the tour operator rather than sharing it with its suppliers (such as hotels, car rental agencies, etc., as is usually done in the United States), he and other U.S. industry representatives do not believe that implementation of the directive will harm their member companies' sales, profits, or competitiveness within the EC tourism market They assert that their self-imposed consumer protection standards already match those required by the directive.

Although U.S. industry does not generally oppose this directive, Cord Hansen-Sturm, a U.S. tourism expert from the New School for Social Research, has stated that the EC directive should not be analyzed solely as a potential "trade barrier' to doing lousiness in the EC. Mr. Hansen-Sturm believes that attention must also be paid to the potential long-term impact of the EC directive on U.S. tour/travel operators' domestic sales. He feels that the EC ective will create European tour/travel operator standards that will exceed those of the United States. In addition, as the EC's economy continues to expand, an increasing, number of European travel/tour operators will invest in the United States and more Europeans will travel to the United States.' (Major European tour operators, such as the British 'Thomas Cooke and Belgian Wagon-Lits, have 'Already made inroads into the U.S. travel market) Although the large U.S. travel/tour companies such as American will be competitive with the European "mega"-travel companies, Mr. Hansen-Sturm asserts that smaller U.S. tour operators, which account for a substantial portion of the travel/tour business, will not be able to compete with the guaranteed standards in package travel offered by the Europeans and consequently, their domestic sales and profits could be threatened.

Generic Standards

The directives covered under EC genetic standards are a necessary complement to those covering individual industry sectors. The first of the two generic proposAs examined provide additional recourse for aggrieved parties, if the more specific technical regulations and standards associated with the EC 1992 program are not sufficient to ensure that products placed on the EC market are not defective or unsafe.

Views regarding the directive on product liability covered in the last phase are updateci, and a companion directive on general productsafety is introduced. Both measures attempt to establish responsibility for product safety as well as establish the administrative mechanisms for enforcement of relevant legal provisions. Although the Product Safety Directive currently covers a wide range of products, the EC Council is reportedly moving to narrow coverage to only consumer products. To date, no views of interested parties have been received, as specific U.S. industries are only beginning to formulate their responses to the proposal. However, views of the legal community and the insurance industry are incorporated in the directive analysis and statements from various chambers of commerce are provided.

Table 84
EC travel/tour packages, U.S. sham of sector total, by market, 1987

(In percent)

Market	*Tour operators*	*Travel agencies*
United Kingdom	15	10
France	q	14
West Germany	20	(1)

(1) Not a leading market for this sector.

Note.—The data in this table are estimates based on limited information with a moderate degree of confidence.

Source: U.S. International Trade Commission. Service *Sector Profiles and Barriers to Trade in Services-Phase I: Profiles of Selected Domestic Service Sectors.* (Investigation No. 332-257), (unpublished report), December 1988.

Background

Directive 85/374, which has been adopted, broadens EC liability law in several respects. Most importantly, a consumer need not prove that a producer was negligent in order to win a judgment for damages resulting from the use of a defective product. Moreover, the consumer can also bring suit against the importer of a defective product, and, if the producer cannot be identified, against the supplier of the product. The entities responsible for the product are jointly and severally liable. A producer cannot escape liability through contractual or other limitations. The producer remains liable for 10 years after its product is put into circulation. Finally, member states may pass implementing legislation that is more stringent than the directive, in that the legislation may cover more products and exclude some defenses provided in the directive.

The directive sets certain limitations. A product is defective only if it is unsafe when used as can reasonably be expected. The directive covers only moveable products and electricity and does not cover primary agricultural products or game. The consumer may collect damages only for death, injury, and damage to property that is worth more than 500 ECU and that is ordinarily intended or used mainly for private consumption. Damage to commercial property is not covered, nor is injury or damage arising from certain nuclear accidents. The producer can reduce or escape liability by the use of certain defenses, such as a showing that the consumer was partly at fault or that the defect was due to compliance with mandatory regulations issued by a public authority. A member state may put a cap onliability, as long as the cap is not lower than 70 million. ECU.

Anticipated Changes

As noted in the initial report, the EC Commission has decided to institute infringement proceedings against most member states for failure to properly implement the directive on liability for defective products, which was slated to become effective on July 30, 1988.[539] In the case of the United Kingdom, the Consumer Protection Act[639] was indeed passed to implement the directive, but the EC Commission believes that the act does not properly transpose the directive into national law. According to a European Parliament committee report, it has been argued that the British law does not provide for a development risks defense' compatible with that provided under the directive. Whereas the directive provides a defense "if the state of scientific and technical knowledge at the same time of putting the product into circulation was not such as to enable the existence of the defect to *be* discovered," the British law allows the defense if "the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were not under his control."[549]

Similarly, the Italian laws" implementing the directive allows the development risk defense when the state of scientific knowledge "did not yet permit the product to be considered as being defective." Moreover, the Italian law allows a defense if the producer has complied with mandatory standards, without specifying, as does the directive, that the standards must be issued by public authorities. Finally, whereas the directive states that a product will not be considered defective just because "a better product is subsequently put into circulation," the Italian law states that the product will not be considered defective "for the sole reason that a more perfected product is put into circulation at whatever time."[642]

In Italy, the federation of industries Confindustria has followed the progress of Directive 85/374 and is working to organize the defense of industry in the face of increased exposure. Certification of products is seen as the best defense, and Confindustria seeks to spread a culture of quality. It was noted that the Italian *Official Gazette* publishes decrees banning the sale of defective products at least three to four times a month.[543]

Greece has adopted the EC's directive on liability for defective products, but representatives of Greek industry reported that Greece may not yet be ready ("mature enough") for consumers to get effective relief. The rise of consumer protection policy at the EC level has merely led anti-industry pressure groups in Greece to switch from demonstrations for environmental protection to demonstrations for consumer protection.[544] Greek implementation of the EC directive on product liability was reportedly relatively easy because Greek law already closely paralleled the text of the directive.[546] The Greek presidency of the EC Council stressed the social dimension as a means of bringing North and South together.s[46]

[53] Confirmed in USITC staff interview with EC Commission officials, Brussels, Jan. 8, 1990.

[53] *Consumer Protection Act of 1987,* pt. 1, effective Mar. 1, 1988.

[34] Report drawn up on behalf of the Committee on Legal Affairs and Citizens' Rights, Apr. 28, 1989, p. 9.

[11] Presidential Decree No. 224 of May 24, 1988, effective July 30, 1988.

Report drawn up on behalf of the Committee on Legal Affairs and Citizens' Rights, Apr. 28, 1989, p. 9.

[43] USITC staff interview with officials of Confindustria, Rome, Jan. 12, 1990.

[44] USITC staff interview with officials of the Greek Federation of Industries (SEV), Athens, Jan. 15, 1990.

[46] Law effective July 30, 1988, but applying to products put into circulation after publication in the Greek *Official Gazette* of Apr. 22, 1988.

[40] USITC staff interview with officials of the Greek Ministry of Foreign Affairs, Athens, Jan. 16, 1990.

West Germany has announced the passage of legislation implementing the directive. The legislation was to become effective January 1, 1990.[547] The EC Commission has not yet stated whether it thinks that infringement proceedings against West Germany are no longer necessary.

U.S. Industry Response

Industry sources have expressed concern that liability law is not so much harmonized by the directive as diversified even more among the member states.[501] Such questions as the liability of company employees and the duty to inspect the product are left to national courts. Although some industry sources believe that liability will be lessened if manufacturers follow CEN and CENELEC standards, in fact the directive does not permit such lessening of liability, because only mandatory standards count for the directive and CEN/CENELEC standards are generally voluntary.[5,9]

Sources in the U.S. pharmaceutical industry indicated that the directive will probably not significantly affect that industry. The directive requires that an injured consumer prove causation, i.e., establish that the accused product caused the injury. Such a test is hard to meet when dealing withpharmaceutical products. The directive provides other advantages for the industry, notably the provision that recognizes the development-risk defense that many member states have adopted, i.e., the defense that tects a producer who used state-of-the-art safetymethods in developing the product. Under the directive, member states can retain a financial ceiling for liability.

The practical effect of a directive may not always match the language of the legislation. Although the directive may result in increased litigation, U.S. sources believe that awards to plaintiffs may not significantly increase in either number or amount The judicial systems in most of the EC member states, unlike the U.S. system, rarely provide jury trials for product liability cases and rarely award punitive damages to plaintiffs in such cases. Also in contrast to U.S. practice, attorneys in EC member states generally do not have contingency fee arrangements, which in the United States facilitate the bringing of product liability suits.sso However, industry is somewhat nervous because, although EC consumer protection measures have not been of great concern so far, the rise of consumerism within the EC may lead to pressure for more drastic measures in the future.[55]i

General Product Safety

Background

The proposal (89)162) supplements a Council directive of July 25 1985, that harmonizes member-state rules concerning liability for defective products (85/374). Despite the fact that considerable EC and member-state legislation already covers the area of product safety, the EC Commission determined that a "general legal instrument, establishing rather simple basic principles"[552] was needed to strengthen the confidence of consumers, workers, and professionals in the 1992 integration program. The proposed directive is designed not to replace existing law but to fill any gaps in coverage that may exist in current EC and member-state safety legislation. It also provides a consistent, EC-wide mechanism for dealing with unsafe products. Industry background information indicates that the growing influence of "green" (environmental) political groups and an expanding consumer movement pushed the proposal through the EC Commission suddenly and without publicity, giving agricultural, manufacturing, insurance, and other industries or interested parties no time to indicate their views and the ramifications of the proposals.

Anticipated Changes

The proposed directive provides for member states to take necessary measures to ensure that products (including manufactured and agricultural products, raw materials, and used and reconditioned products) marketed and used in the EC do not pose "an unacceptable risk for the safety and health of persons" The chosen term "unacceptable risk' (as distinguished from defects that are acceptable) is to be interpreted with regard to such factors as the intended and reasonably

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[547] *Product Liability Act* (Produkthaftunpgesea) and *Doing Business in Europe* (Commerce Clearing Houie), Jan. 16, 1990, p. 2.

[618] The lack of harmonization in the directive led AMCHAM to advise companies to obtain estimates from their insurers of the increase in the product liability insurance premiums for the different options that member states may choose, to draw gavernm.nts' attention to possible increases in costs or unirour risks, and to take measures to insulate themselves from claims made against their subsidiaries in member states. EC Committee of AMCHAM, *Business Guide to EC Initiatives, p.7.*

[540] Organisme de Liaison des Industries Metalliques Europeenes (ORGALIME), *Product Liability in Europe: A Practred Guide for Industry,* ORGALIME, Apr. 1989, pp. 11 and 19.

wo See also ORGALIME, *Product Liability in Europe,* pp. 8-9.

eelThe EC Commission proposed on Oct 4, 1989, a directive on liability for damage caused by waste. AMCHAM, *Business Guide to EC Initiatives,* p. 34. Future EC Commission plata for consumer protection were referred to in EC Commission President Delors"Programme of the Commission for 1989," *EC Bulletin,* supplement 2/89, pp. 54-56. Included in that prog am was a proposed directive on liability for defective services. The draft proposal would apply only to services that may injure health and physical integrity of persons and their . A defect in a service would lead to liability depending on the degree of safety that can reasonably be expected, and force marure or compliance with mandatory rules would obviate lability. AMCHAM, *Business Guide to EC Initiatives,* P- 28.

e" EC Commission, 'Explanatory Memonindum" to Coin (89) 162, June 7, 1989, p. 1.

ass EC Commission, Com (89) 162, art 2, *01* No C 193 (July 31, 1989), p. 1.

foreseeable uses of the product over a reasonable time period. Member states would require suppliers (importers and distributors as well as manufacturers) to use appropriate warning labels and monitor the safety of their products. Although currently the directive covers a wide range of products, the EC Council is moving to narrow the directive to cover only consumer products. This narrowing has not yet been formalized, however, and will probably have to wait until the European Parliament issues its opinion of the proposed directive.[554]

Suppliers would be presumed to achieve adequate safety if they comply with member-state or EC safety regulations, provided these regulations were specific and mandatory. Nevertheless, member states could still order a product in compliance with such regulations withdrawn from the market, when there is evidence that the product is likely to present an unacceptable risk Member states would establish procedures for the exchange of information on product risks.

In the event that a member state found that a product posed an unacceptable risk, the member state could restrict the marketing of the product within its borders. In the case of a risk to more than one member state, the EC Commission could investigate, consult with the member states, and take such action as restricting the marketing of the product within the EC. Each member state would designate a single "competent authority" for the purpose of coordinating and exchanging information with the EC Commission. To aid the EC Commission in the product safety area, the directive would establish a new Committee for Product Safety Emergencies, an advisory body composed of member-state representatives and chaired by an EC Commission representative.

The proposed directive states that although it is a "necessary complement" to Directive 85/374 concerning product liability, the proposed directive's effect is without prejudice to the operation of the liability directive. In particular, the proposed directive states that its coverage of products that pose an unacceptable risk is different from the coverage of defective products in the liability directive, because there may be differences between defective products and unsafe products. Further, whereas under the liability directive a supplier could escape liability because the consumer was contributorily negligent, under the safety directive the member-state authority and the EC Commission could still order the supplier's unsafe product to be withdrawn from the market.

[564] USITC staff interview with officials of EC Commission DG III, Brussels, Jan. 8, 1990.

Possible Effects

U.S. exports to the EC

U.S. exports may be adversely affected because compliance with the proposed directive may be more difficult for U.S. exporters than for producers in the EC. In particular, each member state may develop its own definition of what constitutes an "unacceptable risk," thus leading to confusion and uncertainty for suppliers. This diversity would be a disadvantage for both EC and U.S. firms, and might be alleviated by the EC Commission's oversight role in harmonizing rules among member states.

In certain sectors, such as agriculture and automobiles, virtually all regulations are mandatory and consequently will insulate producers from liability. rn the areas of processed foods, chemicals, and pharmaceuticals, all products are subject to specificregulatory approval before they can be put on the market However, at least for pharmaceuticals and chemicals, there are no specific formulations because by nature any new product is innovative and as yet undefined. Producers of machinery, toys, simple pressure vessels, building products, and most telecommunications products will be subject only to essential requirements because the relevant directives adopt the new approach. Consequently, the producer is responsible for selecting the standards to demonstrate conformity with those requirements and may have difficulty avoiding adverse measures contemplated in the proposed directive.

Theproposal is not likely to be trade liberalizing. Non-EC and EC companies would be treated generally alike by the proposal. However, U.S. suppliers may have a competitive disadvantage as a result of the changes. The International Chamber of Commerce, Faris, identifies a specific point of concern in article 6:

> *(Those chiefly obliged to carry, out the safety monitoring are the manufacturers, ifbased within the Community. For goods originating from outside the EC, this obligation rests with the importers. Distributors who on rational grounds would to import certain products, could therefore be indined to seek suppliers inside the Community borders. In so doing ty essentially escape setting up monitoring schemes . . . . Thus, the monitoring obligation, for alleged safety reasons, puts imported goods to a general disadvantage, regardless, in fact, of their actual safety properties.sw*

U.S. industries are only nning to formulate their responses to the pro . They may oppose the directive on.a number of grounds:

1. Legal uncertainties created by the rather sweeping scope of the proposal may result in considerable litigation. Defining precisely what might include

[665] International Chamber of Commerce, Doc. No. 214460-21/40 (Paris, Nov. 6, 1989).

"unacceptable risk" for given products, for example, could be a lengthy process.

2. Member states could ban sales of a product for a period of 3 months, entirely on the basis of "reasonable grounds to suspect" a product's safety. No procedural right to a hearing or other legal safeguard for the manufacturer is envisaged. Such a provision might be open to abuse by member states attempting to protect their own industries.
3. Large bureaucracies might well be created because "permanent monitoring" of products is required of suppliers, thus necessitating extensive tracking and monitoring procedures, if only for insurance purposes.

If the proposal should become law, the U.S. legal n might benefit because of the increase in 'ligation to clarify the law for *U.S.* exporters to the EC or for U.S.-based companies producing within the Community's borders. It is possible that U.S. companies might be deterred from entering certain EC markets because of the uncertainty of liability for products. They will be aware of the concomitant expense of clarifying the safety liability issue in the courts and covering possible loss of production and sales. The proposal would also tend to increase European market regulation.

Diversion of trade to the US. market

The increased emphasis on safety represented by the proposed directive may make it more difficult for all non-EC producers to export to the EC. Therefore, it may lead exporters from third countries to divert trade from the EC to the United States. The extent of such diversion is difficult to predict at this time. It is unlikely that the competitive aspects of the domestic U.S. insurance industry will be affected by the proposal, from whatever source.

US. investment and operating conditions in the EC

The development will most likely tend to discourage U.S. investment because of the added uncertainty producers would encounter in regard to product safety liability and because of the costs that accompany such uncertainty. The proposed directive does not on its face discriminate among firms producing within the EC. Consequently, the =S directive does not appear to affect U.S. operating there more than it does EC firms. However, the increased emphasis on safety may raise operating costs for all firms in the EC The development is likely to lead to increased litigation and uncertainty for producers, whether of U.S. or other origin.

This proposal might tend to make U.S.-based insurance companies wary of offering product liability insurance in the EC. No known formal positions by insurers have yet emerged, but conversations with knowledgeable industry sources indicate that strong opposition to the directive is likely. Insurance coverage is sold to consumers on the basis of known, quantifiable risks. When such risks are miscalculated, insurers may • incur losses with attendant losses to policyholders, stockholders, and public confidence in insurance institutions.

The case of asbestos in the United States is a good example. Insurance providers furnished coverage to building contractors for construction, such as schools. Asbestos was a proven fire retardant material, widely used, and often required by local building codes. Years after such construction was finished, and long after the final premiums were paid, the U.S. Government declared asbestos to be dangerous and recommended it be removed from schools. Schools sued contractors for failing to build safe schools; contractors in turn sued insurers. Some juries ordered insurers to pay, thus causing considerable financial harm and uncertainty. The example simply indicates that if risks are open ended, only two possible courses are open to prudent insurance companies: refuse to provide coverage at any price or set premiums high enough to cover any possible liability. Neither choice proves popular with consumers, or with insurance providers. Hence, the specific concern of insurance companies operating in the EC will be whether the proposed directive opens the door for open-ended product safety liability risks — risks they may be unable to prudently insure.

U.S. Industry Response

The EC Committee of the American Chamber of Commerce in Belgium, an organization representing the views of European companies of U.S. parentage, states that although the business community supports the principle of optimal product safety for consumers and harmonization of product safety laws, industry is concerned that the proposal "will lead to major legal uncertainties, new trade obstacles and bureaucracy, thus impairing the efficiency of a text aimed at protecting consumers." The EC Committee recommends that the proposed directive explicitly exempt product categories already covered by EC safety directives, that it define terms in accordance with the product liability directive, and that it not require firms to permanently monitor the safety of their products. The EC Committee considers monitoring to be a burdensome and complicated requirement not found in existing laws in the EC and elsewhere.sv

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we EC Committee of the American Chamber of Commerce (AMCHAM) in Belgium, *Business Guide to EC Initiatives,* Autumn 1989, p. 77

657 EC Committee AMCHAM 'Position Pa Re ing the Proposal for a Council Directive Concerning Product Safety,' Jan. 5, 1990.

The International Chamber of Commerce, Paris, has also drafted a strong statement opposing the proposa1.[568] Similarly, producer and manufacturing trade associations are beginning to respond negatively to the proposal. The European Chemical Industry Federation released a strongly negative response to the proposal in September 1989,[559] as did the European Employers' Federation (UNICE).

Gm International Chamber of Commerce, Doc. No. 2404160-21/40.

[41]" Conseil European des Federations de Vlndustrie Otimique (European Chemical Industry Federation), "Position Paper, Brussels, September 1989.

A source in the pharmaceutical industry indicated that the proposed directive will probably not significantly affect that industry because the proposal defers to more specific regulations already covering the industry. The source opined that industry lobbying within the European Pharmaceutical Association (EFPIA) helped obtain the provision deferring to more specific legislation.

CHAPTER 7
CUSTOMS CONTROLS

CONTENTS

CHAPTER 7
CUSTOMS CONTROLS

Given the important United States-EC trading relationship, the United States has a strong interest in customs regulation in the EC. Eliminating border controls and simplifying customs procedures will ease trade with and among the member states, but other EC measures may effectively restrict U.S. exports.

Developments Covered in the Initial Report

The three categories of EC directives under this heading would eliminate border controls on the movement of persons and goods; achieve mutual recognition of EC nationals' professional qualifications in other member states, with a view toward eventual harmonization; and obtain general EC-wide guarantees of workplace health and safety. These directives continue many years' effort to approximate member-state legislation and achieve goals originally set out in the EEC Treaty. They will also provide tangible evidence to EC nationals of the integration process if fully implemented by the member states.

Background and Anticipated Changes

First, controls enforced at internal EC boundaries by customs officers of the member states would largely be eliminated and the remaining member-state procedures greatly simplified. Customs measures (like immigration, antiterrorism, drug enforcement, and other controls) would be applied at the EC's external borders, and traffic between member states would flow unimpeded unless immediate and specific security concerns warrant stopping a person or shipment The abolition of most formalities at intra-EC borders would _pertain to products of member states and to non-EC products in free circulation in the EC. Reduced delays at customs checkpoints and standardized customs documents would decrease markedly the costs of shipping goods. Agreement on all of the proposed customs directives has not yet been reached, for a variety of reasons. To date no consensus exists on necessary tax measures (es y the level and administration of va ue-added taxes), and member states fear relinquishing most authority to control the admission of goods (including existing national quantitative restraints). The customs directives would be expected to facilitate trade and travel, and to benefit both EC and third-country firms, whether established in the EC or located outside it

Second, directives mandating mutual recognition of professional qualifications of EC nationals in member states other than their own would help achieve the EEC Treaty's grant of the right of free movement. Each member state would be required to accept educational credentials, diplomas, certificates, and professional **and vocational** licenses and permits of all member states. Each would retain power to regulate such persons' practice of their trades and professions on the same terms as their own nationals **and to require proof** of self-sufficiency. Restrictions on entry and residence would be generally eliminated as to such EC nationals, their families, **and their servants. In addition, ongoing EC work on harmonizing professional qualifications would continue and be expanded to other trades and professions. Because these measures afford rights only to EC nationals (and perhaps to resident foreign nationals who have obtained a qualification from a member-state institution or body), they are expected to have little effect on U.S. interests. The directives would probably help third-country firms in the EC in hiring and transferring EC nationals in their employ.**

Last, directives to vest in EC institutions considerable authority to regulate workplace health and safety are part of the "social dimension" of internal integration. These measures would apply to almost all places of work in the EC, including those owned or operated by third-country persons and governments (except embassies). As a result, the EC will be able to require employers to provide safety devices wherever needed, train workers in safe procedures, ban the use of certain hazardous substances, and otherwise maintain adequate conditions of work. Member states would be responsible for enforcing EC standards and could be held accountable legislatively and judicially, by private action. U.S. entities -operating in the EC would be subject to these new controls and could be required to make modifications in their operations and equipment; **however, it is believed that many such entities already comply with the proposed EC standards.**

Possible Effects

Considered alone, the customs dirertives seem trade neutral and do not discriminate between EC and foreign suppliers. No diversion of exports to the U.S. market is probable, and U.S. investment in the EC is not likely to change in response. All firms, particularly U.S. subsidiaries established in the EC and smaller firms, will obtain greater flexibility and cost savings, and further rationalization of production and sourcing may result However, the operation of other EC trade measures outside the integration process may negate these benefits.

Developments During 1989

As was the case during 1988, recent developments in the area of customs controls will be discussed in three categories. Under the first, on free movement of goods, some pre-1989 proposals were adopted by the Council and are now being implemented by the member states, and several new proposals have been presented by the EC

Commission. The second category, on free movement of persons and recognition of professional qualifications, has seen considerable activity-at least in part because of the added emphasis on the "social dimension" of integration. The third category, on protection of workers, has likewise drawn much attention by introducing measures establishing general guarantees of workplace health and safety. Many of these directives would expand the EC institutions' authority to regulate conditions of work by requiring member-state action on behalf of workers. Brief mention will be made of member-state efforts to implement those directives adopted at the EC level in all three categories.

It should be recollected again, as stated earlier, that the directives and related actions discussed herein cannot be completely understood without consideration of other aspects of the integration process. Moreover, if viewed outside the broader context of all EC and member-state activities and policies, a review of these directives does not supply a full perspective on the infra-EC trade or the U.S.-EC trading relationship.

Free Movement of Goods

Background

The EC Commission and Council have continued their efforts to standardize customs documentation and procedures throughout the EC and to eliminate frontier formalities among the member states. Their broad goal, established even before the adoption of the White Paper outlining the measures needed to achieve integration, of shifting the application of controls to the EC's external boundaries requires the member states to adopt such similar laws and regulations in numerous areas of concern that border procedures will be unnecessary.[1] Not only must products of the member states be able to move freely throughout the EC but also those of other countries, with minimal or no delays and documentation. In addition, changes in existing EC law have been enacted or proposed to give full effect to the internal market,[2] and agreements and relationships with other countries are being adjusted.[3]

The principal obstacle to the abolition of boundary checks remains the absence of harmonization of taxes, especially the value-added tax-upon which the member states rely considerably for revenues.[4] However, completion of the White Paper program in other areas such as standards is also a necessary prerequisite for the acceptance and implementation of all border measures. In addition, the member states must be convinced that they will not lose significant sources of the information now obtained by customs officers on the movement of goods, persons, and money. The exchange of accurate and current information will be an important element in operating in the single market.

While progress has been made, notably with the 1988 implementation of the Single Administrative Documents much remains to be done. The Council has asked that each member state appoint a single person to responsible for coordinating matters relating to the complete abolition by 1993 of all checks on individuals, and of nearly all formalities relating to goods.e Despite the adoption of measures designed to reduce formalities during the interim period (by having one border check at intra-EC frontiers rather than two), border crossings still present difficulties at some checkpoints?

Anticipated Changes

Measures Adopted

Several measures were adopted during 1989 to further the objectives outlined above, and still

[1] For example, efforts to coordinate member-state measures to combat drug trafficking have been under way for some time, with zpr se tatives of the 12 countries meeting on Jan. 11, 1990. T<iis task force is charged with developing an action plan for dealing with all aspects of the problem, from introducing substitute crops abroad to tightening border controls to regulating money laundering.

[2] For example, the Single European Act amended art. 28 of the EEC Treaty to grant a power of initiative, with respect to autonomous customs duty suspensions, to the EC Commission and to permit the Council to act on these proposals by a qualified majority. Despite this change, effective in mid-1987, the EC Commission lacked criteria for the exercise of this authority and therefore had not exercised it. The member states individually approved requests for suspensions of duties under the integrated Community Tariff, and various classes of goods (enteredd into the appropriate member state) could enter into free circulation free of duty. Thus, a proposal designated

[2] _ Continued
Com(89) 384 final was presented by the EC Commission to set procedures and establish criteria for suspensions—chiefly that the raw material, semifinished article, or component (or less frequently, finished goods) not be available in any member state or fall within several specified categories. These criteria have been described as restrictive, favoring EC-based manufacturing, and potentially more difficult to establish. Some U.S. private sector parties would reportedly prefer global duty reductions under GATT auspices to the uncertainty of this process. USITC staff discussions with European trade association representatives, January 1990.

[3] For example, the EC and the EFTA countries continue to adjust their bilateral and multilateral agreements. Differences of views continue to complicate efforts toward negotiation of a European Economic Space. Ina Dec. 20 document, the EC and Switzerland agreed to relax customs controls between their territories. See European *Report* No. 1551, Dec. 23, 1989. p. 3-External Relations. Work continues on an agreement governing trading relations between the EC and Andorra (p. 6 of same issue). In another part of the world, negotiations have been launched toward an EC-Gulf States free-trade agreement (p. 9 of same issue).

[4] A discussion of the harmonization effort may be found in the chapters on taxation in this report and in the initial report in this study.

[5] See "Answer to Written Question No. 2507/87 Given by Lord Cockfield on Behalf *0f* the EC Commission on July 11, 1988," *Official Journal of the European Communities* No. C 195 Ouly 31, 1989), p. 7.

[6] "Programme of the EEC] Commission for 1989; *Bulletin of the European Communities,* Supplement 289, p. 14.

[7] Many of the proposals needed to achieve formality-free crossings (as discussed in the initial report in this study) have not been adopted. See "Answer to Written Question No. 1360/88 Given by Mrs. Scrivener on Behalf of the EC Commission on March 15, 1989," 01 No. C 262 (Oct. 10, 1989), p.11.

others were presented to the Council by the EC Commission. One such pronouncement was Council Regulation 1292/89 of May 3, 1989,[9] on arrangements for intra-Community movements of goods sent temporarily into one or more member states. The regulation made necessary amendments in the original EC law on this subject, Council Regulation 3/84,[9] an experimental (3-year) regulation under which particular goods were afforded tax exemptions on identical terms by all member states when temporarily imported. Stich goods were issued Community carnets to ensure that for 12 months no taxes would be charged when the goods moved through the EC. The new measure broadened the scope of the earlier regulation to encompass virtually all goods, to extend the time period allowed for tax-free treatment, to permit the goods to cross non-EC countries (needed to allow land transport to Greece and in some other instances), to exempt from taxation spare carried across frontiers by repairmen and works art temporarily moved through the EC by authors or agents, and to create a "Community movement card." The card would reflect immediately the status of goods and indicate their coverage by the regulation.[19] The regulation was made effective July 1, 1989.

On December 21, 1989, the Council adopted Regulation 4046/89, on the security to be given to ensure payment of a customs debt." This measure is intended to standardize the types and levels of security that customs officials in the member states may require from importers who have incurred or may incur customs debts, and to establish that public authorities should not be compelled to post security. The regulation provides that the security must be given by the person incurring the debt, unless customs officials approve a third party to do so. The deposit is preferably to be made in cash. Where mandatory under customs regulations, the deposit must equal the amount of the debt (actual or estimated), and where optional it should not exceed the amount of the debt Third-party guarantors must reside within the EC and be approved by the customs authority of the member state where security is to be given. Release procedures are also set forth, and the regulation is effective as of January 1, 1991.

On the same day the Council adopted a common position on a proposal fora related regulation,[12] and beginning of 1%1 Under the proposal as published, the person last in possession of the goods, or the person who used or consumed the goods (if that has occurred), would be liable for customs debts before persons who had legal title or could otherwise be completed basic work on the text therefor. The regulation would establish liability for payment of customs debts as to goods in customs warehouses and duty-free zones, and would take into account goods used or consumed in these zones. Versions of the proposal have been before the Council since the made subject to legal process. The regulation, if adopted, would apply as of the effective date of Regulation 2504/88 of July 25, 1988, on free warehouses and free zones.'[13]

Another measure, Council Directive 89/604 of November 23, 1989,[14] likewise amended a previously adopted directive's regulating tax exemptions applicable to permanent imports from a Member State of the personal property (noncommercial goods) of individuals. The original directive and several proposed amendments thereof differentiated among classes of goods to grant exemptions based upon the claimant's use in his previous member state of residence. By contrast, the new measure treats alike all goods used by the claimant in that member state. The directive raises the ceiling for exemptions on some claimi therefor and provides that, as of January 1, 1993, member state nationals will receive blanket exemptions with no limits on all personal property taken to other member states of residence.

Council Directive 89/617,[16] adopted on November 27, 1989, established new deadlines for member-state implementation of legislation concerning units of measurement It amended a 1980 Council Directive[17] that had set time limits for the period during which continued use of imperial units of measurement would be legally permissible. During the specified time periods, the member states had to allow the use of such units within their territories. Thus, goods packaged and labelled in terms of such units (especially goods from the United Kingdom) had to be freely accepted. Under the 1989 measure, the member states are afforded the authority to establish the applicable time limits to pertain to some imperial units and their uses. The directive also extended the time limits set for other units of measurement. Under article 2, the member states are obliged to comply with the terms of the Directive within 24 montls of the notification date (November 30, 1989).

Finally, on April 28, 1989, the EC Commission adopted a regulation dealing with the Community

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• *01* No. L 130 (May 1Z 1989), p. 1.

• *01* No. L 2 (Jan. 4, 1984), p. 1.

'• See the opinion of the Economic and Social Committee set forth in *Bulletin of the Econank and Social Consultative Assanbly,* No. 3/1989, pp. 12-14.

" *01* No. L 388 (Dec. 30, 1989), p. *24.* The EC Commission's proposal was designated as Corit(8 590 final; the common position of the Council and amended text by the European Parliament appeared in *01* No. C 291 (Nov.20, 1989), p. 49.

[12] *Amending Regulation in 1031/88* determining the persons liable for payment of a customs debt, final text not yet published;proposal published as Com(89) 214, *01* No. C 142 (June 8,19!39), p. 5; common position adopted.

01 No. L *225* (Aug. 15, 1988}sjp. 8.

'• *01* No. L 348 (Nov. 29, 1989 , p. 28.

[15] *Council Directive 83/183, Of* o. L 105 (Apr. Z1, 1983), p. 64.

" *Amending Directive 80/181* on the approximation of the laws of the member states relating to units of measurement, *Of* No. L 357 (Dec. 7, 1989), p. 28.

01 No. L 39 (Feb., 15, 1980), p. 40.

transit procedure and the use of the Single Administrative Document [18] A related regulation was adopted on June 19, 1989.' [19]

New Initiatives

The EC Commission also presented several proposals to the Council, along with a reexamined proposal for the abolition of exit formalities at internal frontiers. In the latter, designated as COM(88) 831 fina1,[20] clarifying language concerning the duties of officials at the point of entry (pending the abolition of controls) is added, along with detailed information-sharing criteria to be observed by the member states. The proposal would direct such officials at the customs point of entry to return any goods found to have irregularities of documentation or labelling, rather than to attempt to deal with the goods under the laws of the other member state concerned.

One new proposal would abolish the existing requirement for presentation of a transit advice note 2t When goods are transported across the EC, such notes must now be presented to border officials at each point of entry. According to one commentator, over 10 million such forms are filed each year.[22] These notes are chiefly intended to prevent diversion in transit, to ensure that the proper member state will receive tax revenues from each shipment If adopted, the regulation would require presentation of an advice note only to the first member state of entry and to the ultimate member state of entry. It would also establish legal presumptions concerning the situs of any irregularities occurring as to the goods. These presumptions would make the member state of departure or the last member state where an advice note is presented the situs of such irregularities as a matter of law. The measure would also permit the imposition in that situs country of the highest rates of duty and taxes allowed. Spain and Portugal would be afforded derogations during their transition periods.

Other proposals cover means of transport temporarily imported into a member state,[23] the harmonization of procedures for the release of goods for free circulation ,[24] the progressive increase of tax-paid allowances in intra-EC travel 2[5] and the maximum permitted blood alcohol concentration for vehicle drivers.[26] Of greater interest, however, are a set of documents relating to the new method of collecting and sharing trade statistics,[27] which are required not only for purposes of ascertaining imports and exports and balances of trade and payments, but also for verifying tax collections and identifying transport and storage patterns. Non-EC goods in free circulation would also be covered by the new statistical program.[23]

Finally, an amended proposal for a Council directive on control of the acquisition and possession of weapons[29] is of interest as an exercise in Community-wide policy development in an area previously in the purview of the member states, but now being standardized due to the removal of

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son 1159/89 Amending Regulation 1062/87 of March 27,1987; ion 2855/85_ September 18, 1985; and Regulation 2793/86 of y 22, *1986; Of* No. L. 119 (Apr. 29, 1969).

" Regulation 2011/89, OJ No. L 200 July 13, 1989). The mulation simplifies formalities on transit between EC and EFTA countries.

as Of No. C 29 (Feb. 4, 1989), p. 8.

[21] *Proposal for Council Regulation* Com(89) 331 final, *Of* No. C 245 (Sept 26, 1989), co. 4., adopted as *Council Regulation 474/90* on Feb. 22, 1990, *OJNo.* L 51 (Feb. *V,* 1990), p.I For further discussion, see the ch. on 'T

Target 1992, Directorate-General formation, Communication and Culture, No. 1-1990.

[33] See Com(88) 297 final, *Of* No. C 184 (July 14, 1988), p. 9.

U Com(89) 385 final, *Of* No. C 235 (Sept. 13, 1989), p. 16. Under the regulation, if adopted, a simplified declaration procedure would apply at the point goods enter the EC, and a domiciliation procedure would permit customs officials to check goods at sites chosen by them (other than points of entry) or by importers having oat records of cooperation, including the importers' premises. The rapporteur on behalf of the European Parliament has suggested that the regulation also provide an exemption for low-value goods and goods carried by tourists. *European Report,* No. 1555 (Jan. 17, 1990).

"Proposal for a Council Directive Amending Directive 69/169, Com(89) 331 final, 01 No. C 245 (Sept. 26, 1%9), p. 5.

Com(89) 640 final, amending Com(88) 707 final, *01* No. C 25 (Jan. 31, 1989). The maximum permitted concentration, as of Jan. 1, 1991, would be 0.50 milligram per milliliter.

[37] See *Proposal fora Council Regulation on the Statistics Relating to the Trading of Goods Between Member States,* Com(88) 810 final, *Of* No. C 84 (Apr. 5, 1989), p. 4; *Council Resolution of June 19, 1989, on the Implementation of a Plan of Priority Actions in the Field of Statistical Information: Statistical Programme of the European Communities (1989 to 1992), Of* No. C 161 (June 28, 1989), p.1; *Resolution of the ECSC Consultative Committee Concerning Trade Statistics Between the Member States After 1992, Of* No. C 257 (Oct. 10, 1989), p. 3; *Council Resolution of November 14, 1989, 01* No. C 297 (Nov. 26, 1989), p. 2; and *Opinion on Proposal forRegulation q" the Economic and Social Committee,* Of No. C 19 tJune 26, 1%9), p. 16. An on-line automated system known as Intrastat would be established to compile statistics collected by all entities except private individuals on forms established by the EC Commission. Failures to supply information would be punishable by the member states. Confidentiality of statistics reported by the European Atomic Energy Community would be ensured under a proposal for a Council Regulation (EEC/Euratom) on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, *01* No. C 86 (April 7, 1989), p. 12; amended and adopted by the European Parliament, *01* No. C 291 (Nov. 20, 1989), E 25.

One ongoing EC effort is the development of CADDIA (Cooperation in the Automation of Data and Documentation for Imports, Exports and Agriculture), to computerize customs clearances. Another is refining the TEDIS (trade electronic data interchangesystem) network, created by *Council Decision 87/499.* The United Kingdom *has* adopted still more automated schemes, including the so-called Fast Lane and its Local Import Control (UC)eration for full-load shippers and the Direct Trader Input (DTI) system, the last one comparable to the Automated Broker Interface/Automated Commercial System of the U.S. Customs Service.

-- Com(89) 446 final, *Of* No. C 299 (Nov. 28, 1989), p. 6.

frontier checks. The directive would set up four categories of weapons/firearms (illegal firearms, those requiring permits, those requiring declarations, and those freely salable), provide criteria for their ,ossession and transport, dictate rules for identifying the place of residence of individuals, an create a "European firearms certificate" to be issued to persons authorized to carry weapons across frontiers into other member states and to be recognized in the host state as a permit to have and use the weapons described therein. A detailed scheme for sharing information on applicants for and possessors of such certificates, along with other persons having or prohibited from having weapons, would be established among the member states. Dealers and firearms owners would be forbidden from transferring most firearms to residents of other member states. Nor could ammunition be provided to anyone but an authorized holder of a firearm.

Possible Effects

These measures, if implemented, would achieve greater simplification and standardization of customs procedures and formalities in the EC. Most of them apply directly only to EC nationals and firms and to internal trade, but under EC customs laws imported goods in free circulation and any deemed to originate in the EC would receive the same treatment There is no evidence that the directives discussed in this chapter are likely to have a discriminatory impact on the United States or other third countries.

No change in U.S. imports or exports can be quantified based on an examination of these measures, though export opportunities may grow and business operating conditions for entities operating in the EC (especially small- and medium-sized firms) may improve. These positive effects would result from lower customs documentation and compliance costs, fewer border delays, and :pester flexibility in sourcing and shipping goods. To the extent that EC firms achieve cost savings and reduce delays in shipping goods (given their existing advantage of geographic proximity to EC purchasers), they may improve their competitive position relative to U.S. and other foreign firms and exporters.

If these measures are viewed in conjunction with others in the White Paper, and with directives not considered to be part of the integration program, it is possible that U.S. investment in the EC—by firms not currently operating in the EC — may increase to permit such firms to take full advantage of the benefits of integration. Taken by themselves, however, the directives discussed in this chapter do not seem likely to be determinative of plant situs in the business decision-making process. Commercial agents, service personnel, and other persons moving through the EC in the normal course of doing business (including those of foreign nationality) should obtain benefits from the tax exemption measures described above as well as from the other expedited customs procedures being implemented. U.S. interests may benefit considerably from the new Intrastat system if made fully operative. The standardized and elaborate data to be collected would be of value to all entities interested in trading with or in the EC 30

11.S. Industry Response

Although no specific comments regarding the directives discussed in this chapter have been received, general industry response to the EC initiatives to eliminate border controls and to simplify and standardize customs procedures has been positive. The directives already adopted, and in smaller numbers already implemented, are of benefit to all firms and persons engaged in trade across internal EC frontiers, including all non-EC firms. The proposed measures discussed in this chapter would further standardize frontier formalities and provide a basis for improved gathering of trade statistics, both of assistance in business_planning, and available sources indicate no significant problems are presented thereby. In particular, firms should benefit by the proposal to clarify procedures for the entry of goods into free circulation. Small- and medium-sized firms, which cannot easily establish multiple facilities in the member states, should benefit significantly from the reduction of documentation, inspections, delays, and resulting costs.

The note of caution set forth in the first report in this investigation, to the effect that other measures regulating aspects of trade may have a greater — and in some cases negative—impact than those relating to integration, continues to apply. One issue frequently cited as having an adverse effect on in rts of some products, and a potential adverse ec on trade in general, is the operation and amendment of rules of origin and of local content criteria (see chapter 14).

Free Movement of Persons

Background

As noted earlier, this category encompasses several subjects of interest to ordinary persons livingin the EC, both to help them attain the goals of the EEC Treaty and to comprise an aspect of the "social dimension"[31] of integration, a major area of

▪ The EC institutions' desire to improve both the general business environment and EC firms' competitive position—especially for small and medium-sized enterprises—is evidenced in many documents. See, for example, Council *Decision 89/490 of July 28, 1989 (01* No. L 239 (Aug. 16, 1989), p. 33) and Council Resolution *of November 14, 1989 on Internal Trade in the Context of the Internal Marlcet (Of* No. L 165 (June 23, 1989), p. *24).*

• See discussion of this topic in the third part of this chapter and in ch. 18 of this report

effort by the European Parliament and other EC institutions. These subjects include freedom ofmovement, employment, and residence;[32] the harmonization of social benefits and pertinent eligibility and collection criteria; freedom of establishment in all member states for persons wishing to provide services; the improvement and harmonization of training programs for the professions and vocations;[33] mutual recognition of professional and vocational qualifications;[34] and the enhancement of education and training opportunities for all EC nationals.[35]

The increased level of interest and effort in these areas is not solely a result of the White Paper and its impetus toward economic integration. On the contrary, some directives in this category amend one or more existing directives dating back to the early 1970s, and the basis for action in this general area is the EEC Treaty itself.[38] However, despite difficulties and fears surrounding the idea of free movement of persons,[37] new principles have been pout forward by the EC Commission, bringing into effect many changes in areas previously subject to disputes and delays.[38] The forces encouraging economic integration may certainly be said to be accompanied by the recognition that social change and integration are also needed.

Anticipated Changes

Measures Adopted

The first two measures in this category adopted during 1989 are Council Regulations[38] dealing with the application of social security programs of the member states to workers, self-employed persons, and members of their families. These programs provide retirement, sickness/disability, unemployment, and survivor benefits to eligible persons. The levels of benefits and criteria for eligibility differ through the EC, and the original 1971 and 1972 measures aimed at coordinating the programs rather than harmonizing them.[48] The regulations attempt to deal with situations arising from amendments in member-state legislation, benefits for Rhine River boatmen, "kick-in" clause and reference period (minimum periods of work needed to qualify) differentials among member states,

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as These questions have been the subject of discussion and disagreement for many years. While the idea of "accrediting" skilled workers and professionals to expand their mobility in the EC is reported to be widely favored by European and U.S. firms, these interests have been viewed as less supportive of free movement for unskilled workers—an objective [along with immigration and guest worker programs) favored by developing countries—because of potential adverse effects on labor unions. USITC staff discussions with staff of international organization, January 1990.

" Efforts focus on the production and use of high-technology products, the encouragement of entrepreneurship, and the expansion of opportunities and training for the young (matching training with the needs of employers). See *The Role of the Social Partners* in *Vocational Training,* published by the European Centre for the Development of Vocational Training (CEDEFOP), No. 8/89 (December 1989) and *The EC and the Labour Market Oriented Vocational Trainitigrolkies of the European Regions:Emn#es and Training,* also by CEDEFOP, No. 3/89 (November 1%9).

" Under this concept, educational and training credentials for a professional person licensed or certified as qualified by one state must be accepted by other member states and, if appropriate experience levels have been shown when required by the host, the person must be treated on the same basis as the host's professionals—even when the person does not speak the host's language. 'EC. Progresses on Mutual Acceptance of Diplomas, 1992: *Europe Without Frontiers,* No. 294 (March 19N), p. 31.

[211] Among the latest actions in this category is Council *Decision of December 14, 1989 Amending* Decision *87/327 Adopting the European Community Action Scheme for the Mobility of University Students (Erasmus), 01* No. I. 395 (Dec. 30, 1%9), p. 23. The decision provides authorization for grants to university students in particular curricula (that is, not science, research, technological development, or other areas covered by separate EC programs), extending the original 1987 Erasmus from 1990 to 1994. Annexes provide for the establishment and operation of a European UniversityNetwork, set measures to promote mobility through academic recognition of diplomas, and provide measures to encourage student mobility, in addition to tklepants. Other programs along the same lines include LINGUA(fl.cforeign language training), Youth for Europe, and COMET" (for technical training). In a more recent announcement, the EC proposed a European Training Foundation (ETF) and a Trans-European Mobility Programme for University Studies (TEMPUS) to permit educational cooperation and the movement of teachers and students between the EC and the countries of Central and Eastern Euro2e. The ETF would help the training systems of Poland and Hungary adapt to new market conditions and career opportunities. See EC Commission Information Memo No. P-3 Jan. 25, 1990.

[a1] See title 3 of the EEC Treaty, arts. 48-66.

[37] This issue has apparently been a difficult one for (see Eurobrief for Jan. 12, 1990, vol. 2, No. 9, pp. 110-11 , despite a Ministerial declaration that the greatest ' deee of free movement for persons, , and capital is desired. It may also have contributed to the delay in signing of the new Schengen Convention among France, West Germany, and Benelux; concerns as to the continued movement of persons from East to West Germany and their legal status (for *visa* and residence authorization purposes) under the agree t had arisen. See *Europe,* No. 5155 (Dec. 16, 1989), p. 17. The EC Commission's *Programme of the Commission for* 1990 (pp. 1-2) cites free movement of persons as a priority area and seeks speedy &movel of conventions on asylum and the crossing of external EC frontiers.

[38] It should be noted that, in the area of mutual recognition/approximation of training curricula and professional standards, the EC Commission has proposed measures only when it has achieved a consensus within the particular profession as to the content of the relevant directive. In the absence of such a consensus, the general directive providing. mutual recognition of qualifications of persons having taken education and training of at least 3 years duration would apply. 'Answer to Written Question No. 2104/88 Given by Mr. Bannn on March 1, 1989 on Behalf of the EC Commission,' *01* No. C 157 (June 26, 1989), p. 38. The EC Commission's work since 1985 has focused on achieving recognition first. Prior to 1986 directives to approximate the laws of member states had been agreed to for only seven professions.

" *Council Regulation 2332/89 of July 18, 1989, Amending Regulation 108/71 on the Applkation of Social* Security *Schemes to Employed Persons, to Self-employed Persons and to Members Their Families Moving Within the Community and Regulation 57 Laying Down the Procedure for Implementing Regul* ation *1408/71, 01 No.* L 224 (Aug. 8, 1989), P 1, and *Council* Regulation *3427/89 of October 30, 1989* (having the same title as the July measure), *01* No. L 331 (Nov. 16, 1989), p. 1. *Regulation 14001* may be found at *01* No. L 149 (July 5, 1971), p. 2,, and *Regulation* 574/72 at *01* No. L 74 (Mar. 27, 1r12), p. 1.

[40] See 'Answer to Written Question No. 1698/88 Given by Mrs. Papandreou on Behalf of the EC Commission on February 10,1989," *01* No. C 280 (Nov. 6, 1989), p. 10. Her statement makes clear that member states retain the bask power to establish, delimit, and regulate such programs. Problems regarding workers and other persons who migrate through the EC have been further complicated by the enlargements of the EC in 1973, 1981, and 1986.

differing occupational disease benefits, Court of Justice rulings (such as Case 377/85 (Burchell) on EC rules against overlapping benefits), family benefit problems created by the rights of residence being provided in other directives, privacy problems for personal information, omissions in previous EC law, broader benefits in some member states, and other issues. These measures provide general rules to be applied throughout the EC in these situations, so that member states may deal with individual cases more consistently and easily and litigation may be reduced.[41] The July regulation specifies numerous effective dates for its varied changes in law, and the second regulation (except for one clause effective May 1, 1990) is effective as of January 15, 1986.

Two directives[42] adopted during 1989 provide a framework for ensuring that medical professionals in several categories may move freely to, provide services in, and establish themselves in any member state based on the mutual recognition of their educational and professional credentials. The directives change numerous specific criteria of the member states, provide explicitly that qualifications of these professionals shall be mutually recognized, extend that principle to holders of former qualifications no longer awarded and to certain other persons, and essentially provide for nondiscriminatory or "national" treatment to EC medical professionals from outside the host country, including in situations where a member state changes individual qualifications for its own nationals. The October 10 directive also deals in very detailed terms with the coordination of nurses' training in the member states.[43] The October 30 document does likewise with respect to veterinary surgeons and midwives. The other enumerated professions were treated in earlier directives.[44]

A similar Council directive of June 21, 1989,[45] designated as 89/438, will cover truck and bus drivers, to ensure mutual recognition of qualifications and at the same time the good repute, financial standing, and professional competence of each driver. The member states will continue to administer written tests but may exempt drivers showing sufficient (5 years) practicale x ence and a good record. The good-repute and financial standing requirements are made uniform under this directive. The measure includes an information-sharing requirement, especially important where an individual's license applications have been rejected or revoked by a member state. It also extends the benefits of the directive to transport operators who received certificates of qualification following training prior to January 1, 1990, the effective date of the directive.

New Initiatives

Proposals presented by the EC Commission during 1989 suggested changes to assure the right of residence to EC nationals not covered by existing EC law,[48] free movement of workers and their

[41] Many cases are submitted annually to the European Court of Justice on social benefit questions; for an example, see *Laborero v. Offre de Securite Sociak d'Outre-Mer; Sabato v. Offre de Securite Societe d'Outre-Mer* (Joined Cases 82/86 and 1MIU) [1989) 2 CEC 205 [holding that *Regulation 1408/71* extends its principles to national legislation on social security]. Because of the costs the member states must incur to comply with EC-wide social benefit rules, the cases often present questions concerning the EC's authority to adopt the measures at issue, and challenge the articles of the EEC Treaty put forth as authority therefor. The factual and evidentiary matters involved are equally complex.

[42] *Council Directive 89/595 of October 10, 1989, Amending Directive* 77/452 *Concerning the Mutual Recognition of Diplomas, CertOcates and Other Evidence of the Formal Qualifications of Nurses Responsilikfor General* Care, *Including Measures to Facilitate the Effective Exercise of the right of establishment and frasdom to provide services, and Amending Directive 77/453 Concerning the Coordination of Provisions Laid Down by Imv, Regulation or Administrative Action in Respect of the Activities of Nurses Responsible for General Care,* Of No. L 341 (Nov. 23, 1%9), p. 30; and Council *Directive 89/594 of October* 30, *1989, Amending Directives* 75/362, 77/452, *78/686, 78/1026 and 80/154 Relating to the Mutual Recognition of Diplomas, Certificates and Other Evidence of Formal Qualifications as Doctors, Nurses Responsible for General Care, Dental Practitioners, Veterinary Surgeons and Midwives, together with Directives 75/363, 78/1027 and 80/155 Concerning the Coordination of Provisions Laid Down by Law, Regulation or Administrative Action Relating to the Activities o Doctors, Veterinary Surgeons and Midwives,* Of No. L 34 (Nov. 23, 1989), p. 19. Citations for the enumerated directives being amended are jarovided in the current measures.

[42] The measure defines 'theoretical' and 'clinical* instruction as these terms apply to nurses in training and sets limits on the proportions of each in the total curricula. It directs the member states to implement its changes by Oct. 13, 1991.

" The directive lists the qualifying credentials in each member state and the med'cal specialties recognized in each, makes changes in provisions relating to training courses, deals with problems of mutual recognition for each profession, and sets forth protections for holders of the credentials being stricken from prior directives in favor of the above new listing, It has several effective dates for medical specialty changes, and requires member-state implementation of the directive as a whole by May 8, 1991.

.us Amending *Directive 74/561* on admission to the occupation of road haulage operator in national and international transport operations, *Directive* 74/562 on admission to the occupation of road passenger transport operator in national and International transport operations and *Directive* 77/796 aiming at mutual recognition *of* diplomas, certificates, and other evidence of formal qualifications for goods haulage operators and road passenger transport operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment *01* No. L 212 (July 22, 1989), p. 101.

" Agreement has been reached at the Council level on the content of three directives dealing with the right of residence for students, retired people, and persons who are not economically active, with some concern as to the legal basis under the EEC Treaty for the measures. Press Release 11045189 (Presse 255),1382d Council meeting, General Secretariat of the EC Council; General News Release, Europe/ Internationale dInformation pour la Presse Lce . 23, 1989). The December 1989 Internal Market Council agreed (subject to approval of the revisions by the European Parliament) to an expanded right of residence for any EC national, effective July 1, 199Z upon a showing that he or she is covered by health insurance and has sufficient resources (including benefits from other member states) to avoid claims against social security systems of the host; students would no longer be obliged to prove they are financially self-supporting. The revised Is are Com(89) 675 final and Corn(89) 275 final Foriginally published in Of No. C 191 (Jul)? 28, 1989), p. 5). The latter would create a "European Communities residence it" valid for 5 years and renewable in most circumstances; EC and non-EC-origin family members could obtain such permits. The residence issue has been controversial given the cost of social assistance programs, differing benefits in the member states, housing shortages, geographic patterns of unemployment, and varying labor supplies.

families,[47] adaptation of vocational training to technological change,[49] and the second general system for the recognition of professional education and training.[49] Other measures have been presented in the context of the Action Programme Relating to the Implementation of the Community Charter of Basic Social Rights for Workers, which in fact also covers issues of interest to persons who are at present not economically active.[50]

The documents relating to freedom of movement and right of residence-which have been debated for over a decade-are significant in that they would grant the right of movement and residence to family members and other dependents of workers, not just to workers themselves, and to other persons who are economically inactive. Family members moving with workers would also receive a residence card from and be eligible for employment in the host country, and the card could not be demanded at border checkpoints. Other benefits would also be extended, such as vocational and adaptive training, "national treatment" in certain tax questions, and the right to continue to live and work in the host member state after thedeath of the worker whose employment originally qualified the family to move.

"As noted above, agreement has been reached at the Council (though foul approval awaits Parliamentary approval) on proposed Council Regulation Com(88) 815 final [this designation was assigned to two documents, one amending Regulation 1612/68 on freedom of movement for workers (01 No. C 100 (Apr. 21, 1989), p. 6) and one amending Directive 6W630 on the abolition of restrictions on movement and residence within the EC for workers and their families (01 No. C 100 (Apr. 21, 1989), p. 8). See also the opinion of the Economic and Social Committee on these two proposals, 01 No. C 159 (June 26, 1989), p. 65. That opinion notes that the work to achieve these objectives has already gone on for 20 years, and that unifying principles and equal treatment should be assured.

P for Council Decision, designated as Com(89) 355 final, 01 o. C 242 (Sept. 22, 1989), p. 7, implementing EUROTECNET II, a program of business-scientific-university cooperation to ensure a well-trained worldorce in light of continuing technological change. The scheme is a continuation of an earlier one is related to other cooperative programs (BRITE, ESPRIT, SCIENCE, SPRINT, DELTA, etc.). In addition, a Community Action Programme was proposed by the EC Commission in November 1989, as Com(89) 567 final, 01 No. C 12 ()an. 18, 1990), p. 16.

[47] Com(89) 372 final, 01 No. C 263 (Oct. 16, 1989), p. 1. The first general system for the recognition of higher education diplomas was created by Directive 89/48, examined in proposed form in the first report of this study.

[50] See Communication from the [EC) Commission, Com(89) 568 final of Nov. 29, 1989 (published as a separate document). Among the suggestions are a revision to the existing employment vacancy system (Regulation 1612/68 and the SEDOC scheme, mentioned in the initial report in this study); a memorandum on the social integration of migrants from nonmember countries; numerous documents relating to social security and assistance schemes; a proposal on working conditions for workers from another member state performing services in the host country, focusing on subcontracting activities; a communication on the living and working conditions of EC nationals in frontier areas (who may seek to take advantage of services available across frontiers); instruments on worker participation and the equal treatment of men and women; efforts to integrate and assist the disabled; and measures relating to vocational training. Some of these are discussed in this chapter; others are highlighted in pt. 3 of this report in the analysis of the social dimension of integration.

The proposal on the second general system of recognition of qualifications would broaden the scope of recognition to persons completing secondary education and/or postsecondary education of less than 3 years' duration. The first system extended this principle only to persons who had completed post-secondary courses of 3 or more years' duration. The EC Commission, in presenting the proposal to the Council, stated in its explanatory memorandum that there was "general agreement" in the European Parliament, in the Economic and Social Committee, and afr cid the heads of state of the member states that om of movement and establishment would only be achieved by widening the class of persons afforded such mutual recognition. Like the first general system, this one would apply only to persons not covered by directives specific to their profession or vocation, or to self-employed persons in professions covered by directives limited only to employed persons. The measure would set out specific testing standards, provide for disciplinary treatment in the host member state, deal with situations where educational criteria or levels differ among member states for a given vocation (or where a member state allows "self-training"), and ensure a liberal reading of the individual's qualifications by the host

Possible Effects

As noted in the first report, the measures in this category apply only to EC nationals and their families, and (in terms of recognition of qualifications) to the very small number of non-EC nationals receiving educational and professional credentials in the member states. Accordingly, although they may afford greater flexibility in hiring and transferring employees for U.S. firms established in the EC, they seem likely to have only an indirect impact on U.S. interests - mainly in terms of relative future competitiveness based on worker training and cooperative programs-and essentially no discernible impact on U.S. imports, exports, or investment

It may be observed that, to the extent national treatment is afforded to non-EC persons (such as foreign lawyers seeking to practice in the EC), these directives do expand opportunities for economic and professional activities in the EC. Other new opportunities, especially in the services sector, may come from EC efforts to harmonize many business practices, such as accounting rules, which are occurring through means other than legislation but are seen as resulting from the terms and objectives of directives in this category.

U.S. Industry Response

As stated above, the directives falling in this category affect EC citizens and entities almost exclusively. As such, there has been little reaction from U.S. industry to these measures (with the exception of various EC efforts to increase the involvement of workers in business decision-making), and no comments to USITC staff have

indicated difficulties with the majority of measures in this category. The directives establishing EC-wide programs for joint research and development, improved vocational training, and greater competitiveness have led some private sector parties to state that, over time, such government-supported efforts could give EC firms an advantage over their U.S. competitors. However, the extent of U.S. operations and ownership in the EC enables many firms (subsidiaries and entities established in the EC) to be involved in these programs.

Protection of Workers

Background

Measures to Encourage Improvements in the Safety and Health (Directives 89/391, 89/654, 89/655, 89/656, (89) 195, and (89) 213) of Workers at Work

In June, 1989, the EC Council adopted a framework directive (89/391) on the introduction of measures to encourage improvements in the safety and health of workers at the workplace.[51] The framework directive lays down general principles for harmonizing workplace safety and health. In article 16 (1) and the annex of the framework directive, the Council states its intention to act upon EC Commission proposals for more specific directives covering: work places; work equipment; personal protective equipment; work with visual display units ("VDUs"); handling of heavy loads; temporary or mobile work site; and fisheries and agriculture.

On November 30, 1989, the Council of Ministers adopted three of the specific directives falling within this framework: Directive 89/654, addressing general minimum safety and health conditions at the workplace (first individual directive);[52] Directive 89/655, addressing the use of work equipment (second individual directive);[53] and Directive 89/656, addressing personal protective equipment (third individual directive).[54] On October 30, 1989, the Social Affairs Council reached a common position on the fourth and fifth individual directives dealing with VDUs and the handling of heavy loads.

The member states are to implement the framework directive, the three adopted individual directives, and the two proposed individual directives by December 31, 1992.

[61] *Council Directive on the Introduction of Measures to Encourage Improvements in the Safety and Health of Workers at Work, 01* No. L 183 (June 29, 1989), p. 1.

"Council *Directive Concerning the Minimum Safely and Health Requirements for the Workplace,* 01 No. L 393 12, 1989), p. I.

" Ibid., p. 13.

" Ibid.,, p. 18.

Measures Related to Risks of Exposure to Biological Agents at Work (Directive (89) 404)

The Council resolution of June 29, 1978, on an action program of the EC on safety and health at works[5] provides for the harmonization of provisions and measures regarding the protection of workers with respect to chemical, physical, and biological agents. The EC Commission proposal for a council directive on the protection of workers from the risks related to exposure to chemical, physical, and biological agents at work was adopted on November 27, 1980, as Council Directive 80/1107.[56] The individual directives adopting limit values under article 8 of this directive made no mention of biological agents at work. The Council resolution of February 27, 1984,[57] expressed the intention to take action based on Council Directive 80/1107, establish common methodologies for the assessment of health risks at the workplace, develop a standard approach for the establishment of exposure limits, and develop preventive and protective measures for substances and processes which may have serious harmful effects on health.

In the EC Commission's 1988 program concerning safety, hygiene, and health at work,[58] the EC Commission noted that it had proposed a directive, [50] establishing the basis for an EC list of exposure limit values for 100 agents, in order to guarantee that exposure of workers to physical factors, biological organisms, and chemical substances is as low as reasonably achievable. The list of occupational exposure limit values did not contain any biological organisms and was not adopted by the EC Council. The program concerning safety, hygiene, and health at work included another proposal for a directive on biological agents and genetic engineering techniques that may present a risk to health.

Measures on Risks Related to Exposure to Carcinogens at Work (Directive (89) 405)

The individual directives adopting limit values under Article 8 of Council Directive 80/1107 show regard for the risks related to exposure to metallic lead and its ionic compounds [50] to asbestos,[51] and to 2-naphthylamine, 4-aminobiphenyl, benzidine, their salts, and 4-nitrodiphenyle[2] at work. The Commission proposed an individual directive on the protection of workers from the risks related to exposure to benzene at work,[63] but agreement has

ati 01 No. C 165 uly 11, 1978), p. 1.

" 01 No. L 322 . 3, 1980), p. 8.

" *01* No. C 67 (Mar. 8, 1984), p. 2.

Com(87) 520; Of No. C 28 (Feb. 3, 1988), p. 5.

" Com(86) 2%; *Of* No. C 164 (July 2, 1986), p. 4.

"Council Directive 82/605, 01 No. L *247* (Aug. 23, 1982), p.12.

*! *Council Directive 83/477, 01* No. L 263 (Sept. 24, 1983), p. 25.

" *Council Directive 88/364; 01* No. L 179 (July 9, 1988), I). 44.

" Com(85) 669, *01* No. C 349 (Dec. 31, 1985), p. 32

not been achieved under the cooperation procedure. The EC Commission proposed a directive,[84] establishing the basis for an EC list of exposure limit values for 100 agents, in order to guarantee that exposure of workers to physical factors, biological organisms, and chemical substances is as low as reasonably achievable. The list of occupational exposure limit values was not adopted by the EC Council.

In the EC Commission's program concerning safety, hygiene, and health at work,[85] the EC Commission noted that the member states have already drawn up lists containing more than 1,000 substances and the European Inventory of Existing Chemical Substances (EINECS) contains more than 100,000 entries.[66] The EC Commission proposed a Council Directive on the protection of workers from the risks related to exposure to carcinogens at work,e[7] as an individual directive under Article 8 of Council Directive 80/1107. Once this proposal is adopted by the Council, the EC Commission will request technical assistance from competent organizations such as the European Committee for Standardization (CEN) and the International Standards Organization.

Anticipated Changes

Measures Adopted and Proposed

Measures to Encourage Improvements in the Safety and Health of Workers at Work

These directives apply to both private and public sectors of activity, with the exception of certain public service activities such as the armed forces or the police. The framework directive requires that employers provide appropriate information and safety training to the employer's own workers as well as workers from outside establishments engaged in work at that employer's workplace. In addition, employers must consult with and allow participation of workers or their representatives in matters regarding safety and health.

The original EC Commission proposals for each of the individual directives noted that Article 118A of the EEC Treaty recommends that worker safety and health directives shall "avoid imposing administrative, financial, and legal constraints which would hold back the creation and development of small and medium-sized undertaldngs."[88] Following the European Parliament's opinion of November 16, 1988, regarding these proposals, the Commission deleted the small business reference from its amended proposals.[89] Prior to Council's adoption of the first, second and third individual directives, however, this reference was reinserted into these directives.

The first individual directive contains minimum workplace standards concerning building structure, electrical installations, emergency exits, fire detection, ventilation, temperature control, lighting, traffic routes, rest rooms, and sanitary equipment Member states must implement this directive by December 31, 1992. Workplaces opened or modified after that date are subject to structural requirements stricter than those imposed on existing workplaces. Workplaces already in use before January 1, 1993, will have 3 years (4 years for Portuguese workplaces) to comply with the directive's requirements.[70]

The second individual directive contains minimum requirements concerning the safety, use, and maintenance of work equipment Member states must implement the directive by December 31, 1992, but employers will have four years after implementation to conform equipment provided to workers prior to that date.[71]

The third individual directive requires employers to provide, free of charge, appropriate personal protective equipment for workplace risks that cannot be avoided or sufficiently limited by engineering controls or work practices. The directive also requires worker training, information, and consultation regarding the risks involved and the use of the protective equipment Protective devices required by the directive include, but are not limited to: earplugs; respirators; helmets; eye goggles; protective gloves; safety shoes; skin ointments; life jackets; fall protection equipment; and fire-resistant clothing.n A supplemental communication from the EC Commission provides information for evaluating, choosing, and using various types of protective equipment.[73]

The proposed fourth individual directive addresses the ergonomic design of VDU workstations.[74] It also provides for worker training and eye examinations. There has been some dispute among the Council members regarding the appropriate scope of the directive. Under the October 1989 common position adopted by 11 member states(the United Kingdom abstaining), the scope is defined to include all potentially dangerous VDUs, which would not include certain equipment such as calculators.[7]s

[84] ComC) 296, *01* No. C 164 (July 2, 1986), p. 4.
asCom 87) 520, *01* NoC 28 (Feb. 3, 1988), p.B.
[66] See a EC Statistical *Office, External Trade Analytical Tables-N1MEXE 1987, vol.* C (Luxembourg, 1988), pp. 224-231, 261-262.
[7] Comr7) 641, OJ No. C 34 (Feb. 8, 1988), p. 9.
s° Com 88) 74, *01* No. C 141 (May 30, 1988), p. 6; Com(88) 75, *01* No. 114 (Apr. 4, 1988), p. 3; Com(88) 76, *01* No. C 161 (rune 6, 1988), p. 1; Com(88) 77, 01 No. C 113 (Apr. 29, 1988), p. 7; and Com(88) 78, *01* No. C 117 (May 4, 1988), p. 8. For further discussion of Art. 118A of the EEC Treaty, see ch. 18 (The Social Dimension) of this report.
[85] Com(89) 85, *01* No. C 106 (Apr. 4, 1989), p. 13; Com(89) 86, 01 No. C 115 (May 8, 1989), p. 34; Com(89) 87, *O1* No. C 115 (May 8, 1989),pr; Com(89) 195, *01* No. C 130 (Apr. 28, 1989), p. 5; and Corn) 213, 01 No. C 129 (May 5, 1989), p. 6.
[70] OJ No. 393 (Dec. 12, 1989), p. 1.
[7]' Ibid., p. 13.
[7]° Ibid., p. 18.
[88] *01* No. C 328 (Dec.1Z 1989), p. 3.
[74] *Amended Proposal for a Council Directive Concerning the Minimum Safety and Health Requirements for Work With Visual Display Units,* Com(89) 195, *01* No. C 130 (May 26, 1989), p. 5.
[715] "Internal Market," *European Report,* No. 1536 (Oct. 31, 1989), p. 7, and *Eurobrief,* vol. 2, No. 5 (Nov. 10, 1989), p. 54.

The proposed fifth directive was intended to provide minimum requirements for the manual handling of heavy loads in order to prevent back injury.[76] By the Council's October 1989 common position, the proposed directive was expanded to cover all difficult loads regardless of weight; the common position further expands upon the proposal by making the directive applicable to all physical risks attendant to load handling."

Measures Related to Risks of Exposure to Biological Agents at Work

The proposed directive requires risk assessment for any activity that is likely to involve exposure to biological agents. The risk would be assessed to allow classification into the four groups of biological agents, to determine the inherent hazard, the risk of exposure, the effectiveness of protective and recuperative measures, the risk of transfer to the community, and the risk of the spread of infection within the EC. Potential or actual exposure to biological agents classified in group 1 with no identifiable health risk to workers would require employers merely to provide on request the results of the assessment to responsible authorities and to workers.

For **other work activities involving exposure to biological agents, employers would be obligated to take the following measures: provide the results of the assessment on request; limit the number of workers exposed; control exposure by appropriate work processes and engineering control measures; provide collective protection measures; provide personal protection measures, where exposure cannot be avoided by other means; apply hygiene measures to prevent accidental release of a biological agent from the workplace; use biohazard signs; and apply emergency procedures to minimize workers' exposure resulting from a serious accident**

The proposed directive further imposes continuing worker information and training programs. Employers would ensure that workers receive appropriate and current information and training concerning health risks from exposure to biological agents, hygiene requirements, and emergency procedures to minimize their exposure resulting from a serious accident On request, employers would provide information to responsible authorities **and workers on the activities involving exposure or potential exposure to biological agents, the number of workers exposed, the name and qualifications of theperson responsible for safety and health at work, the protective and preventive measures taken, and an emergency plan for protection of workers if a loss of physical containment of especially harmful (group 3 or 4) biological agents occurs.**

In activities that involve a conscious decision to work with biological agents, employers would provide the appropriate protective clothing, separate storage places for protective clothing and for street clothes, a well-defined place for protective respiratory equipment, and areas where workers can eat and dnnk without risking contamination by biological agents. Contaminated clothing and equipment would be disinfected, cleaned or, if **necessary, destroyed. Workers who handle biological agents would be provided with skin and eye antiseptics, suitable washing facilities and, if appropriate, showers. Workers would not be charged for the cost of the measures described in this paragraph.**

Employers would keep a record of workers exposed or potentially exposed to group 3 or 4 biological agents for at least 40 years following the end of exposure. Each record could be accessed by the worker to whom it relates and the authority responsible **for health and safety at work. Workers and their representatives could have access to anonymous, collective information compiled from these records.**

Employers would be required to substitute less hazardous or nonhazardous agents for group 3 or 4 biological agents, when technically practical. Suppliers of group 3 or 4 biological agents would ensure the safe Handling, transport, collection, storage, and disposal of such agents in clearly labelled, airtight containers.

Employers would display written instructions at the workplace on the procedure in case of a serious accident, and for work with a group 4 biological agent Serious accidents would be rted immediately to the person responsible for and health at work. Workers and their representatives would be informed as quickly as possible of a serious accident, the cause thereof, and the measures to rectify the situation.

Member states would keep and publish national statistics of illness or death due to exposure to biological agents at work and regularly communicate the statistics to the EC Commission. They would publish current information on occupational diseases caused by biological agents. The necessary laws, regulations, and administrative provisions would be adopted before January 1, 1992.

Measures on Risks Related to Exposure to Carcinogens at Work

The proposed directive requires risk assessment for any activity that is likely to involve exposure to carcinogens. The nature, degree, and duration of the workers' exposure would be determined to assess any risk to the workers' safety or health. The concentrations of carcinogens at the workplace would be measured annually and recorded in writing. Analyses showing increasing levels of exposure would indicate that appropriate measures to remove the danger must be taken. Pregnant women, breastfeeding mothers, and persons under

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" Amended Proposal fora Council Directive on the Minimum Health and Safety Requirements for Handling Heavy Lads Where There Is a Risk of Back Injury for Workers, **Cotn(89) 213,** *01* **No. C 129 Nay 5, 1989), p. 6.**

[77] **"Internal Market,"** *European Report,* **No. 1536 (Oct. 31, 1989), p. 7, and** *Eurobrief, vol.* **Z No. 5 (Nov. 10, 1989), p. 54.**

18 years of age would not be employed in areas where they will come into contact with carcinogens.

Carcinogens that could not be replaced by harmless orless dangerous substances would only be produced or used in closed systems. Employers at facilities where work activities involve possible exposure to carcinogens would be required to take the following measures: attempt to use harmless or less dangerous substances; strictly limit the number of workers exposed or likely to be exposed; minimize exposure by appropnate work processes and engineering control measures; use adequate measurement procedures for carcinogenic agents; provide collective protection measures; provide personal protection measures, where exposure cannot be avoided by other means; apply hygiene measures to floors, walls, and other surfaces; provide information on the potential risks to health from exposure to carcinogens to workers and their representatives; mark risk areas with warning and safety signs; maintain surveillance of the health of workers; and apply emergency procedures for abnormal exposures. They would also ensure the safe handling, transport, collection, storage, labelling, and disposal of carcinogens.

Upon the request of competent authorities, employers would provide appropriate information concerning work activities and industrial processes, the quantities of carcinogenic agents produced or used, the number of workers exposed, and the protective and preventive measures taken. Accidents which might result in an abnormal exposure of workers would be reported immediately to the person responsible for safety and health at work. Workers would be informed as quickly as possible of the abnormal exposure, the causes thereof, and the measures taken or to be taken to rectify the situation. Only those workers needed to take remedial action would be permitted in the affected zone, until the causes for the increased exposure are eliminated. Those workers would be provided with personal protective clothing and equipment Workers and their representatives would be involved in the determination of the appropriate measures established by their employer.

For planned activities which might involve a significant increase in exposure of workers, the employer would consult with the workers or their representatives to determine the measures required to keep the duration of workers' exposure at a minimum and to ensure the protection of the workers while they are engaged in these activities. These workers would be _provided with appropriate personal protective clothing and equipment The affected zones would be clearly marked, and other measures toprevent unauthorized access to these zones would 1De taken. Access to the areas where work involving possible exposure to carginogens is carried out would be restricted solely to workers required to work in these areas, to supervisors responsible for the work performed, and to persons entrusted with control duties by the competent authorities.

Workers would not be allowed to eat, drink, or smoke in working areas where there is a risk of exposure to carcinogens. They would be provided with protective clothing and separate storage places for protective clothing and for street clothes. They would be provided with adequate washing facilities, including showers in the case of dusty operations. Protective equipment would be stored in a well-defined place and checked and cleaned after each use. Workers would not be charged for the cost of these measures.

Workers would be given training and regular refresher training concerning the following: the potential risks to health, including the additional risks resulting from tobacco use; the precautions to prevent exposure; hygiene requirements; the wearing and use of protective clothing and equipment; preventative measures; and the measures to be taken in case of accidents.

All persons concerned with specific measures for adequate medical surveillance would be able to undergo an appropriate assessment of their state of health prior to exposure and at regular intervals thereafter. If a worker is found to be suffering from an abnormality that might be the result of exposure to carcinogens, then the competent authority for the health surveillance of workers would require other workers who have been similarly exposed to undergo medical examination immediately. The employer would make an immediate reassessment of the risk of exposure.

Employers would keep a list of workers engaged in activities involving possible exposure to carcinogens and the health record for each listed worker for 40 years following the end of exposure. Each health record could be accessed by the worker to which it relates and the authority responsible for health and safety at work. Workers and their representatives could have access to anonymous, collective information compiled from these records. These records would be made available to the competent authority in cases where the undertaking ceases its activity.

Member states would keep national statistics of recognized cases of occupational diseases due to exposure to carcinogens. They would adopt the necessary laws, regulations, and administrative provisions to comply with this and related developments[78] by December 31, 1990.

New Initiatives

In its action program for implementation of the Social Charter,[79] the EC Commission proposed new

"Amendments to Council Directives 67/548 on Dangerous Substances (0) No. 196 (Aug. 16, 1967), p. 1), last adapted by *Commission Directive 88/490, 01* No. 1.259 (Sept. 19. 198[3]. 1, and *Council Directive 88/379* on dangerous preparations, *01* No. L 187 (July 16, 1988), p. *14, last* adapted by *Commission Directive 89/178* OJNo. L 64 (Mar. 8, 1989),p. 18.

[79] "Communication From the [BC1 Commission Concerning its Action Programme Relating to the Implementation of the Community Charter of Basic Social Rights for Workers," Com(89) 568 (Nov. 29, 1989). For further discussion of this action program, see ch. 18 (The Social Dimension).

worker safety and health directives covering the following subjects: medical assistance aboard vessels; temporary or mobile work sites; drilling industries; quarrying and open-cast mining industries; transport sector; fishing vessels; safety and health signs; worker notification regarding hazardous exposures; amendment to the asbestos directive; and protection of pregnant women at work. The Commission also proposed the establishment of an EC-wide safety, hygiene, and health agency.

Possible Effects

Measures to Encourage Improvements in the Safety and Health of Workers at Work

These directives are not considered likely to cause trade diversion. Since these directives impose requirements similar to those already required by some U.S. Occupational Safety and Health Administration (OSHA), U.S.-based corporations will have an edge over their European competitors. In many instances, large U.S. companies that operate internationally maintain uniform safety standards at all of their plants worldwide.[88] Thus, these companies have already brought all of their plants, including their European facilities, into compliance with U.S. OSHA standards. To this extent, the U.S. companies are likely to be ahead of a number of European companies in meeting the new EC worker directives, particularly those European companies based in member states with lower standards.

However, the first and second individual directives, addressing general workplace and equipment safety, may have a greater impact on smaller U.S. companies seeking to invest in the EC after 1992. Both of these directives require immediate compliance for workplaces or machinery put into operation after 199 whereas existing workplaces have three additional years to comply. In addition, the workplace directive imposes stricter structural requirements on facilities put into operation after 1992.[81] U.S. companies that are unable to open plants and purchase equipment prior to the close of 1992 will bear additional costs in complying with these directives. The competitive disadvantage from failing to open prior to 1992 will be felt most heavily during the 3-year grace period for existing workplaces to come into compliance.

The directive requiring personal protective equipment may open markets for U.S. exports of items such as respirators, ear protectors, fall protection equipment, and protective clothing. U.S. technology in these product areas is advanced, and U.S. manufacturers of these products area already producing items that comply with specifications set by U.S. OSHA and U.S. Mine Safety and Health Administration (MSHA).

The member states' implementation of this, and the other worker safety standards, should be monitored, however, since Article 118A of the EEC Treaty permits member states to maintain their own more stringent measures for worker protection.[82] In this regard, it should be noted that, during the process of adopting this directive, the European Parliament suggested a provision specifying who is qualified to test certain personal protective equipment.[83] If any member state attempts to invoke article 118A to implement this type of restrictive provision regarding testing and certification of protective equipment, such provision might discriminate against products manufactured and tested in the United States.[84]

The same is true with respect to the directives governing workplace machinery and VDU design. While the European Community directives do not discriminate against non-EC imoducts, additional restrictions onproduct design et the member states could have adiscriminatory However, any member state restrictionsthis nature are likely to be challenged within the European Community itself, since the products of other member states likewise will be adversely affected. For example, Italian equipment manufacturers already are sensitive to the varying requirements imposed by individual states (Lan er) within West Germany.[88]

Measures Related to Risks of Exposure to Biological Agents at Work

U.S. exports to the EC would probably increase owing to the high level of U.S. technological development in containment of biological agents. The requirement to protect workers from the risks arising or likely to arise from exposure to biological agents at work will create trade opportunities for suppliers of goods that aid in accomplishing this objective.

The industries in the United States that will probably receive the most benefit are filter per and paperboard (HTS 4823.20)(CCT 4815.10) and other filtering or purifying machinery and apparatus for gases (HTS 8421.39) (CCT 8418.84 EC imports from the United States under CCT 4815.10 were valued at 1.4 million ECU compared with 5.6 million ECU from all non-EC sources in

USITC staff meeting with representatives of Chemical Manufacturer's Association, Jan. 23, 1990 [hereinafter "CMA meeting].

Compare annex 1 of the directive ("Minimum Safety and Health Requirements for Workplaces Used for the First time, as Referred to in Article 3 of the Directive"), Of No. L 393 (Dec. 12, 1989), p. 4, with annex 2 of the directive ('Minimum Safety and Health Requirements for Workplaces Already in Use, as Referred to in Article 4 of the threctivel, *01 No.* L 393, p. 10.

as Art. 118A of the EEC Treaty, added by art. 21 of the SEA. See ch. 18 (The Social Dimension).

'Internal Market' *European Report,* No. 1536, (Oct. *V,* 1989), p. 2.

See ch. 6 (Standards).

USITC staff meeting with Office of Italian Ministry of Industry and Handicrafts, an. 12, 1990.

1987.[86] The amount of benefit received by these U.S. firms will depend on their ability to compete against suppliers from West Germany, the United Kingdom, Switzerland, and France. EC imports under this subheading from Switzerland were valued at 3.2 million ECUs in 1987. EC imports from the United States under CCT 8418.88 were valued at 23.3 million ECU in 1987. EC imports of this classification from non-EC suppliers were valued at 73.8 million ECU in 1987. The amount of benefit received by these U.S. firms will depend on their ability to compete against suppliers from Switzerland (12.5 million ECU in 1987), Sweden (10.2 million ECU), and Japan (9.2 million ECU). Data for 1988 are not yet available.

This development is not considered trade discriminatory. But the purchasers of many of the goods required by this proposal are government entities and could use government procurement rules to select politically favored products. The United States is not expected to be hit especially hard by such trade discrimination; even inrance, where much government procurement is centralized, U.S. products are well regarded. As such, the U.S. market share is expected to at least be maintained.

Non-EC exports are unlikely to be diverted to the U.S. market. U.S. imports of filtering paper from Switzerland were valued at $1.2 million in 1987. They increased in value to $1.5 million in 1988. These specialty products from Switzerland are expected to continue to be supplied to both the EC and the United States.

Adoption of this directive is not expected to alter U.S. investment in the EC, although it may require some U.S.-owned facilities to upgrade containment measures to achieve compliance. There is no indication that any U.S. investment would be withdrawn rather than invest in required containment measures. The proposal may discourage new U.S. investment in the EC because similar containment measures have been considered as a barrier to commercialization by firms studying the consolidation of the U.S. biotechnology industry.

Measures Related to Risks of Exposure to Carcinogens at Work

U.S. exports to the EC would probably increase owing to the high level of U.S. technological development in protection from carcinogens. The requirement to protect workers from the risks arising or likely to arise from exposure to carcinogens at work will create trade opportunities for suppliers of goods that aid in accomplishing this objective.

The industry in the United States that will probably receive the most benefit is other machines and mechanical appliances having individual functions (HTS 8419.89) (CCT 8459.87).[87] EC imports from the United States under this subheading were valued at 200 million ECU compared with 807 million ECU from all non-EC sources in 1987. The amount of benefit received by U.S. firms will depend on their ability to compete against suppliers from West Germany, Switzerland, Italy and Japan. EC imports under this subheading from Switzerland and Japan were valued at 229 million ECU and 198 million ECU, respectively, in 1987. Data for 1988 are not yet available.

This proposal is not considered to be trade discriminatory, but U.S. producers of the many products affected by this proposal are concerned that the appropriate measuresfor one member state may not be the same in all member states or acceptable to the U.S. OSHA for their U.S. plants. The work activities subject to this proposal are primarily in European companies, but the United States is the largest foreign investor in plants affected by this proposal.

No U.S. industries are expected to be harmed by the development of protection from the risks of exposure to carcinogens at work unless the member states require stricter measures than those that are unacceptable to U.S. OSHA. No exports by third countries are likely to be diverted to the U.S. market as a result of adoption of this proposal by the EC Council.

United States investments in the EC are likely to be affected by this proposal, since the United States is the largest foreign investor in EC plants producing cartinogens.[99] Compliance with the directive's technological requirements will not be unduly burdensome to these companies, most of which have already instituted measures required by U.S. OSHA in all their facilities worldwide.[99]

However, compliance with the directive's recordkeeping requirements is expected to increase labor costs.[°°] There is no indication that any U.S. companies would withdraw their investments rather than comply with the directive.

U.S. Industry Response

Generally, U.S. industry has responded favorably to EC occupational safety and health directives. As noted above, requirements similar to those considered by the EC are already mandated by U.S. OSHA. In addition, there is a general agreement among industry and labor representatives that harmonization of worker safety and health standards is desirable.[91]

The U.S. biotechnology industry expects that assessment, notification, and containment measures will be no more difficult to comply with than U.S.. regulations that are already in force.

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s° EC Statistical *Office, External Trade Analytical Tables — NIMEXE 1987, vol.* J (Luxembourg, 1988), pp. 80-81, 236.237, and vol. E, pp. 88-89.

▪ *NIMEXE 1987, vol.* J, pp. 80-81, 236-237.
●● CMA meeting.
S≥ Ibid.
°° Ibid.
°' See ch. 18, 'The Social Dimension'.

The U.S. industry most likely to be affected by measures on carcinogens encompasses the suppliers of products classified as carcinogens under the current versions of Council Directives 67/548 and 88/379. This industry is concerned that individual member states will establish control procedures that make it difficult for producers to implement uniform process efficiencies at all their plants worldwide. These producers also oppose implementation of protective requirements that are incompatible with protective measures established by U.S. OSHA.

CHAPTER 8
TRANSPORT

CONTENTS

CONTENTS — *Continued*

CHAPTER 8
TRANSPORT

Transport is regarded as a public service in the EC and is largely controlled by local or central governments through fare-setting, number of mutes, and the quality of services. Control is also exercised through dependence on government subsidies.

Developments Covered in the Initial Report

Background and Anticipated Changes

An efficient transport system, unhampered by border controls and valued-added tax adjustments, will be a critical dimension to the successful integration of the EC. Thirty years after the Treaty of Rome, the EC maintains a patchwork of transport quotas, restrictions, and limits on access to the transport market Long delays at border crossings amounting to 40 percent of trucks' delivery schedules are commonplace in the EC.

Road-freight directives proposed in the EC to improve services in the mad freight transport sector expand the freedom of nonresident EC carriers to provide trucking services throughout the EC. Currently, member states use a system of bilateral quotas under which member states allocate a limited number ofjourney authorizations among themselves and in turn issue them to trucking companies. The authorizations are usually limited in that they entitle the holder to transport goods for only that bilateral link.

Passenger-transport directives proposed to improve services in the passenger-transport services in the EC streamline procedures under which nonresident EC service providers can operate. These directives facilitate border crossings and eliminate the requirement that passenger-transport companies maintain separate offices in each of the member states they serve. The directives prohibit member states from discriminating against other EC passenger-transport service providers on the basis of their nationality or country of establishment

Maritime-transport directives proposed to integrate services in the maritime transport sector are intended to ensure that member states are free to provide sea-transport services among and within member states. All existing national restrictions that reserve the carriage of goods to vessels flying the national flag will be phased out along with existing bilateral cargo-sharing agreements with third countries. The directives also address the issue of harmonizing cabotage rules in order to facilitate transportation within member states.

Air-transport directives proposed in the EC for deregulating the air transport sector were largely shaped in April 1986 by the Court of Justice in the Nouvelles Frontiers case, which decided that rules of competition under the Treaty of Rome were applicable to air transport In December 1987, the EC Council applied the Treaty of Rome's competition rules to pricing, access to routes, and capacity sharing. Under these competitive rules, airline passenger fares will receive automatic government approval provided prices are set within agreed-upon limits. Carriers that can show their fully allocated costs justify a fare below these limits can force arbitration on member-state governments that refuse to grant these low fares.

Possible Effects

According to an industry source, the major problems U.S. airlines have had in member states relate to airport access, computer reservation systems, and ground-handling services. Foreign carriers in the United States have been granted the privilege to freely provide ground-handling services for their respective national airlines, but U.S. carriers reportedly have had difficulties. in obtaining reciprocal rights within the member states. In addition, the use of U.S. airspace for all airline carriers is provided by the U.S. Government without charge. In contrast, U.S. carriers are charged more than $60 million annually for the use of the European airspace.

EC transport directives would apply only to the member states and are silent with respect to bilateral agreements in effect between the EC and third-party countries such as the United States. It is ed that existing maritime and air-transport bi teral agreements will remain unaffected until after EC integration in 1992. Speculation exists that after that time the EC may as a single entity elect to negotiate with third countries over the issue of cabotage, the right to carry local passengers and merchandise. Although EC member states have not announced that thesebilateral agreements with the United States will be canceled, many Europeans reportedly believe that if U.S. airlines can fly between various cities in Western Europe, or U.S. vessels can offer services between European ports, it is only equitable that national airlines in the member states can offer services between cities in the United States and that European vessels are permitted to make similar ports of call.

The U.S. transport industries are largely taking a cautious attitude toward the integration of the EC. The U.S. air-transport industry regards the directives with caution, noting that governments in the member states in the past have taken actions that have been contrary to existing laws and directives. U.S. firms producing merchandise in the EC look favorably on these directives and support the goal that limits should not be placed on the movement of goods or the number of trucks a member state has on the road or the mutes that trucks take.

Developments During 1989

Introduction

The EC Commission increasingly views the deregulation of air and surface-transport industries of member states as an important precondition to achieving the goals of the 1992 project. Transport directives, proposals, and regulations issued in 1989 served to move the deregulation process along, but despite these liberalizing significant problems remain for the EC Commission to address m all transport sectors. Improvements are needed in the deregulation of air freight, centralized distribution, existing transport infrastructures, and obstructed border crossings. The transport infrastructure in the EC differs from the infrastructure in the United States in that EC roads are often too narrow and tunnels are too numerous to permit heavy truck traffic, and railroads are often too inefficient In addition, EC transport infrastructures have difficulty in intercommunicating because they were created to serve the needs of the individual member states. The goal of the EC Commission regarding the development of a common transport system is to strike a balance between deregulation and the harmonization of working conditions with due consideration given to the environment

The lack of harmonization of valued-added taxes among the member states remains a significant barrier to the creation of an efficient road-transport system. The procedure of paying value-added taxes and receiving credit for previously paid value-added taxes at the borders of the member states remains in force, causing long transport delays.[1] Unable to agree upon a common tax rate, the Economy/Finance Council of Ministers elected in 1989 to extend the policy of collecting value-added taxes in the country of destination of the goods until after a transition period ending in 1993 when value-added taxes are expected to be harmonized? As an interim solution, the Council of Ministers has proposed to reduce the standard value-added tax rates within a band of 14-20 percent after December 31, 1991. But until that time, member states are under no obligations to change their tax rates. The action by the Council[2] provides the market 2 years to bring the value-added tax rates within harmony. Excise duty rates on products such as tobacco, alcohol, and minerals oils also need to be harmonized, but a system of EC-bonded warehouses may be used to settle this issue.

Cabotage (trade between two points within a country) also remains a significant issue with which the EC Commission must deal. The Belgian Road Haulage Association estimates that only 5 percent of total EC road haulage is transported across the borders of the member states.[3] The association estimates that with the complete deregulation of EC road haulage, 95 percent of EC road transport currently protected by cabotage regulations will face increased competition, which may lead to lower freight rates and more efficient use of capacity. Major problems remaining for the Council to address include the issue of territoriality, the impact on the environment, and the harmonization of social (labor rules) and technical rules. Under territoriality, drivers would pay for the use of the roads in all member states in which they serve, rather than just in the country of registration. Without territoriality, a uniform system of road taxes could not be applied.

Background

A number of directives, proposals, and regulations relating to EC transport deregulation were issued in 1989, mast of which effected changes in the air- and mad-transport sectors. The second liberalizing package of air-transport directives gives the EC Commission powers to liberalize air fares, promote travel between regional air ports, assist in the development of infrastructures in the member states, establish fifth-freedom rights,[4] and establish a pan-European air-traffic-control system. A Council draft resolution on Trans-European Networks indicates that the European Community has experienced a noticeable decline in the number of on-time flights, the cost of which has increased by several billion ECUs.[5] In addition, safety- margin risks have increased because of the difficult coordination between multiple European traffic-control centers. A total of 42 air-traffic centers control the air space in Europe compared with 20 in the United States, that handle 3 times the traffic. Sir Leon Brittan, Vice President of the EC Commission responsible for competition policy, describes the second air-transport liberalization package as an effort to eliminate the EC's protectionist and

[1] In an article titled, 'Single Market Phooey,' appearing in the *Economist* on Jan. 13, 199a, the inability of the Commission to resolve the issue of harmonization was attacked on the basis that European governments cannot face the fiscal consequences of the market they reportedly want because value-added taxes and excise taxes differ too much to survive in an open market Member states insist on collecting value-added taxes on the full value of something acquired in another member state even if most of the value was added somewhere else in Europe. European governments are removing border controls by devising substitutes for them, not by removing the underlying need for them. The article holds that governments should adopt a system in which the proof of a seller's collection of a tax is sufficient proof for a buyer's right to a tax deduction. The standard value-added tax rates in the EC range from a low of 12 percent in Spain and Luxembourg to a high of 25 percent in Ireland. The standard rate is 14 percent in West Germany.

[2] *Atlantic Trade Report,* Nov. 30, 1989, p. 7.

[3] "Comic Relief on Road to Reform,' *Financial Times,* Nov. 16, 1989, p. 2.

[4] The five freedoms of air transport were defined under the Chicago Convention of 1944. These freedom rights include (1) the right to fly over another nation; (2) the right to land in another nation without picking up or disembarking passengers; (3) the right to disembark in another nation passengers boarded in the carrier's home country; (4) the right to carry passengers of another nation to the carrier's home country; and (5) the right to carry passengers from one foreign country to another.

[5] Com (89) 643 final, Dec. 18, 1989, p. 8.

anticompetitive framework and create an environment in which airlines can operate free from governmental and bureaucratic interference.[8] Sir Leon contends that airline regulation should be limited to those practices where airlines abuse the system, and to safety and security requirements, and such practices as predatory behavior, incentive commission schemes, and biased reservation systems would not be permitted.

In the road-transport sector, regulations were issued to extend the existing interim bilateral quota system for the carriage of goods by road, eliminate the need to establish offices in each of the member states served, eliminate the need for the lodgement of a transit advice note in transporting goods between the member states, provide for the continuance of existing rates fixed for the carriage of goods by road, and relax the procedures EC firms must meet to enter the EC passenger transport market. The EC Council of Ministers, aware that more than 10 million transit forms are filled out each year in the EC,[7] ageed on November 23, 1989, to eliminate the need for the lodgement of a transit advice note.

In the rail-transport sector, the EC Commission responsible for EC transport policy unveiled a four-point strategy for boosting the Community railroads that have been declining in competitiveness with mad transport. Under the strategy, the national railroads will retain their monopoly possession of the railroad infrastructures (systems), but they must open up the unused capacity of the network to private freight.companies in return for a user fee.[8] The accounting practices used by the railroads would be changed to ensure that the user fees collected reflect the cost of providing the service. The railroad monopolies oppose the plan, but many of them are deeply in debt and could be put on a better financial footing under this arrangement. West Germany's national rail system receives annual subsidies of $7.9 billion. Last year, the Italian national rail system received subsidies of $4.25 billion, and an additional $2.56 billion for capital improvements)' The EC Commission also is supporting the practice of putting trailers on railroads (combined transport) to encourage lower height rates and reduce pollution created by large transport trucks. The use of combined transport in the EC surged in 1988 and is expected to show continued growth in the future, stimulated by road bottlenecks in several transit countries, by the rationalization of major transport investment, such as the channel tunnel, and increasing environmental pressures.I[8]

In the maritime-transport sector, action programs were submitted to help reverse the decline of the industry and strengthen its competitive position. The program includes the creation of a Community ship register as well as a series of measures concerning research and harmonization of technical norms relating to cabotage and safety at sea.[11] But despite the recognition of problems in cabotage, the EC Commission has failed to make significant progress in introducing more competition in maritime shipping along the coasts of the member states. The United Kingdom, Ireland, Belgium, and the Netherlands are the only countries in the EC that allow foreign shipowners to transport freight freely between ports on their coastlines.[12] The United States prohibits foreign shipowners under the Jones Act from transporting freight between ports on its coastlines.

Air-Transport Sector

Directives proposed in the second package of airline deregulation in 1989 parallel the first deregulation package adopted in 1987. In the past, each air route in the EC has been served by two national airlines and fares have been fixed by governments under bilateral agreements. The 1987 deregulation package introduced for the first time competition in this cartel arrangement, changing by October 1989 the capacity-sharing arrangements for these mutes from a 50-50 basis to a 60-40 basis. The 1987 package permitted airlines to reduce air fares within prescribed limits provided the air fares were based on fully allocated costs and market access for multiple carriers was improved.

The second phase of liberalization moved forward the deregulation process that was begun in 1987 regarding air fares, capacity-sharing agreements, market access, clearer definition for the application of rules of competition to ensure protection for small, efficient carriers, and increases m mutes with multiple designations. Also, the deregulation process moved forward through the harmonization of licenses for pilots and air traffic controllers. The new liberalization package does fail to consider the deregulation of freight-only services, or provide specific proposals covering the services of non-scheduled airlines. The lack of public opposition to airline cartel arrangements and high fares in Europe can be traced to EC charter airlines which offer cheap fares to travellers and account for 50 percent of European air travel. However, charter airlines have not been able to expand into scheduled routes because of opposition of governments of the member states.[13]

• U.S. Department of State Telegram, May 1989, Brussels, Message Reference No. 272566, p. 1.

[7] EC Commission, Directorate-General Information, Communication *and Culture,* January 1990, p. 2.

• *Eurobrief,* vol. 2, Dec. 8, 1989, p. 83.

• Rockwell and Barnard, *One Europc 1992 and Beyond, How to Prosper* in *the World's* Urged *Market,* p. 82.

'• U.S. Department of State Telegram, February 1989, Geneva, Message Reference No. Z7jT15, p. 1.

" U.S. Departnient of State Telegram, June 1989, Brussels, Messsage Reference No. 247042, p. 2.

[12] "EC Struggles with Coastal Shipping Protectionism," *Journal of Commerce,* Oct. 12, 1989, p. 1B.

Rockwell and Barnard, *One Europe: 1992 and Beyond, p.* 82.

Council Regulation on Computer Reservation Systems

Background

The full name for the regulation discussed here is *Council Regulation 2299/89 of July 24,1989, on a Code of Conduct for Computer Reservation Systems.* The bulk of airline reservations are made though computer reservation systems, which if properly used, can provide an important and useful service to carriers, travel agents, and the travellihg public by easy access to information on fares, flights, and seating arrangements. The denial of access to these systems or arbitrary listing can often create abuses and disadvantage carriers, travellers, and travel agents. For those reasons, the Council recognized that a mandatory code of conduct is necessary to ensure that such systems are operated in a nondiscriminatory fashion, ensuring that computerized reservation systems do not distort competition between carriers and at the same time protect the public interests.

Anticipated Changes

The directive mandates that any system operator offering distribution facilities relating to passenger air services shall permit any scheduled air carrier the opportunity to participate on an equal and nondiscriminatory bas access to the system within the available capacity. Under the directive, the system vendor cannot require a subscriber to sign an exclusive contract nor prevent a subscriber from entering into a contract with another vendor or using another system. The system vendor cannot require a subscriber to accept unreasonable conditions to participate in the system. During the first year, the subscriber is permitted to terminate his contract with the vendor without penalty provided notice, not to exceed 6 months, is given. The directive also mandates that, if a system vendor adds improvements to the distribution facilities provided, or to the equipment used in the facilities, it shall offer these improvements to all the participating carriers under the same terms and conditions. The directive applies to all computer reservation systems for scheduled passenger air services as of August 1, 1989, with certain exceptions.

An article was ommited from the final version that had been previously proposed for inclusion in the directive and that could provide EC vendors of computerized reservation systems (CRS) with the opportunity to discriminate against non-EC countries. The article omitted from the final draft of the directive stipulated that, "A parent carrier may not refuse, except for an objective and legitimate reason of a technical or commercial nature, to provide to a competing CRS the same information on schedules, fares, and seats available for individual purchase relating to its own services as it provides to the CRS in which it is a parent carrier, nor shall it refuse to prbvide information or accept a reservation made through a competing CRS unless the fee(s) charges are higher than in the CRS of which it is a parent Carrier".

Council Directive on Scheduled Interregional Air Services

Background

The full name for the directive discussed here is *Council Directive 89/463 of July 18, 1989, Amending Directive 83/416 Concerning the Authorization of Scheduled Interregional Air Services for the* Transport *of Passengers, Mail, and Cargo Between Member States.* Directive 83/416 established in 1983 a Community procedure for authorizing scheduled interregional air services between the member states. The system established by the directive was of an experimental nature and the Council was required to evaluate by July 1, 1986 progress made in improving interregional air services on the basis of a report supplied by the EC Commission. Since experience had shown that only a few services had been authorized in accordance with the directive, the Council decided its was in the best interest of the EC to give air carriers greater scope to developinarkets and thereby contribute to the evolution of the intra-Community network and promote the development of direct services between the various regions in the Community rather than provide indirect services.

Anticipated Changes

The directive sets forth procedures authorizing scheduled interregional air services to develop air-transport services for the carriage of passengers, or passengers in combination with mail or cargo, on routes that originate and end in the member states, and which are open to certain international scheduled traffic. The aircraft operated under this directive, and providing interregional EC services, shall be equipped with more than 70 passenger seats. The Council must make a determination to revise this directive by June 30, 1990 on the basis of a Commission proposal to be submitted by November 1, 1989.

Council Directive on Limitation of Noise . Emission From Civil Subsonic Jet Aeroplanes

Background

The full name for the directive discussed here *is Council Directive 89/C 629 of December 4, 1989, on the Limitation of Noise Emission From Civil Subsonic Jet Aeroplanes.* European airspace is becoming increasingly crowded with an attendant increase in jet aircraft noise and pollution. The Council recognized that the application of noise emission standards to civil jet aeroplanes could have significant consequences for the provision of air-transport services. But at the same time, the

Council recognized that restrictions on the use of certain types of aircraft would encourage investment in new and quieter aircraft and facilitate the better use of existing capacity. As a result, the Council concluded that the reduction of aircraft noise was desirable and should be achieved through common rules introduced on a reasonable time-scale to ensure a harmonized approach throughout the member states.

Anticipated Changes

The directive instructs member states to ensure that from November 1, 1990, civil subsonic jet aircraft registered after that date in their territories may not be operated in the Community unless granted a noise certificate certifying that the aircraft meets noise standards at least equal to those specified in part II, chapter 3, volume 1 of annex 16 to the Convention on International Civil Aviation, 2nd edition 1988. However, the directive does not apply to aircraft having a maximum takeoff weight of 34,000 kg or less, aircraft having a capacity of 19 seats or fewer, or to aircraft entered on the registers of the member states as of November 1, 1990. Member states may grant exemptions to the above restrictions, if (1) the aircraft is of historic interest; (2) aircraft used by an operator of a member state before November 1, 1989, under hire purchase or leasing contracts still in effect and have been registered in a nonmember state; (3) aircraft leased to an operator of a nonmember state which for that reason has been temporarily removed from a member state's register (4) an aircraft which replaces one that has been accidently destroyed and which the operator cannot replace by a comparable aircraft on the market that can meet the new noise emission standards, and (s) powered by engines with a by-pass ratio of 2 or more.

Proposal for Development of Civil Aviation in the Community

Background

The full name of the proposal discussed here is *Proposal Com(89) 373 for Development of Civil Aviation in the Community, Brussels, September 8, 1989 (89/C 258/04), (89/C 238/05), and (89/C 258/06).* The EC Commission and the Council of Ministers recognized that the first deregulation package adopted in December 1987 was only an interim solution to the liberalization of air transport in the Community. The EC Commission and the Council had indicated their intention of developing policies to encourage the creation of a civilian aviation sector that makes a significant contribution to the European Community. The Council concentrated at first on a liberalization package covering fares, capacity sharing, market access, and competition. It has become the goal of the Council to provide users with a wide choice of services at low cost, improve the air transport infrastructure, and create a sound financial, productive European Community network The Council recognized that a system of double disapproval for air fares was needed to achieve further liberalization of fares along with regulations to ensure approved air fares were not contrary to rules of competition. Consistent with those goals, national airlines in the member states had begun to adjust to the inevitability of a single European market and are anticipating how to achieve economies of scale, obtain access to important hub locations and scarce takeoff and landing slots, and establish coherent route systems. The major thrust of the second package of liberalization package is an attempt to break down the government- and state-owned carriers of some of the member states.

Anticipated Changes

Proposed regulation 89/C 258/04 would replace Directive 87/601 effective January 1, 1991 and provides for further liberalization of air fares. Under the new regulation, member states could not disapprove a proposed air fare strictly because the fare is lower than that offered by another airline serving on the same route. However, a member state would have the right to examine any proposed air fare which is 20 percent higher or lower than the corresponding fare in force with the stipulation that only European Community air carriers are entitled to introduce lower fares. The principal of double disapproval is intended to bring down the cost of air fares by preventing state-owned airlines from vetoing cheap fares.

Proposed regulation 89/C 258/05 would replace Directive 83/416 and Decision 87/602 and permit effective October 1, 1990 on any *given* route effective any carrier operating third- and fourth-freedom rights to increase capacity provided that the shares do not exceed the range of 67.5-32.5 of capacity. From April 1, 1992, the regulation would extend the range to a 75-25 capacity-share arrangement. The regulation would also extend cabotage traffic rights on routes to and from a carrier's state of registration provided the route is operated between two airports, one of which is a regional airport, and the air carrier does not use more than 30 percent of its annual seat capacity serving cabotage passengers.

Regulation 89/C 258/06 amends Council Regulation 3976/87 and provides the EC Commission with powers to adopt regulations regarding certain airline competitive practices. These include slot allocations at airports, planning and coordination of the capacity to be provided on scheduled airlines, operation of computerized reservation systems, technical and operational ground handling support activities, handling of

passengers, freight, and baggage at airports, and services for inflight catering.

Council Regulation Relating to Agreements and Practices in the Air-Transport Sector

Background

The full titles of the material discussed in this section are *Regulations 3975/87* (89/C 248/05) and *3976/87* (89/C 2 6), and *Application of Article 85 (3) of the Treaty to Certain Categories of Agreements and Concerted Practices in the Air-Ttransport Sector* (89/C 248/07). The EC Commission submitted a proposal to the Council in 1981 setting forth the procedures for the application of rules of competition to air transport, including the regulation of international air transport with third countries. During Council discussion, and in order to reach agreement on the EC Commission proposal, it became necessary to limit the scope of the EC Commission proposal to international transport within the Community. The change was incorporated in Regulation. 3975/87 adopted December 14, 1987. [14] Subsequently, in April 1989, the Court of Justice indicated that, if a dominant airline succeeds by other than normal competitive means in eliminating competition, even on a domestic or European Community-third country route, this anticompetitive behavior is considered an abuse. Because the EC Commission cannotgrant block exceptions for airlines under artide 85(3) of the EEC Treaty nor use normal procedures to rule on abuses of dominant position under article 86, air carriers are placed in an unfavorable position because they are uncertain as to whether the practices and arrangements in which they enwage on mutes are legal or legitimate. Even by accident, airlines could run the risk of actions by national courts leading to the payment of compensation. In addition, member states are placed in an unfavorable position when they approve fares filed by carriers on such mutes. Proposal Com(89) 417 would give to the EC Commission the necessary powers to clarify how articles 85 and 86 apply to domestic and international transport.

Anticipated Changes

The first regulation modifies Council Regulation 3975/87 by deleting artides 1(2) which limits the scope of its application making the European Community competition law apply where there is an effect between member states, and provide jurisdiction for consultations and negotiations in the event a conflict arises between the European Community competition law and third country legislative or regulatory provisions, or with the provisions of air service agreements between member states and third countries. The second regulation amends Regulation 3976/87 to include within its scope the extension to domestic air transport block exemption for slot allocations. The duration of such block exemptions would be the same as that for the other exemptions granted under Regulation 3976/87. The third regulation, which provides the EC Commission with additional powers to clarify articles 85 and 86, is similar to Regulation 3976/87, but contains a provision to deal with actions or provisions adopted by third countries or contained in air-service agreements between member states and third countries. The regulation does recognize that restrictions on competition on routes between member states and third countries are likely to have less distortion effect within the member states than restrictions on routes within the Community.

[14] EC Commission, *Application of the Competition Rules to Air Transport*, Sept. 8, 1989, p. 1.

Proposal on Mutual Acceptance of Licenses for Civil Aviation Personnel

Background

The full title of this pro is Proposal *Com(89) 472 on Mutual Acceptance personnel Licenses for the Exercise of Functions in Civil Aviation.* The Council recognizes that a sufficient number of qualified and licensed personnel is necessary for the operation of safe and efficient air-transport services, and that the air-transport sector is dynamic and developing rapidly in international character. The Council also recognizes that although requirements for licenses differ among the member states, there is an urgent need to train a large number of additional air controllers, whose functions are necessary to the operation of safe transport services. Requirements for licenses among the member states are in many instances so different that it is difficult for the nationals of one member state to exercise a similar function in another member state. Under the proposal, licenses issued in any member state would be recognized by the other member states, permitting the free movement of licensed personnel anywhere within the Community.

Anticipated Changes

The proposal applies to civil aviation licensing procedures and requirements of member states covering flight crews, aircraft maintenance personnel, air traffic controllers, flight operations, and aeronautical station operations. Under the proposal, no later than December 31, 1992, the EC Commission would adopt procedures establishing harmonized requirements for licenses and training programs, in consultation with professionals in the air-transport industry. The license requirements would at a minimum meet the level of those requirements provided for in the eighth edition (July 1988) of annex 1 to the Convention on International Civil Aviation. The member states would take the necessary steps by July 1, 1990 to bring into law the necessary laws, regulations, and administrative regulations to comply with the regulation.

Council Resolution on Air-Traffic System Capacity

Background

The full title of this resolution is *Resolution (89/C 189/02) of the Council and the Ministersfor Transport, Meeting Within the Council on Air-Traffic System Capacity Problems.* **The Commission considers the existence of an efficient air-transport system important to the unhindered movement of people and goods within the Community. However, air transport in Europe suffers from air traffic congestion and saturation of air space, especially during seasonal peaks. These conditions are present in part because of the lack of coordination between the air-traffic-control centers in Europe and air-traffic-flow management These conditions prompted the European Civil Aviation Commission to adopt a set of decisions on October 20, 1988, to deal with the problems, and recommend that these decisions be implemented with utmost speed and efficiency. After due consideration, the Council resolved that the International Convention relating to Cooperation for the Safety of Air Navigation (Eurocontrol) was the appropriate instrument to carry out the implementation.**

Anticipated **Changes**

The resolution encourages member states that are not members of Eurocontrol to consider joining Eurocontrol as a contracting party and cooperate to establish a single air-flow management center. The resolution also recommends improving the system for recruiting and training controllers on a common basis with a view of achieving mutual recognition of certificates and possible freedom of movement for air-traffic controllers. The resolution also recommends the coordination of air-traffic control measures implementing the resolution with international organizations.

Road- and Rail-Transport Sectors

The road-transport market was streamlined further in 1989 through the elimination of the requirement of the lodgement of transit notes and other border procedures, but cabotage and transport quotas remain as severe restrictions on the free movement of goods within the EC. Although these restrictions are scheduled to be swept away at the end of 1992, at present, lorries returning home empty from EC cross-border journeys cost an estimated 1.2 billion ECUs annually. [15] The European Transport Commissioner, Karel van Miert, has pressed for fair competition for all transport carriers, and has said that it up to the EC infrastructure to adapt to the single market and organize road taxation on the basis of healthy competition. [16] Transport officials in the U.S. trucking industry who oppose the majority ownership provision (genuine link), which had been under Council consideration and which has been withdrawn, have expressed their reservation over the extent to which foreign road haulers will be permitted to serve the EC deregulated market U.S. officials point out that in the United States, 100-percent foreign ownership of U.S. trucking firms is permitted, and the 51-percent ownership requirement contemplated by the EC is inconsistent with open markets. [17]

"Road Haulage Single Market is Still a Long Way From Reality; *Financial Times, Oct.* 23, 1989, p. 6.

"Eurofocvs, Jan. 8-15, 1990, p. 9.

Council Regulation Laying Down Conditions for Nonresident Road Haulage Carriers

Background

The full title of this regulation is *Council Regulation 4059/89 of December 21, 1989, Laying Down the Conditions Under Which Nonresident Carriers May Operate National Road Haulage Services in a Member State.* **The Council recognizes the need to adopt procedures to gradually eliminate restrictions on road-haulage cabotage operations in the member states and liberalize the Community quota system as an interim solution beginning July 1, 1990, and terminating.on December 31, 1992, when all quotas are removed. At that time, a definitive system, developed under Council direction and in compliance with the Treaty, will become applicable. The regulation limits the cabotage operations solely to carriers established in a member state and authorized in that member state to operate international mad-haulage services.**

Anticipated Changes

The regulation calls for the issuance of 15,000 Community licenses, valid for a 2-month period, which permit haulers to carry out cabotage in any member state. The regulation does not require a "genuine Community link," [16] but the Council in adopting the tion did not provide details as to cabotage regulations anticipated for 1993. The licenses will be divided among the member states on a previously agreed-on basis, [16] and each year, the Commission will fix the rate of increase based on the average increase in Community road haulage according to data collected by the member states. If the average increase does not exceed 10 percent, the number of licenses will be increased by 10 percent. However, the regulation does limit the number of cabotage operations in any member state to no more than 30 percent of the total. The licenses will be distributed by the Commission to the member states. Under the regulation, the Council must consider a proposal submitted by December 31,

"'Motor Carriers Face EC Barriers; *Journal of Commerce, Oct.* 17, 1989, p. 1C.

" The term "genuine link' refers to majority ownership by a member-state firm.

" The licenses were divided as follows: Belgium-1,30Z Denmark-1,263, West Germany-Z073, Greece- 573, Spain-1,350, France-1,767, Ireland-585, Italy-1,767, Luxembourg-606, the Netherlands-1,84Z Portugal-765, and the United Kingdom-1,107.

1991, that to adopt before July 1, 1992, a new regulation outlining the cabotage system which shall enter into force on January 1, 1993.

Council Regulation Fixing Rates of Carriage Goods by Road Between Member States

Background

The full titles of the material discussed here are *Proposal Com(89) 189 for a Council Regulation on the Fixing of Rates for the Carriage of Goods by Road Between Member States* and *Council Regulation 4058/89.* Transport rates fixed under Council Regulation 3568/83 of December 1, 1983 and amended by Regulation 1991/88 of June 30, 1988, expired on December 31, 1989, requiring subsequent action on transport rates by the Council before the date of expiration. Under the proposal, the Council recommends the abolition of fixed haulage rates and the adoption of free fixing of rates by free agreement between parties to haulage contracts as the tariff system best suited to the completion of a free transport market and to the need for a uniformly applied tariff system.

Anticipated Changes

The Council proposes that effective January 1, 1990, the rates for carriage of goods by road between member states would be governed by a system of rate-fixing by free agreement between parties to haulage contracts, and would apply to road transport for hire, even if part of the journey is performed in transit through a third country, or by a road vehicle that is carried by another means of transport (combined transport) without intermediate reloading. Trade associations representing road-haulage firms in the member states could establish cost indexes for purposes of calculation of rates in coordination with national statistical organizations in the member states. The indexes may take the form of general or special indexes and may include information on the payment for certain services in connection with EC haulage operations.

Proposal on the Abolition of Lodgement of the Transit Advice Note

Background

The full title of this proposal is *Proposal Com(89) 331 Amending Regulation 222/77 for the Abolition of Lodgement of the Transit Advice Note on Crossing an Internal Frontier of the Community.* Under EC transit rules, persons engaged in EC transit operations are required to submit a transit note to the customs office at the border of each member state through which a consignment is transported. Under these rules, if a driver is unable to produce the consignment at the customs office of destination and the place where the irregularity occurred cannot be determined, it is deemed to have occurred in the member state in which the last transit advice note showed that the consignment had entered. The objective of the transit advice note is to provide physical evidence to explain where an irregularity occurs in the event a consignment fails to reach its designation.

Traders consider the lodgement of a transit advice note at each frontier as a constraint on commerce and as inconsistent with the objectives of simplifying and speeding up the transport of merchandise in the EC. For that reason, the Commission has attempted since 1979 to abolish the transit advice note and establish a legal framework for clearly defining responsibility regarding customs duties and other charges for consignments that disappear in transit It is clear to the Commission that with the planned dismantling of the EC internal frontiers at the end of 1992, the requirement for the lodgement of the transit note would be abolished. Consistent with this plan, the proposal recommends the abolishment of the requirement for the lodgement of the transit advice note effective July 1, 1990.

Anticipated Changes

The abolition of the lodgement of a transit advice note requires the enactment of new legislation designed to streamline the procedures for the efficient movement of goods within the European Community and to determine both the amount of charges payable and the member state authorized to collect the charges. Under the proposal, when a consignment is not produced at the office of destination, and no proof has been furnished by the principal as to the regularity of the operation or the place where the irregularity was committed, duties would be levied by the member state of departure at the highest rates applicable, or if the consignment has passed through a third country, would be levied by the member state of entry. If at a later date, it can be determined in which member state the irregularity was committed, charges in that member state to which the consignment are subject would be calculated at the rates in force there with any possible overpayment reimbursed to the party who had paid the taxes.

Proposal on Transport Infrastructure to Complete an Integrated Transport Market

Background

The full title of this proposal is *Proposal Com(88) 340* (88/C 270/05), *Modified by Com(89) 238 for a Council Regulation for an Action Programme in the Field of Transport Infrastructure With a View to the Completion of an Integrated Transport Market in* 1992. The completion of the EC internal market and the creation of a common transport policy call for a Community program to develop the transport networks in the Community. The Council has determined that the development of infrastructure projects can have a favorable impact on the

development of new technologies, improve industrial competitiveness, and increase employment Through funds provided by the European Investment Bank and other financial sources, the development of infrastructure projects could provide stimuli to the promotion and construction of projects having European Community interests. Projects considered for inclusion in the first phase of the program include a combined transport network of widening the loading gauge on the railroad linking the United Kingdom, the Benelux countries, and Italy, improvement of road and rail routes from Paris to Madrid-Lisbon-Porto-Algeciras, improvement of the infrastructure associated with the Channel Tunnel, and construction of a high-speed rail line from London to Paris-Brussels-Amsterdam-Cologne. Under proposal Com(89) 238, the list of projects considered for inclusion was amended to include the improvement of a European air traffic control system, high-speed links from Lisbon to Seville-Madrid-Barcelona-Lyon, the alpine transit axis (Brenner Route), the North Wales coast road, the Scanlink, and the reinforcement of the land links in Greece.

Anticipated Changes

The Community will contribute to transport infrastructure projects and feasibility studies relating to such projects provided that the share of the specific appropriations in the financing of a project may not exceed 25 percent of the total cost of the project, or 50 percent in cases of studies needed prior to the start of construction work. The principal grounds for eligibility for financing assistance are set forth in articles 1 and 2 of the proposal, such as the elimination of bottlenecks, improvement of links between major urban centers and the reduction of the cost of transit traffic in cooperation with nonmember countries.

Proposal on the Use of Vehicles Hired Without Drivers

Background

The full title of this proposal is *Proposal Com(89) 430* (89/C 296/05) *for Amending Directive 84/644 on the Use of Vehicles Hired Without Drivers for the Carriage of by Road.* Articles 3 and 4 of Directive 84/647 pertaining to the use of trucks hired without drivers permitted member states the possibility of excluding own-account drivers (owner-operators) from the scope of the directive and allowed member states to set a minimum period of hire. After a required review of the directive, the Council has determined under proposal Com(89) 430 that these restrictive clauses have resulted in unequal application of the directive in the European Community. The amendment provides for abolition of the clauses in order to promote better financial management and reduce costs of haulers operating on their own account

Anticipated Changes

The directive, if adopted, would promote further deregulation of the road-haulage industry in the EC by extending to owner-operators protection from being excluded under Directive 84/647. The new directive would become effective as of June 30, 1990.

Proposal on Community Transit

Background

The full title of this proposal is *Proposal Com(89) 480 for a Council Regulation on Community Transit.* Community transit procedures require the lodgement of a transit advice note and compliance with other formalities. The application of provisions to facilitate the free movement of goods within the EC have "rendered the procedure for internal Community transit devoid of any purpose," according to EC opinion. It becomes necessary therefore to amend transit procedures so that existing procedures remain in effect between the Community of Ten and Spain and Portugal during the transitional period following the accession of Spain and Portugal to the Community. Although the lodgement of a transit notes is no longer needed between the original 10 members of the EC, these formalities are to be preserved during the transitional period at the borders with Spain and Portugal. During the transitional period, goods traded between Spain or Portugal with the other 10 member states, or goods traded between Spain and Portugal do not benefit from the total abolition of custom duties or other charges as specified in the Act of Accession.

Anticipated Changes

The elimination of the lodgement of transit advice notes (Proposal Com(89) 331) would require the revision of certain internal Community transit procedures, recognizing that current transit procedures will continue in effect as they relate to Spain and Portugal. The revision of special rules for goods carried by sea or air from one port or airport to another is required because goods from third countries must be identified for customs purposes, and because airports and ports constitute both internal and external frontiers within the EC.

Proposal Amending Regulation or the International Carriage of Goods by Road

Background

The measures discussed here are *Proposal Com(89) 572 for Amending Regulation 3164/76 Concerning Access to the Market in the International Carriage o Goods by Road* and *Regulation 1841/88* (89/C 316/06). In Regulation 1841/88, the Council set a

Community quota for the carriage of good by road between member states for 1988 and 1989, and elected to abolish all quotas, including the Community quota on January 1, 1993. Under article 3(3) of Regulation 3164/76 as amended by regulation 1841/88, the Council is required by March 31, 1990, to decide on an increase in the Community quota from 1990. The aim of the proposal is to provide the Council with sufficient time to make a decision, if possible, before the end of 1989, to make Community authorizations fully available in practice by January 1, 1990.

Anticipated Changes

The increase in the Community quotas for 1990, 1991, and 1992 should be set at 40 percent per year, which is equivalent to the Community quota increases for 1987, 1988, and 1989.[20] The increases are essential for the smooth transition to a system in force in 1993, which will no longer require quantitative restrictions to have access to the market because quotas will be abolished. The extra allocations are to be distributed among the member states on a linear basis, much as in 1989, because it permits the member states to start on an equal basis when the unrestricted system comes into force in 1993. The proposal would also abolish the formality requiring a customs stamp on a records sheet when a lorry crosses the frontier of a member state in which the transport operation is to terminate. Although the formality will no longer be required when Regulation 1841/88 enters fully into force, the proposal is useful in providing authorization for advance preparations for dismantling border formalities. In addition, the requirement as contained in Regulation 3165/76 is a barrier to the elimination of the formality by member states of the Schengen Group.[21]

[22] For 1990, 1991, and 1992, the total number of Community authorizations for the member states as a whole are set under the proposal at 33,635; 47,094; and 65,936, respectively. Of the total, West Germany, the Netherlands, France, and Italy together account for almost 50 percent of the authorizations.

a' In 1985, West Germany, France, Belgium, the Netherlands, and Luxembourg signed an agreement in the Luxembourg village of Schengen to abolish controls on the movement of people by Jan. 1, 1990. The Schengen Group was scheduled to sign the accord on Dec. 15, 1989, but West Germany asked for a postponement because of visas issued by West Germany for visiting East Germans. Also the Netherlands is reportedly having reservations because the other partners to the agreement require that the Netherlands provide them with certain information on its citizens because of the lax treatment of drug users by the Dutch police.

Proposal for Adopting Research Programs in Transport

Background

The full title of this proposal is ***Proposal Com(89) 557 Adopting a Specific Research and Technological Development Program in the Field of Transport (ELIRET)*** 1990-93.[22] The completion of the internal market requires a modern and efficient transport market to meet the increased demand for carriage of goods and passengers by road with minimum damage to the environment and enhancement of the least favored regions. Cooperation in transport research can advance standardization and compatibility and lead to unification of transport networks within the Community. Council policies indicate that the pursuit of scientific and technical excellence is consistent with developing and strengthening the social cohesion of the Community.

Anticipated Changes

The proposal adopts a specific research and development program to cover theperiod from March 1,1990, to Apri130, 1994, with a funding of 25 million ECUs. The objectives of the program include the optimum exploitation of the network, improved logistics, and reduction of harmful externalities. The proposal indicates that the limit to EC infrastructure networks has been reached and it has become necessary to make full use of the infrastructure already in place. Transport is becoming a major part of the production process in the EC with equipment producers expecting carriers to provide more complex services, including handling, stock management, and order processing. The Council recognizes that quality transport embraces speed, punctuality, and increasingly timely information on the location of goods.

The proposal recognizes that the integration of transport modes and improved communications are essential to the efficient movement of goods. At the same time, the proposal anticipates that transport can have negative environmental side effects and that safety risks need to be reduced. The proposal also recognizes that the number of transport accidents occurring in both the road and maritime sectors are evidence of the need to improve safety, and the number of terrorist attacks and airline hijackings occurring in the past indicate the need for increased security. In addition, transport is one of the major sources of pollution in the ECand all EC transportation modes are noisy, especially railroads and aircraft

[22] This proposal covers research and development programs for all transport sectors, but its major Impact is likely to be on surface **transport**

The criteria set forth in the proposal for optimum network exploitation include cost benefit analysis for new road construction, European rail traffic management conception, vessel-traffic management, and data exchange for air traffic management Criteria for logistics improvement include estimates of demand pDrojection for EC freight transport and the need for research on the design and evaluation of rapid transfer of goods, and optimization of manpower in maritime transport and man/ship systems. Criteria for reducing harmful externalities include improving methods for evaluating road safety and assessment of driving safety of possible truck and trailer combinations.

Maritime-Transport Sector

The EC Commission has been unable to find solutions for the cabotage regulations that several EC member states continue to impose on their coastal shipping trades. Greece, Italy, and Spain, prohibit foreign shipping companies from operating between ports on their coastlines, and France imposes a number of restrictions on sea transport EC Transport Ministers agreed 3 years ago to allow EC-registered vessels to transport r and passengers freely between the member the end of 1989, and extend this freedom to third counties by the end of 1991.[23] The southern member states feared that with the end of coastal cabotage, the more efficient northern fleets would take over their coastal waters. However, they agreed to the proposal, on the condition they received aid for their shipping industry. At present, the EC Commission has not been able to reach a satisfactory solution, despite the fact that the proposed single market is less than 3 years away. In the meantime, the United Kingdom is threatening to prohibit ships from other member states from transporting goods within their coastal waters unless it receives equal treatment for its fleet in the coastal waters of the other member states.

Proposal Covering Freedom to Provide Maritime-Transport Services and Defining a Community Shipowner

Background

The full title of this proposal is *Proposal Com(89) 266 (89/C 26304 and 05) Applying the Principal of Freedom to Provide Services to Maritime Transport Within Member States and Provide a Common Definition of a Shipowner.* Under the treaty establishing the European Economic Community, particularly article 84(2), it is important to progressively establish the internal market without frontiers by December 31, 1992, including the abolition of restrictions on the provision of maritime-transport services within the member states. The decision to authorize cabotage for the carriage of goods by water has not yet been adopted because there has been a lack of progress in harmonizing competitive conditions among the member states. Certain member states are not receptive to additional competition from maritime-transport firms from other member states operating within their borders.

Anticipated Changes

The proposal would abolish restrictions on the freedom of Community shipowners to provide maritime-transport service within all member states, effective January 1, 1991, provided the vessels used are registered in the Community ship register and do not exceed 6,000 tons gross weight. Under the proposal, "maritime-transport services" are those services for which renumerations are received and include the carriage of passengers or goods by sea between ports in any one member state, or the carriage of passengers or goods between any port in a member state and installations or structures on the continental shelf of that member state. The member state between whose ports the services are provided, may require that the vessels used for these services are manned with nationals of the member states to the same degree as is required in respect to vessels flying its flag and providing these services. In addition, in the case of providing transport services between the mainland and the islands of a member state, scheduled services would need to be provid2 ular

Under the proposal, effective January 1, 1990, a Community shipowner would mean a natural or legal person providing service in the transport of passengers or goods by water by one or more sea-going vessels which he owns or has chartered. A shipowner is regarded as a national of a member state whose residence is in a member state, and a shipping company is one whose principal place of business is situated in a member state and whose effective control is exercised in a member state. The executive board of the shipping company must consist of persons, the majority of whom are member state nationals, or the majority of shares of the company must be owned by member state nationals who have their usual residence in a member state. A shipping company established outside the Community, but controlled by nationals of a member state, if its ships are registered in that member state, would also be regarded as an EC firm.

Possible Effects on All Transport Sectors

Despite the lack of significant progress in harmonizing value-added taxes and liberalizing EC road and maritime cabotage operations, developments in the EC transport industries during 1989 indicate that the Council and the EC Commission are moving toward the establishment of an integrated transport infrastructure that is more

--- EC Struggles with Coastal Shipping Protectionism," *Journal of Commerce,* Oct. 1Z 1989, p. 18.

streamlined and efficient The Community is only 3 years away from the creation of a market without barriers, but much remains for the Council to accomplish to deregulate the EC transport sectors that have been sheltered through subsidies, government ownership, and protected regulations. However, manufacturing already considers the EC to be a single market and market pressures are likely to demand that the Council find solutions to eliminate the inefficient distribution of goods and protective measures and create a system of low-cost transport These changes will provide opportunities for non-EC firms serving this market; but at the same time, EC firms established in this market are likely to become larger and provide more competition in other world markets.

Effects on the Air-Transport Sector

Although the air-transport directives issued in 1989 are silent with respect to third countries, U.S. firms are increasingly aware of the costs and benefits associated with the second package of airline deregulation and the ultimate deregulation of the industry in 1992. A major concern of both the airline and packaged-travel industries is the watering down of the EC directive on computerized reservation systems, which is viewed as being anticompetitive and which has created serious concerns in these industries. A U.S. airline representative reports that European carriers frequently deny to U.S. computer reservation systems the information they need to operate in the member states, and the deletion of Article 4 from the final version of the CRS directive in June 1989 "at the eleventh hour simply preserves the ability of European airline to place U.S. CRSs at an absolutely insuperable competitive disadvantage."[24] Computerized reservation systems have emerged into complex business-management systems linking airline, hotels, rental car firms, and travel agents. These systems have become even more critical since a proposal to harmonize EC rules for packaged travel has been agreed upon (Com(88) 41).

The deregulation of the EC air-transport sector will provide significant opportunities for U.S. air carriers, but European air carriers can be expected to increase their demands for greater access to the U.S. market that is denied to them under U.S. cabotage regulations. The EC Commission has already instructed the member states of its intention to take over the responsibility for negotiating future international air traffic agreements. EC Transport Minister Karel van Miert has indicated that, in an effort to win air-traffic rights, foreign countries have played one EC country off against another. U.S. carriers have 18 fifth-freedom rights in the EC on 88 routes covering 430 fli is a month, and Asian carriers have 11 fifth-om rights covering 35 routes and 234 flights a month.[26] The Transport Minister has indicated that fifth-freedom rights are a Community asset that should be used to secure improved market access in the United States, Japan, and other third-country markets. The EC Commission has also indicated a willingness to enter into negotiations with the six member nations of the European Free Trade Association (EFTA) and join in an agreement with them for future negotiations with third countries. The major EFTA air carriers are Swissair of Switzerland and Scandanavian Airlines, which is one-third owned each by Sweden and Norway. The airline is treated as an EC airline because the remaining one-third is owned by Denmark.

Lufthansa, the airline of West Germany, recently issued a statement concerning the status of United States-West German bilateral air agreements, openly accusing the United States of protectionism. Lufthansa points out that it is able to fly to only 11 destinations in the United States, whereas American Airlines is able to fly from any in the United States to any point in West Germany. Lufthansa charges that points like St Louis, Detroit, Minneapolis, and Seattle, from which U.S. airline flights to West Germany originate, are denied to Lufthansa. Lufthansa charges further that since the United States has deregulated its domestic market, it is now pursuing a policy of protectionism with outside competition.[28] According to Mr. Jeffrey Shane, Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation, some U.S. carriers are beginning to soften their opposition to allowing foreign airlines to carry passengers and freight in the U.S. marketv

Effects on the Road-Transport Sector

Although road-transport cabotage was further liberalized during 1989, the Community continues to impose rigid restrictions on foreign haulers transporting goods from within the borders of any member state. The U.S. Chamber of Commerce estimates that "removing barriers in the road transport sector could reduce transport costs by as much as 30 to 40 percent and thus have a far-reaching impact on virtually every industry." A study by the International Transport Union shows that at any given time, "one-third of all trucks operating in Europe are empty."[28]

Major concerns of U.S. transport firms relate to the issues of the "genuine Community link" and whether restrictions on road cabotage will be removed. According to the United Kingdom firm of Ernst and Whinney, haulage firms in large counties

[24] R.L Crandall, Chairman and President of American Airlines, Letter to the Honorable James A. Baker, III, Secretary, U.S. Department of State, June 26, 1989.

[26] "EC Seeks to Start Negotiating Members' Air Traffic Rights, *Journal of Commerce,* Jan. 26, 1990, p. 2B.

[27] U.S. Department of State Telegram, June 1989, Bonn, Message Reference No. 265525, p. 1.

[28] 'U.S. Airlines May Soften Stand on Cabotage,' *Journal of Commerce, Oct.* 31, 1989, p. 2B.

[28] 'EC '92 a Primer for Motor Carriers,' *International Insights,* October 1989, p. 6.

with highly regulated domestic haulage markets and high transport rates, such as France and West Germany, fear the reduction in cabotage restrictions because of the likelihood that low-cost haulers from the member states in the south could become strong competitors in their markets. At the same time, member states in the south are concerned over the competition that large haulage firms from the member states in the north could bring to the markets in the south.

After protests by U.S. Government and industry officials in September 1989, the EC dropped the "genuine Community link" requirement Under this requirement, unless haulage firms are EC majority-owned, they would not be permitted to make stops other than at their destination once they have crossed the border of a member state. As an example, a U.S.-owned freight carrier traveling from Munich, West Germany to Paris, France would not be permitted to pick up freight in Strasbourg. According to Mr. Peter Finnerty, Vice President, Public Affairs, Sealand Services, Inc., "In the United States trucking is 100% open to investment. The Europeans are always pointing out how careful they have been (to avoid restrictive practices in the single market exercise), but this 51% ownership proposal is totally against open markets."n Investments in the Community by U.S. firms such as Consolidated Freightways, Inc., which purchased Emery Air Freight to enter the EC market, United Parcel Services, Inc., and Sealand Services, Inc. would likely be placed in jeopardy if the genuine link requirement becomes a force of law 30

The complete liberalization of the mad-haulage market in the EC would likely bring a 15-20- percent reduction in road transport freight rates. With these expected lower rates and the elimination or significant decreases in border delays, road-haulage firms would likely take over part of the short-haul freight transported by the airlines. This would likely in turn bring competitive pressures on the EC airlines to reduce the rates on their short-haul freight mutes. Environmental interests and railroads on the other hand are likely to oppose the increased pollution of the environment through the use road transport lorries, and are likely to lobby the governments in the member states to support a policy of moving more freight by rail in order to protect the environment.

Effects on the Maritime-Transport Sector

The issue of coastal cabotage remains a difficult problem for the EC Commission. Man indication of the problem, Greece has informed the EC Commission that it will not open up its shipping mutes between its islands in the Aegean Sea to foreign shipping lines. The action has been taken by Greece despite the fact that it is incompatible with the single market proposal. In 1988, the United Kingdom passed a law requiring any shipping company involved in cabotage in British waters to have an operating base in the United Kingdom. Officials in the United Kingdom have voiced their fears that British fleets will not be permitted to operate freely in the coastal waters of the other member states even after 1992. [31]

Diversion of Trade to the U.S. Market

There are strong indications that the EC Commission will increase its pressure on the United States to change the existing U.S. bilateral air-traffic agreements with the EC member states to allow EC airlines to serve more U.S cities. The EC Commission has already instructed the members states of its intention to take over future bilateral negotiations with third countries such as the United States and Japan. In addition, it is attempting to negotiate an agreement with EFTA countries to join in with the EC to negotiate future bilaterals as a bloc. European carriers argue that existing bilaterals permitting U.S. airlines to fly into the member states were negotiated by playing one member state off against another. The result is that U.S. markets are protected under cabotage, whereas member states have granted U.S. carriers extensive fifth-freedom rights in the Community. If these bilaterals are negotiated more favorably in the future and consolidations in the air-transport industry results in the development of EC megacarriers, U.S. air carriers could experience increased competition from foreign carriers on U.S. domestic mutes. Increased competition could also be felt in U.S. intercoastal shipping that is now protected from foreign competition under the Jones Act, if U.S. ships are permitted to serve the coastal ports in the member states. It is equally as likely that the EC Commission will attempt in the future to engage in negotiations over the Jones Act and contend that foreign shippers transporting freight by sea along the coasts of the member states is no more different than from Europeans shippers trans porting freight by sea along the coastlines of the United States or any other third country.

Investment and Operating Conditions in the EC

Majority-owned foreign affiliates of U.S. companies made major capital commitments in the EC m 1989 after investing heavily in 1988. In anticipation of the removal of internal trade barriers, U.S. firms made these capital investments to compete with domestically owned firms in the EC and to increase or maintain market share. The investments are indicative of the concerns of U.S. firms who are anticipating that lower EC market barriers may lead to increased protectionism against non-EC countries.[32] U.S. investment in the EC

" 'Motor Carriers Face EC Barriers," *Journal of Commerce,* Oct. 17, 1989, p. 1C.
" Ibid.

[31] 'European Community Strugg.les With Coastal Shipping Protectionism; *Journal of Commerce, Oct.* 12, 1989, p. 1B.
" U.S. Department of Commerce, Survey *of Current Business,* March 1989, p. 20.

reached $19.8 billion in 1988 and increased to an estimated $22.2 billion in 1989. About $3.0 billion of the investments in 1989 was made in service industries, excluding investment made in banking, insurance, and real estate. Investment in transport equipment was valued at an estimated $2.4 billion compared with an investment of $2.2 billion in transport equipment in the EC in 1988. A large share of the investments in service industries were made in the United Kingdom and West Germany.

U.S. Industry Response

U.S. transport industries continue to take a cautious attitude toward recent transport developments in the EC. Certain airline officials have indicated that they could support a policy of permitting EC airlines to serve U.S. domestic mutes provided U.S. airlines are treated fairly in the EC market. U.S. transport officials have previously expressed their fears of how they will be treated with respect to computerized reservation systems, cargo handling, catering, and aircraft maintenance. The Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation has identified intermodalism as a key issue facing the EC transport market after 1992. He said that, "potential EC practices affecting one mode, such as trucking, can bejust as damaging to U.S. ocean and air carriers as policies directly affecting those modes or, conversely, that the potential expansion of U.S. trucking operations within post-1992 Europe can easily be limited by policies adversely affection air and ocean carriers."[33] In a letter dated November 1, 1989, Federal Express informed the U.S. Department of Transportation that it "remains deeply concerned at the anticipated discriminatory treatment between companies owned by ECC member companies and those owned by nonmember national companies that are contemplated."[34] The fears expressed by Federal Express relate to the "genuine Community link" issue which could severely disrupt the operations of multimodal transport carriers such as Federal Express, if the majority ownership provision becomes the force of law.

Ryder Systems, Inc. recently expressed its concerns over a measure on licenses for drivers of vehicles weighing, up to 7.5 tons in a letter addressed to the Honorable Thomas Niles, United States Ambassador to the European Community. Ryder's concerns relate to the EC Transport Group which advocates that a commercial license be required for drivers of vehicles over 35 tons. Ryder indicates that if this proposal is adopted, it would have seriousconsequences for its one-way rental business.[35] According to the Ambassador's response dated November 21, 1989, to Ryder's letter, "The reasoning behind the 3.5 ton limit is that 10 of the EC Member States currently require drivers of trucks over that tonnage to hold special licenses, and that the floor of 3.5 tons also is included in the Vienna Convention, which deal with road haulage matters." Only the United Kingdom and Ireland require a commercial license at the floor level of 7.5 tons.

"American Trucking Associations, Inc, International Forum, Fall Symposium Oct. 28, 1989., p. 15.

"Christine P. Richards, Senior Attorney, Federal Express Corp. letter, Nov. 1, 1989, to Ms. Florizelle R. Laser, U.S. Department of Transportation.

ss Beverly F. Walker, Ryder Systems, Inc., Letter to the Honorable Thomas Niles, U.S. Ambassador to the EC, Oct. 19, 1989.

CHAPTER 9
COMPETITION AND CORPORATE STRUCTURE

CONTENTS

CHAPTER 9
COMPETITION AND CORPORATE STRUCTURE

Developments Covered in the Initial Report

Because a presence in Europe is seen as the best strategy in planning for 1992, developments in the competition and company law area are Of increasing interest to U.S. companies.

In the initial report, this chapter covered two directives concerning competition policy and four directives in the area of company law.

Background and Anticipated Changes

Merger Regulation

The restructuring within the EC in anticipation of 1992 prompted the EC Commission to give priority to passage of a Merger Regulation. On cember 21, 1989, the EC Commission passed the merger regulation containing a few changes from the draft analyzed in the initial report. Four major issues were addressed in the initial report: (1) the scope of the regulation—which mergers will be subject to the jurisdiction of the EC Commission; (2) the finality of the EC Commission's rulings, and what, if any, residual authority is retained by the member states to oversee mergers; (3) the substantive criteria to be applied by the EC Commission in evaluating a merger; and (4) the applicability of articles 85 and 86 of the Treaty of Rome following passage of the Merger Regulation.

Telecommunications Directive

The EC Commission passed the Telecommunications Directive establishing guidelines to eliminate the monopoly held by the national Post Telegraph and Telecommunications authorities (PTTs) over the supply of telecommunications end-user equipment. However, some memberstates have sued the Commission in the European Court of Justice challenging the use of Article 90 in order to bypass a Council vote. The directive opens markets, by eliminating the Ms monopoly in sales of telecommunications equipment, increasing transparency in procurement, and requiring the separation of the regulatory and commercial roles of the PTTs. The PTTs will, however, retain the power to protect the network, and hence the power to set standards.

Company Law

The EC Commission has passed many company law directives to facilitate cross-border business activity. The directive creating the European Economic Interest Grouping -(EEIG) creates a legal entity, with a basis in European law, whose function is to develop economic opportunities of the companies participating and perhaps set an example for the European Company Statute.

Of the three proposed company law directives, the Fifth Directive harmonizes the structure of public limited companies, (including a controversial worker participation requirement); the Tenth Directive establishes the procedures for cross-border mergers; and the Eleventh Directive sets forth disclosure requirements for branches of companies in other member states. On December 21, 1989, the Council adopted the Eleventh Council Directive.

Possible Effects

Merger Regulation

The EC is an important market for U.S. direct investment How and where mergers will be evaluated is of great interest to U.S. firms. The changes found in the adopted regulation and their implications for U.S. investment are explored below.

Telecommunications Directive

This directive could open the national telecommunications markets not only to other European suppliers but to non-European suppliers as well. Although the U.S. telecommunications industry already has a strong presence in the EC, the opening of the European market could provide further opportunities for U.S. exporters. However, any consideration of the telecommunications market must be linked to the directive on telecommunications services, the various standards directives, and evolving rules on local content

Company Law

The EEIG will allow companies to pool resources and skills across national boundaries in a variety of areas. The EEIG creates a great opportunity for small and medium-sized enterprises, enabling them to cooperate with other small and medium-sized enterprises to meet the new challenges of a larger market. The effects of the company law directives are difficult to assess. The worker participation provision of the Fifth Directive may present a challenge for U.S. companies. The facilitation of cross-border mergers will better enable companies to benefit from the new economies of scale resulting from the single market and will certainly benefit many U.S. firms, which already view the EC as a single market The continued trends of standardization manifested by the Eleventh Directive will have a positive effect, provided the U.S. accounting standards are accepted in the EC as "equivalent" to EC standards.

Developments in 1989

Since the publication of the initial report,' the Merger Regulation and Eleventh Company Law Directive, discussed in the initial report, have been adopted by the Council and two new company law directives have been proposed. This section will address first the adopted directives, analyzing the changes made by the EC Commission and the resulting environment Thereafter, this section will examine two new directives: one proposing the creation of a European Company; and the other standardizing procedures for public bids and tender offers.

Measures Adopted

Council Regulation No. 4064/89

On December 21, 1989, the Council of Ministers of the European Communities (hereinafter "Council"), after more than 17 years of protracted negotiations, adopted a regulation on the control of concentrations between undertakings (hereinafter "Regulation").[2] The Regulation **transfers the authority to vet mergers from the national authorities to the EC Commission. The Regulation will enter into force on September 21, 1990. This section examines the antitrust procedures that companies will face following the Regulation's entry into force and the changes to the 1988 proposed Regulation on the Control of Concentrations ("Draft Regulation")[3] that led to the adoption of this Regulation.[4]**

After September 1990, all mergers with a "Community 'dimension" will be vetted by the EC Commission. The Regulation incorporates the thresholds defining a Community dimension agreed to by Sir Leon Britton in early 1989, as noted in the Initial Reports One change made to the Draft Regulation following the publications of the Initial Report is in the calculation of thresholds. Art. 5(1) uses after-tax revenues to calculate turnover, rather than before-tax revenues as used in the Draft Regulation. The primary result of this change **will be to further decrease the number of mergers falling within the scope of the Regulation.**

The thresholds established in the Regulation will be reviewed within 4 years.° The decision to review the thresholds reflects a compromise between those countries that wanted high thresholds and those that wanted low thresholds. The expectation is that the upper threshold will be reduced to 2 billion ECU and the de minimis threshold will be reduced to 100 million ECU. In a last-minute conciliatory gesture, the United Kingdom withdrew its demand that the revision vote require unanimity; instead the vote will be by qualified majority.?

As pointed out the by **the EC Commission, "[t] he** principle of the Regulation is to establish a clear-cut division between large mergers of a **European dimension, where the Commission will have responsibility, and smaller mergers where national authorities will apply national control."° Article 2(2) explicitly prohibits member states from applying national legislation to mergers with a Community dimenSion. At the same time, the single member state criteria in Article 1(2) guarantees that only mergers with a transnational impact will fall within the jurisdiction of the Commission. The Regulation, however, falls short of creating a solid dividing line between the authority of the Commission and that of the national authorities.°**

U.S. International Trade Commission, *The Effects of the Greater Economic Integration Within the European Community on the United States (Investigation No. 332-267),* USITC Publication 2204 (July 1989) (hereinafter, 'Initial Report").

• *CouncilRegulation No.* 4064 *on the Control of Concentrations Between Undertakings, Official Journal of the European Communities* (hereinafter "01") No. L 395 (Dec. 30, 1989) p. 1 (hereinafter Regulation").

[3] *Amended Proposal for a Council Regulation on the Control of Concentrations Between Undertakings,* Com(88) 734; OJ No. C 22 (Jan. 71, 1989), p .73 (hereinafter Draft Regulation"). The Initial Report analyzed the 1988 draft on control of concentrations and proposals thereto.

The impact of this Regulation, as with any law, depends on how it is interpreted and applied by the appropriate EC institutions. The text of the Regulation can be analyzed and discussed, but its true impact cannot be fully assessed until the EC Commission has applied it, and the European Court of Justice has reviewed the EC Commission's actions.

• Initial Report, p. 9-7, ftnts. 26 and 28. To have a Community dimension, the merging companies must have an aggregate worldwide turnover ("upper threshold') of 5 billion

[6] *—Continual*

ECU ($ 6 billion) and at least two of the companies involved must have an EC turnover *("de minimis* threshold") of at least 250 million ECU ($ 3 million), unless each of the companies derives more than two-thirds of its aggregate EC revenues from business in the same member state ("single member-state criteriaj.

The thresholds for credit and financial institutions are calculated differently, focusing on gross premiums and total assets respectively. Regulation, art 5(3). The text of the Draft Regulation initially set the thresholds lower, but Sir Leon Britton, EC Commissioner for Competition, at the insistence of the United Kingdom and West Germany, had agreed, prior to the publication of the Initial Report, to raise them to limit the jurisdiction of the EC Commission.

The upper threshold and single-member criteria establish the dividing line between the jurisdiction of the Community and national merger authorities. The minimum thresholds (250 million ECU EC turnover) excludes purely foreign mergers.

• Regulation, art. 1(3).

[7] See Regulation, art. 3(1). Pepper, Hamilton & Scheetz, "Europe Meets North America: The Brave New World of Trans-Atlantic Merger Review,' (Washington, DC: n.p., January 1990)(hereinafter "Europe Meets North America") p. 3.

• EC Commission, *Memorandum on the Mergers Regulation;* Memo 77/89, Brussels, Dec. 22, 1989 (hereinafter 'Memo") p. 1.

• Barry E Hawk and Michael L. Weiner, EEC *Regulation on the Control of Concentrations Between Undertakings* (New York: n.p., February 1990) (hereinafter "Hawk & Weiner') p. 3.

The EC Commission can acquire jurisdiction over mergers that fall *bclow* the thresholds if a request for review is made by a member state. [10] This mechanism was created to benefit those countries that have not developed merger legislation of their own." In vetting such a merger, the Commission sits in the seat of a national authority, i.e., its authority does not become exclusive under article 21(1). *If* the EC Commission finds such a merger **incompatible with the common market, it can suggest conditions under which a merger would become compatible, declare the merger incompatible, or order separation of a merger already completed. [12] The EC Commission was not empowered to directly approve a merger, [13] presumably because an approval by the Commission might appear to outweigh the prohibition of or the conditions established by a national authority. [14]**

If the merger has a Community dimension, article 21(1) confers on the EC Commission "the sole competence to take decisions provided for in the Regulation." [15] One of the primary attractions of transferring authority over mergers from the national authorities to the EC Commission for multinational corporations doing business in the EC **was the possibility of "one-stop shopping." [16] The greatest appeal of this regulation to companies on both sides of the Atlantic is knowing which regulation authority has the ultimate oversight responsibility. [17]**

The Regulation itself, however, creates two exceptions to this "exclusive control." Article 9 permits a member state to request that the EC Commission "refer a merger back to the national authority on the basis that there exists within the member state a "distinct marker that would be affected by the merger. [18] The EC Commission can either refer the merger to the national authority for appraisal under its laws, or evaluate the compatibility of the merger itself, taking into account the existence of the 'distinct market" [19] This discretion, together with the fact that the EC Commission has fought hard to win the authority to vet those mergers with a Community dimension, makes it unlikely, at least initially, that the EC Commission will refer many mergers back to the member states. Yet, a member state can appeal the EC Commission's decision under article 9(3) to the European Court of justice. [20] Thus, just how successful the member states will be in recapturing jurisdiction remains, as with many other aspects of the Regulation, unknown for the present.

The other exception to the exclusive jurisdiction of the EC Commission is the ability **of a member state to intervene if a merger implicates "other legitimate interests" of a member state. Article 21 recognizes that member states may have an interest in a merger for reasons other than competition, and permits a member state to "take appropriate measures to protect legitimate interests other than those taken into consideration by this Regulation [i.e., competition]." [21] The three recognized legitimate interests are public interest, plurality of the media, and rules of caution for financial institutions, but other interests may be communicated to the EC Commission, which will** judge their acceptability. [22] Whereas the EC Commission has the discretion to refuse to refer **a merger to a member state's merger authorities under article 9, it cannot interfere with a member state's review under article 21 concerning legitimate interests. [23]**

During the negotiations leading to the Regulation, a much feared exception to "one-stop shopping" was the possibility of "doubFe jeopardy" [24] and the continued application of articles 85 and 86 of the Treaty of Rome (hereinafter "Treaty") [25] to mergers with a Community dimension 2[8] This apprehension appears to be allayed by this Regulation. Article 21(1) vests in the EC Commission exclusive jurisdiction to apply this Regulation and Article 22(1) states that only this Regulation applies to concentrations. Article 21(2) prohibits member states from applying their law to concentrations with a Community dimension whereas article 22(2) disapplies other Regulations adopted by the Council to enforce articles 85 and 86 of the Treaty, which apply to all concentrations. [27]

[10] Regulation, art. 22(3).

[11] The United Kingdom, France, West Germany, and Ireland currently have merger legislation. Portugal and Spain recently enacted merger legislation. The "referral' right will remain in effect only until the thresholds are reevaluated under art. 1(4

[12] Regulation, art. 8(2) to (4).

[13] Presumably, the EC Commission will indicate its approval by not prohibiting a merger.

[14] USITC staff conversation with antitrust attorney, Washingon, DC, Mar. 1, 1990.

[15] The regulation operates on the principle of exclusivity.' Memo,_p. 2.

[16] Report, 9-8 to 9-9. With 'one-stop shopping,," companies planning to merge would need approval only from the EC Commission, rather than from all the national authorities that might be involved.

[17] USITC staff meeting with management consultant, Washington, DC, Feb. 1,1990; USITC staff telephone conversation with antitrust attorney, Feb. 5, 1990.

[18] Regulation, art. 9(2).

[19] Ibid., art. 9(3).

[20] Ibid., art. 9(9).

[21] Ibid., art. 21(3).

[22] Ibid.

[23] Once a member state acquires jurisdiction over a merger pursuant to art. 21(3), it is not limited in the remedy it may apply to protect its legitimate interest as it would be under art. 9(8), which permits only those "measures strictly necessary to safeguard or restore effective competition on the market concerned.' Hawk & Weiner, p.

[24] Double jeopardy is the possibility that merger would be challenged at both the EC Commission and in the national courts. Initial Report, pp. 9-8 to 9-11.

[25] Treaty *Establishing the European Economic Community,* Rome, Mar. 25,1957; Treaty Series No. 1 (Cmd. 5170) [hereinafter "Treaty"].

[26] Initial Report, pp. 9-8 to 9-9 and 9-10 to 9-11.

[27] Art. 22(2) disapplies Regulation 17, *01* No. 13 (Feb. 21, 1962), p. 204/62; Regulation No. 1017, *01* No. L 175 Uul 23, 1968), p. I; Regulation No. 4056, OJ No. L 378 (Dec. 31, 1986), p. 4; and Regulation No. 3975, OJ No. L 374 (Dec. 31, 1987), p. I. Arts. 85 and 86 will continue to apply to anticompetitive behavior and abuse of a dominant position.

As a result, mergers with a Community dimension can be vetted only under this Regulation and not under articles 85 and 86 or national legislation 26

One-stop shopping was the hope for very large mergers, such as that between GEC, Seimens, and Plessy. However, as noted above, articles 9 and 21 severely undermine the reality of one-stop shopping, even for those mergers with a Community dimension.[29] Furthermore, the predictions are that approximately 40 to 50 mergers a year will fall within the scope of the Regulation.[30] In 1989, approximately 1,275 cross-border mergers occurred in the EC.[31] Thus, the vast majority of cross-border mergers within the EC will fall below the thresholds. Many practitioners have complained about the fact that only a very small number of mergers will reap the benefits of "one-stop shopping."[32] Non-Community dimension mergers will continue to face review by each national merger authority in the various member states. Such mergers may also be subject to review under this Regulation if a member state requests review under article 22(3).

The last jurisdictional issue of concern is the potential for extraterritorial application of the Regulation.[33] Under the Regulation, a merger between two U.S. companies with sufficiently high worldwide and EC revenues could have a Community dimension.[34] Hence, these companies would have to file a notification with the EC Commission and suspend the merger for the requisite period.[35] In view of the EC Commission's recent decision in the Woodpulp case,[36] it is possible that the EC Commission will exercise its authority to vet a merger between two U.S. companies.[37] In addition, it is quite probable that the Commission will extend its broad investigative authority under article 13 and conduct extraterritorial discovery.[38] As broad as the scope of the Regulation may appear, it is not significantly broader than the reach of the Hart-Scott-Rodino Act in U.S. law.[39] Furthermore, as a practical matter, the Commission has limited enforcement power over the behavior of foreign firms. The Commission will, however, be able to exercise some leverage over foreign companies with EC subsidiaries, thus enabling it to exert power over the foreign parent.[49] The scope of the Regulation may increase the already growing overlap in the jurisdictions of various national merger authorities, increasing the internationalization of antitrust enforcement.[41]

If a merger has a Community dimension, the parties must notify the EC Commission within a week of the agreement or public announcement.[42] The authority of the EC Commission to evaluate the merger before it occurs,[43] and the concomitant power to prohibit, or attach conditions to, a merger, substantially increases the EC Commission's control over competition in the EC." After notification to the EC Commission, there is a three week mandatory suspension period during which the merger must not be completed 4[5] A similar four

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It is uncertain, however, whether the EC Commission can, by art. 22(2), supersede a private right (to challenge a merger under arts. 85 or 86) created by the Treaty.

[26] "UK Enforcement Official Sketches Chances for Success in EC Merger Control,' *BNA Antitrust & Trade Regulation Reporter,* vol. 58 (Mar. 1, 1990), p. 323 (hereinafter BNA *Trade Repartee).* (Sir Gordon Borne, head of the British Office of Fair Trading, predicted that one-stop shopping would be 'illusory" in practice.) See also Jean Patrice de la Laurencie, "The New EC Merger Control Regulation: A Good Political Compromise but a Nest for Litigation," 1992— *The External Impact of European Integration, vol.* 1, No. 22, Feb. 23, 1990 (hereinafter "de la Laurencie").

[30] E.g., *European Report,* No. 1559, Dec. 23, 1989.

Translink's, *Translink's European Deal Review,* (New York, Feb. 6, 1990). This figure is a total number and does not distinguish between those mergers that would have fallen within the scope of the Regulation.

USITC staff conversations with French and British antitrust attorneys, New York, Oct. 26, 1989.

USITC staff meeting with management consultant, Washington, DC, Feb. 1, 1990; USITC staff telephone conversation with automobile industry attorney in Detroit, MI, Feb.5, 1990.

[34] Eg, the recent merger between Bristol-Myers and Squibb and that between Time and Warner Communications. Hawk & Weiner, p.10.

" Regulation, arts. 4 and 7. It is an entirely separate substantive, notjurisdictional, question whether a meter between two U.S. companies would, in fact, implicate EC antitrust concerns, i.e., be 'compatible with the common market.'

[3°] "Re Wood Pulp Cartel: A. Ahlstrom OY v. EC. Commission, *Common Market law Reporter Antitrust Supplement,* pp. 940-941 (December 1988)(EC Commission had authority ' to prohibit concerted practices by woodpulp producers located outside the EC because the producers acted in the EC by

a —Continued

making their (anticompetitive) sales in the EC.) See Andrew M. Vollmer and John Byron Sand age, 'The Wood Pulp Case ," *International Lawyer,* vol. 23, (Fall 1989) p. 721.

[31] In framing the scope of the Regulation in this manner, the EC Commission is merely claiming a bailiwick that the United States has claimed for decades. E.g., *American Banana v. United Fruit Co.,* 213 U.S. 347 (1909); *Laker Airways v. Sabena, Bdpan World Airways,* 771 F.2d 909 (DC Cir. 1984); *United States v. Aluminum Co. ofAmerica (Alcoa),* 148 F.2d 416 (2d Cir. 1945). It was not until the recent Woodpulp case (see below) that the EC Commission, for the first time, extended its jurisdiction to cover actions taking place outside the EC that resulted in anti-competitive results within the EC.

a USITC staff conversation with antitrust attorney, Washington, DC, Mar. 1, 1990. See also Hawk & Weiner, pp. 22-23.

15 U.S.C. §18a; "Europe Meets North America,' p. 6. See also, J. Griffen, "Possible Resolutions of International disputes Over Enforcement of U.S. Antitrust Laws," *Stanford Journal of International Law,* vol. 18 (1982), p. 279.

" The *de minimis* threshold functions as a minimum-contacts test because it is unlikely that a company would generate S3 million in revenue in the EC without a jurisdictional presence in the EC.

[4'] Vanessa Ruiz, 'EC Integration: Key Leg. islative and Legal Issues for Business in 1992," Address at The European Institute, Jan. 10, 1990.

[43] Regulation, art. 4(1).

" Ibid., art. 7(1), prohibits companies from completing a merger before it is notified and for 3 weeks after notification.

[44] See art. 7(1). In the past, the EC Commission only had the authority to 'unscramble the egg'—declare a merger anticompetitive after it had happened.

[46] Regulation, art. 7(1). The EC Commission may extend the suspension period if necessary. Art. 7(2). Art. 7(3) exempts public bids from the suspension requirement but provides that the voting rights may only be exercised to maintain the value of the stock.

week suspension is required under the Hart-Scott-Rodino Act."

After the EC Commission has been notified, it has one month to decide whether to "open proceedings."[47] The EC Commission will initiate proceedings if the merger falls within the scope of the Regulation and "raises serious doubts as to its compatibility with the common market."[48] The EC Commission then has 4 months to determine whether the merger is compatible with the common market." There is concern among those familiar with antitrust proceedings that four 'months is not sufficient time[50] to adequately vet a merger of the size falling within the scope of the Regulation, especially considering the lack of expertise of the EC Commission in vetting mergers.[51]

The main differences between U.S. and EC law in this area are that the EC Commission hasgreater investigative powers than the Department of Justice or Federal Trade Commission,[82] that the parties under investigation have a right to be heardbefore the EC Commission[63] that the EC Commission has beater equitable flexibility,[54] and that the EC Commission must publish the results.ss In addition, of potential concern to U.S. firms subject to the Regulation is the apparently less rigorous protection of business secrets in the Regulation in contrast to that under Hart-Scott-Rodino.[56]

The substantive criteria under which **the EC Commission will** judge mergers **was a critical area of negotiation.[57] The British and the Germans were strictly opposed to the inclusion of industrial policy in the criteria whereas the French supported the inclusion strongly.[58] The final language of article 2(2) appears to exclude the consideration of industrial policy. Article 2(1) directs the EC Commission to appraise mergers "with a view to establishing whether or not they are compatible with the common market."[59] In determining what is "compatible," the EC Commission is to consider"the need to preserve and develop effective competition."[59] Any merger that would result in the creation or strengthening of a dominant position the result of which would impede effective competition in the common market must be declared anticompetitive and therefore be prohibited.[80] This language clearly emphasizes traditional competition and antitrust considerations.**

In determining what constitutes "compatibility," the EC Commission is directed to "take into account the need to preserve and develop effective competition within the common market."[61] In so doing, the EC Commission is to look at the market **position and the economic and financial power of the** companies involved, market opportunities, market accessibility, barriers to entry, supply and **demand trends, consumer concerns and "the development of economic and technical progress."[62] These factors will probably be applied consistently with past EC Commission and European Court of Justice decisions, efficiency considerations, and the general principles of the U.S. Department of Justice Merger Guidelines.[63] Because the emphasis of the Regulation is on "dominant position," some consider it likely that the general approach of the EC Commission will be similar to that of the Federal Trade Commission in applying section 7 of the Clayton Acta'**

Moreover, in contrast to both article 85(3) of the Treaty and article 2(3) of the Draft Regulation, the Regulation contains no provision empowering the EC Commission to allow a merger notwithstanding its anticompetitive nature. Article 8(3) of the Regulation requires that the EC Commission declare incompatible any merger which "creates or strengthens a dominant position as a result of which the maintenance or development of effective competition would be significantly impeded in the common market."[65]

Nevertheless, some doubt has been expressed about the provision that allows the EC Commission to consider the "development of technical and economic progress" in vetting mergers.[66] These considerations are unrelated to the competitive structure of the market and thus hint at industrial policy. This provision could potentially be used to prevent an anticompetitive merger involving a U.S. firm, whereas such a merger involving only EC firms might be permitted. The latter arrangement,

40 15 U.S.C. §18a(b)(1)(B).

47 Regulation, art. 10(1). This 4-week period will *be* extended to 6-weeks if a member state requests referral under art. 9(1). Id. In contrast to U.S. practice, the fact of notification is published.

" Ibid., art. 6(1)(c).

" Ibid., art. 10(3). The 4-month review period is analogous to the "Second Request" period under Hart-Scott-Rodino. "Europe Meets North America, pp. 7-8; Under the Civil Investigative Demand Statute, 15 U.S.C. §1312, the Department of Justice is empowered to issue a Civil Investigative Demand requesting documents and answers to interrogatories before a case is actually filed.

The time limits may be extended if the EC Commission has difficulty in obtaining information under art. 11 or if an investigation is initiated under art. 13.

61 One source suggested that another reason why the scope of the Regulation was narrowed, limiting the number of mergers to be vetted by the EC Commission, was to enable the EC Commission to develop the necessary expertise.

&I Regulation, art. 13. U.S. law does not envision the type of on-site investigations permitted under the Regulation.

" Ibid., art. 18.

&' Ibid., art. 7(3) and (4).

66 Ibid., art. 20. "Europe Meets North America" PP. 8-9.

°° Compare Regulation, arts. 4(3) and 20(2) to 15 U.S.C. §15a(h). Hawk & Weiner, p. 22.

67 Initial Report, pp. 9-9 to 9-10.

" Ibid.

"Regulation, art. 2(1)(a).

66A "safe harbor' is created by the Recital (15), in which a market share of less than 25 percent is presumed to be compatible with the common market

" Regulation, art. 2(1).

" Ibid, art. 2(1)(b).

" "Europe Meets North America" p. 10.

" Ibid., p. 11.

" Regulation, art. 3.

" Ibid., art. 2(1)(b). E.g., "Europe Meets North America," pp. 12-13.

the EC Commission might claim, would lead to "economic and technical progress" in the EC (i.e., the development of a European Champion capable of competing with U.S. and Japanese competitors) and therefore should be permitted. However, these are only two factors among many that the EC Commission is to consider in determining what is "compatible with the common market."

In addition, the thirteenth recital advises the EC Commission to "place its appraisal within the general framework of the achievement of the fundamental objectives referred to in Article 2 of the Treaty [of Rome], including that of strengthening the EC's economic and social cohesion, referred to in Article 130a."[67] The preamble further instructs the Commission to consider the views of management and workers in the undertakings involved, as well as "third parties showing a legitimate interest."[68] Under article 2(1)(a) of the Regulation, the Commission is to consider the "actual or potential competition from undertakings located either within or without the Community." Taken together, these provisions allow the Commission to take into account non-competitive factors in the merger assessment.[69]

Moreover, it cannot be forgotten that a central purpose of the Treaty is the economic development wire the European Community. "Competition" has a broader application in the EC than it is in the United States.?[0] Therefore, although the text of the Regulation sets forth criteria that focus on the traditional concept of a dominant position, the overriding goal of the European Community, and the EC Commission's role in working toward that goal, may influence the EC Commission's interpretation of the Regulation.

If the Commission finds that a merger is not compatible with the common market, it can prohibit the merger, articulate conditions under which it can proceed, or dissolve a completed merger." The Commission also has broad powers to assess fines against firms that violate the Regulation.[72]

An area of interest to the United States is the inclusion of article 24, "Relations with non-member countries." This provision, and Recital (30), requires the EC Commission to undertake a report "examining the treatment accorded to Community undertakings . . . as regards concentrations in non-member countries."[73] If the EC Commission finds that a nonmember country is not according treatment equal to that offered in the EC, the EC Commission may so advise the Council, which is then authorized to enter into negotiations to open up that market.[74] This provision has caused some concern on the part of the United States, in both the private and public sectors.[75] The reciprocity provisions in this Regulation should not, however, be of great concern. They were added at the last minute at the insistence of the French and can only lead to negotiations.[76] Most importantly, reciprocity was not adopted as one of the criteria by which the EC Commission will judge mergers.[77]

The creation of an Advisory Committee on concentrations under in article 19 is another "unknown." Although a similar committee has existed for over 20 years, the structure and influence of this committee remain an open question and, therefore, of minor concern.[78] The Advisory Committee could be a means for the member states to have an influence on the decision made by the EC Commission. The committee does not, however, have any control over the EC Commission, and its role is only an advisory one. It has been opined that, as with most committees, it will be difficult for the members to reach a consensus, undermining the Advisory Committee's effectiveness and influence.[79] Nevertheless, because member states were very hesitant to surrender their jurisdiction over merger control, the uncertainty surrounding the function and the influence of this Advisory Committee has generated some concern.[80]

Another aspect of the Regulation engendering concern is the provision covering joint ventures.[81] As one expert study noted, "[t]he Regulation fails to establish a clear analytical distinction between joint ventures that are subject to the Regulation and those that are not"[82] Article 3, defining "concentration,"[83] states that a joint venture "which

" Regulation, Preamble, par. 13. Art. 2 of the Treaty establishes as one of the principles of the European Community the promotion throughout the Community of harmonious development of economic activities." Art. 130a, added by the Single European Act, directs the Council to "aim at reducing disparities between the various regions and the backwardness of the least favoured regions.'

"Regulation, Preamble, par., 19.

"Hawk & Weiner, pp.12-13.

" USITC staff meeting with antitrust attorney, Washington, DC, Jan. 22, 1990.

[7'] Regulation, art. 8.

[72] Ibid., arts. 14 and 15.

" Ibid., art. 24(2). The provision targets such practices as the Exon-Florio Act, codified at 50 U.S.0 app. §2170 (authorizing the president to prohibit a takeover of a domestic company by a foreign company) or the law prohibiting a foreigner from owning radio stations in the United States. Comments by an EC Delegation Official on 'Mergers and Acquisitions in the 1992 European Community," National Lawyers Club, Washington, DC, Mar. 1, 1990.

[7•] Regulation, art. 24(3).

" See Initial Report, ch. 13.

"U.S. Department of State Telegram, 1989, Brussels, Message Reference No. 11910.

• USITC staff meeting with antitrust attorney, Washington, DC, June 26, 1990.

" USITC staff telephone conversation with EC antitrust expert in New York, Feb. 5, 1990.

• USITC staff meeting with computer and data processing industry attorney, Washington, DC, Jan. 31, 1990.

" USITC staff meeting with Washington, DC, attorney, Jan. 22, 1990.

▪ USITC staff meetings with Washington, DC, antitrust attorney, Jan. 22, 1990, and with management consultant, Washington, DC, Feb. 1, 1990.

[22] Hawk & Weiner, pp. 5 and 7.

" Concentration is the translation from the French term of the same spelling but is generally thought to haVe a slightly broader scope than the English merger.'

has as its object or effect the co-ordination of the competitive behavior of undertakings which remain independent shall not constitute a concentration." However, "the creation of [a) joint venture performing on a lasting basis all the functions of an autonomous economic entity, which does not give rise to co-ordination of the competitive behavior of the parties amongst themselves or between them and the joint venture, shall constitute a concentration."[84] These definitions appear to be loosely drawn, leaving the EC Commission with lots of room for discretion.[85] Whether two companies' joint venture will be considered a concentration or not can be of vast importance to those companies, and thus the definition needs clarification.

In summation, the Regulation is a victory for **the** Commission, which, after many years, has acquired the power to vet mergers under Community law. Eventually, merger law in the EC will be reg,ulated by one authority according to a single standard. In the short term, however, due to the high thresholds and articles 9 and 21(3), one-stop shopping continues to be a dream.[86] Furthermore, the Regulation has been criticized as creating much legal uncertainty, increasing delays in authorizations of mergers and portending lots of litigation.[87]

Directive 88/666

On December 21, 1989, the Council adopted the Eleventh Council Directive on disclosure of branches (hereinafter "Eleventh Directive")[88] The directive concerns financial disclosure requirements of branches of companies governed by the law of a state other than that in which the branch is located.[89] In general, the Eleventh Directive permits a branch located in a member sta te other than that in which the company is located to submit the annual accounts and annual report of the entire company rather than submit its own accounts. Between its presentation to the Council in **1986 and its adoption in 1989, the Eleventh Directive underwent only minimal changes.**

Changes were made -in three main areas.go Article 2[91] increases the information the branch is required to disclose to the member state in which it is located. Article 8 requires the same additional information from branches of non-EC companies.

Article 4 permits the member state to stipulate in what language the documents must be written, and allows for a required certification of that translation. The question of in which languages the accounts would have to bepublished raised some concern in the proposed draft.[92] The final text is more flexible because the branch can provide the accounts to the relevant national authority in any other official language whereas an earlier draft only provided for translation into **the official** language of the **member state in which the branch is locateci.[93]**

New Initiatives

Proposed Regulation Conz(89) 268 and Proposed Directive Conz(89) 268

Background

The idea for a European Company was first introduced in 1959 **but not submitted to the EC Commission until 1967, and then again in 1970. Modified in 1975, the proposal was shelved until 1982, but failed again to gain the necessary support.[94] The proposed statute for a European Company was listed in the 1985 White Paper as one of the means of achieving the legal framework necessary for the cooperation between enterprises.gs The EC Commission believes that the creation of a European Company will playa key role in facilitating cross-border cooperation, enhancing the move toward a single market in 1992.**

There are currently no means by which a company can create a single legal entity with production or service facilities in different member

" Regulation, art. 3(2).

-- USITC staff meetings with Washington, DC, attorney, Jan. 2Z 1990, and with management consultant, Washington, DC, Feb. 1, 1990.

[61] Hawk & Weiner, p. 3; *BNA Trade Reporter,* p. 323; de la Laurence, pp. 6-7.

" See generally Hawk & Weiner; de la Laurencie.

" *Eleventh Council Directive Concerning Disclosure Requirements in Respect of Branches Opened in a Member State by Certain types ofCompanyfsici Governed by the Law of Another Stale, 01 No.* L 395 (Dec. 21, 1989) p. 36, (hereinafter 'Eleventh Directive").

" For extensive comments on proposed directive, see Initial Report, pp. 9-24 to 9-28.

" See *Amended Proposal for an Eleventh Council Directive on* Company *Law Concerning Disclosure Requirements in Respect of Branches Opened in a Member State by Certain* Typos *Companies Governed by the Law of Another State,* Com(88) 153, OJ No. C 105 (Apr. 21, 1989), p. 6

" All references to artides of the Eleventh Directive are to the final text adopted by the EC Commission unless otherwise noted.

-- Initial Report, p. 9-27.

" Propose/ *or an Eleventh Council Directive based on Ankle SOUP 0f the ratty concerning disclosure requirements in respect of branches opened in a Member State by certain types 0f companies by the law of another State,* Com(86) 39', *01* C 203 Dec. 8, 1486), p. 7, art. 3(3).

-- In July 1983, the Weans Proposal was presented. Its provisions went further, requiring providing information to and consultation with employees in companies throughout the Community. See ch. 18 on the Social Dimension.

"Completing the Internal Market, White Paper From *the Commission to the European Council,* March 1985 (hereinafter 'White Paper"), p. 35.

states.[96] As such, there is much support for the general principle of a "transnational" corporate structure but much work must be done on the details.[97]

In June 1988, the EC Commission revived **the plan for a European Company statute. A memorandum was submitted to the Parliament, to the Council and to employer and employee organizations.[98] The EC Commission then submitted a formal proposal to the Council in August** of 1989 for a Regulation on the Statute **for a European Company (hereinafter "Company Regulation") and a Directive complementing the statute regarding the involvement of employees in the European Company (hereinafter "Company Directive")(hereinaftertogether, the "Company Statute").[89]**

Anticipated Changes

Unlike the other components of the company law program, the Company Statute does not attempt to harmonize the member states laws, although it relies on many aspects of harmonized legislation. Instead, the Company Statute creates a thirteenth set of laws based on which a company can be established, separate from those in each of the member states.[1f)3] As such, this section will discuss the salient points of the statute, noting the controversial aspects.

A" European Company, or *Socictas Europca* (SE), can be formed in one of three ways. An SE may be formed by merging or by creating a holding company,[101] as a joint venture[102] or as a subsidiary to another SE.[co] Only a public limited company, defined by the second paragraph of article 58, which **is formed under the laws of a members state and which has its registered office and central administration in the EC may form an SE by merging or forming a holding company.[184] The creation of an SE through a joint venture is open to broader participation, namely, to all legal bodies created under private or public law, formed under the laws of a member state, and** having their registered office and central administration in the EC.[105] Although U.S. companies may be precluded from forming an SE, subsidiaries of U.S. companies located in the EC are not. A U.S. company cnr: establish a company in any member stag ti.us gaining European nationality, and then pa rtIcipate in the formation of an SE.[106]

The 1989 text of the Company Statute decreased the amount of required capital required to establish an SE from 250,000 ECU to 100,000 ECU.[107] The purpose of lowering the **minimum capital requirement was to make it easier for small and medium-sized businesses to take advantage of the** Company Regulation.loa The capital, **as well as** the shares, of the SE must be denominated in ECU.[109]

Article 5 requires that each SE have a registered office within the European Community and that the location of that office be specified in its statutes. This provision is important because, although the Company Statute replaces national law in some areas, in many others, such as protection of creditors,[110] **issuance and transfer of shares,"**[1] **insolvency,[112]** and taxation,[113] national law applies.

• There are actually four parts to the EC Commission's plan to realize the freedom of establishment mandated by the Treaty as well as to create a single market for investment: (1) the European Company statute, (2) the Fifth Company Law Directive on public limited companies, (3) the Tenth Company La* Directive on cross-border mergers, Initial Report, pp. *9-24* to 9-28; and (4) the Regulation creating the European Economic Interest Group (EEG), Initial Report, pp. 9-23 to 9-24. The EF1G, considered the 'poor cousin' of the European Company statute, was seen as a precursor of the European Company because it provides a vehicle for transborder cooperahon.

USITC staff telephone conversation with European aerospace industry attorney, Jan. 5,1990; Meeting with computer and data prom-sing industry attorney,Washington, DC,Jan. 31, 1990; Meeting with management consultant, Washington, DC, Feb. 1, 1990.

• Peter Verloop, The New Company Law Statute and Harmonization of Business Law Among Member Countries' (Paper presented at the American Bar Assodation (ABA) Conference '1992: New Opportunities for U.S. Banks and Businesses in Europe,' New York, Feb. 23 and 24, 1989) (hereinafter "Verloop ABA Paper') p.113.

• *Proposal for* a *Council Regulation on the Statute for a European Company* Com(89) 268; *01* No. C 263 (Aug. 16, 1989) p. 41, (hereinafter "Company Regulation') and *Proposal for Council Directive Complementing the Statute for* a *European Company with Regard to the Involvement of Employees in the European Company* Com(89) 268 *01 No.* C 263 (Aug. 16, 1989) , p. 69 (hereinafter 'Company Directive"). Although legally two different proposals, the Regulation and Directive are, for all practical purposes, one pro l. They are treated *as* such in this report and are referredto as the Company Statute, except that citations are to the Company Regulation or Company Directive, as required.

'00 The EC Commission claims that one of the anticipated benefits of this statute will be that a transnational group of companies may rely on it when they cannot agree on which national law to *base* their company. It is uncertain, however, whether companies, or their attorneys, will find a system with which neither party is familiar preferable to that with which at least one is familiar.

'0' At least two of the companies involved in the merger or formation must be from different member states. Company Regulation, art. 2(1).

" Ibid., art 2(2).

1-- Ibid., art 3(3).

1O' Ibid., art. 2(1).

'" Ibid., art. 2(2).

1-- Whereas French law, like the Company Regulation, requires that both the registered office and central administration of the company be in France, the nationality test is met in the United Kingdom, Ireland, and the Netherlands by the simple act of incorporation. Thus, the test of forming a company under the laws of a member state is not a difficult one, and the registered office and central administration must only be somewhere in the Community for the art. 2 test to be met J. Grayson, "The European Company Corporate Restructunng With a European Carrot," ch. inlaBoeuf, Lamb, Leiby & MacRae, eds. *Euronotes: European Law Develqnnents Affecting International Business* (Brussels, NovemberMecember 1989).

107 Company Regulation, art. 4(1). 'Commentary on the Articles of the Company Statute Regulation' (hereinafter 'Commentary") p. 45.

'00 Commentary, p.45.

'" Company Regulation, art. 38(1) and (2).

"0 Ibid., art. 23.

"' Ibid., art. 54.

-- Ibid., art. 129.

"8 Ibid., art. 133(3).

The Company Statute contains detailed provisions governing the formation and management of the SE.[114] The two most important, and controversial, aspects however are the taxation and worker participation provisions.

The Company Statute attempts to create a neutral tax structure. Under the terms of the current draft, the SE will be subject to the tax laws of the country in which it is registered.[115] Under article 133(1), however, the SE will be able to offset gains made in the home country with losses suffered by permanent establishments and subsidiaries in other member states. Because most member states do not presently permit deductions for losses of subsidiaries in other countries, this provision would be a great benefit to companies doing business throughout the EC.[119] Despite its advantages, *this* provision has engendered much criticism. The Union of Industrial and Employers' Confederations of Europe (UNICE) supports the general principle of fiscal harmonization. UNICE, however, suggests that the tax provisions in the Company Statute are insufficient and that greater work, on *a* much more extensive scale, needs to be done.[117] In particular, UNICE would like to see a regulation "applicable to all companies which carry out business across borders, including European Companies."[119] Because the tax provisions of the Company Statute have proved so controversial, the EC Commission is said to be working on other areas of corporate tax harmonization. There are currently three tax provisions before the Council that would significantly resolve the double taxation problem.[119] Thus, it appears that article 133 of the Company Regulation does not, by itself, provide the tax incentives some had hoped for.

The most controversial aspect of the Company Statute is the accompanying directive requiring some form of worker participation.[129] The Company Directive sets out three models of participation. Article 4, modeled after the German system, requires that one-fourth to one-third of the supervisory or administrative board (i.e., the Board of Directors)[121] be either _ appointed by the employees or by the board. Alternatively, article 5 would require the establishment of a separate body representing the employees, which must be kept informed and consulted by the management board or administrative body. If neither of the options presented in articles 4 or 5 are acceptable, article 6 allows the company and its employees to establish other methods of participation through collective bargaining.[122] A member state is permitted to restrict the options that European companies registered within its borders may chose.[123]

The EC Commission has made it clear that *the* employees will not be involved in the day to day management of the company, that such responsibility will be left to management. The workers must, however, be consulted on such issues as closure or relocation of a plant, major modifications of the activities of the company, creation or conclusion of a long-term relationship with another company, and significant modifications in the organization of the company.[124] Fear has been voiced that because the company is required to consult with the workers before such major strategic decisions are taken, the workers may hold the company ransom,only. agreeing to the necessary changes if concessions *are made.*'[25]

Worker participation of some sort already exists in most of the member states of the European Community. Worker representatives already have a seat on the board of German companies. In Spain, France, Belgium, Portugal, and Greece, worker representative bodies (or works councils) exist with rights of information and consultation. Worker participation arrangements negotiated between management and workers exist already in Italy, Ireland and the United Kingdom.[126] The actual procedures established in this directive therefore represent neither a new nor radical departure from current practice in the EC. The provision has, nevertheless, caused a great deal of controversy. The West Germans insist on some form of worker participation, preferably that modeled on their own system of worker participation on the supervisory board.[127] The British, at the other end of the

"[4] The detailed provisions of the Company Regulation cover, among other things, the issuance of shares and debentures, Company Regulation, Title III, the construction and obligations of the governing body and general shareholders' meeting, Company Regulation, Title IV, annual and consolidated accounts, Title V, and the winding-up and insolvency of the SE, Company Regulation, Title VI.

[115] Company Regulation, art. 133(3).

[116] J.M. Dither, "The Future European Company Statute: An 'Early Warning' on EC Intentions; *1992: The External Impact of Eurwcan Unification, vol.* 1, No. 3, (May 5, 1989), p. 13.

[117] UNICE, Position paper on the European Company Statute of the Union of Industrial and Employers' Confederations of Europe, Nov. 20, 1989, (hereinafter `UNICE Position Paper").

[118] Ibid., p. 8.

[119] 1992• *The External Impact of European Unification, vol.1,* No. 20, Jan. 26, 1990.

[120] The worker participation provisions, viewed by the EC Commission as an Integral parr' of the Company Statute, are proposed as a separate directive to allow the Council to adopt it by qualified majority. Adoption of the Company Regulation, by contrast, will require unanimity.

[121] If the SE has a two-tiered structure (Company Statute, pt 4, sec. 1), art. 4 applies to the supervisory board, but if it has adopted the single-tier model (Company Statute, pt. 4, sec. 2), it applies to the administrative board.

[122] Company Directive sets out minimum requirements that must be met if the third option is chosen, including rights of the employees to information and consultation on certain issues. The company is not required to institute a worker participation regime if the employees and management do not want one.

[123] Company Directive, art. 3(5).

[124] U.S. Department of State Telegram, 1989, Brussels, Message Reference No. 09020.

[125] USITC staff meeting with computer and data processing industry attorney, Washington, DC, Jan. 31, 1990.

[126] *1992: The External Impact of European Unification, vol. 1,* No. 3. (May 5, 1990), p. 14.

[127] USITC staff meeting with members of the West German Ministry of Justice, Bonn, *Apr. V,* 1989.

spectrum, are equally adamant that such arrangements should not be statutorily mandated but left to negotiations between management and workers.[128]

The support for this proposed Company Statute by European industry has been mixed. In general, there does not appear to be much mobilization by European industry in favor of the Company Statute, and the position statement from UNICE contained far more negative comments than positive ones.[129] The flexibility of the worker participation provisions offered by the Company Directive appears to have assuaged some concern.[139] However, one European attorney familiar with the Company Statute suggested that although the concept of a European Company was quite attractive, this text was entirely too complicated.[131] Another difficulty with the Company Statute is that it continues to depend to a large extent on national law.[132] Some companies feel that the tax provisions do not yet provide sufficient advantages. In fact, the tax provision, as currently written, would require that companies keep separate balance sheets, profit and loss statements and other financial records for each operation although the company is one legal entity. In short, the Company Statute would create administrative inefficiencies whereas one of its goals is to streamline the management of European companies.[133]

U.S. companies, on the other hand, have voiced interest in the proposal and are optimistic about the possibilities available through a European Company. Some companies have expressed strong opposition to mandated worker participation.[134] The preference among U.S. firms is clearly for negotiated worker involvement. There appears to be a lingering concern, raised originally with the Vredling Proposal, on the extent to which the information and consultation requirements in U.S. subsidiaries located in the EC would reach back to affect management decisions taken at U.S. headquarters.[135] Other companies, less apprehensive of the worker participation requirements, fear that the Company Statute will not be adopted soon enough because they are planning how to restructure their organization now.[136]

Summary of Possible Effects

- In general, the Company Statute should have limited effects on U.S. industries operating in the EC. Because it does not replace the formation of companies under the individual member's laws, at worst it can be viewed as simply 1 choice among 13 in forming a company to do business in Europe. At best, although not legally designed to harmonize individual country law, the creation of a single set of rules to operate throughout the entire EC will have a similar result For the U.S. firm with a subsidiary in the EC, it will be a question of weighing the merits of forming an SE balanced against the benefits of remaining under the current national legislation. The decision faced by the new investor is similar except that the 13 variations may be evaluated without the bias of a preexisting company.

The primary advantages to the formation of an SE under the proposed Company Regulation are the single treatment across the European Community and tax savings. The Company Regulation would allow SEs to rationalize individual country operations and benefit from increased management efficiencies. The greatest disadvantage to both U.S. firms and some member state firms, particularly those in the United Kingdom, in addition to the regulation's relative complexity, are the worker participation provisions. The ultimate disposition of the worker participation options will determine much of the desirability of an SE for most U.S. firms. The modes of participation detailed in articles 4 and 5 (employees serving on a supervisory or administrative board and a separate body representing the employees, respectively) are the least compatible with U.S. practice. If these two models are ultimately the only two available, then the attractiveness of an SE for U.S. investors may be severely diminished. The option for other models in Article 6 offers the possibility of individually negotiated solutions that may result in somewhat greater participation. However, there remains significant U.S. opposition to any EC-mandated worker participation.[137]

One additional potentially negative result of this regulation would be the possibility of greater competition from SEs in the EC, the United States, and in third country markets. Firms in most member states, particularly West Germany and France, do not view worker participation in a negative way as do U.S. and British firms, and could be expected to more readily form SEs for the remaining benefits. To the extent that such firms would achieve various economies and cost savings, they could gain greater market share at home and abroad.

USITC staff meeting with computer and data processing industry attorney, Washington, DC, Jan. 31, 1990.

[128] USITC staff telephone conversation with European aerospace industry attorney in France, Jan. 5,1990; and UNICE Position paper.

[129] USITC staff meetings with computer and data processing industry attorney, Washington, DC, Jan. 31,1990; and with management consultant, Washington, DC, Feb. 1, 1990.

[130] USITC staff telephone conversation with European aerospace industry attorney in France, Jan. 5, 1990.

USITC staff meeting with computer and data processing industry attorney, Washington, DC, Jan. 31, 1990.

as USITC staff meeting with representative of heavy machinery equipment manufacturer, Brussels, Jan. 11, 1990.

[133] USITC staff telephone conversation with computer technology company representative, Jan. 24,1990; USITC staff meeting with information technology attorney, Washington, DC, Feb. 1, 1990.

[138] USITC staff telephone conversation with computer technology company representative, Jan. 24, 1990.

USITC staff meeting with management consultant, Washington, DC, Feb. 1, 1990.

[137] U.S. Chamber of Commerce of the United States, *Europe 1992: A Practical Guide for American Business,* 1989, pp. 35-44.

U.S. exports to the EC

The European Community is an important market for, and supplier to, the United States. U.S. exports to the EC amounted to $71 billion in 1988, accounting for 23 percent of total U.S. exports. Estimated U.S. exports to the EC rose to $82 billion in 1989, accounting for 24 percent of the total. The Company Statute may have the effect of creating greater competition within the Community from EC firms enjoying the efficiency benefits of an SE company format However, because U.S. subsidiaries that are incorporated in a member state may form an SE, they will enjoy similar benefits. Notwithstanding, this increased competition, the overall effect of the proposed Company Statute on U.S. exports is expected to be minor.

Diversion of trade to the U.S. market

The Company Statute is not expected to result in significant trade diversion overall. For the industries sampled, trade in the particular product is small, or U.S. companies are generally competitive in the product.

U.S. investment and operating conditions in the EC

M was previously indicated, the formation of an SE is optional; therefore, the Company Statute may not directly affect existing U.S. investment but provide an alternative system under which to form a company. The worker participation provisions represent a change in operating conditions for any U.S. firm or investor that has not operated in those member states already requiring such participation. If models of worker participation other than those referred to in articles 4 and 5 are not contained in the final text of the Company Regulation, most U.S. firms could be expected to eschew the use of the SE. Even firms with subsidiaries or other investments in those countries already requiring worker participation could well decline to form SEs to avoid covering operating units in other EC countries under these provisions. Presuming that optional worker participation models are allowed, there remains an incentive to headquarter SEs in those countries currently requiring the least participation. In addition, the EC Company Statutes hold little appeal to firms serving exclusively regional or single country markets.

Representative Industries

This ends the general discussion of the proposed regulation on the statute for a European Company. Following are individual discussions of the sectors/industries listed below:

Aerospace
Air-conditioning and refrigeration
Processed foods, grains and oilseeds
Telecommunications
Financial services

Aerospace

Possible *effects*

U.S. exports to the **EC**

This Company Statute will have little, if any, effect on U.S. exports of aerospace products to the EC. The EC civil and military aerospace industries have already undergone rationalization with the result that three large conglomerates are in control of most of EC production.[138] In spite of this restructuring, U.S. aerospace products continue to dominate EC aircraft fleets. In 1988, aerospace ex its to the EC accounted for 35 percent of total U.S. aerospace exports. It is considered highly unlikely that EC producers will seek further rationalization through an SE, because these firms are currently profitable in their own areas. However, an SE might be considered by certain **companies that wish to address niche markets, as have two joint venture arrangements in the area of aircraft engine design and production.**

There are no U.S.-owned aerospace companies in the EC. At present, there is no interest in forming an SE between a U.S. and EC company, according to industry sources.

Diversion of trade to the U.S. market

No trade is expected to be diverted to the U.S. market from foreign sources of aerospace products as a result of the Company Statute. U.S. and EC firms account for the bulk of global production of aerospace products.

U.S. investment and operating conditions in the EC

U.S. **investment and operating conditions are not expected change substantially because of the Company Statute. In the future, U.S. companies may form SEs with EC companies to compete more successfully in the EC market**

U.S. **industry response**

Several major U.S. and EC aerospace firms were contacted for this evaluation. These firms included the major airframe and aircraft engine producers in the world. Both the U.S. and EC firms believe that this Company Statute will have no near term effect on their operations; however, they will monitor events in the EC to see what, if any, effect the Company Statute will have on the industry.

Air-conditioning and refrigeration

Possible effects

U.S. exports to the EC

U.S. exports to the EC of air-conditioning and refrigeration equipment were approximately $401 million in 1988, or 19 percent of total exports of air-conditioning and refrigeration equipment U.S.

[1] " Further rationalization could raise antitrust concerns.

firms are estimated to account for a 35- to 40-percent share of the European market for these products. Major types of equipment and components exported to the EC include auto and truck refrigeration and air-conditioning compressors, parts for refrigeration and air-conditioning equipment, all types of room air-conditioners, and self-contained and spit-system heat pumps. Germany, France, Britain, Belgium, and Spain account for the bulk of U.S. exports of these products.[139] The net effect on U.S. exports will be negligible.

Diversion of trade to the U.S. market

The proposed Company Statute will most likely have a minimal effect on U.S. imports or third-country suppliers to the EC. According to industry officials, the majority of U.S. exports to the EC consist of unitary equipment that has few major world competitors. However, Japanese suppliers of compressor technologies (i.e., rotary and scroll compressors) are expected to make some long-term inroads in select component areas of this industry.

U.S. investment and operating conditions in the EC

U.S. investment and operating conditions in the EC will most likely be affected in a positive way. Because the European market is the largest market for these products, second only to the United States, numerous large and medium-sized U.S. producers of air-conditioning and refrigeration equipment have major manufacturing investments in this vital market. U.S. producers of air-conditioning and refrigeration equipment are likely to benefit from high levels of foreign investment and economic growth as a result of the EC 92 consolidation. This particular industry has strategically positioned itself to be able to benefit from economies of scale, greater business harmonization, and regulations. Firms in this industry indicate that they are likely to streamline their operations and become more efficient. In addition, many of these firms have been active in acquiring smaller European producers of these products to expand both market share and product lines.[140]

U.S. industry response

By and large, nearly all U.S. manufacturers of air-conditioning and refrigeration equipment surveyed have indicated that they would be able to comply with the majority of essential provisions set forth in the proposal. However, spokesman for the Air Conditioning and Refrigeration Institute have indicated that anticipated labor requirements set forth by the Company Directive will likely increase costs and decrease flexibility for U.S. firms with subsidiaries in the EC.[141] Furthermore, the proposed Company Directive may lead to a European industrial relations model that could eventually serve as a prototype for other nations, and may result in international labor standards that are incompatible with labor/management practices in the United States.

Processed foods, grains and oilseeds

Possible effects

U.S. exports to the EC

The effects of the Company Statute on U.S. exports of these products, particularly processed foods, will be slightly negative. U.S. exports of processed foods to the EC amounted to $173 million, accounting for 12 percent of the total processed foods exports. U.S. exports of grain and oilseeds to the EC in 1988 were $2.5 billion, or 20 percent of the total grain and oilseeds exports. The competitive advantages (e.g., economies of scale from consolidation of management in a single EC location) that the Company Statute could give to firms producing within the EC would allow them to capture a greater share of the EC market, which would reduce EC demand for imports from third countries. This decline in import demand would affect the United States more than other third-country suppliers because U.S.-based firms account for a large share of third-country exports of processed foods.

Diversion of trade to the U.S. market

The principal trade-diverting effect of the proposal is likely be a reduction in U.S. exports of processed foods, which will increase U.S. domestic supply and reduce domestic prices, benefiting U.S. consumers and burdening U.S. producers.

U.S. investment and operating conditions in the EC

The Company Statute is expected to benefit current investment and may encourage future investment by U.S. firms already located m the EC. In both processed foods and grains and oilseeds, U.S. exports to the EC as well as EC-based production are in the hands of large firms that export to the EC and operate production facilities within the EC, either directly or through subsidiaries or joint ventures. For many large U.S. producer/exporters, their ECproduction facilities are a significant part of their global operations; estimated U.S. investment in these EC industries currently exceeds $40 billion, accounting for a significant share of the EC processed foods industry and the majority of the grains and oilseeds industry. Consolidation of their EC operations may be an attractive opportunity. These firms expect to benefit directly from this Company Statute if they see tax or other advantages in creating a single EC subsidiary to oversee their various member state operations.

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

USITC staff telephone conversation with Air-conditioning and Refrigeration Institute spokesperson, Nov. 17, 1989.

[141] Ibid., USITC staff meeting with air-conditioning industry representative, Baltimore, MD, Jan. 9, 1990.

U.S. industry response

U.S. companies may be expected to continue their recent efforts to establish and expand their EC productionimarketing operations regardless of whether the Company Statute is adopted. However, because the EC demand for many processed food products is highly regionalized (and so there are fewer gains from coordinating EC-wide operations from a base in one member state), the Company Statute will have a smaller impact on regional or single-country firms specializing in these product lines (e.g., jams or cheeses) than on firms marketing products sold throughout the EC (like colas or candy bars).

Tel econzmunications

Possible effects

U.S. exports to the EC

U.S. exports of telecommunications equipment could increase as a result of the harmonization of **the EC company law. U.S. high-technology firms operate out of the world's largest market and are more prepared financially and technically than EC firms which operate out of 12 fragmented markets. The EC market for telecommunications equipment totaled an estimated $18 billion in 1988. U.S. exports to the EC were $1.3 billion, or about 21 percent of the total value of exports of $6.5 billion in 1988. U.S. firms should be well positioned to establish joint ventures with larger firms in the EC and to take over smaller firms. SEs formed by mergers and joint ventures are likely be supplied with U.S.-produced parts or with U.S.-produced equipment to complete product lines. A major advantage of establishing firms under the Company Statute is that the costs of doing business across the national borders that would be incurred because of overlapping legal systems can be avoided. Costs associated with establishment and reporting burdens can thus be reduced. Also, the tax advantages contained in the proposed statute could reduce the cost of doing business in the EC fora U.S. firm organized as an SE.**

Diversion of trade to the U.S. market

European firms are expected to become larger through cross-border mergers and more_globar in product marketing if they adopt the European Company corporate form. Economies of scale from their increased size and streamlined reporting will decrease their cost, increase their resources, and allow them to be more competitive in the U.S. and other major telecommunications markets. At the same time, with the opening of telecommunications network equipment markets (one of the excluded sectors) in the EC member states to competition,[142] EC telecommunications network equipment manufacturers will face new infra-EC and foreign competitive pressures, which will act to reduce the level of *benefits* EC telecommunications equipment manufacturers may derive from organizing as a European Company, but will also act to increase the need to export.

U.S. *investment and operating conditions in the EC*

If the SE framework proposed by the Company Statute gives U.S. firms operating in the EC the ability to streamline reporting or operations costs, the level of U.S. investment may increase. U.S. investment in the radio, television, and communications industries, which includes the telecommunications industry, was almost $10 billion in 1986, according to U.S. Department of Commerce data. t[43] A major hindrance is likely to be the worker participation provisions. Companies are likely to be weigh the disadvantages of mandatory worker participation against the promised tax benefits in deciding whether to form an SE. Given the optional nature of the corporate form proposed by the Company Statute, its impact on U.S. investment in the EC appears neutral.

U.S. industry response

U.S. firms operating in the EC view the European Statute as having a neutral to positive effect. A representative of the computer and data processing industry noted that incorporation was optional. Incorporation as a transnational corporation not subject to national laws could give the company a more "European" character. Although participation in an SE is limited to European companies, because most subsidiaries are incorporated in a member state and because the Company Statute does not discriminate according to parentage, U.S. subsidiaries in the EC are on an even footing with EC companies. Representatives of a telecommunications company opined that, notwithstanding the opportunities that might be enjoyed by a European Company, the requirement of worker participation associated with European incorporation made the proposal less beneficial.'" Companies are continuing to monitor the progress of the proposed statute and evaluate the potential benefits versus the costs associated with worker participation.

Some companies view the issue of worker participation with concern.[145] Although industry representatives recognized that good management practices require that firms involve workers in the running of the company, they did not wish to have a mandated worker participation system; rather, they would prefer to develop their own method of worker participation. There is concern with the degree of the worker participation provision and

[142] *Commission Directive on Competition in the Markets in Telecommunications Terminal Equipment,* OJ No. L 131 (May V, 1988), p. 73. See Initial Report, pp. 9-33 to 9-23.

[143] U.S. Department of Commerce, Bureau of Economic Analysis, *U.S. Direct Investmcnt Abroad,* June 1988, table 5.

[144] USITC staff telephone conversation with telecommunications company representative, Jan. 24, 1990.

[145] Ibid. USITC staff meeting with computer and data processing industry attorney, Washington, DC, Jan. 31, 1990.

with the extent of the impact on management decisions in the United States. The development of formal schedules for worker participation during corporate restructuring or acquisition is also a problem. Much of the involvement of workers in such corporate changes currently is informal; requiring that a strict timetable for participation be created limits the flexibility of management

Financial services

Possible effects

U.S. exports to the EC

The relevance of commodity exports to the EC does not apply in the case of financial services firms. It is, however, appropriate to analyze the effect of the proposed Company Statute on investment conditions in the EC.

Diversion of trade to the U.S. market

Because the effect of the proposed regulation should be confined to the EC, diversion of trade to the U.S. market is unlikely.

U.S. investment and operating conditions in the EC

Total U.S. direct investment by the finance and insurance industries in the EC by 1988 totaled $21.6 billion.[146] The adoption of the proposed Company Regulation is likely to encourage greater investment in the EC by those U.S. financial services firms that wish to take advantage of the positive tax features of the proposal and that view the formation of an SE as a vehicle for expanding their operations throughout the EC. However, based on conversations with industry contacts, it does not appear likely that many financial services firms will choose to form SEs because the mandatory nature of the worker participation features of the proposal outweigh the possible benefits.[147] For those financial services firms that operate principally in the United States or in the United Kingdom where worker participation in management is largely unknown, the prospect of adopting models of worker participation similar to those in West Germany makes these firms uneasy. Those firms that already operate through branches and subsidiaries in West Germany and are accustomed to dealing with workers' councils generally prefer to deal with these arrangements on a country-by-country basis and would prefer not to operate under a single worker participation standard."[8]

[141] This figure is valued on ebook value' basis, or, at historical cost. Because this investment is based on values established at the time of investment it may be somewhat understated in relation to market value today.

USITC staff telephone conversation with investment bank representative, London, Nov. 30, 1989.

[16] UNICE Position Paper pp. 3-12.

U.S. industry response _

For some financial services firms, the proposed Company Statute may encourage an expansion of market presence across the EC under the umbrella of the SE. However, most firms contacted expressed no desire to form an SE at this point and indicated that market expansion would continue to occur through the establishment of branches and subsidiaries, mergers and takeovers, or through the formation of European Economic Interest Groups.[149]

Proposed Directive Cont(88) 823

Background

As noted in the initial report, there has been a steady process of harmonizing company laws throughout the European Community to facilitate cross-border activity.[150] One of the four fundamental freedoms in the European Community is the freedom of establishment To promote the EC as a common market for businesses, as well as goods, the Council has adopted a series of Company Law directives to create a common set of guidelines covering the operations of corporations, such as corporate accounts, formation of companies and disclosure.[151]

The Proposal for a 13th Council Directive on company law, concerning takeover and other general bids (hereinafter "13th Directive"),[152] is the latest in the long line of Company Law directives coordinating laws governing corporate behavior throughout the EC. The EC Commission noted in the White Paper additional areas that needed

'" USITC staff telephone conversation with member of financial services firm, London, Nov. 29, 1989. Initial Report, pp. 9-23 to 9-24.

'" Initial Report, p. 9-24.

[181] The Company Law Directives that have been passed by the Council are as follows:

First Council Directive 68/151, *01* No. L 65, (Mar. 14, 1968), p. 8 (disclosure requirements of limited liability companies);

Second Council Directive 77/91, 01 No. L 26, (Jan. 3, 1977) ,p.1 (the formation and capital of public limited companies);

Third Council Directive 78/885, *01* No. L 295, (Oct. 20, 1978), p. 36 (merger of public limited companies);

Fourth Council Directive 78/660, *01* No. L 222, (Aug. 14, 1978), p. 111 (coordination of company accounting requirements);

Seventh Council Directive 83/349, *01* No. L 193, (July 18, 1983), p. 1 (coordina tion of consolida tion of accounts of some limited liability corn panies);

Eighth Council Directive 84/253, *01* No. L 126, (Dec. 5,1%5), p. 20 (professional qualifica lions of auditors)

Eleventh Council Directive 89/666, 01 No. L 395, (Dec. 21, 1989), p. 36 (concerning disclosure requirement of branches opened in a member states by companies governed by the law of another state); and

Twelfth Council Directive 89/667, *01* No. L 395 (Dec. 21, 1989), p. 40 (single member private limited-liability companies).

I" *Proposal for a 13th Council Directive on Company law, Concerning Takeover and Other General Bids* (hereinafter '13th Directive') Com(88) 823, *01* C 64 (Mar. 3, 1989), p.11. At an upcoming Council of Economics and Finance Ministers meeting, certain amendments that may be added to the directive will be discussed in addition to the actual terms in the published text.

coordination to further the creation of a single market by 1993. Among other steps, the EC Commission called for "making better use of certain procedures such as offers of shares to the public for reshaping the pattern of share ownership." [153] Pursuing the goal of creating a single market for investment, [154] the EC Commission, by means of the proposed thirteenth directive, is attempting to harmonize rules concerning takeover bids by making such operations "more attractive." [155]

Takeovers have not been as common in Europe as in the United States, and hostile takeovers are fairly rare in Europe. In fact, only in the United Kingdom is the hostile takeover a common occurrence. In 1987, although there were over 250 takeovers in the United Kingdom, they are virtually unheard of in other countries. [156] The takeover environment and regulatory structures vary widely from member state to member state. Whereas there are few (440) publically traded companies in West Germany, [157] most of whose shares are held by family members or friendly banks, there are over 3,000 publically held companies traded on the British stock exchanges. [158] Most of the continental countries fit into the German model, and any takeovers that occur tend to be friendly ones. Because takeovers are infrequent, and hostile takeovers rare, some member states have not developed extensive takeover regulations. [159] On January 19, 1989, the EC Commission presented to Council the 13th Directive based on article 54 of the Treaty of Rome which directs the Council to abolish restrictions on the freedom of establishment in the European Community and authorizes the EC Commission and the Council to issue directives to create equivalent safeguards. The proposed Directive attempts to establish basic technical rules for takeovers of publically traded companies:to

Anticipated Changes

The 13th Directive is still in the proposal stage. As such, this discussion will address the changes that will result from adoption of the current text (and known changes thereto) as well as note those areas of the greatest contention.

If passed, the 13th Directive will standardize the procedures for public bids and tender offers. Article 1 defines the scope of the directive to all limited-liability companies. [161] The scope may be narrowed further to apply only to limited-liability companies that are publically traded. [162] This change has been supported by the Economic and Financial Committee, [163] the European Parliament, [164] and Mr. Martin Bangemann, the Internal Market Commissioner. [185] Article 5, however, exempts from the requirements of article 4 (obligatory bid) bids for small and medium enterprises.

The United Kingdom wants member states to be empowered to disapply the directive entirely if the application of it would undermine the 13th Directive's purpose and efficiency. Although the EC Commission may be willing to permit the member states some discretion in determining the scope of the 13th Directive, it is not inclined to permit a member state to disapply it completely.lo

'" White Paper, p. 35.

'[64] Art. 3(c) of the Treaty of Rome sets forth as one of the activities of the Community, 'the abolition, as between Member States, of obstacles to freedom of movement for persons, services and capital.'

[ss] White Paper, p. 34.

'" See Simon MacLachlan, ed. *Takeovers and Mergers in Europe* (London: Clifford Chance, 1988)(hereinafter *"Takeovers*

I" Although limited liability corporations, or stock corporations, are the most important legal structure, the majority of commercial activity is undertaken by Gesellschaft mit beschankter Haftung (private limited liability companies, GmbH). Dr. Gerhard Wegen, 'Take-overs and Mergers in the Federal Republic of Germany," *Takeovers,* p. 31; see also, Nathalie Basaldua, 'Towards the Harmonization of EC-Member States' Regulations on Takeover Bids: The Proposal for a Thirteenth Council Directive on Company Law; *Northwestern Journal of International Law & Business,* vol. 9, (1989) p. 493 (hereinafter 'Takeover Bide), citing 34 *Die Aktimigellschaft* R55 (1988).

'[56] In 1985, 3,000 publicly traded companies were listed in the United Kingdom. 'Takeover Bids,' p. 492.

'es Belgium has no detailed regulatory system. France has a number of regulatory bodies but no statutory regulations. The laws of West Germany and Italy do not provide for takeover bids. Probably the most extensive regulation is found in the United Kingdom, where takeovers are governed by the Panel and Takeovers and Mergers under a nonstatutory scheme. See, generally, *Takeovers.*

'" This directive should not be confused with *Regulation No. 4064/89* on control of concentrations discussed above, which confers on the EC Commission the authority to determine the anticompetitive effects of a merger (or a takeover), or with the *Tenth Company Law Directive, discussed* in the Initial Report, pp. 9-24 to 9-28, which establishes the technical rules)3overning_mergers between companies in different member states. The major difference between a merger and takeover is that in a merger, also known as a legal merger, all the assets and liabilities of one company are transferred to another and the first company is essentially dissolved. A takeover, or 'shares merger,' is the purchase by one company, or person, of all the shares of another, and the acquired company remains in existence.

"" Under U.S. law, this scope would apply to corporations whose primary legal characteristic is the limitation of liability of the shareholders of the corporation. The directive thus specifically exempts from these procedures all unlimited liability companies, such as partnerships.

[1'" *Europem Report,* No. 1550, Dec. 20, 1989.

'" *Europe,* No. 5168 (new series), Jan. 10, 1990.

[1'" *European Report,* No. 1556, Jan. 20, 1990.

[1.s] *Financial Tunes,* Jan. 24, 1990, p. Z col.l.

[1'" *Europe,* No. 5168 (new series), Jan. 10, 1990.

A major underlying principle of the 13th Directive is equal treatment for all stockholders. This standard is specifically stated in article 3 as well as in the Recitals. The most specific example of this principle is the requirement that when a person (or a company) acquires more than 33.3 percent [167] of the shares of a company, the offeror must make an offer for the rest of the shares of that company. [168] This provision is to prevent partial speculative bids and to protect minority shareholders who after a partial bid might suffer a loss in the value of their shares because of their minority position. The 33.3-percent figure was chosen because at that point a shareholder has enough power to exercise a blocking vote.

The obligatory bid provision has three controversial aspects. Member states representatives at the Economic and Financial Committee of the Council, held December 18, 1989, raised two problems concerning this provision. The first is with the concept of an obligatory bid altogether. At the meeting, the West Germans and the Dutch voiced their dislike of the provision. [189] The representatives of Denmark and Luxembourg expressed reservations about the idea. [170] A second concern was raised by the Belgians, West Germans, and Luxembourgers who felt that using the 33.3-percent threshold as the single criterion requiring an obligatory bid was too rigid. [171]

The third controversial aspect of this provision is the obligation to make the offer for 100 percent of **the shares.** [172] **It has been** suggested that the requirement should be lowered to two-thirds rather than all of the shares. [173] With the hundred percent requirement, it is feared that the ownership of companies will be concentrated in a few shareholders' hands, reducing the number of companies on the stock market [174] The EC Commission, however, has not been receptive to lowering the hundred percent rule, nor to any of the other suggested changes to article 4. [175]

Another example of the principle of equal treatment is the increased amount of information provided to employees of the target company. Article 19 of the 13th Directive requires that the board of the target company provide the workers' representatives with the information about the securities offered as consideration or, if the securities are not publically listed, information about the issuer, as well as with the report prepared by the board of the target company. In the meeting of the European Parliament in January 1990, the Parliament stressed the importance of providing information to the employees. The Parliament suggested that before an offer is published, the terms of the offer be provided to the target company, which must in turn provide the terms to its employees within 24 hours. The Parliament also wanted the assessment of the offer that is generated by the board of directors of the offeree company to be provided to the employees of that company. Furthermore, a report from the offeree company's workers should accompany the offeree company's response to the offeror. [176]

The Legal Affairs Committee of the European Parliament proposed that the offeror company forward to employees of both companies "an appropriate evaluation of the consequences the offer will have on employment, as well as on its social commitments."In The committee likewise recommended increased consultation with the employees of the offeree company. The United Kingdom and Ireland have expressed reservations concerning increased consultation with the employees. [178]

The 13th Directive guarantees transparency through article **7** (offeror must announce his intentions), article 11 (publication of **the offer** document), and especially article **10. The European** Parliament noted that the offeror **company should provide more information to employees than is required in the current text of article 10.** [179] **Article 10 currently requires that the offeror company reveal in the offer document,** *inter alia, the name, office* **address, and type of the offeree** *company; name* **and address of the company's representative; securities for which the offer is being made as well as the securities already held by the offeror; the consideration to be offered for each security; conditions, if any, set by the supervisory authority; the dates of the offering; the intentions of the offeror for the offeree** company; any special advantages for the offeree company directors; and any voting agreements attached to the securities of **the offeree company.** [180]

The European Parliament would also like to see the offeror company provide information on how it plans to finance the bid, and how the takeover will affect the indebtedness of it and the offeree company, provided the takeover succeeds. The Parliament also recommended that the offeror

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"rrlhe actual percentage that will trigger the obligatory bid provision is to be set by the individual member states but may not be set higher than 33.3 percent. 13th Directive, art. 4(1).

[166] Ibid. Obligatory bids are not unknown in Europe. The United Kingdom requires an obligatory bid when any person acquires 30 percent of the voting rights of a compatir Portuguese law mandates an obligatory bid at the 20-percent threshold; Italy's threshold is 90 percent; Spain requires an obligatory bid when the offeror acquires enough shares to alter the company's bylaws.

I" *Europe,* **No. 5168 (new series), Jan. 10, 1990;** *European Report,* **No. 1550, Dec. 12, 1989.**

" *Europe,* **No. 5168 (new series), Jan. 10, 1990.**

[171] Ibid.

[172] *European Report,* **No. 1549, Dec. 16, 1989.**

[1] " "Opinion of the Proposal for a Thirteenth Council Directive on Company Law Concerning Takeovers and General Bids,' *Of* **No. C 298 (Nov.** *V,* **1989), p. 57.**

[174] European *Report,* **No. 1549, Dec. 16, 1989.**

[1] " Ibid.; see also, *Financial Times,* **Jan. 24, 1990, p.2 col. 1.**

[176] *European Report,* **No. 1556, Jan. 20, 1990.**

[177] *Europe,* **No. 1569 (new series) Jan. 11, 1990, p. 10.**

[176] *Europe,* **No. 5168 (new series), Jan. 10, 1990.**

[179] *European* **Report, No. 1556, Jan. 23, 1990.**

I" 13th Directive, art. 10(1).

company be required to disclose the country of the future company's registration, any restructuring plans the offeror may have, changes to the articles of association proposed by the offeror, and its policy on the future return on capita1.[181]

A significant element in this proposed directive is the limitation on the defensive measures the target company is permitted to take in response to an unfriendly takeover attempt. There are a number of defensives ("poison pills') that a company can take to fight an unfriendly takeover attempt, such as issuing new securities, granting special rights to purchase stock at a discount, or including in the articles of association a provision that provides that if any single shareholder purchases over a s 'fled amount of stock, some shares have decrea voting power.[182]

Whereas in the United States substantial powers are left to the board of directors to decide whether and how to fight a takeover bid, European law or codes of conduct seem to curtail the power of the board in favor of the shareholders.[183] Article 8 of the Directive restricts the powers of the Board of Directors of the offeree company as soon as the bid has been made public. The Board is not permitted to issue new voting securities or engage in extraordinary transactions without the approval of a general meeting of the shareholders. The meeting of the Economic and Social Committee of the Parliament fully endorsed restrictions on the target company's board although it did concede that if shares had been authorized but not issued prior to the bid, they could be used. Furthermore, if the shareholders had previously voted to allow the Board to increase the capital, they could do so following a takeover bid.[184]

The Legal Affairs Committee of the Parliament also supported limiting the powers of the Board of the offeree company. Specifically, it recommended requiring an emergency general meeting.[185] However, because calling a shareholders meeting may cause a delay, it has been proposed that the bid be suspended until the day after the shareholder meeting.

Having established this new set of rules under which takeover and other bids may be made, the 13th Directive also provides for the establishment of supervisory authorities in each member state to oversee the enforcement of the directive.[186] The Legal Affairs Committee has recommended that the competence and responsibilities of these controlling ,authorities be better defined.[187] EC Commissioner Bangemann appears to have agreed to establish a set Of guidelines for the authorities, but not as to be so rigid as setting out detailed rules," as

Possible Effects

As with all the company law directives, the 13th Directive will have little, if any effect on U.S. commodity exports. There will, however, be a change in the investment environment by the adoption of thii directive.,

This directive does not include any especially harmful provisions. U.S. law stresses transparency rather than mandatory action. For instance, although U.S. la* does not include an obligatory bid requireMent, the law does require disclosure when a person acquires more than 5 percent of a company's stock. Furthermore, any tender offer requires a filing with the Securities and Exchange Commission.

Two elements of the 13th Directive that may raise concern, or present new requirements, are the increased amount of information required in the offer document, and the restraints on the actions of the board of the offeree company. As noted above, the Parliament strongly supports extensive disclosure of information by the offeror company in the offer document. Although most of the member states that allow takeovers require some level of disclosure in the offer document,[189] the amount of disclosure required under the 13th Directive goes far beyond that required in any member state.[190] The required disclosures are perhaps slightly more detailed but not significantly more burdensome than the disclosure requirements under U.S. law and therefore should not prove difficult for U.S. companies effected by this directive.

The other aspect of this directive that would be a change for U.S. companies is the restriction on the powers of the board of directors of the target company. Under U.S. law, most of the power resides in the board, especially in the area of defenses against unfriendly takeovers.[191] The requirement that an emergency meeting of the stockholders be called could prove burdensome primarily because of the time delay involved. However, if, as has been suggested, the bid is suspended until after the meeting, the time problem is avoided although the logistical problems connected with any general meeting remain. It is important to note, however,

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[180] *European Report,* No. 1556, Jan. 20, 1990.

[182] These are just a few examples of defensive measures available in the United States. USITC staff telephone conversation with securities attorney in Washington, DC, Jan. 17, 1990.

[183] USITC staff meeting with Washington, DC, antitrust attorney, Jan. 22, 1990.

[184] 'Opinion on the Proposal for a Thirteenth Company Law Directive Concerning Takeover and Other General Bids.' *01* No. C 298 (Nov. 27, 1989) p. 56.

[185] *Europe,* No. 5169 (new series), Jan. 11, 1990.

[186] 13th Directive, art. 6.

[187] *Europe,* No. 5169 (new series), Jan. 11, 1990.

[188] *Financial Times,* Jan. 24, 1990, p. 2 col. 1.

[189] The United Kingdom has the most detailed rules concerning disclosure, whereas the West German guidelines are purely voluntary. See, generally, *Takeovers.*

[190] The increased disclosure requirements should not however disturb U.S. companies making a bid for a European Company. Under the rules of the Securities Exchange Act of 1934, extensive information, primarily financial, about both the offeror and the offeror company must be reported when a tender offer is made. 19 C.F.R. 240.13e-3 & 4.

[191] USITC staff telephone conversation with Washington, DC, securities attorney, Jan. 17, 1990.

that the 13th Directive limits only actions taken after the offer has been made. Many defensive measures can be written into the bylaws and articles of association on a contingency basis.

It is unlikely that the obligatory bid requirement will discourage direct investment in the EC as most companies do not wait to acquire 33 percent before making their intentions kmown. [192] In a company with hundreds of shareholders, owning even a smaller percentage can give a single shareholder considerable power. Frequently, a single shareholder who holds 33.3 percent of a company's stock, is doing so for a reason, and should be required to reveal that intention. [123] However, until the EC Commission defines what is meant by "acting in concert" in article 2(5), there will be some uncertainty about persons unintentionally falling under the provision requiring a bid.

As with the other Company Law Directives, adoption of the 13th Directive is expected to be beneficial because it creates a single standard where many, sometime as many as 12, existed before. Because a 33.3-percent holding of a large, publically traded company is a very large holding, the obligatory bid provision is not as burdensome as it might appear. Most companies will launch a takeover bid before the 33.3-percent threshold is reached.

USITC staff meeting with computer and data processing industry attorney, Washington, DC, Jan. 31, 1990.

[1]" It should be remembered that the shareholder is not required to purchase the entire company, only to pen up the bid to all shareholders; the shareholders have the option but are not required to sell.

CHAPTER 10
TAXATION

CONTENTS

CHAPTER 10
TAXATION

The focus of EC tax harmonization efforts is harmonization of indirect taxes— value-added taxes (VAT) and excise taxes. Amended article 99 of the Treaty of Rome requires harmonization of indirect taxes, but it contains no obligation to harmonize direct taxes (e.g., income taxes). Efforts have also been made to devise a common system of withholding taxes on interest income. Harmonization of taxes is one of the most sensitive and difficult challenges facing the EC. In its fourth progress report, made available in June 1989, the EC Commission identified efforts to harmonize indirect taxes as one of the four areas furthest behind schedule.

Developments Covered in the Initial Report

In the case of indirect taxes, the 1985 White Paper stated that it would be impossible to remove frontier controls "if there are significant tax and corresponding differences between the member states.' The Single European Act anticipated difficulties in this area and required that actions directed at harmonizing indirect taxes be adoped unanimously rather than by the majority vote required for many other actions. Under present EC practice, goods are zero-rated at the border (taxes are rebated) and the VAT and excise taxes of the importing country are imposed on entry into the importing country. Present border formalities add an estimated 1.5 percent to the cost of goods crossing member-state borders, and an estimated 90 percent of that amount is associated with documentation related to VAT. Rates and rate structures vary widely between countries; no two countries maintain the same rates. Because VAT and excise taxes are an important source of member-state revenue and because respective rates at least in part reflect certain national social and political policies, any significant changes in rates associated with harmonization in a member state can have significant revenue and policy implications.

In August 1987, the EC Commission issued a comprehensive fiscal package, including seven proposed directives, covering VAT and excise duties. Had it been adopted, the package (1) would have required each country to establish two VAT rates, each within a rate band — a reduced rate for certain enumerated necessity items like food and a standard rate for all other goods; (2) would have established a clearinghouse mechanism for adjusting member state revenues (since taxes would still be owed to the government of the consuming country but paperwork relating to adjustments would no longerbe processed at the border); and (3) would have set specific excise duty rates for alcohol, tobacco, and petroleum products. However, member states expressed- concern about numerous aspects of the proposals. For example, the United Kingdom expressed concern about the elimination of its practice of zero-rating food and children's clothing and of the complexities of the clearing mechanism; Denmark and Ireland would have had to lower rates and were concerned about revenue losses; and Luxembourg, a low tax country, was concerned about the impact of higher rates on its sales to visitors from other EC countries. In May 1989, the EC Commission adopted a communication outlining a "new approach designed to address many of these concerns. This new approach would provide for a transitional phase lasting until the end of 1992, would allow limited zero-rating, eliminate the requirement for a rate cap, simplify the clearing mechanism, and provide lor improved flexibility in excise rates.

Efforts to develop a common system of withholding tax on interest income are related to the liberalization of capital markets. Beginning July 1, 1990, residents of member states are to be free to maintain savings accounts in other member states. There is concern that in the absence of a common declaration and withholding system, the risk of distortion, tax evasion, and tax avoidance will increase substantially. A proposed directive issued in January 1989 called for, among other things, a minimum withholding tax of 15 percent However, the measure was opposed by the United Kingdom, Luxembourg, and West Germany. In July 1989, a paper to the member state finance ministers proposed a modified approach consisting largely of increased reporting requirements and increased cooperation between member states.

Developments During 1989

Introduction

The EC made progress during 1989 in coming closer to resolving important differences among member states in the areas of VAT, excise taxes, and taxation of savings. In December 1989, the Economic and Financial Council of Ministers (ECOFIN) reached agreement on a compromise proposal that may provide the basis for a final agreement on harmonization of VAT rates. At the same time, with the exception of Luxembourg, the ECOFIN Council also reached agreement on a compromise on the taxation of savings issue that may lead to a greater sharing of confidential financial information when tax evasion is suspected. Also in December, the EC Commission issued three amended proposed directives relating to excise taxes. In addition, the EC Commission laid the groundwork for issuing a communication early in 1990 on corporate taxation.

Value-added Tax

The ECOFIN Council agreement in December fulfilled in part the goal laid down at the European Council meeting in Madrid in May 1989 of reaching agreement "on the broad lines of a solution in this

area" before the end of the year) However, the agreement reached continues to postpone important decisions on rates and rate structures. In addition, the EC Commission and the ECOFIN Council remain divided on the question of whether VAT should be collected in the country of origin or the country of destination, although for the time being the Council, which favors the latter, appears to have prevailed.

In the view of EC Commission President Jacques Delors, progress in the removal tax frontiers 'has been disappointing [when] measured against the goals set by the Single Act"[2] Delors compares the "partial" agreement reached in December to the "gleaming bodywork of a car" but with the engine missing.[3] However, the European Council, meeting in Strasbourg just before the ECOFIN Council meeting and presumably aware of the likely outline of the ECOFIN Council's agreement, noted "with satisfaction the progress made during the last few months, with the formulation of a transitional system which will lighten the burden on undertakings and administrations and enable border checks to be eliminated.• The European Parliament had earlier expressed disappointment with the "slow progress" in tax harmonization .[8]

The ECOFIN Council reached agreements on the following five points:

(1) Member states should agree to compulsory VAT rate bands for reduced and lower rates by December 31,1991?

(2) member states would not diverge further from their current standard rates, and any changes in such rates should be toward the 14- to 20-percent rate band in the August 1987 proposed directive;

(3) the lower rates presently operating will remain at their present levels until December 1991;

(4) member states that presently apply a zero-rate will be able to retain it, but no new introductions of zero rating will be permitted; and

(5) in 1992, the new VAT system will follow the simplified destination principle.

The agreement does several things. First, it permits member states to defer harmonization of rates at least through the end of 1991. Second, by prohibiting further divergences from the proposed 14- to 20-percent standard rate band and by encouraging member states whose present standard rates fall outside that band to move towards it, the agreement suggests that the standard rate band eventually to be agreed to will be the 14-20-percent band proposed by the EC Commission in the summer of 1987. Third, it suggests that any final agreement on rates will provide derogations that will permit the United Kingdom and Ireland to continue zero-rating food and certain other necessity items.[8] Fourth, it further increases the likelihood that the VAT system eventually agreed to will follow the simplified destination principle preferred by the ECOFIN Council. The EC Commission has been instructed by the Council to draw up a new proposal consistent with the terms of the December agreement

The origin vs. destination principle was a matter of considerable debate during the fall of 1989. Under the VAT system in place in the European Community, VAT is ultimately owed to the member state in which the good subject to tax is consumed. At the present time, when goods pass from one member state to another, VAT is rebated at the border and reimposed upon entry into the importing state, which gives rise to considerable delay and paperwork. However, when frontiers are eliminated after 1992, goods are to move freely across borders without the present delay and paperwork. To insure that consuming countries received their appropriate VAT revenues, the EC Commission in its 1987 fiscal package proposed the establishment of a clearing mechanism.° The proposed clearing mechanism would have consisted essentially of a central account managed by the EC Commission. Net exporting member states would pay into the account, and net importing states would receive funds from it There would be no distinction between VAT on domestic transactions and VAT on goods originating in other member states; goods traded between member states would be traded with the VAT already paid. The United Kingdom and France, among other states, expressed concern about the complexity of the mechanism.'° The EC Commission presented

' *European Community News,* June 28, 1989, p. 3.

[2] Jacques Debra, address to the European Parliament ling the EC Commission's program for 1990, Jan. 17, 1990. n

• Ibid.

• "Conclusions of the Presidency, European Council, Strasbourg, Dec. 8-9, 1989; *European Community News, Dec.* 11, 1989, p. 3.

• 'Joint Resolution Replacing Doz. B3 221, 222, 226 and 303189, Oct 12, 1989; *Offrsal Journal of the European* Communities, No. C 291 (Nov. 20, 1%9), p. 99.

• Technically, the Council members stated their agreement with the conclusions expressed by the President of the Council, French Finance Minister I.E. Beregovoy. Denmark expressed reservations on one aspect of the a t, taxation of goods purchased by travelers. Accordin y, Beregovoy stated the conclusions as his own, but all Council members agreed that Beregovoy's "conclusions' represented the opinion of the Council as a whole. U.S. Department of State Telegram describing Dec. 18, 1989, ECOFIN Council meeting.

[7] Reportedly, most Council members agreed on eventually settling on a single rate with the standard band, but no timetable for achieving that goal was envisioned. Ibid.

• The prohibition on new introductions of zero-ratin$ presumably will preclude Luxembourg from introducing its proposed zero rate on certain products.

• *Outline Working Paper for a Community VAT* Clearing *Mechanism,* Corn (87) 323, Aug. 5, 1987.

'° For further discussion of the 1987 proposal and member-state concerns, see U.S. International Trade Commission, *The Effects of Greater Economy Inegration Within the European Community on the United States* (Investigation No. 332-267), USITC Publication 2204, July 1989, p. 10-8.

a simplified version of its clearing mechanism in June 1989, which would have removed mail-order sales, automobile sales, sales to exempt persons, and intracorporate transactions from the transactions covered by the clearing mechanism and provided that member state credits and debits be calculated on the basis of trade statistics rather than VAT returns from taxable persons. [11]

The ECOFIN **Council unanimously agreed to adopt "for a limited period," as a "compromise," a destination principle approach at its meeting in Luxembourg on October** 9. [12] **Under that approach, beginning on January 1, 1993, all VAT and excise duties will be collected in the country of consumption. In the case of goods originating in another member state, the importer will pay VAT to his national VAT office when the good is delivered (rather than at the border as is presently done). The exporter will submit appropriate paperwork to his national VAT office in order to obtain his VAT credit. The tax authorities of the importing state will check with the tax authorities of the exporting state to determine whether any fraud has occurred. The selection of the destination-principle approach was perceived as a victory for market forces, which generally favor a system that provides downward pressure on tax rates. However, West Germany expressed concern that the destination approach might lead to excessive fraud or unreasonable control. EC Commissioner Christiane Scrivener, the member of the EC Commission with special responsibility for taxation, customs union, and matters relating to overall tax burden, was of the view that the approach adopted by the Council maintained discrimination between national and intra-Community transactions and would impose a burden on firms that was likely to be far greater than the system proposed by the EC Commission. She expressed the view that the system exclusve of tax envisaged by the Council would entail a greater risk of fraud than the system inclusive of tax proposed by the EC Commission.** [13] **A majority of EC Commissioners, led by President Jacques Delors, was of the view that the only practical way to eliminate fiscal frontiers is to follow the scheme proposed by the EC Commission in July 1987.** [14]

" *Completion of the Internal Market and Approximation of Indirect Taxes,* Com (89) 260 final, June 14, 1989, pp. 5-9.

[12] French Finance Minister Pierre Beregovoy, as quoted by D. Buchan, '"EC Takes Step Nearer Pact on Excise Taxes,' *Financial Times, Oct.* 10, 1989, p. 20. Beregovoy was quoted as saying "I prefer a good compromise to total disagreement."

EC Commission press release No. IP(89)804, Oct. 24, 1989, 'Mrs. Scrivener Addresses the European Parliament: "The Removal of Tax Frontiers is the Key to the Free Movement of Persons and Goods,'.' See also EC Commission press release No. IP(89)775, Oct. 18, 1989, 'Mrs Schrivener, in Rome, Underlines the Key Role Played by Business in Building the Large, Single Market'

See generally *European Report,* No. 1530, Oct. 11, 1989, p. 3; No. 1533, Oct. 21, 1989, sec. 2, p. 4; and No. 1553, Jan. 10, 1990, sec. 2, p. 5. See also D. Buchan, "EC Takes Step Nearer Pact on Excise Taxes,' *Financial Times,* Oct. 10, 1989, p. 20.

Excise Taxes

In its June 1989 communication to the EC Council and the European Parliament, the EC Commission acknowledged criticism that its 1987 proposals on harmonizing excise duties lacked flexibility. It noted that **the attempt at harmonization of excise duties highlighted an even** greater **diversity of situation than in the case of VAT** because **of differences in member state circumstances and health and environmental policies. The EC Commission indicated that it would propose a new set of higher long-term target rates and a more flexible system of minimum rates and rate bands based on these targets.'s**

In November, the EC Commission submitted amended proposals for Council directives on the approximation of taxes on alcohol, tobacco, and mineral oils. The new approach involves the introduction of minimum rates **on all products subject to excise duty except on certain petroleum products, where rate bands would be used to avoid possible distortions in competition. Member states would be required to implement the new minimum rates or rate bands no later than January 1, 1993. The EC Commission also presented "target rates" for tobacco and alcohol, which would not be compulsory but would indicate the levels at which the Commission desired rates to converge over the longer term. The Commission indicated that it would propose target rates for mineral oils by December 31, 1991. Under the amended proposal, the Council would examine the minimum and target rates every 2 years and make adjustments based on changes in real value and budgetary, environmental, health, energy, or transport policy considerations."'**

The proposed minimum and target rates are presented in table 10-1 on the following page.

With the exception of diesel oil, all of the proposed minimum rates are lower than the 1987 prposed rates. However, all the announced target rates are high or higher. As with the 1987 proposal, the new proposal will require West Germany, Italy, Portugal, Spain, and Greece to impose at least a minimum rate on wine, where none exists at present In the case of tobacco products, only Greece and Spain would be required to raise their rates. In the case of diesel oil, West Germany, Greece, France, the Netherlands, Italy, Luxembourg, Portugal, and Spain would all have to raise their rates. However, in the case of heavy fuels, Denmark, Greece, and Italy would have to reduce their rates. In the case of petrol, Belgium, Luxembourg, and Portugal, and, to a lesser extent, West Germany, Greece, and the United Kingdom would have to increase their rates to reach the minimum rate.' [7]

[16] Com (89) 260 final, p. 10.

[17] See generally 'The Commission Proposes a New Approach to Excise Duties to Allow the Removal of Tax Checks at Frontiers on 1 January 1993; Press release of the European Communities, Oct. *25,* 1089.

See generally *European Report,* No. 1535, Oct. 28, 1989, p. 11.

Taxation of Savings

At the EC summit in Madrid in June 1989, the European Council asked the Council of Ministers to increase its efforts to find a satisfactory solution to the problem of taxation of savings in order to reach an agreement before July 1, 1990, when the liberalization of capital movements is to take place.[18] This view was reaffirmed in a resolution passed by the European Parliament in October 1989.[19] Broad agreement was reached at ECOFIN Council meetings in November. and December (with Luxembourg expressing reservations) on methods to reinforce measures on cooperation among national tax authorities in the case of suspected tax evasion. However, the United Kingdom and several other states continued to oppose adoption of a directive that would require a minimum withholding tax on savings, and the agreement reached in November and December did not include provision for such a tax. The EC Commission was directed to begin drawing up texts for applying the measures. At its meeting in December, the European Council noted "the progress which has been made since Madrid" with regard to the taxation of savings 2[0]

Among the measures agreed to were reinforcement of the 1977 directive on cooperation among tax authorities so as to make it possible for national laws on bank secrecy to belifted when serious tax fraud is suspected, and ratification of the Council of Europe's convention on mutual legal cooperation and the accompanying protocol on tax offenses. In addition, the member states would be authorized to introduce protection measures, such as automatic declarations by finance bodies or simple declarations by taxable person, in order to safeguard against risk of evasion or ille investment Member states also agreed to undertake negotiations with third countries, either bilaterally or multilaterally through such organizations as the OECD or IMF, with a view to stepping up international legal and tax cooperation worldwide.[21]

Luxembourg expressed reservations, particularly with regard to measures that would allow the lifting of bank secrecy. Luxembourg, which has become a major European financial center, is particularly concerned about the risk of capital being moved to offshore tax havens such as the Channel Islands, the Canaries, and Madeira.

t° "EC. Summit Brings Agreement on Monetary Union; Europmn ***Community News,*** June 28, 1989, p. 3.

[19] 'Joint Resolution Replacing Dom. B3-223, 224 and 262/89, Oct 12 1989; OJ No. C 291 (Nov. 20, 1989), p. 97. Par. 7 of the resolution stated that Parliament—

Reaffirms its views on the need to produce an agreement on the taxation of savings by 1 July 1990 in order to reduce the risk of the delocalization of savings, since this would conflict with the ***need*** for investment in certain countries and would make nonsense of the objectives of the reform of the structural

[20] "Conclusions of the Presidency, European Council, Strasbourg, 8 and 9 December 1989; ***European*** Community ***News,*** Dec. 11, 1989, p. 3.

[21] See Euromun ***Report,*** No. 1537, Nov. 4, 1989, sec. 2,, p. 3 and No. 1550, Dec. 20, 1989, sec. 2, p. 6. See also Price Waterhouse, 'Savings Taxation: Compromise Reached,' ***EC Bulletin,*** No. 86 (January-February 1990) p. 6.

Table 10-1

Proposed excise duty rates on alcohol, tobacco, and mineral oils

Commodity	*Minimum rate*	Target *rate*
Alcohol:		
Spirits (per hi. of pure alchol)	1.118.5 ECU	1398.1 ECU
Intermediary products	74.8 ECU/hL	93.5 ECU
Still wine	9.35 ECU/hL	18.7 ECU
Sparkling wine	16.5 ECU/hL	33.0 ECU
Beer	9.35 ECU/hl	18.7 ECU
Alcohol In perfume, toilet water, and cosmetics	0	0
Tobacco:		
Cigarettes		
Specific excise (1,000 cigarettes)	15 ECU	21.5 ECU
Ad valorem + VAT	45% ad valorem	54% ad valorem
Cigars and cigarillos	25% ad valorem	36% ad valorem
Smoking tobaccos	50% ad valorem	56% ad valorem
Snuff and chewing tobacco	37% ad valorem	43% ad valorem
Mineral oils (per 1,000 L):		
Petrol		
Leaded	337 ECU	to be proposed
Unleaded	at least 50 ECU less than for leaded	to be proposed
Diesel	195-205 ECU	to be proposed
Heating gas oil	47-53 ECU	to be proposed
Heavy fuel oil	16-18 ECU	to be proposed
Liquified petroleum gas and methane	84.5 ECU	to be proposed

Source: European Community.

Corporate Taxation

As noted above, the Treaty of Rome does not contain an obligation to harmonize direct taxes. The 1985 White Paper did not contain any new proposals on harmonization of direct taxes, but instead announced the EC Commission's intention to publish, by the end of 1985, a white paper on the taxation of enterprises in the EC and proposed action on three pre-existing proposals relating to the removal of obstacles to cooperation between companies in different member states.[22] Despite numerous studies and reports, rio white paper has been issued and none of the three proposals has been adopted. Attention in the tax area instead has focused on harmonization of indirect taxes. However, as physical, technical, and fiscal barriers are removed, considerations related to direct taxes are expected to become more important in corporate decisions with regard to the location of tax bases and even production facilities. The EC Commission has begun to focus on direct taxation to a greater degree and was expected to issue a major communication on company taxation in March.[23]

Currently, there are relatively significant differences in the tax rates, definitions of tax base, and tax systems employed in member state countries.[24] For example, corporate tax rates range from 34 percent in Luxembourg and 35 percent in the United Kingdom, the Netherlands, and Spain, to 50 percent in Denmark and West Germany. Provisions related to depreciation and other deductions and investment credits, which affect the tax base and tax paid, vary widely from member state to member state. In addition, some member states, such as the Netherlands and Luxembourg, follow a classical system of taxation (which is also followed in the United States) and in effect tax corporate profits twice —once at the corporate level and a second time at the shareholder level. The United Kingdom follows an imputation system, under which shareholders receive a tax credit which reduces their liability for personal tax. West Germany follows a "split-rate" system, under which distributed profits are taxed at a lower rate than undistributed profits. As a result of such differences, the United Kingdom's Institute of Fiscal Studies calculates that an Italian company investing in West Germany would need to generate a pretax return of 10.3 percent in order to pay its shareholders a post-tax return of 5 percent, but the same company investing in Ireland would need only a 4.53 percent pretax return to pay shareholders the same 5-percent post-tax return.[25]

The preexisting proposals addressed by the White Paper date back to 1%9 and 1976. They relate to tax treatment of parents and subsidiaries, taxation of mergers, and avoidance of double taxation[26] The objective of the proposal related to taxation of parents and subsidiaries is to eliminate the double taxation that can arise in certain countries when dividends are paid by a subsidiary to its parent company.[27] The proposed directive calls for tax to be imposed only at the subsidiary level, with no further taxation if a dividend is paid to the parent company located in another member state.[28] The proposed directive related to mergers and demergers (divisions) would facilitate cross border mergers and demergers within the EC and would lead to deferrals recapture of depreciation, capital gains, and similar tax charges.[29] The third proposed directive would provide for an arbitration procedure if competent tax authorities are unable to agree on some kind of relief in the case of double taxation resulting from, for example, conflicts of law or different approaches in collecting revenue.[30]

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[22] EC Commission, *Completing the Internal Market: White Paper From the Commission to the European Council* (1985), pars. 150-151, p. 38 (hereinafter White Paper). It should be noted that the discussion in the White Paper relating to direct taxes was in the technical barriers part of the White Paper rather than the fiscal barriers part

[23] See European Report, No. 1566, Feb. 2A, 1990, sec. Z p.5.

" For a general discussion of differences, see H. Smit & P. Herzog, T& *Law of the* European *Economic Community,* vol. 3, pp. 452-453; A. Hamburger, "Evolution of EC Taxation: Obstacles, Misconceptions and Opportunities," unpublished monograph presented at a conference in Washington, DC, Dec. 10-12, 1989, under the auspices of Tax Executives Institute and the American Tax Institute in Europe; and D. Waller, 'Corporate Taxation Escapes EC's Single Market Net, Financial *Times,* Jan. 15, 1990, p. 2.

[26] Waller, 'Corporate Taxation Escapes EC's Single Market Net," p. 2. The IFS study is set forth in an IFS publication entitled "Corporate Tax Harmonisation and Economic Efficienry; by M. Devereux and M. Pearson.

" White Paper, p. 38, par. 151.

" *Proposed Directive on Taxation of Parents and Subsidiaries,* Com (69) 6, OJ No. C 39/7 (1969).

For a general discussion of the three proposed directives, see Arthur Andersen & Co., '"Tax Implications of 19927 *European Review,* No. 2 (November 1989); Baker & McKenzie, "Single European Market Reporter; October 1989, pp. 5-1 to 5-3; and Clifford Chance, *1992—An Introductory Gui,* November 1986, pp. 19-21.

"Proposed Directive on Taxation of Cross-border Mergers, Com (69) 5, OJ No. C 39/1(1969).

"Proposed Directive on Arbitration Procedures to Avoid Double Taxation, Com (76) 611, (31 No. C 301/4 (1976).

CHAPTER 11
RESIDUAL QUANTITATIVE RESTRICTIONS

CONTENTS

CHAPTER 11
RESIDUAL QUANTITATIVE RESTRICTIONS

The elimination of intraborder controls in the EC's effort to create a single internal market will pressure the EC to transform existing or residual national quantitative restrictions (QRs) into EC-wide quotas or other protective measures, particularly in sensitive sectors. Although new EC-wide quotas are likely to be directed at Asian exporters rather than exports 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 Covered in the Initial Report

Background and Anticipated Changes

Currently individual EC member states impose over 1,000 quantitative restrictions (QRs). These quotas or grey area measures (usually voluntary restraint agreements) are aimed primarily at exports from Eastern Europe and Asia and cover a wide variety of products, including textiles and automobiles. Many of these QRs were established by member states prior to the time they joined the EC and were grandfathered in. Others are linked to agreements concluded by the EC Commission, such as the Multifiber Arrangement and the Generalized System of Preferences. Effective enforcement of national QRs is safeguarded by article 115 of the Treaty of Rome.

Because the EC intends to remove all border controls between the member states by 1992, national QRs will be unenforceable in the integrated single market Therefore, the EC has indicated that it plans to eliminate all member-state QRs and article 115 by 1992. However, the EC Commission has not issued any regulations or directives addressing QRs. The options facing the EC appear to be threefold: first, to unilaterally abandon existing national quotas; second, to transform existing national restrictions into EC-wide quotas; and third, to replace current national QRs with other EC measures, including increased reliance on antidumping statutes, subsidization of sensitive industries, and higher tariffs.

The EC Commission has not yet identified those sectors that would require an EC-wide quota, with the exception of automobiles. An EC Commission document issued in October 1988 listed two other sensitive sectors that could require EC-wide measures-shoes and consumer electronics. The document also identified 12 sectors that have trade problems that are not EC-wide in dimension and that accordingly would warrant more defined solutions, such as subsidization. A number of other sensitive sectors are still under study, including bananas, urea, sewing machines, motorcycles, dishware, and ceramic articles.

Certain QRs are already being addressed by the EC Commission. For example, **the EC is negotiating bilateral trade and economic cooperation agreements with Eastern European countries and the U.S.S.R. that call for the elimination of many existing national QRs. Also, the EC agreed to persuade individual member states to abandon certain QRs directed at Japan after Japanese officials threatened to request dispute-settlement procedures in the GATT.**

Possible Effects

Three sensitive sectors - automobiles, footwear, and textiles and apparel-are considered most likely to be subject to EC-wide QRs after 1992. However, EC-wide quotas on these products would probably be directed at Far Eastern rather than U.S. products. Nonetheless, U.S. producers could be indirectly affected by this course of action. In footwear and textiles and apparel, a shift to EC-wide quotas could cause controlled suppliers to redirect shipments to markets where they have the greatest competitive advantage but that had been previously limited by a member-state QR, thereby increasing competition for U.S. exports in these markets. EC-wide QRs in footwear could also cause trade diversion to the United States.

In the automobile sector, non-EC companies that face QRs on their automobile exports are expected to increase investment in production facilities within the EC, thereby increasing competition for U.S. firms already operating in the EC. EC-wide quotas directed at Japan could also increase marketing opportunities for U.S. exports in the EC. However, if the EC institutes local-content requirements on automobiles, Japanese-owned automakers in the United States could face barriers in exporting to the EC.

Developments During 1989

Throughout 1989 the EC Commission continued to make broad policy statements regarding its intention to eliminate all national QRs by the end of 1992. However, with the exception of automobiles, Community officials have not yet definitively indicated how they intend to address member-state QRs in sensitive sectors.

Ongoing studies conducted by the EC Commission to determine whether the abolition of article 115 would have adverse consequences on specific sectors were partly completed in 1989. [1] The EC Commission determined for certain sectors that article 115 could disappear without serious disturbances ,except possibly at a regional level.

[1] For further information, see U.S. International Trade Commission, *The Effects of Greater Economic Integration Within the European Community on the United States* (Investigation No. 332-267), USITC Publication U)4, July 1989 [hereinafter, Initial Report], p. 11-7.

Member states will be responsible for addressing any problems at the regional level, although the EC Commission may conduct further studies if regional problems prove particularly severe. Sectors that the EC Commission is still studying include consumer electronics, motorcycles, tableware, textiles, cars, and shoes.[2]

EC Commission officials have acknowledged that certain struggling industries — in particular, consumer electronics, shoes, and textiles—would warrant some form of protection from imports after the national restrictions are lifted. However, they claim that the plan for a transitional import restraint after 1992 in the automobile sector would not be extended to other industries. Instead, alternative forms of protection would be sought, such as adjustment assistance funds.[3]

During the year, the EC continued to negotiate the removal of existing national QRs with East European countries, the U.S.S.R., and Japan. Also, preferential quotas with certain developing countries were addressed in the new Lome convention signed in December.

Ongoing EC Actions That Address QRs

EC Agreements With East European Countries and the U.S.S.R.

By yearend 1989, the EC had signed bilateral trade and economic cooperation agreements with Hungary, Czechoslovakia, Poland, and the U.S.S.R. All of these accords incorporate provisions calling for the elimination of member-state QRs imposed on exports from these countries. The EC anticipates negotiating similar agreements during 1990 with Bulgaria, East Germany, and Romania.

Japan

The EC and Japan are currently consulting each other over the removal of national QRs directed at Japan. In March 1989, the EC offered to have member states abolish about 68 of the 156 national QRs directed at Japan.[5] In December, the EC indicated its intention to lift another approximately 50 national QRs of which 25 are specific to Japan. These QRs cover products such as porcelainware and typewriters. The EC agreed in March 1989 to consult informally with Japan about once a year, more talks are anticipated at the end of 1990. As long as reasonable progress is made, Japan has indicated that it will not bring the issue to the General Agreement on Tariffs and Trade (GATT).[9]

* Telephone conversation with an EC Commission official in Brussels, Feb. 20,1990.

'Transition rune Needed for Some EC Industries,' *Journal of Commerce,* Feb. 8,1990.

• For further information on these agreements, see ch. 1.

° For more background on this issue, see Initial Report, p. 11-7.

• Telephone conversation with an EC Commission official in Brussels, Feb. 2Z 1990; and "EC Plans to Ease Curbs On 30 Japan Imports,' *Journal of Commerce, Dec.* 3), 1989, p. 5.

Lome

African, Caribbean, and Pacific states (ACP) enjoy preferential access of certain commodities to the EC market under the Lome Convention. Of particular concern to these countries are the protocols on bananas and rum that guarantee preferential access to certain member-state markets. The Banana Protocol provides that "no ACP state will be placed, as regards access to its traditional markets [in the United Kingdom, France, and Italy] and its advantages on those markets, in a less favorable situation than in the past or present" The Rum Protocolprovides the ACP with duty-free access to the EC market for rum within a certain volume quota, above which import levies are imposed. The global quota for rum is subdivided into national quotas.?

Because the member-state dimension of these accords will be incompatible with the goal of free circulation of goods under the single market, the ACP expressed concern that their preferential quotas could be in danger when the internal market is completed. However, the recent renegotiation of the Lome Convention for a 10-year period includes provisions that should safeguard their privileged access to the EC banana and rum markets.[8]

Automobiles

Background

Currently, Great Britain, France, Spain, Italy, and Portugal impose import restrictions on automobiles from Japan. The United Kingdom has a voluntary restraint arrangement that limits imports of Japanese automobiles to about 11 percent of the British market Japan limits its exports of automobiles to France to less than 3 percent of total sales through Japan's voluntary export restraint Portugal and Spam each have bilateral controls on imports of autos from Japan of less than 1 percent of their market, respectively, and Italy's quota limits imports of Japanese autos to 2,500 units, totaling less than 1 percent of its market In addition, Japan's Ministry of International Trade and Industry (MITT), informally and voluntarily limits total annual exports of automobiles to the EC to approximately 1.2 million cars. On April 5, 1989, MM announced that it would continue monitorin g exports to all of the EC for another Japanese fiscal year (April 1, 1989, to March 31, 1990) increasing 1990 exports by no more than 3 percent[9]

Although these countries impose direct restraints on imports of Japanese automobiles, it is

[7] International Monetary Fund, *Issues and Deodopntents in International Trade Policy,* December 1988, pp. 100 and 101.

• For further discussion of the new Lome agreement on bananas and rum, see ch. 1.

[a] Initial Report, p. 11-9.

possible for Japanese firms to circumvent national quotas. National restrictions on imports of goods from third countries that are in free circulation within the EC are enforced through article 115 of the Treaty of Rome, if the restrictions are officially recognized by the EC Commission. Article 115 allows member countries to temporarily prevent circumvention of their quotas otherwise possible through the transshipment of the restricted product through other member nations that do not maintain quotas. If the national restriction is not officially recognized, member states may impose national import licensing or standards and certification procedures to enforce national restrictions. Both the United Kingdom and France have industry-to-industry restrictions on Japanese automobile imports that are not approved by the EC Commission and therefore are not covered by article 115.[10] On the other hand, Italy and Spain—whose direct quotas are officially recognized by the EC Commission — periodically request authorization under article 115 to impose intra-EC restrictions to prevent circumvention of their quotas."

In January 1990, the EC Commission allowed an increase in the number of Japanese autos entering Italy and Spain from nonprotected EC member states. For example, in 1990 the EC Commission will allow Italy to indirectly import 17,000 cars compared with 14,000, and Spain will be allowed to indirectly import 7,800 (of which 2,400 are all-terrain vehicles), compared with 5,000 in 1989. The EC Commission permitted only a small increase in indirect imports in light of the belief that an artificial and abrupt change in the flow of trade would prevent the EC auto industry from becoming more competitive during a transition period before complete deregulation.[12]

Anticipated Changes

According to the White Paper, national restrictions must be abolished by the end of 1992 in order to achieve the single market. In December 1989, the EC announced that it will remove all member-state quotas on automobiles, beginning January 1, 1991, to be completed by January 1, 1993. The EC will also seek a voluntary restraint arrangement with Japanese producers to restrain their exports of automobiles, light commercial vehicles, and off-the-road vehicles for an undetermined transition period anticipated to begin on January 1, 1991,[13] and continue after January 1, 1993.[14] Heavy commercial vehicles are currently subject to a "tariff of 22 percent, and will not be included within the vehicle coverage.[16] The length of the transition period, and the market share to be held by the Japanese during that period has not yet been announced by EC officials, because that will be the subject of upcoming negotiations.[16] According to unofficial reports, it is likely that Japanese market share would be allowed to increase from the current 10 percent to between 15 and 25 percent, and it is expected that the transition period would last between 3 and 6 years.[17]

In addition, the EC has indicated that it will avoid setting minimum local-content requirements for those vehicles produced in the EC by Japan-based manufacturers. The EC Commission states, however, that account must be taken of EC production by Japanese automakers in defining future solutions and possible options, although at the same time the EC encourages direct foreign investment and the integration of foreign-owned production facilities in its economy.[16] EC officials have also indicated that automobiles produced in the United States by Japan-based manufacturers will not be included in the voluntary restraint arrangement with Japan.[16] U.S. domestic content of vehicles made in the United States by Japanese ucers ranges from approximately 60 percent to percent, with domestic content goals increasing for most to about 75 percent by 1991.[20]

In order that the process toward completing a single market in motor vehicles be gradual, and that artificial shifts in intra-EC trade not take place, the EC has pro • • that the dismantling of national restrictions• 'n on January 1, 1991, and end on January 1,199 . During this 2-year period, the five EC countries having import restrictions on Japanese autos would be required to remove their quotas. Member states with a higher level of protection

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[10] France and the United Kingdom are able to enforce their national quotas on Japanese automobile imports through other means than art. 115. For example, France uses national automobile standards and certification procedures to prevent indirect imports of Japanese cars from other EC member countries. (These are scheduled to be eliminated by 1992.) See International Monetary Fund, *Issues and Developments* in *International Trade Policy,* December 1983, p. 93.

[11] ELM. Volker, ed., Protectionism and *the European Community,* (New York: Kluwer, 1987), pp. 83-85.

[12] "Cars: Spanish and Italian Indirect Import Quotas Increased,' *European Report,* No. 1556, Jan. 18, 1990, p. 4-12.

The EC Commission hopes to set up a monitoring system with the Japanese to begin Jan. 1, 1993. However, it is still subject to negotiation. See Unclassified State Department Telegram, "EC-Japan Talks on Car Imports,' (Mar. 6, 1990).

[14] Reportedly, Japan is willing to accept continued restrictions on its automobile exports to the EC after 1992, but only until the year 2000. See 'Japan to Restrain Car Exports to EC Until 20007 *Financial Tines,* Feb. 2, 1990. According to the EC Commission, this information, which it cited from the Financial *Times* as well as the *Herald Tribune,* has yet to be confirmed. See EC Commission, Telex, "Preparation du Conseil des Affaires Generales; Feb. 2, 1990.

[15] Bureau of National Affairs (BNA), 1992— *The External Impact of European Unification,* Dec. 15, 1989, pp. 2-3.

[16] 'Cars: Commission Calls for Deregulation of EEC Market; *European* ***Report,*** No. 1547, Dec. 9, 1989, p. 4-6.

BNA, /992— *The External Impact of European Unification,* pp. 24.

[17] EC Commission, A *Single Community Motor Vehicle Market, Dec.* 19, 1989, pp. 12-14.

[18] BNA, ***1992-7hi*** *External Impact of European Unrication,* p. [3].

[20] For a description of japan-based U.S. auto production facilities and Japan-based EC production facilities, see di. 11 of the Initial Report.

would open up their markets together in the initial stage and to a greater extent than countries having lower levels of protection.[21]

The transition period and the monitored growth in imports would provide EC manufacturers (including U.S. companies with operations in the EC) a protected market and time to adjust to competition, according to EC officials. The EC Commission cites the following three reasons why the transition period is necessary.[22] First, sudden dismantling of national quotas would alter import flows and risk flooding the EC market with imports. Second, the increase in EC production of automobiles by Japanese-owned companies, added to imports, also increases overall market share held by the Japanese producers and reduces the potential market share held by older and less efficient manufacturing operations. And third, the EC has not yet completed its internal restructuring of the automotive industry. The transition period would enable companies producing cars, light trucks, and off-the-road vehicles in the EC time to restructure their operations, to modernize their facilities with new technology and manufacturing methods, and to form joint ventures with other automakers.[23]

Several EC officials, as well as a few EC automobile manufacturers, have argued that reciprocity should be sought as part of the trade-liberalizing agreement with Japan, and that the EC should set a minimum sales level in Japan for EC automakers. However, the EC has indicated that strict reciprocity will not be sought. Instead, Japan will be asked to improve market conditions in a broad range of industries.[24]

At present, it is unclear how the EC Commission's automobile strategy will actually unfold. Debate among the member states is hampering the EC Commission's ability to formulate a clear and coherent Community position to present to the Japanese.[25] Some member-state representatives have expressed reservations concerning the EC Commission's proposal to abolish member-state quotas and the move to total deregulation during a transition period. There is also discussion among member states about how soon the EC market should be opened up prior to 1992, the length of the transition period, and the level of market share allowed by imports from Japan following the transition period. Some member countries think that the EC should seek guarantees that the Japanese will open their markets to imports from the EC, and that the EC should consider retaliatory measures. Finally, some member states wish to extend a market surveillance procedure to imports from Eastern Europe, the United States (particularly for autos produced by Japan-based producers), and South Korea 2[6]

Possible Effects

U.S. Exports to the EC

U.S. exports of automobiles to the EC would be likely to increase if the EC were to replace the existing national quotas imposed by five member states with an EC-wide restraint on imports of Japanese automobiles. There would be, after all, increased sales and marketing opportunities for U.S. automobiles since market share to be held by the Japanese would be limited across all of the EC. Likewise, U.S. automakers producing in the EC would also benefit from protection from Japanese car imports during this transition period. The EC is the world's largest market for passenger cars, with 1989 registrations exceeding 13 million, and the market is expected to grow about 1-2 percent annually.[27] The U.S. market, however, has been characterized by overcapacity, a decline in production and sales, and increased inventory. Chrysler, which does not have manufacturing facilities in the EC, recently began a successful European export campaign and exported 31,000 cars to Europe in 1988, increasing to about 50,000 in 1989. By 1992, Chrysler plans to achieve exports of 100,000 annually.[28] General Motors increased European sales of North American-built automobiles from about 9,000 units in 1988 to more than 15,000 in 1989, and plans to continue increases thereafter.[29]

U.S. motor vehicle exporters as well as U.S. auto manufacturers with production facilities located in the EC would benefit from limits on the level of imports from Japan for another reason: U.S. firms operating in the EC are competitive in productivity with other EC auto manufacturers, and in many cases are more efficient overall.[30] Also, a survey of North American auto purchasers indicates that the product quality of automobiles produced in Europe by Europe-based manufacturers ranks third behind that of Japanese and U.S.-produced automobiles.[31]

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[21] EC Commission, *A Single Community Motor Vehicle Market,* pp. 12-13.

[22] "'EC Plans Push to Eliminate Auto Barriers," *The Wall Street Journal,* Dec. 7, 1989, p. IIIA10.

" EC Commission, *A Single Community Motor Vehicle* Market,p. 14.

as Et Commission, Telex, "Conseil Affaires Generates," Feb. 6, 1990.

a° 'Cars: Member State Representatives Undertake Initial Review of EEC Staten': *European Report,* No. 1554, Jan. 13, 1990, p. 4-10. The EC Commission has stated that although 'Korean exports to the EC remain marginal, the Commission will watch them closely." See EC Commission, *A Single Community Motor Vehicle Market,* p.12.

[27] EC Commission, *Panorama of EC Industry,* p. 14-1.

" Louise Kertesz, "Keeping Up With the 'New' Europe," *Automotive News,* Apr. 17, 1989, p. 30.

a Ward's Automotive Yearbook, (Detroit: Ward's Communications, 1989), p. 84.

" Prepared statement of John F. Krafcik, Research Associate, international Motor Vehicle Program, MIT, before the Subcommittee on Europe and the Middle East and Subcommittee of International Economic Policy and Trade Committee on Foreign Affairs, U.S. House of Representatives, Washington, DC, Mar. 21, 1989, pp. 4-6.

USITC staff meeting with members of Ford Motor Co., Brussels, May 8, 1989.

Therefore, should the EC impose an EC-wide limit on imports of Japanese automobiles—the number one ranked car for quality — U.S. producers will be well positioned to compete effectively. Moreover, both U.S. exporters and U.S. companies operating in the EC will benefit particularly from the elimination of national quotas and import restraints in the currently protected countries of Great Britain, Spain, Italy, France, and Portugal, where entrenched "national champions" or protected automakers are strongest The increased competition in these markets will lead to a decline in the strength of the national champions, whose autos may not be competitive in terms of quality with autos produced by U.S. manufacturers.[32] The decline in the protected markets' national champions will provide increased opportunity for sales and increased competition in these markets, benefitting U.S. auto manufacturers.

Because the market share to be held by the Japanese under the proposed transitional EC-wide restraint remains undetermined, several scenarios could take place. U.S. manufacturers would benefit most if the share of the EC auto market held by imports from Japan were limited to the current level of 10 percent, and an 80-percent local-content level requirement by the EC were necessary to qualify Japanese autos produced in the EC as domestic. Japanese auto-producing facilities in the EC do not yet procure a high level of EC-produced auto parts. Using this scenario, U.S. producers would have an opportunity to increase their market share, while the Japanese market share would be limited. If, however, the EC allows the market share in the EC held by imports from Japan to increase to more than the current 10 percent, competition between EC, U.S., and Japanese automakers will be likely to be more intense for market share in this relatively newly opened market

Diversion of Trade to the U.S. Market

It is unlikely that conversion of member state quotas on imports of automobiles, light trucks, and four-wheel drive vehicles into a transitional EC-wide restraint would result in diversion of trade to the United States. Substantial production capacity exists globally, thus automobile-producing countries could export to the United States, whether or not trade barriers are imposed in the EC. In addition, Japan-based auto production facilities located in the United States are currently expanding production capacity. At the same time the U.S. auto industry is facing the problem of overcapacity. An increase in imports of autos into the United States from Japan would not benefit Japan-based U.S. producers, but could displace their sales in a market currently characterized by low sales and high inventory.

[32] Cesare Romiti, *A Strong Europe: A Competitive Industry*, presentation to the European Parliament, Mar. 7,1989, pp. 4 to 6.

U.S. Investment and Operating Conditions in the EC

The outlook for the EC motor vehicle market is that it will continue to grow at a relatively steady pace. Restructuring will continue as outdated manufacturing facilities are replaced, acquisitions and mergers continue between U.S. and EC automakers, and Japanese producers shift production facilities to the EC to avoid the threat of external trade barriers.

U.S. automakers are increasing their investment in the EC. Ford and General Motors already have substantial investment in manufacturing facilities, as well as component-manufacturing operations, engineering centers, and distribution networks.[33] In 1988, Ford of Europe held an 11.3 percent share of the EC market, and placed behind Volkswagen and Fiat, who are tied for first place, and Peugeot Group [34] General Motors' market share in Europe rose from 10.5 percent in 1988 to 11.2 percent in 1989. In 1989, GM had European sales of an estimated $2.0 billion, amounting to half of GM's estimated total worldwide earnings[35] compared with Ford's European sales of $1.7 billion. During 1988, Chrysler (which does not have manufacturing facilities in the EC), established 564 automobile dealers in Europe, and aimed to have 875 dealers functioning by the end of 1989.[36] In addition, U.S. automakers are seeking greater market strength through acquisitions and joint ventures, as evidenced by Ford's recent purchase of Britain's Jaguar for $2.38 billion, General Motors' purchase of half of Sweden's Saab for $600 million,[37] and Chrysler's plan to manufacture in Europe through a joint venture with Renault The dynamics of the EC scenario could bring about an increase in collaboration between automakers in various aspects of automaking, including design, engineering, and manufacturing in order to reduce costs associated with developing and marketing cars.

U.S. Industry Response

U.S. automakers view the opening of the European market as an opportunity to expand sales in the EC, particularly in the more protected markets. U.S. automakers are supportive of the EC's restrictions on imports of automobiles imported from Japan. But at the same time they oppose the inclusion of automobiles produced in the United States by Japan-based producers.[38]

"For further details, see the Initial Report, p. 11-11.

'' *Ward's Automotive Yearbook*, p. 84.

" Steven Prokesch,"G.M. Europe: How to Get Something Right,' *The New York Times*, Feb. 4,1990, p. 3-1.

Kertesz, 'Keeping Up With the 'New' Europe,' p 30.

[37] Michelle Krebs and Richard Johnson, 'Saab and GM Both Benefit From 50-50 Deal,' *Automotive News*, Dec. 18,1989, p. 1.

USITC staff phone conversation with General Motors Corp. representative, January 1989.

CHAPTER 12
INTELLECTUAL PROPERTY

CONTENTS

CHAPTER 12
INTELLECTUAL PROPERTY

Intellectual property rights in the EC are important to U.S. business interests, particularly for firms selling high-technology products that require significant development expenses and investments. With the advent of the 1992 program, the EC is establishing EC-wide regimes or partial harmonizations of national law on intellectual property.

Developments Covered in the Initial Report

Background and Anticipated Changes

Semiconductor Mask Works

Council directive 87/54 directs EC memberstates to enact laws for protection of semiconductor topographies (mask works), conforming to minimum standards in the directive. All member states have complied or are complying with this directive.

Trademarks

Most member states have well-developed and generally similar trademark laws and have sought harmonization by creating an EC trademark regime parallel to the existing national regimes and by seeking partial harmonization among national regimes. Council directive 89/104 is not a full-scale harmonization but is intended to approximate member-state laws on trademarks acquired by registration. Proposed regulation (84) 470 would establish an EC-wide regime for trademarks with enforcement in the national courts. Proposed regulation (85) 844 would implement the Regulation on the Community Trade Mark Proposed regulation (86) 731 would set rules of procedure for the board of appeals.

Copyright

Most of the member states have well-developed copyright laws. Green Paper (88) 172 is a consultative document discussing piracy, home-copying of sound and audiovisual works, distribution and rental rights for sound and video recordings, computer programs, data bases, and externalaspects of copyright protection. It contains suggested courses of action that may be formally proposed and implemented by the EC or member states. In one area, computer software, a directive was proposed ((88) 816) and will be analyzed in the current report

Patents

Although most member states have well-developed patent laws, patent protection of biotechnological inventions is a major new issue. Proposed directive (88) 496 would achieve partial harmonization of the patent laws of the member states with respect to biotechnological inventions. It provides, among other things, that an invention cannot be considered unpatentable simply because it is composed of living matter.

Possible Effects

Semiconductor Mask Works

Directive 87/54 should provide increased market opportunities in the EC for U.S. semiconductor firms. The United States has more than $2 billion invested in semiconductor operations in the EC, and U.S. firms account for more than 40 percent of the European market, through local production and exports combined. Protection provided by the directive should facilitate both U.S. investment and, to a lesser extent, exports. Strong U.S. protection makes trade diversion to the United States unlikely, but competition in some third-country markets may increase as a result of trade diverted from the EC.

Trademarks

The creation and administration of an EC trademark will simplify the acquisition of trademark protection by non-EC suppliers, in addition to enhancing the average protection, and presumably enforcement, EC-wide. Similarly, the approximation of the trademark laws of member states can be expected to enhance protection and somewhat simplify acquisition by ensuring that registration and protection are handled similarly by all the members. U.S. firms own a disproportionately large share of internationally well-known trademarks and should benefit accordingly. The effect of an adequately enforced EC trademark would be to tect and encourage U.S. investment However, overall benefit is expected to be moderate at best, because trademark protection is already very good in the EC as a whole and U.S. losses due to violations of trademark rights in the EC are on the low end of the scale internationally.

Copyright

Assuming that directives result from the Green Paper, the harmonization and strengthening of the member states' copyright laws, particularly with respect to audio and video recordings and computer software, will reduce piracy within the EC and increase the market for legitimate products regardless of origin. As such, both U.S. exports and U.S. investment in the EC would benefit to a great degree.

Patents

The proposed directive will probably liberalize trade by creating opportunities for U.S. producers of biotechnological products to enter the EC market Greater patent protection would not only stimulate research and development in this industry, it would also reduce the risks associated with introducing biotechnological products into a new market U.S. industries most likely to benefit are agriculture and chemicals. The proposed directive will probably benefit U.S. investment by creating opportunities for scale economies in research and development, allowing firms to more easily expand across member-state borders.

Developments in 1989: Proposal for a Council Directive on the Legal Protection of Computer Programs (Corn 88 (816))

Background

The major event in 1989 with respect to the European Community's 1992 program as it relates to intellectual property is the proposal by the EC Commission for a Council directive on the legal protection of computer programs.[1]

Several member states of the EC explicitly protect computer programs under their national copyright laws, either by express legislative reference or by court decision. Other member states are currently considering legislation to the same effect Nevertheless, the protection afforded computer programs varies from member state to member state.[2] As part of the 1992 program an effort is being made through the proposed directive on the legal protection of computer programs to achieve a partial harmonization of national law.

Anticipated Changes

Proposed directive (88) 816 on the legal protection of computer programs was submitted to the EC Council of Ministers by the EC Commission on January 5, 1989, andpublished in the *Official Journal* on April 12, 1989 (No. C 91/4).

If adopted, the proposed directive would direct the member states tc5 conform or enact laws to treat computer programs as literary works under their respective national copyright laws. The exclusive rights to be provided include those of reproduction, adaptation, and distribution. However, certain exceptions are made where necessary for the use of the program and for use in nonprofit public libraries. Other provisions address the questions of authorship, of who may exercise the rights accorded authors and to what extent, and of secondary (i. e., contributory) infringement The term of protection is set at 50 years from the date of creation. This is less than the normal Berne Convention term for literary works, which is the life of the author plus 50 years. The proposed directive provides that it is without prejudice to other legal provisions concerning patents, trademarks, unfair competition, trade secrets, or the law of contract (all of which have been used to protect computer programs) "in so far as such porovisions do not conflict with the principles laid clown in the present Directive. "

The proposed directive, if adopted, would achieve only a partial harmonization of the law. Some areas, such as enforcement, have been left entirely to national law. Several of the provisions of the proposed directive have become controversial. Principal among these are the "interface" and "reverse engineering" controversies, which are related.

The "interface" controversy centers on article 1(3) of the proposed directive, which provides:

> ***Protection in accordance with this Directive shall apply to the expression in any form of a computer program but shall not extend to the ideas, principles, logic, alithms or programme languages underlying the program. Where the specification of inf ces constitutes ideas and principles which underlie the program, those ideas and principles are not copyrightable subject matter.***

The controversy centers on the exclusion of "logic, algorithms or programming languages underlying the program" and the potential exclusion of the "specification of interfaces. "The motivation for expressing these exclusions is the Commission's concern for the interoperability of software and hardware and for the generation of compatible programs by competitors, and its desire to express the current law of the member states, i.e., that while the expression of an idea may be subject to copyright, the idea itself is not[3] The debate has been hampered somewhat because of differences in how critical terms such as "specification" and "interface" are defined.

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[1] Outside the 1992program as such, the member states toyed to a final text ofthe promsed Community Patent Convention in December 1989. The member states decided that if the convention is not ratified by all member states by the end of 1991, a conference will be called to determine (by unanimous vote of all the member states) whether the convention may be ratified by (and enter into force for) less than all the member states. In addition, the EC Commission is considering (but has not yet proposed) a directive to extend the terms of pharmaceutical patents. USITC staff interviews with staff of the Industrial Property and Copyright Department, Department of Trade an hidustry, Government of the United Kingdom, London, Jan. 9, 1990.

The Department of Commerce (Patent and Trademark Office) has extended until Dec. 31, 1990, the interim orders issued under sec. 914 of the Semiconductor Chip Protection Act, which protects EC mask works in the United States. 54 F. R. 50793 (Dec. 11, 1989).

[2] For example, in West Germany, the existing jurisprudence on computer programs presently requires, as a result of a court decision, that the program show 'more than average' creativity. USITC staff interview with staff of Department of Law and Commerce, Bundesverband der Deutschen Industrie e. V. (BDI), Bonn, Jan. 10, 1990. This is a higher standard for copyrightability than some of the other member states have. As another example, the term of protection differs in several of the member states. See *European Kvort,* No. 1558, Sec. 3, p. 4 (Jan. *Z7,* 1990).

[3] USITC staff interviews with staff of the intellectual property division, DG 3, EC Commission, Brussels, Jan. 16, 1990. This is also reflected in the Explanatory Memorandum and the "Commission Conclusions Decided on the Occasion of the Adoption of the Commission's Proposal for a Council Directive on the Legal Protection of Computer Programs," both of which accompanied the proposed directive.

The "reverse engineering" controversy centers on proposals by certain companies to amend the proposed directive to permit some form of "reverse engineering. "Again, the debate has been hampered because of differences in how "reverse engineering" should be defined. In its broadest context, "reverse engineering" could refer to one or more of a number of methods by which the object code• of part or all of a program is analyzed to try to information about how the . program is structured. However, "reverse engineering" is frequently equated with one of these methods, called "decompilation." In "decompilation" an attempt is made to convert object code to assembly languages and ultimately to source code .s This usually involves "reproducing" part or all of the program being "decompiled. Another form of reverse engineering" is the so-called "dean room technique," in which a program is analyzed to determine uncopyrightable information about the structure of the program. The results are passed on to another group of programmers, who develop a second program. The theory is that if the programmers of the second program do not have access to the copyrightable content of the first program, there can be no infringement

The reason why some advocates of "reverse engineering" and especially "decompilation" seek a c amendment is article 4(a) of the proposed ve, which prohibits the unauthorized "reproduction of a computer program by any means and in any form, in part or in whole. "This prohibition includes loading, viewing, running, transmitting or storing of a computer eogiam "in so far as they necessitate a reproduction of the program in part or in whole ... Under article 5, reproduction as far as is "n for the use of the program" is permissible, in thabsence of a written agreement to the contrary, signed by both parties.

The Council has recently instructed the EC Commission to report to it on, among other things, the definitional aspects of the controversy.? It IS unclear at this time whether there will be any amendments to the proposed directive.

Possible Effects

The possible effects of uniform EC protection of computer programs depend upon how the two major issues under contention -decompilation or "reverse engineering" and protection for logic, algorithms, programming languages, and interface specifications-are ultimately handled.

The exclusion of any protection for interfaces and little prohibition of reverse engineering would reduce overall protection and probably allow if not encourage some piracy. It would also encourage greater competition of compatible software. The opposite situation would greatly reduce both piracy and competing products and would have a tendency to favor established firms over new entrants. However, regardless of the ultimate resolution of these questions, the simple standardization of protection represented by the directive will have a positive effect on U.S. interests.

U.S. Exports to the EC

U.S. software producers account for an estimated 70 percent of the world market In 1987, U.S. software firms had worldwide revenues of over $30 billion.s U.S. firms' foreign sales of packaged software totaled about $9 billion in 1987.[9] The EC member states accounted for a large percentage of foreign revenues. Sales of software produced by U.S. firms accounted for between 55 and 65 percent of EC software market[10] U.S. imports of software have been negligible. Exports by those firms already doing business in the EC would benefit to the greatest extent if the directive contains those restrictions and protection favoring the status quo (protection of interfaces and prohibition of reverse engineering). If the opposite holds true, U.S. exports by newer competitors could be expected to increase. Furthermore, although some industry sources predict that exports by more established firms could either be curtailed to avoid piracy or lost to pirates, such a decline would more truly represent a loss compared to potential sales under ideal protection, not a net loss compared to sales under the current sundry laws. As the preeminent source, overall U.S. exports of these products would stand to benefit from uniformly enforced computer software protection, regardless.

Diversion of Trade to the U.S. Market

The directive would likely increase U.S. firms' sales rather than cause any diversion of trade. As mentioned, U.S. software firms account for most of the world market The protection of computer software envisioned by the directive would thus enhance U.S. software firms' competitiveness in the EC, with little chance of pirated products being diverted to the United States.

• A program written in code is a program written in machine language, a series of numbers that the computer can understand. See Osborne and Bunnell, *An Introduction to Mier paters,* 3rd ed. (Osborne/McGraw-Hill, 1962), vol. 0, pp. T7-81,1133-137.

° In a program written in assembly laneage,,each machine-language (object code) instruction is assigned a word or abbreviation, called a mnemonic. The program consists of a sequence of these mnemonics. Ibid.

• A program written in source code is one written in a programming language, *such* as BASIC or PASCAL Ibid.

C staff interviews with officials of the Institut National de la Propriete Industrielle (INPI), Ministry of Industry, Paris, Jan. 19, 1990.

• U.S. Department of Commerce, /988 *U.S. Industrial Outlook.*

° Ibid.

'° EC Commission, *Green P on Copyright and the Challenge of Technology—* Capri *t Issues airing Immediate Action,* Com(88) 172 final, June, 1988.

U.S. Investment and Operating Conditions in the EC

Most of the major U.S. software producers have established facilities in the EC. In these facilities, U.S. firms are adapting their programs to meet the needs of individual EC markets by translating the commands and user manuals into the languages of the member states. Software piracy is a major problem in the EC, in part, due to the lack of protection in all member states. In some EC member states, pirated copies of U.S. software programs account for up to 50 percent of the copies in use. The U.S. International Trade Commission's study on intellectual property rights reported that 31 computer and software firms' worldwide losses due to piracy were estimated to total $4.1 billion in 1986.[11] Therefore, the uniform application of computer software protection will generally benefit U.S. investments in the EC and improve operating conditions. *As* discussed previously, a ban on reverse engineering and protection of interfaces would benefit most those firms already in the market. Because U.S. firms predominate, this combination of protection would most benefit established U.S. interests. The opposite, less protection of interfaces and no ban on reverse engineering, promotes competition from less established players, both U.S. and other.

U.S. Industry Response

The U.S. industry supports the idea of copyright protection for computer software, in general. Furthermore, the directive, whatever its final form, should encourage a positive U.S. business response in this field. However, there is a significant divergence of views on the issue of reverse engineering of computer software and the protection of interfaces. The -major U.S. software trade associations are opposed to any provision that would indicate that reverse engineering of software programs is permissible. Some hardware manufacturers feel that analysis of a software program is needed to allow for the design of equipment that will function properly with the software.

Business Software Association (BSA) testified at the USITC's hearing on April 11, 1989, regarding the proposed directive. BSA stated that copyright laws are critical for the development of a strong software industry. The EC Commission's proposal would represent an important step forward in providing full copyright protection in Europe for computer programs. BSA welcomed the European Community's attention to the subject and hoped that interested parties would encourage the Community to adopt a measure protecting software. BSA noted three aspects of the directive that should be strengthened or clarified. First, the directive should deter software pirates by closing loopholes on the adaptation, translation, and reproduction of computer programs and the use of such programs in public libranes. Second, the directive should equally protect all aspects of software programs, including interfaces, algorithms, and programming languag, es. Third, the directive should strengthen copyright enforcement by enacting new provisions on the burden-of-proof and remedies applicable to infringement actions.[12]

NCR Corp. filed a submission with the USITC stating that the proposed directive may prohibit the research and analysis necessary to develop compatible or interoperable hardware and software and open systems. NCR stated that copyright laws are designed to protect the expression of ideas and not the ideas themselves. In order to understand the ideas contained in a computer program so that other programs may be made compatible with it, the program has to be "read" so that analysis of its design criteria (e.g. handshaking protocols) can be performed. The directive prohibits the "reading" of a program unless it is necessary for the use of the program. NCR urged the U.S. Government to support modification of the proposed directive so that it would prevent software piracy while still promoting competition and the availability of compatible and interoperable products.

In addition to comments filed with the USITC, 42 software firms, associations, and individuals filed public comments on the directive in response to a request by the USTR on January 9, 1990.[13] A - - summary of their comments follows.

Twenty-one of the commenting firms endorsed the industry statement in support of the Software Action Group for Europe (SAGE). According to the statement, SAGE supports the EC Commission's proposal to protect computer as literary works. The group does not believe that it extends the scope of copyright protection existing in the member states and the United States and that protection should not extend to ideas and principles. However, the exclusion of protection for logic, algorithms, programming languages, and interface specifications would severely damage protection for legitimate U.S. works. Furthermore any amendment enabling commercial copying as part of research and analysis techniques would result in uncontrollable decompilation. In separate comments, Hewlett Packard, Apple Computer, Digital, and IBM stated opposition to the provisions of article 1(3) on interfaces, in general, supporting further definition and protection for copyrightable expressions. These firms and the Information Industry Association oppose the concept of legalized decompilation.

R.J. Swantek and Martin Goetz submitted statements supporting the article 1(3) exclusions because it encourages competition. Along with Bull HN Information Systems, they support reverse

[11] *U.S. International Trade Commission, Foreign Protection of Intellectual Property Rights and the Effect on U.S. Industry and Trade (hroestigation No.* 332-245), USITC Publication 2065, February 1988.

[12] Transcript, pp. 121-122.

[13] 55 F. R. 790 (Ja 9, 1990).

engineering used in research and analysis for software development Sun Microsystems, Amdahl Corp., Phoenix Technology, Sysvm, and V Communications concur with NCR's position.

The Computer and Business Equipment Manufacturers Association (CBEMA) and the United States Council for International Business have suggested a number of clarifying modifications to the language and, along with the Copyright Clearance Center, support standard copyright protection for computer software. Xerox filed a statement in support of CBEMA's position.

Cadence stated that the current level of protection gives a tolerable level of assurance that a fair return can be made on investment and that allowing reverse engineering would encourage piracy, thus restricting European software development and reducing U.S. exports. Central Point Software supports exceptions for circumvention of mechanisms designed to prevent copying for the purposes of making archival backup copies.

CHAPTER 13
RECIPROCITY

CONTENTS

CHAPTER 13
RECIPROCITY

The concept of reciprocity was introduced into the EC 1992 program with the incorporation of "reciprocity clauses" into several proposed directives during 1988 by the EC Commission. U.S. interests opposed these provisions because they felt that such provisions could lead to discrimination against U.S. firms, particularly in the fields of banking, financial services, and insurance. Also, the European Community has suggested that it will take reciprocity into consideration as it implements other measures to liberalize trade with respect to third countries in sectors not subject to the GATT. However, the U.S. Government believes that reciprocity is inconsistent with the principles of national treatment and nondiscrimination upon which international commercial relations are based.

Developments Covered in the Initial Report

Background and Anticipated Changes

In 1988, three proposed directives indicated that access of third-country firms to EC banking, financial services, and life insurance markets would be contingent upon European Community firms' receiving "reciprocal treatment" from the non-EC firms' home countries. A fourth directive provided for liberalization of capital flows on a reciprocal basis, and another directive allowed an exchange of information regarding credit exposures. Finally, the EC Commission said that it will seek reciprocity as a condition in the opening up of public sector procurement.

The EC Commission, however, did not explain how reciprocity would be defined or implemented. In fact, much controversy results because the central concepts of reciprocity, national treatment, and right of establishment lack concrete definitions.

The use of reciprocity in EC directives was seen by many, both within and outside the European Community, as not only a barrier to liberalization of trade in services and the free flow of capital, but also as inconsistent with provisions of the Treaty of Rome and existing international commitments. National treatment is interpreted by the United States, as codified in international agreements, as unconditionally granted. Reciprocity, even as envisioned in both the amended proposal and the June 1989 revision, could restrict the right of national treatment in the right of establishment.

The amended proposed reciprocity provisions of the Second Banking Directive and the October 1988 EC press release somewhat clarified EC intentions and diminished concerns, although the amended language did not satisfy all critics of reciprocity:

Possible Effects

In the October 19th statement, the European Community appeared to be reserving the right to seek reciprocity in any sector not subject to a ATT discipline. Thus, a large number of U.S. industries could be significantly impacted. Those sectors already targeted by reciprocity provisions are financial services and government procurement

The reciprocity provisions of the directives regarding capital movements, mutual fund transactions, and credit exposures are not seen by U.S. industry sources as any cause for concern. Potential difficulties posed by reciprocity may affect U.S. exports to the EC of financial services, although the actual effects depend on the outcome of the debate on this issue and the method of implementation.

Potential difficulties posed by reciprocity may also affect investment and operating conditions in the EC. According to indus sources, the ures set forth in the original article 7 of the nd Banking Directive to establish or acquire a subsidiary appear to be trade discriminatory.

In Europe, banking activities are less dearly delineated and the EC appears to be moving towards the universal banking system. If reciprocity were defined as 'mirror image" or otherwise narrowly sectoral, it could be noted that the European Community is U.S. banks greater privileges than the United States permits for EC and U.S. commercial banks could thus be precluded from being involved in securities transactions, money-brokering, and portfolio management, or from branching across EC member states. Such a development would greatly disadvantage U.S. firms in the European Community market in terms of the services they could provide and the costs they could incur. The redraft of article 7 was welcomed by U.S. interests as an improvement on the original version but they still object both in general and on specific points.

Reciprocity provisions in government procurement directives suggest that purchasing by EC member states in the sectors specifically excluded from the GATT Procurement Code could be opened up to third-country suppliers if those countries agreed to consider EC firms in the awarding of their public contracts. Current government procurement practices largely limit the involvement of third-country suppliers to the EC market. Thus, the United States haslittle if anything to lose should strict reciprocity provisions be adopted. In financial services, there have been some clarifications; but in government procurement the issue of reciprocity remains broadly undefined.

Developments During 1989

Background

In its July 1989 report on the European Community's 1992 single market program, the USITC staff presented directives' issued through the end of 1988. This first followup report is designed to address developments during 1989. Reciprocity was a topic of considerable controversy during 1988; the year ended with the European Community's intentions unclear and U.S. Government and industry officials greatly concerned about access to post-1992 EC financial markets. However, during the first half of 1989, the Commission of the European Communities (EC Commission) revised a key reciprocity provision. To provide an accurate and timely analysis of the reciprocity debate, chapter 13 of the initial report ("Reciprocity") presented developments up to midyear 1989.[2] This followup chapter will not revisit issues addressed in the discussion of reciprocity in that report Rather, this chapter is limited to developments during July-December 1989. Analysis is presented elsewhere as specified.

The Second Banking Directive

As reported in chapter 13 of the initial report, the European Council of Ministers (EC Council) reached an "agreement in principle" on the proposed Second Banking Directive on June 19, 1989. The EC Council formally adopted the common pmition at the agricultural ministers' meeting of June 24-26, 1989. This agreement finalized the reciprocity language of the directive, formerly article 7, now incorporated into Title HI, "Relations With Third Countries," composed of articles 8 and 9.[3]

The proposal returned to the European Parliament for a second reading, which took place on November 20, 1989. Spokespersons for the committee on legal affairs and for Socialist members argued for reinstatement of a stricter reciprocity requirement; however, British, West German, and Belgian parliamentarians supported the common position. Speaking for the EC Commission, Martin Bangemann emphasized that the European Community did not want to be seen as protectionist[4] The directive was adopted by the EC Council without amendment on December 15, 1989.

The terms "reciprocity" and "reciprocal treatment" appear only in recitals 19 and 20 of the approved Second Banking Directive, which characterize the procedures set forth in Title III as intended "to ensure that Community credit institutions receive reciprocal treatment" in third countries and "to improve the liberalization of the global financial markets. . . ." Recital 20 states that suspensions and restrictions of new authorizations will be a "last resort" measure.

Article 8 of Title HI requires member states to inform the EC Commission of new authorizations of non-EC-owned subsidiaries and of the acquisition by a third-country bank of an EC credit institution to establish a subsidiary. The member states will also notify the EC Commission of the structure of any newly authorized subsidiary of a third-country parent. In previous versions of the proposed directive, member states were required to report requests for authorizations. Also, the amended proposal of April 1989 (published in May 1989) asked for notification of the "ultimate parent" of a subsidiary. In both respects, the final language is perceived as more flexible.

Article 9 calls upon member states to report difficulties encountered by their credit institutions in establishing subsidiaries in third countries or any problems related to conducting business in such other markets. Further, the EC Commission will report to the Council the conditions of establishment and competition accorded EC credit institutions by other countries. These provisions were included in the amended proposed Second Banking Directive.

The final language specified more clearly than before how the European Community proposes to implement its reciprocity provisions and increased the control of the EC Council over negotiations with third countries. For example, when "a third country is not granting Community credit institutions effective market access comparable to that granted by the Community to credit institutions from that third country, the Commission may" request the approval of the EC Council to enter into negotiations with the offending state. Approval must *be* by a qualified majority. In a second, more severe case, wherein "Community credit institutions in a third country do not receive national treatment offering the same competitive opportunities as are available to domestic credit institutions and the the [sic] conditions of effective market access are not fulfilled, the Commission may initiate negotiations" without seeking Council approval. Finally, the EC Commission can only require member states to suspend authorizations for third-country-owned subsidiaries after having sought approval for such action from a committee of member-state representatives. If the committee denies such a request, the EC Commission must then seek Council approval, again, by a qualified majority. However, if the EC Council fails to act within 3 months, the Commission is still allowed to

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' The term 'directive as used in this chapter refers to directives and amendments and proposals thereof.

² See, for example, U.S. International Trade Commission, "The June 1989 Revision of Article 7," *The Effects of Greater Economic Integration Within the European Community on the United States* investigation No. 331267), USITC Publication 2204, July 1989, pp. 13.9 to 13-10.

The text of the common position on arts. 8 and 9 was not available for inclusion or comment in the initial report and is therefore presented in this report.

• Debate of the European Parliament Plenary Session, Strasbo Nov. 21:), 1989, as summ*rized in *European Report* No. 1547 9, 1989), pp. 1-2.

proceed as long as the Council does not reject the plan, which it can do by a simple majority vote. Authorizations may not be limited or suspended for a period of more than 3 months, except with the qualified approval of the EC Council, acting on a proposal by the EC Commission.

An addition to the reciprocity language specifies that limits or suspensions of authorization will not apply to "credit institutions or their subsidiaries duly authorized in the Community. . . ." This "grandfather clause" had been sought by U.S. financial institutions currently operating in the European Community.[5]

Other EC Reciprocity Provisions

As promised, the EC Council incorporated reciprocity language substantially similar to that in the Second Banking Directive into an amended proposed Second Life Insurance Directive.[6]

At this same Council meeting, a draft merger control regulation was adopted.[7] Among the compromises made was the acceptance by other member states[8] of France's proposal for a reciprocity clause. Recital 30 reads:

> Whereas the conditions in which concentrations involving Community undertakings are carried out in non-member countries should be observed, and provision should be made for the possibility of the Council's giving the Commission an appropriate mandate for negotiations with a view to obtaining non-discriminatory treatment for Community undertakings;

Like the above-described reciprocity clauses, article 24 of the draft merger control regulation provides for reports on treatment of EC firms in third countries. Also, in the event that —

> a non-member country does not grant Community undertakings treatment comparable to that granted by the Community to undertakings from that non-member country, the Commission may submit proposals to the Council for the appropriate mandate for negotiation with a view to obtaining comparable treatment for Community undertakings.

[5] For analysis and U.S. Government and industry reaction, see ch. 5, 'Financial Services."

[6] USITC staff meetings with insurance companies in Belgium, France, the United Kingdom, and West Germany in January 1990. For analysis and ITS. Government and industry reaction, see ch. 5, 'Financial Services.'

For further discussion of this directive, see ch. 9, 'Competition and Company Law.'

[8] The United Kingdom, West Germany, and EC Commission sources were reportedly opposed to the inclusion of any mention of reciprocity in this directive.

CHAPTER 14
RULES OF ORIGIN AND LOCAL-CONTENT REQUIREMENTS

CONTENTS

CHAPTER 14
RULES OF ORIGIN AND LOCAL-CONTENT REQUIREMENTS

Introduction

The two related but distinct terms "rules of origin" and "local content" are usually discussed in the context of customs matters, because they are principally enforced by customs officers of each country. However, these two issues were not designated as the subjects of any of the so-called White Paper directives needed to achieve the single market"[1] Instead, they are among the many areas dealt with on a daily basis by EC institutions conducting "business as usual." They tend to be addressed in narrower circumstances, often relating to shipments of one product from a particular country. Because origin and content standards may be used to accomplish policy objectives, and potentially to protect EC firms or affect trade and investment, it is necessary to relate these issues to the White Paper directives and to identify areas of interest for the United States.

These two topics have recently given rise to concerns for two reasons. First, because rules of origin are applied to every shipment of goods, the operation of and changes in such rules may have a significant, immediate impact on exporting countries. Second, many U.S. private sector parties have expressed to the U.S. Government their belief that the EC institutions have been using and will continue to use rules of origin and local content requirements (especially the latter) to achieve particular policy ends, rather than using them in a neutral or nondiscriminatory manner.[2] Others see the EC actions as reducing the freedom of choice of private investors, distorting international trade and investment, and • artificially reducing trade (potentially shifting production from areas of greater efficiency). Accordingly, the U.S. Government has been following EC actions in these two areas and discussing various concerns with the EC. It has raised these issues in a number of forums in an effort to obtain both changes in EC policies and discipline on EC actions.

[1] Government procurement measures and the broadcasting directive do contain provisions involving content and origin. See discussions in pt 2 of this report.

[2] Rules of origin are perceived as a means of achieving the industrial policy objective of encouraging high value-added investment United States Trade Representative, *Europe 1992: Report of the Advisory Committee for Trade Policy and Negotiations,* November 1989), p. 12.

Rules of Origin

Background

Applications of Origin Rules

Many different legal rules are employed by countries engaged in international trade to ascertain the origin of imported goods that are not wholly grown, produced, or mined in a single country. These rules serve several purposes, among them the following: to permit the assessment of appropriate customs duties (including most-favored-nation (MFN), antidumping, and countervailing duties), to restrict benefits of preferential trade programs to goods considered to be the product of beneficiary countries, to assure the proper marking of foreign goods, to administer quantitative restrictions, and to direct the application of country-specific trade measures. Thus, such rules help members of the trading community predict how particular articles will be treated for regulatory purposes when shipped to other countries.

Basis for Origin Rules

Country-of-origin rules rest on a small number of basic principles, which have as their goal the identification of the last country of significant processing or inputs (for goods not wholly the product of a single country). These rules are generally easier to state in the abstract than to apply to actual goods in trade, and none is wholly satisfactory from the perspective of both government policymakers and private businessmen.

Briefly stated, the underlying principles are "substantial transformation" (used by the United States as its general origin standard), value-added or value content, change of tariff classification, and enumerated processes.[3] Additional criteria such as direct shipment of goods may be added, and two or more basicprinciples may be combined, to form origin rules for preferential trade programs such as the Generalized System of Preferences (GSP). Other standards-especially processed-based and value-content requirements - may be added to give effect to origin rules. Importers must consult customs authorities in each country to ascertain the origin to be assigned to specific goods because these determinations are made on a case-by-case basis.

It should be noted that rules of origin are not covered within the framework of the General Agreement on Tariffs and Trade (GATT) or the related Antidumping Code and, therefore, are not

[3] For a more detailed discussion of these principles, see U.S. International Trade Commission, *Standardization of Rules of Origin* (Investigation No. 332-239), USITC Publication 1976 (May 1987).

subject to international discipline.[4] However, it must also be observed that origin rules do relate to and affect subject matters treated by the GATT. The application of and changes in rules of origin may have a definite impact on the benefits actually obtained under trade concessions or preferential programs. Due to the absence of, multilateral standards, and to the number of trade programs and preferences in existence, separate rules of origin are commonly used by a single country for different purposes.[5] The quantity and complexity of origin rules, and the ability of countries to amend such rules freely, pose difficulties for the trading community and for customs officials alike. In some instances rules of origin may rise to the level of nontariff obstacles to trade.[6]

In recent years **the growth of multinational corporations and** international **joint** ventures, **along with multiple-country sourcing in the production of manufactured goods, has further complicated the administration oforigin rules. Places of production and** levels of inputs can be manipulated to take **advantage of preferential programs or to avoid application of import relief measures. As one result, so-called "screwdriver plant" provisions have been employed by the United States and the EC to prevent circumvention of antidumping findings, especially those directed at Japan, through the assembly of goods outside the country targeted in the findings. These measures attempt to identify "products of" (goods originating in) Japan for purposes of applying antidumping duties by imposing content limits or thresholds or examining other factors, thereby supplementing ordinary origin rules. This overlap has resulted in confusion, and the distinctions between the two subjects, origin and content, have often been blurred or ignored.**

The EC-Origin Rules

Non preferential Rules

The general standard for nonpreferential origin determinations in the EC was adopted in Regulation 802/68[7] for purposes of applying MFN duty rates, quantitative restrictions and similar measures, and certificate of. origin programs to imported goods and establishing the origin of exported goods.[8] The test was based upon the definitions of origin set forth in the International Convention on the Simplification and Harmon- ization of Customs Procedures (known as the Kyoto Convention), adopted in 1973 under the auspices of the Customs Cooperation Counci1.[9] Under article **4,** "goods wholly obtained or produced in one country," as defined in some detail, are deemed to originate in that country. Where two or more countries are involved in producing an article, article 5 provides that its origin shall be—

> **the country in which the last substantial process or operation that is economically justified was having been carried out in an undertaking equipped for the purpose, and resulting in the manufacture of a new product or representing an important stage of manufacture.**[10]

Where the "sole object" of any processing or operation is shown or presumed to be the circumvention of provisions of the EC or its member states applicable to goods of specified countries, article 6 prohibits that processing or work from determining the origin of the goods. Several articles set forth the framework for the use of certificates of origin, which must accompany many categories of goods subject to special import arrangements."

Because these provisions were not deemed to resolve all questions of the origin of particular products, additional orusecondarr regulations had to be developed, under article 14 of the 1968 regulation, setting more detailed criteria for determining origin of certain goods.[12] **Many of**

• By contrast, it is generally areed that local-content criteria are prohibited by the GATT (see art. 3, National Treatment, and arts. 11 and 13 on quantitative restrictions).

[5] The United States has been said to have as many as 19 origin rules; among them are the general substantial transformation rule and separate rules for insular possessions treatment, the U.S. GSP, the Caribbean Basin Economic Recovery Act, the free-trade arrangements with Israel and Canada, freely associated states treatment, government procurementBuy America," the voluntary restraint programs for steel and automobiles, and the administration of antidumping/anticircumvention measures. *USTR Europe* 1992:, 1[7. 9].

[6] For a summary of U.S. Government views on orin rules, see testimony of Peter Allgeier, Assistant United States Trade Representative for Europe and the Mediterranean, before the House Foreign Affairs Committee, Subcommittee on International Economic Policy and Trade and Subcommittee on Europe and the Middle East, Feb. al, 1990, pp. 4-6.

[7] 'On the Common Definition of the Concept of the Origin of Goods; adopted by the Council on June *77,1968, Official Journal of the European Communities* No. L 148 (lune *28, 1968),* p. 1.

[8] For a detailed explanation of all EC-origin rules, see USITC, *The Impact of Rules of Origin on U.S. Imports and Exports* (Investigation No. 332.192), USITC Publication 1695 (May 1985), pp. 39-59.

[9] Annex D.1 to the convention suggests that origin be determined on the basis of substantial transformation, reflected by a change of tariff heading.

[10] "Substantial' has been described as being processes sufficient to afford the [new] product, arising from the operation, its own properties and characteristics that did not previously exist *Gesellschaft* fur *Uberseehandel mbH v. Handelskammer Hamburg, [1977] European Communities Court of Justice* ***Reports*** p. 41. To be 'substantial; processing must cause a significant qualitative change in a product's properties. *Zentralgenossenschaft des Fleischergewerbes e.G. v. Hauptzollamt Bochum,* [1984] E. Comm. Ct. I. Rep. p. 1095.

[11] For one example, see *Commission Regulation 3850/89 of 15 December 1989Isiying Down Provisions for the Implementation of* ***Council*** *Regulation 802/68 of 27 June 1968 on the Common Definition of the Concept of* ***the*** Origin of *Goods in Respect of Certain Agrru/tu Products Subject to Spaial Import Arrangements, 01* o. L 374 (Dec. V. 1989), p. 8.

[12] For example, several regulations pertaifling to textile products were adopted, including *Regulation 1039/71* of May 24, 1971, *Of* No. L 113 (May 25, 1971), p. 3; *Regulation 1480/77* of June 24, 1977, ***01*** No. L 164 (July 2, 1977), p. 16; *Regulation 749/78* of Apr. 10, 1978, *01* No. L 101 (April 14, 1g78), p. 7; and *Regulation 3626/83* of Dec. 19, 1983, *01* No. L 360 (Dec. 23, 1983), 17'

these regulations specify an enumeration of processes that must be done in order to claim origin in the situs country. Others set forth value-added criteria for individual classes of goods. [13] The basic 1968 regulation and these secondary regulations are employed unless a more specific measure (generally rules for preferential agreements) exists for the goods. [14]

Preferential Rules

The EC's preference agreements rely on the change-of-tariff-heading principle to ascertain origin. That is, if a finished product has a different four-digit tariff heading from its components, origin will often be assigned to the country of processing or manufacture and preference eligibility will thereby be established. Many exceptions to this scheme exist List Als sets forth additional requirements that must be performed, such as enumerated processes, negative enumerated processes, and added-value tests. List B enumerates operations that will be deemed to confer origin where no change of tariff classification occurs. List C sets forth rules for finding the origin of petroleum products. Another measure, which resulted from the adoption by the EC of the Harmonized Commodity Description and Coding System as the basis of its tariff nomenclature, was Regulation 693/88. It defined rules of origin for tariff preference agreements granted by the EC to certain developing countries; le the regulation used the nomenclature as the basis for the origin rule.

Country-Specific Actions

In addition to applying origin rules to every shipment of goods, for purposes of assessing ordinary customs duties and keeping trade statistics, the EC uses the basic 1968 regulation to administer quantitative restrictions' and other country-specific measures. Moreover, determinations of domestic (EC) origin are important in the context of government procurement's These are not true origin rules in the customs sense, because they are applied by procurement authorities examining bids rather than by customs officials (who would utilize regulation 802/68 as the basis for tariff assessment). They may more appropriately be described as "eligibility criteria" for competitive bidding and award purposes.

Concerns Relating to EC-Origin Rules

In general terms, the ordinary country-of-origin rules employed by the EC for customs purposes do not differ in significant ways from the origin standards applied to imports into the United States. Questions regarding origin findings may be directed to customs authorities and to the courts, as **they are in the United States, through the protest and appeal process relating to individual customs entries. The problems surrounding origin rules are of long standing, and the overall changes resulting from the integration process may exacerbate**

" *Regulation 2432170* of Dec. 23, 1970, *01* No. L 719 (Dec. 24, 1970), p. 35, concerning radio and television receivers, is one such measure. Under the regulation, at least 45 t of the value (ex-works price) must derive from assembly operations and the incorporation of products (if any) originating in the country of assembly to claim it as *the* ongin of the goods. Failing that test, the last country of origin' whose parts represented an important stage in manufacture, to the extent of 35 percent of the value, would be assigned, or as a third choice the country whose parts represented Ble highest percentage value would be deemed as the country of on n.

[14] These agreement. include the EC-EFTA agreements, agreements wilt Mediterranean countries, agreements with the Lome countries and with the Overseas Countries and Territories, the EC GSP scheme, and other arrangements. For an example, see *Council Regulation 3386/84, 01* No. L *323* (Dec. 11, 1984), p. 1, for the rules of origin to pertain between the EC and Austria.

[15] Valuation for purposes of List A is extremely complex and is intended to ensure that significant processing occurs in the country claiming the preference. Some preference agreements permit cumulation of values added in multiple beneficiaries, including bilateral, diagonal, and total cumulation calculations. See USITC, Impel *of Rules of Origin,* cited above, pp. 49 and the following; also see 'Entry into Application Between the Community and ASEAN Member States of Council -WSW of 22 October 1985 Derogating From Regulation 3749/83 on the Definition of the Concept of Originating Products for Purposes of the Application of Tariff Preferences Granted by the European Economic Community in Respect of Certain Products From Developing Countries' [dealing with regional cumulation], *01* No. C 316 (Dec. 12, 1989), p. 3.

[16] *Of* No. L 77 (Mar. 22, 1988), p. 1.

" For example, art 5 of that regulation is used to determine wlx. Japanese automobiles built in Europe should be deemed to be "domestic' or 'products of Japan"; if the latter, they must be counted towards the restraint figure imposed by the EC. Explaining the aeplication of the last substantial manufacturing operation test to these autos, Mrs. Christian Scrivener stated—

> The notion of the last substantial process or operation mentioned in art. 5 above is fulfilled when a considerable added value is achieved. In order to take into account the technological realities of the sector in question and to add a technical element to the economic test, it is also necessary that not all the essential parts orienate from outside the Community.

"Answer on Behalf of the EC Commission to Written Question No. 1818/88, Given on May 26, 1989; 01 No. C 255 (Oct 10, 1989), p. 13. The difficulties in administering general origin rules to specific production operations are made apparent in this response. Disputes exist among the member states as to the appropriate content level to impose on Japanese automobiles, with France arguing for an 80-percent EC-content level (compared with the 1988 achieved figure of 70 percent) and Italy already imposing that threshold; Nissan's plant in the United Kingdom is expected to meet that figure to claim their automobiles have EC origin (for both quota and duty purposes). See Keith M. Rockwell and Bruce Barnard, *One Europe: 1992 and Beyond,* pp. 27-28 (New York, 1989).

[18] See Communication from the Commission on a Community Regpne for Procurement in the Excluded Sectors: Water, Energy, Transport and Telecommunications: Com(88) 376 final (Oct 11, 19011), pp. 103-105. Asa rule, goods having 50 percent **or** greater of turopren content are considered domestic' for procurement purposes and may thereby be preferred by procuring authorities. (If inputs do not meet the threshold, the bid may be automatically rejected.) 1992: *The European Community's Internal Market Program —Opportunities and Challenges for U.S. Firms,* MAPI, pp. 77-78. The standard is retained in the proposed directive covering the so-called "excluded sectors. For a thorough discussion, see ch. 4 of this report, 'Government Procurement."

existing problems. Three aspects of this issue have been reflected in many comments by private industry and trade associations and merit attention. i[9]

First, the subject is an arcane, highly technical one, and information leading to an understanding of different countries' standards is not always readily accessible. Nor is it always apparent, when a customs ruling is issued or a policy is being evaluated, that an origin rule may be involved or is the real problem for an importer. Because of this complexity, and because origin underlies so many government policies and findings, it is feared that origin rules may be used to achieve objectives that cannot overtly be taken in White Paper directives to increase the level of protection for EC firms.

Second, the EC procedures involved in developing, administering, and amending origin standards may present problems. Proposals to change general origin rules or their application to particular classes of goods may not be made public, and sufficient opportunity to comment thereon may not be provided. The retroactive application of amendments to origin rules and the use of "negative standards" present significant problems for the trading community. Negative standards state that certain processes or operations are not sufficient to confer origin on the situs country, but they provide no guidance as to those that are sufficient

Third, although EC-wide origin rides exist, they must be interpreted and applied by customs authorities of the 12 member states. It is therefore possible for the same product entered by the same importer following a particular manufacturing operation to be treated in different ways for origin purposes by the member states. This variation encourages diversion to those member states issuing more favorable rulings (at least by larger or more sophisticated importers) to enter the goods into free circulation. Smaller firms or those unaccustomed to exporting to the EC are not always able to take advantage of these differences in treatment, hampering efforts to expand sales. Brokers and suppliers must deal with not only the authorities and procedures of the EC institutions but also those of the member states. Achieving uniform interpretation of EC standards may therefore be more difficult, in view of the differing languages and administrative structures. This factor is even more significant in relation to changes or proposed changes in origin rules.

" "NAM Points Out EC-92 Market Opportunities and Concerns to Congress Press Release 90-018 (Jan. 30, 1990) [citing origin andcontent rules as one of three areas of concern]; Testimony of Susan Engeleiter, Administrator, U.S. Small Business Administration, before the Subcommittee on Exports, Tax Policy and Special Problems of the Small Business Committee, U.S. House of Representatives (Sept 12 1989), pp. 9-10 [stating that the issues, while unresolved, 'will significantly affect long-term investment decisions by U.S. firms and that small firms with the lowest capital could experience the greatest adverse impact because they lack the option of investing in the EC].

Local-Content Requirements

Background

Very narrow measures that are at times labeled as or confused with origin rules are also issued by EC institutions. By their language they determine the scope of "originating goods" for purposes of administering antidumping orders for a specified class of products of a named country. In fact, these measures are instead subordinate to general origin rules and are often used to ensure that such orders are applied to the appropriate goods. This is necessary where a restriction or penalty is being imposed, because the additional duties should be assessed only on those articles properly attributable to the subject country (known as the target country).

Such subsidiary measures may define the category of originating goods by means of processes conducted in particular countries, minimum nontargeted country (focal or third-country) or maximum targeted country content, or other criteria. In general, these measures can be viewed as either encouraging or reflecting unique production or sourcing patterns for the goods in question. This section will provide an overview and will highlight the use of such requirements in the antidumping/anticircumvention context[20]

Application of the Requirements

Actions to End Dumping

When an antidumping order is issued in the EC,[21] it may apply additional duties provisionally (for 4 months, with a possible extension of 2 months) or definitively. Definitive duties may be applied only after a full antidumping investigation, a proposal from the EC Commission after consultations with the Advisory Committee, and action by the Council for a period of 5 years (measured from the date of entry into force or the last modification or confirmation by the Council), under articles 12 and 15 of the regulation. They apply to specified classes of goods originating in a named country that have been found to be

-- Local content standards are f uently categorized as trade-related investment measures (T1UMs). Such measures are being addressed in the ongoing negotiations of the Uruguay Round, under GATT auspices.Loml content is also used in determining whether suspensions of ordinary customs duties should be adopted and how these suspensions will be administered.

[21] The basic EC antidumping provisions, designated as *Regulation 2423/88 of July 11, 1988 on Protection Against Dumped or Subsidized Imports* From Countries *not Members of the European Economic Community, Of* No. L 3)9 (Aug. 21988), p. 1, tes many changes from theprevious regulation it ed (No. 21764, 01 No. L 201 (ruly 30, 1984), p. 1). The 1988 measure includes the 'screwdriver assembly' lan[gua]ge adopted in 1987 as art. 13(10), *Regulation No. 1761/87, 01* No. L 167 (June 26, 1987), p. 9. For a detailed discussion, see Van Gerven, 'New Anti-Circumvention Rules in EEC Anti-Dumping Law," *International Lawyer vol. 27* (1988) p. 809; Norall, 'The New Amendments to the EC's Basic Anti-Dumping Regulation,' 26 *Common Market Law Review,* vol. 26 (1989), p. 81

of goods originating in a named country that have been found to be dumped and to cause or threaten to cause material injury to an EC industry making the like product.

In the alternative, the EC Commission may agree to an undertaking by the exporters to stop exports, revise prices, or otherwise eliminate the injurious effects of the dumping. The antidumping proceedings are then terminated and no duties are imposed. The undertakings need not be published in full, under the terms of articles 9 and 10 of the 1988 regulation. Instead, the EC Commission is required by article 9(2) to provide ". . . its basic conclusions and a summary of the reasons therefor." Approximately half of the EC cases have been ended after acceptance of price undertakings, many of which reportedly rest on commitments by the subject firms or related or associated parties within the EC (usually in the corporate sense but also in terms of contractual arrangements) to increase the level of European content in the products. [22]

"Screwdriver Plant" Rules

Under the 1987 regulation, three conditions allow the Council to apply efinitive antidumping duties to goods not shipped in finished form to the EC (that is, parts or components imported by or for firms of the targeted country) but instead assembled or manufactured in plants in the EC. [23] The assembly or production must be done by parties related to or associated with any manufacturer of goods subject to the antidumping duty, be started or substantially increased after_ the initiation of the investigation, and the value of targeted-country parts and materials used in the EC operation must exceed the value of all other (EC and nontargeted country) parts and materials by at least 50 percent. [24] Parts and materials originating in the targeted country and suitable for inclusion in the article subject to the definitive duty can be entered into free circulation in the EC only upon declaration that they will not be used in the EC to assemble or produce that article . [25]

Applying Duties to "Originating Goods"

As observed earlier, it can at times be difficult for customs officials to identify the goods that should appropriately be assessed an antidumping duty. Article 13(7) of the 1988 regulation provides the EC Commission with the means of addressing these situations:

In the absence of any special provisions to the contrary adopted when a definitive or provisional antidumping or countervailing duty was imposed, the rules on the common definition of the concept of origin and the relevant common implementing provisions shall apply.

On several occasions such special provisions have in fact been adopted, at times well after an initial regulation setting forth the antidumping findings. [26] It may be said, then, that in cases where special provisions are adopted and for purposes of the undertakings, the EC may employ different or additional rules of origin for goods the subject of

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a Van Gerven, 'New Anti-Circumvention Rules, pp 814, 817. According to Van Gerven, at p. 817, officials of the EC Coadnission —

toil *reject, on the* contrary, *undertakings whereby sourcing in the country in witch products are subject to the anti-dumping duty is lowered in favor of sourcing from* a country *outside the* Community. *The Commission officials rely upon the discretion_ary powers of the Commission with regard to accepting undertakings to* Justify *such policy. Sourcing of* parts *or materials countries outside the Community _would also be di fain to monitor, @wording to the same [EC] Commission facials. In requiring related or associated companies to give a certain level of European content to their products, such undertakings* go, *howear, further than the conditions of the new anti-circumvention rides. Admittedly, the 1979 GATT-Anti-Dumping Code does not require the antiwar: g parties to accept undertakings for the purpose of eliminating dumping, but it is questionable whether contracting parties to the GATT Code* may turn *undertakings into an instrument of favoring local component manufacturers. In principle the 'Commission should furthermore not be entitled to rapdre a reduction of foreign content to below 60 percent of the total content since, at that point, one of the conditionsjor iroposing an anti-dumping duty is no longer satiOed.*

l'i Such anticircumvention has been found to exist and duties applied in several instances. *Council Regulation 1877/85 Imposing a Definitive Anti-dumping Duty on Imports of Certain Hydraulic Excavators Originating in Japan, 01* No. L 176 (1985), p. 1; *Regulation 1698/85 Imposing a Definitive Anti-dwriang Duty on Imports of Electronic Typewriters Originating in Japan,* 01 No. L 163 (1985), p. 1; *Regulation 1058/86 Imposing a Definitive -durriping Duty on imports of Certain Electronic Scales Originating in Japan, 01* No. L 97 (1986), p. 1; *Regulation 535/87 Imposing a Definitive* Anti-Dumping Duty *on Imports of Plain Paper Photocopie in Japan, 01* No. L 54 (1987), p.12. The latter product has frequently been the subject of onfian investigations, with Ricoh copiers assembled in the United States alleged to *be* of Japanese rather than U.S. origin. A

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satisfactory resolution of the issue has reportedly been reached in recent weeks; the EC has calculated the value contribution of Japan in copiers assembled in France as being less than 60 percent of the final product and has rathedagreement with Ricoh as to the treatment of the U.S.-msemb1edgoods.

m In the EC content effectively must exceed 40 percent; for videocassette recorders, this figure is 45 percent. *European Community: Issues Raised by 1992 Integration,* Congressional Research Service Report for Congress (May 31, 1989), p. CRS-44. In another case, antidumping duties were imposed on serial-impact dot-matrix printers produced in the EC using Japanese content of up to 98 percent, following a complaint from the European manufacturers that local-content rules requiring 40-percent non-Japanese content were being violated.

*° For a discussion of the issues, see Rockwell and Barnard, pp. 27-28. The relevant section ('domestic content discontent') states that local-content standards in general have little effect on the majority of U.S. multinationals but would reduce their flexibility increase their costs (through expensive, less efficient EC production operations). It notes that the U.S. Government has focused on the investment impact of such standards.

Commission Regulation 288/89 of 3 February 1989 on Determining the Origin of Integrated Circuits, 01 No. L 33 (Feb. 4, 1989), p. *23; Commission Lion 2071/89 of 11 July 1989 on Determining the Origin of P tccopying Apparatus, Incorporating an Optkid System or of the Contact Type, Of* No. L 196 (July 12, 1%9), p. 24. In the first of these, the last substantial process normally used to determine origin was replaced with a 'most substantial process' test, with the place where the diffusion stage of manufacture of integrated circuits occurs found to be their origin. In the second, directed at U.S.-based assembly using both Japanese and U.S. inputs of goods for export to the EC, the assembly stage was found not to comprise the last substantial process"; the effect was that U.S. origin could not be claimed.

special provisions are adopted and for purposes of the undertakings, the EC may employ different or additional rules of origin for goods the subject of antidumping petitions. However, it may at times be hard to distinguish economically expedient sourcing practices from anticircumvention schemes, and nontargeted third-country suppliers may suddenly find that their targeted-country purchasers are no longer interested in the former's goods.

Concerns Relating to Content Criteria

Many statements to Congressional committees, submissions to government agencies, and comments of private parties have stated that content requirements are a major obstacle to trade with the EC. These views also oppose the use of such standards to force investment in EC-based productive capacity[27] or to provide a disincentive to use nontargete country content in rods for export to the EC.[28] Others have opined that the anticircumvention rules will ultimately jeopardize fore*: n (especially Japanese) direct investment in the EC.[28]

A common complaint put forward by U.S. interested parties is that Japan, the usual target of such EC measures, has in a gprowing number of product areas opted for EC content and/or operations in lieu of those of the United States.[38] This may be a more serious problem over time than in initial stages Of EC assembly, especially if currency relationships eventually compel Japanese firms established in the EC or their affiliates to use greater EC content instead of outsourcing from other countries.[31]

Moreover, a potential exists for goods covered by an undertaking to be produced by an existing EC enterprise without imposition of antidumping duties, even if the targeted-country content exceeds 60 percent and despite the existence of the rule concerning postinstitution oppte lions, because most details ing **und ' gs are not made public.[32] Another[d] significant concern is that the semiconductor origin rule, based on "most" instead of "last" significant processing, may serve as a precedent in other product categories.[33]**

Communications from the United States and other governments have raised their concerns in both of these areas[34] and have emphasized the procedures for establishing, administering, and amending origin rules. Without international rules and the resulting transparency, it is extremely difficult to have an opportunity to comment about these criteria. Private sector parties report inadequate EC efforts to obtain input from potentially affected suppliers and exporters before rules or amendments are put into effect, as well as injurious retroactive application of such actions. Such procedural deficiencies are seen as being more harmful than the type of rules chosen, in many instances.

[2"] In a statement responding to Japanese Government criticism, EC Commissioner W. De Gercq (external relations and commercial policy) said that the antidumping/ **anti-eiramwenbon measures will** not discourage investment and that, on the contrary, it will encourage investment with a high proportion of added value and a transfer oftechnology_.'" (Noted by Van Gerven, p. 827, citing ***Europe,*** June 26, 1987. However, see written statement by Lothar Griessbach,Representative for German Industry and Trade, Association of German Industry and Commerce and the Federation of German Industries, (April 11, [1989]), p. [3] `submitted to hearing for' USITC Investigation No. 332267:

> "It is true that some European member states contemplate raising investment or trade barriers in order to fend off foreign investments as a source of foreign competition. One way of doing this is proposing local or foreign content regulations. This move has to be understood as a reaction to increased Japanese investment which in turn appears to be prompted by the fear of retaliation for insufficient [in] opening Japanese markets ..

[P123] Letter from Andrew A. Procassini, President, Semiconductor Industry **ration,** to Secretary of Commerce Robert A. Mosbacher and United States Trade Representative Carla A. Hills Dune 1, 1989), with attachment entitled, `Unintended Domestic Content Requirements? The Problem With the Administration of the EC's Screwdriver Assembly Regulation, to the effect that several U.S. manufacturers of semiconductors had recently lost contracts to supply these goods to Japanese firms, when the latter indicated a need to raise the level of EC content in their finished products.

" Van Gerven, p. 827, citing news reports that Japanese Government officials have warned the EC that the new rules may discourage investment

[Se] U.S. semiconductor chips are reportedly being eliminated (designed out of) from finished products that are subject to EC-local content thresholds as Japanese firms shift to purchasing EC-origin components, because of calculations of content in boards for inclusion in printers and other goods. Statement of Michael C. Maibach to Subcommittees of the House Committee on Foreign Affairs, Mar. 23, 1989. The American Electronics Association submitted papers to U.S. and EC officials indicating that the use of value elements in any

[Se] — ***Continued***

origin tests can be trade restrictive and imposesa great burden on those trying to meet the required threshold level.

[31] Van Gerven, FL 828.

sit However, if definitive antidumping duties are ordered, this is not the case. Electronic typewriters assembled in the EC but having 60 percent Japanese (targeted-country) content were determined to be subject to duties. ***1992: The European Community's Internal Market Program,*** p. 77.1m:rasing the EC content would seem the easiest way to avoid the additional duties.

[22] The semiconductor origin rule change and its effects on U.S. firms are summarized in a statement by Senator Bingaman, ***Congressional Record*** (Oct. 3, 1989), pp. S 13364-12365. He notes that, under prior EC law, testing and assembly in the EC were sufficient to confer origin; under the new rule, all manufacturing processes must be done in the EC for a semiconductor to be treated as an EC product The Senator observed that the other change relating to semiconductors—the local-content requirement applicable to Japanese goods imposed under the 'screwdriver assembly' laws— ***has*** resulted in de facto discrimination against U.S. components. Thus, he stated that firms such as Intel have decided they must invest in EC facilities to remain competitive in that market, with resulting employment and technology losses to the United States. Senator Bingen= expressed dm view that such 'covert protectionism' cannot be accepted and "invites retaliation bythis country'. He cites tariff differentials (frequently higher EC duty rates), government procurement restrictions, and other measures as harming U.S. economic interests. His statement helps demonstrate that all EC laws and policies must be viewed in the aggregate if their overall effect on U.S. industry is to be ascertained.

" Major U.S. concerns are summarized in an article by Youri Devuyst entitled 'The United States and Europe 1992" in the ***Journal of World Competition,*** vol. 13, No. 1(1989), p. 29. The United States Trade Representative, Carla Hills, has spoken of these problems at length on numerous occasions, before GATT bodies and in discussions with EC officials.

In response, the EC and its representatives have repeatedly stated that any perceived adverse effect is unintended, and that recent actions in the areas of origin and content have not been taken with the goal of restricting trade or compelling EC investmentas They have indicated their willingness to discuss these questions, both in relation to specific products and more generally. International efforts to establish GATT discipline and to harmonize rules of origin are ongoing in the Uruguay Round of multilateral trade negotiations.[36]

Such a longer term solution, however, may not greatly allay the concerns of non-EC governments and firms today. Communication and efforts to eliminate adverse effects will be necessary, as well as evidence that trade and investment are not over time suffering restrictive effects. It may be observed that efforts under GATT auspices to work toward simplified and common origin standards are not new, but in fact began in the mid-1950s.[37] Business and government interests must be convinced, if stable trade and investment is to occur, that rules of origin will not continue to cause uncertainty as to tariff rates that would apply to particular goods. They must be convinced that local content requirements will not operate to exclude some goods from the EC or suddenly force the imposition of unexpectedly high tariffs.

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[36] 'The European Community Will Continue to Apply the Rules of Origin in a Way Which Will Not Affect Trade or Investment, Press Release No. 39/89 (Nov. 1, 1989), quoting EC Commissioner Christian Saivener as follows: 'Rules of ongin are a tool to implement trade measures and must be neutral and technical. The European Community must continue to apply rules of origin in a way which would not affect trade or investment' In a statement to the RIAA/CBI Single Market Conference entitled 'The Implications of the Great Market for Trade and Investment' (London, July 2F,1-4-74.C Commission *Vice* President Frans Andriessen observed, "Vinci investment in Europe is welcome. To limit it through local content requirements or other restrictions would be to impose the same handicap on our own businessmen which their competitors face in less liberal societies.'

United States suggested that rules of origin be taken up as a subject for negotiations during the Uruguay Round; work is ongoing in the context of reducing norttariff barriers to trade. In late September 1989, the United States submitted a paper laying out aproposed basis for discipline, a common on rile, and rn wtaer Coopetiuri eolsicr would serve as the initial framework for further negotiations in the GAIT, ultimately to lead to adoption of an agreed standard for goo' in trade. uWs of Origin: Communication from the United States to the Negotiating Group on Non-Tariff Measures' (Sept. 27, 1989). Other countries, including the EC, are expected to submitresponsors pwosati in the near future. The United States has also submitted a proposal that antidumping rules be changed to improve transparency, deter evasion of antidumping duties, and take into account the global nature of manufacturing operations.

[33] The contracting parties to the GATT submitted to member governments a suggested origin definition based on 'last substantial transformation" in October 1953. In 1954, governments were asked to report on rules of origin and their administration. A report of the working party on the 'Definition of Origin' was adopted on Mar. 2, 1955. GAIT BISD, Third Supplement (June 1955), pp. 94 and the following. This effort to set general language on origin of goods drew heavily on work of the International Chamber of Commerce. However, one succinct but illtuninating response to the proposed definition, that of the United Kingdom, described it as an 'uncontroversial affirmation' making no important contribution to the goal of achieving uniformity.

CHAPTER 15
EC INTEGRATION AND THE GATT

CONTENTS

CHAPTER 15
EC INTEGRATION AND THE GATT

The mission of the General Agreement on Tariffs and Trade (GATT) is to encourage liberalized trade among member countries. The cornerstones of the GATT are most-favored-nation (MFN) treatment, national treatment, and transparency. The Agreement also calls for the elimination of quantitative restrictions and export subsidies. Use of safeguards, however, is allowed in certain instances, such as protecting an industry seriously injured by increased imports.

One of the principal questions concerning the restructuring of the EC internal market is whether all the changes will conform to the EC's international trade obligations and commitments. The United States and other countries share a concern that the EC program not result in increased protectionism or in discrimination against their (ar ts to the EC. If adverse practices do arise, the and the Uruguay Round will be available to address the concerns.

Developments Covered in the Initial Report

Background and Anticipated Changes

Original European Community

An indication of how the EC integration will be handled by GATT may be revealed by examining the initial creation of the EC. The Treaty of Rome, signed on March 25, 1957, established the European Economic Community. A GATT workingparty, established in late 1957, reviewed the compatibility of the treaty with the General Agreement A final ruling was never issued. The EC maintained that the treaty was compatible with GATT and regarded the questions of GATT conformity as minor. They agreed to work out any problems that might arise over time.

EC 1992

Specific areas of concern expressed by U.S. Government officials include protectionism, reciprocity (particularly in banking and financial services), transparency, transitional measures on autos and textiles, and standards and certification issues. Other concerns center around limits on national treatment, guidelines for third countries, local-content rules, and quantitative restrictions.

The EC has countered these concerns by stating that its new policies will meet its international obligations but will do so in accordance with a balance of mutual benefits and reciprocity. In sectors with no multilateral rules, the EC says it will seek new international agreements. However, prior to new agreements, the EC will negotiate bilaterally with its trading partners for satisfactory access to their markets to compensate for benefits received from the EC liberalization process.

Such pronouncements seem to imply that the EC will seek "sectoral **reciprocity" rather than the** "unconditional reciprocity" contained in the GAIT. These EC statements have prompted concern for two reasons. First, the EC call for reciprocity has the potential of undermining the Uruguay Round and the national treatment provisions of the GATT. Second, some items "not covered by GATT" are currently subject to Uruguay Round negotiations to bring them under GAIT rules. If the GATT succeeds in covering "new areas" by the conclusion of the Uruguay Round in 1990, it is unclear how EC directives calling for sector-specific reciprocity will conform to the national treatment principle that may be extended to services and trade-related investment measures.

Transparency, also, is particularly relevant to the drafting of technical and detailed directives in areas such as standards and government procurement The implementation of the 1992 **program** involves drafting, approving, and implementing nearly 300 directives and other policies. Although, prior to their adoption, each directive is published and **circulated for comment within the EC, it is not clear to what degree non-EC countries may make their interests known prior to a directive becoming a fait accompli.**

Safeguards provisions of the GATT may become relevant for some currently protected European industries which will face global competition in the future. If safeguards are used by the EC to address short-term industry adjustment problems, the United States and other EC trading partners may be able to negotiate for compensation for the effects on their trade for the duration of the measures.

Tokyo Round Codes

The Agreement was supplemented by the Tokyo Round Codes on Nontariff Barriers. Included in these codes are the Standards Code and the Government Procurement Code. Currently, there is some ambiguity regarding the Standards Code's national-treatment clause. The question is whether the EC's rules on the free movement of goods and the application of standards should be applied to all parties to the code, pursuant to its national-treatment clause.

"Excluded sectors" and services do not benefit from the Government Procurement Code coverage. This means that the EC is not currently obliged to ensure U.S. suppliers' access to such contracts, nor to follow the code's requirements for transparency and nondiscrimination in procurement practices in such purchases.

Developments During 1989

The trading partners of the European Community have already been affected by some elements of the EC 1992 program, and the incidence of disputes related to the program is likely to increase over the next few years. The U.S. Advisory Committee for Trade Policy and Negotiations (ACTPN) released its recommendations on the U.S. response to the EC 1992 program in November 1989. The ACTPN report encouraged the U.S. and EC governments to consult on a regular basis "to defuse trade tensions and deal constructively with the disputes that will continue to arise in specific areas."[1]

The principal and preferred means of resolving trade disputes among countries are the dispute-settlement procedures of the General Agreement on Tariffs and Trade (GATT)? The basic procedures were described in the USITC's initial report on the effects of the EC integration on U.S. industries.[3] This chapter discusses matters that may affect the way trade and trade-related issues arising from the EC 1992 program are resolved through multilateral action in the GATT.

Streamlined GATT Procedures

One of the first agreements reached in the GATT-sponsored Uruguay Round of multilateral trade negotiations (MTNs) was to streamline the existing dispute settlement procedures to "ensure timely and efficient dispute settlement in GATT." On April 12, 1989, just three days after the Trade Negotiations Committee completed the midterm review of the Round in Montreal, the GATT Council formally adopted the new procedures, effective May 1, 1989.[5]

Under the reformed procedures, time limits are established so that if a dispute is not resolved promptly through bilateral consultations, a dispute panel to consider the issue is established automatically. The panel's terms of reference and selection of panelists will be determined by the parties of the dispute in consultation with the GATT Council Chairman. Under the prior procedures, establishment of a panel could be blocked indefinitely by a single party (typically the subject of the complaint) or bilateral consultations could drag on for years.[6]

So far under the new streamlined procedures, the United States has initiated only one complaint related to the EC 1992 program. This concerns the EC's recent broadcast directive. As the first step of dispute settlement under GATT articles XXII and XXIII, the United States requested consultations with the EC on September 1, 1989.[7] Under the new ures, the United States may now request the Formation of a panel at any time if it concludes that the bilateral consultations have not resolved the issue and so notifies the GATT Council.

One EC-1992-related dispute between the United States and the EC that predates the new procedures concerns the hormones case. Since the dispute under the Tokyo Round Agreement on Technical Barriers to Trade (the Standards Code) erupted before the new procedures went into effect, theEC can continue to block the establishment of a panel. On the other hand, the United States can also continue to block the establishment of a panel on a complaint by the EC against unilateral U.S. retaliation against the EC hormone ban.[8]

The only other GATT dispute clearly related to the EC's internal market process involved the EC Third Country Meat Directive. In 1987, the EC issued a directive which required meat producers to comply with certain technical standards in order to export to the EC. This complaint has been inactive since the U.S. firms involved obtained EC certification in early 1988.[9]

Trade Policy Review Mechanism

The Trade Policy Review Mechanism (TPRM), implemented in early May 1989, is a new device for encouraging greater compliance with GATT rules. The new mechanism is designed to increase the transparency of trade policy actions taken by contracting parties, and to assist other countries in understanding them.

As part of the agreement to implement the reviews, four important developed economies-the United States, Japan, the EC, and Canada - volunteered to have their trade policy regimes examined in the first 18 months of theimogram. An analysis of the EC regime will be conducted in late 1990.

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[1] "Report of the Advisory Committee for Trade Policy and Negotiations; Europe 1992, ACTPN, November 1989, p. 6.

[2] Most international trade and economic issues are handled without resort to formal government-to-government action (through private negotiation or arbitration, national administrative or judicial procedures, or routine informal government-to-government contacts). Some issues are also Fondled through bilateral government-to-government negotiation, particularly when the issues are not adequately covered or not covered at all by GATT or other multilateral agreement, e.g., intellectual property and services.

[3] See *The Effects of Granter Economic Integration Within the European Community on the United States (Investigation No.* 332-267), USITC Publication 2204, July 1989, ch. 14. An indepth study of the dispute-settlement process was conducted by the USITC in 1985. See *Review of theEffectiveness of Trade Dispute Sdtlanent Under the GATT and the Tokyo Round Agreanents (Investigation No.* 332-212), USITC Publication 1793, December 1985.

[4] GAIT, *GATT Focus,* No. 62. June 1989, p. 1.

[5] The new procedures only apply to those disputes formally raised under the GATT dispute system under arts. XXII and XXIII and not to disputes raised under the Tokyo Round codes.

[6] See USITC, *Review of the E graveness of Trade Dispute Settlement,* USITC Publication 1793, 57. See also An Unofficial Description of How a GATT Panel Works and Does Not; Journal *of International Arbitration,* vol. 4, (1987), p. 93.

[7] *GATT Focus,* No. 66, November 1989, p. 3.

[8] Ibid.

[9] For more information, see USITC *OTAP, 40th report, 1988,* USITC Publication 2208, July 1989, pp. 88-89.

Under the TPRM, each country will submit a report on its trade policies. The report will cover such topics as the objectives of national trade policies; a description of the import and export system; and the country's trade policy framework; including domestic trade laws and foreign trade agreements. Background information will be provided to permit other countries to assess the trade policies in the context of wider economic needs and the external environment An "illustrative" list of trade measures is also to be included, e.g., quantitative restrictions, variable levies, rules of origin, government procurement rules, safeguard actions, technical barriers, and antidumping actions. [10]

The format of the review for the EC trade regime will be determined over the next few months in consultation between the GAIT Secretariat and the EC. Because of its broad scope, this review of the EC's trade regime should provide the other contracting parties information on the internal market process. This could offer an opportunity for making progress on one specific recommendation contained in the ACTPN report: that the U.S. Government and industry "push hard for transparent, predictable procedures to counteract an European tendency toward administrative fiat." [11]

Possibility of Review of the Terms of the EC Customs Union

Under the rules of GATT Article XXIV (governing formation of customs unions) the terms of the waiver of most-favored-nation (MFN) obligations granted to European GATT members to permit formation of the EC customs union would have to be examined if a new country were to acceed to the community, or if any other major change were made to the trade regime that might affect other GATT contracting parties. [12] If the scope and nature of the EC 1992 program significantly change the conditions of access to the EC market, a XXIV:6 review of the customs union may be requested by the contracting parties.

[10] The GAIT Secretariat will also prepare a report on the country being reviewed. This report will closely follow the same Emmet of the country report

[11] "Report of the Advisory Committee for Trade Policy and Negotiations; p.6.

[12] Under art. XXIV, customs unions are exempted from the MFN principle that guarantees that a concession negotiated between two GATT members is extended to all other signatories.

CHAPTER 16
EC INTEGRATION AND THE URUGUAY ROUND

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CHAPTER 16
EC INTEGRATION AND THE URUGUAY ROUND

Increasing resort to nontariff barriers, substantially greater volumes of trade in services, and a heightened awareness of effects on trade of investment measures and intellectual property rights have prompted a determination to expand GATT's coverage. Accordingly, in the Uruguay Round trade negotiators are working to bring the "new areas" of services, trade-related investment measures, and trade-related aspects of intellectual property rights within GATT's scope.

Efforts to reform the GATT involve significant areas of overlap with developments in the EC plan. Although the goals of both the GATT and the EC exercises offer positive signs for international trade liberalization, it is unclear to what degree the initiatives will reinforce one another or will conflict

Developments Covered in the Initial Report

The fact that the EC effort and the Uruguay Round transpire at the same time raises problems in itself. The Uruguay Round is scheduled to finish by the end of 1990, whereas the Europeans have already passed many of their new directives. Thus, certain policies and directives may already be fait accompli when related issues arise in the Uruguay Round, perhaps leaving little room for negotiating flexibility. Also, with European countries focusing on internal matters, their Uruguay Round positions may reflect their internal politics more than their global interests.

The single-market exercise is likely to have other effects on Uruguay Round initiatives. Some EC directives, such as those on government ent, may reinforce EC positions in the Tu[illegible]gil:y Round. On the other hand, in standards discussions, the EC has argued that the internal process needs to *be* completed before the EC can fully engage in multilateral negotiations. Such an approach could slow progress of the Uruguay Round. In all areas, the concern is whether inconsistencies will arise between decisions made in Brussels and the agreements being sought in Geneva.

Other overlapping topics between Uruguay Round negotiations and the European integration include safeguards, nontariff measures, agriculhire, and 'new areas,' such as services, intellectual property, and investment. In these topics and others, it is not yet clear whether the European exercise will conflict with or reinforce Uruguay Round negotiating objectives.

Safeguard actions may be utilized by the EC to remedy short-term adjustment problems by industries as a result of new EC measures. The outcome of negotiations on the selectivity of safeguards then may be relevant to such EC actions and to the corresponding compensation that trading partners may seek. Furthermore, the EC already has a number of voluntary export arrangements in place. If the EC considers further use of such measures following the implementation of 1992, the Uruguay Round negotiations to bring grey-area measures under GATT coverage will be an issue that its trading partners may consider.

On nontariff barriers, if the statements of European officials regarding "credit" for liberalization are followed, the EC may want to use the negotiations to gain concessions for new measures that are more liberal than preintegration measures. Complications from this approach include the reluctance of EC trading partners to grant Uruguay Round concessions for measures the EC would be implementing anyway because of its own internal program. Furthermore, the Uruguay Round negotiations ignore the effects on EC trading partners caused by more restrictive EC 1992 actions. These would have to be undertaken in the dispute-settlement forum.

One area of overlap in the agricultural negotiations is phytosanitary and health standards that affect agricultural trade. The EC is working to set new standards and harmonize existing ones, and the negotiating group has tentatively a[illegible] to base these standards on internationaf[illegible] scientific consensus.

GATT trade Ministers agreed in Montreal that negotiations on a framework of rules for trade in services should continue. The Ministers approved a text stating that the principles of transparency, national treatment, most-favored-nation treatment, and nondiscrimination are relevant to these negotiations. The issue of whether any service sectors would be excluded from a service framework or would require special considerations was left open. Nevertheless, the proposed banking, financial service, and insurance directives already contain provisions calling for reciprocity from non-EC states. The apprehension is that this EC approach may indicate a precedent that the EC will apply in other service sectors and that will influence its positions in Uruguay Round negotiations on services.

Developments During 1989

Introduction

As EC integration p[illegible], internal market policies may affect th[illegible]C's Uruguay Round positions. In some areas, integration activities have little relationship to or impact on EC positions in the trade negotiations. In other instances, efforts in the 1992 program may complement Uruguay Round activities or help shape EC views on particular subjects under negotiation.

This chapter will highlight those areas where EC integration activities and Uruguay Round positions exhibit a relationship and will discuss the major issues in corresponding Uruguay Round

negotiating groups. The relevant EC 1992 initiatives and the stance of the EC Commission' in those subject areas in the trade talks will be compared. Finally, U.S. concerns on these issues will be briefly outlined.

Issues Under Negotiation and Relationship to Integration

Three new areas — services, intellectual property, and investment measures—are being considered by participants in the Uruguay Round for coverage under GATT. In the services negotiations, the EC is requesting "credit" in evaluating EC concessions offered in the Round and reciprocity from its trading partners for its recent banking liberalization; the EC's current internal law on banking results from the integration process.[2] As to intellectual property, the patentability of biotechnologically derived plants, copyright protection for computer software, and the use of geographical indications in labeling wine[3] are all issues being debated in both Brussels and Geneva. In addition, the EC has supported the prohibition of local-content requirements in the on trade-related investment measures). However, recent developments in the EC, such as the broadcast directive, raise fears among the EC's trading partners that the internal market process will result in trade-restrictive local-content requirements.

Three other Uruguay Round topics, local content, rules of origin, and antidumping measures, have also been related to recent trade actions by the EC.[4] Apart from the appearance of local-content criteria in a handful of measures, these issues are not the subject of directives in the integration process but have been repeatedly raised as important concerns. In the nontariff-measures negotiations, the EC maintains that its rules of origin are not trade distorting and are merely technical provisions.s Again, recent pronouncements, such as in the Ricoh antidumping case, suggest otherwise to many interested parties.[8] Whether EC antidumping law or origin criteria will be changed, either during integration or after the Uruguay Round, is unclear.

A further correlation between EC 1992 activities and the EC's negotiating stance in the Uruguay Round may be found in the areas of subsidies, textiles, and agriculture. The EC Commission recently began a campaign to eliminate several national state aid programs. However, it reportedly does not support the prohibition of domestic subsidies in the subsidies negotiating group. In the textiles negotiating group, the EC has linked its willingness to agree on the phaseout of the Multifibre Arrangement (MFA) with the possible establishment of a textile safeguard or transistional measure. The debate on whether animal and plant health and human safety standards should be based on pure scientific evidence or on social and economic concerns continues in both Geneva and Brussels. Last, developments in the Standards Code and Government Procurement Code renegotiations are also being observed for influences from integration policies?

The EC institutions, particularly the EC Commission, must work simultaneously on integration and on the Uruguay Round. With the EC Commission's resources divided and with developments in Eastern Europe, EC officials have been said by one publication to "concede they cannot devote their full attention"[8] to the ongoing multilateral trade talks.

' The EC Commission has full competence to represent all member states in the multilateral trade negotiations. This competence is granted through art. 113 of the Treaty of Rome. The EC Commission negotiating staff consults with the "113 Committee," which comprises special representatives from each member state. After consulting with and being advised by the "113 Committee," EC Commission negotiators represent the Community in Geneva. Third countries must negotiate only with the EC Commission officials and not with individual member-state officials.

[2] See ch. 5, "Financial Sector."

[3] Geographical indications designate a product as originating from a geographical location that signifies quality and reputation. The EC has asserted a strong interest in promoting the integrity of geographical indications, particularly those applying to wines.

Antidumping is related to rules of origin and local content. Rules of origin determine the "nationality" of a product or service for the assessment of customs duties, the administration of quotas and sanctions, and the eligibility for any preferential agreements. If an antidumping case results in a finding that a foreign country is dumping its products on the EC market, a local-content requirement can be imposed to prevent circumvention of the order. Local-content requirements are discussed below in the section on trade-related investment measures, and rules of origin in the section on nontariff barriers. Ch. 14 also addresses these two concepts.

For a more detailed discussion, see ch. 14, "Rules of Origin and Local-Content Requirements."

• Ricoh, a Japanese photocopier-maker, in early 1989, avoided an EC dumping duty on its product by eliminating the U.S. content from its product—U.S.-made circuit boards added in California—and replaced these circuit boards with EC-made ones to meet the Community local-content requirements. U.S. semiconductor manufacturers lost their supply contracts, but Ricoh was able to maintain the Japanese-content of the product while meeting the EC-content rule. See Report of the Advisory Committee on Trade Policy and Negotiations to the United States Trade Representative (USTR), *Europe 1992,* November 1989, p. 9.

[7] Another Uruguay Round topic that relates to the integration process concerns safeguards. The EC's trading partners are concerned as to the type of transitional measures (emergency actions or safeguards) the EC may impose as internal barriers are removed.

• Keith Rockwell, "E. Bloc Reforms Strain EC Focus on Trade Round," *Journal of Commerce,* (Jan. 24, 1990).

Services

Background

The objective of the services negotiations is to establish a multilateral framework agreement that would ensure transparency, predictability, and nondiscrimination in the services arena, and thereby contribute to the liberalization and expansion of international trade in services, currently not covered by the GATT.

The United States and the EC have proposed different methods for handling trade in services. The United States° urges general liberalization but would allow reservations and special agreements for specified areas.'° The EC advocates a general multilateral framework agreement with sector-by-sector liberalization. One sector on which the EC and the United States disagree is banking. The United States supports a special or separate agreement, whereas the EC advocates complete liberalization of the financial industry.

EC Internal Market Process

The financial sector is a services area directly covered by integration measures. In December 1989, the EC adopted the Second Banking Directive, which introduced the singe banking license and both product and geographic liberalization under the principle of national treatment" An EC bank with a single license may do business throughout the Community through either branching or the cross-border provision of a broad range of services. Third-country banks can benefit from the single license and the single banking market if they establish a subsidiary in the EC under the provisions of the Second Banking Directive. [12]

EC Uruguay Round Position

At the September 1989 meeting of the services negotiating group, the EC called for a liberalized services sector, especially in the financial area. In these negotiations, the EC is seeking liberalization of the banking sector, "credir in the Uruguay Round for its internal banking sector changes, and reciprocity from third countries in return for increased access to the EC banking market. [13] Reportedly, the EC wants to liberalize the financial services sector and views its own banking system as a possible model.• The request for "credir appears to be an attempt to use the Uruguay Round to win concessions from its trading partners to offset the advantages they gain from access to Europe's newly liberalized internal market's

Although, as adopted, the Second Banking Directive contains a mutual recognition provision rather than a reciprocity clause, [18] the EC Uruguay Round position remains the negotiation of "similar treatment for products from sectors not yet covered by multilateral agreements." [17] (Services are not currently covered by GATT.)

U.S. Concerns

Various U.S. interests and government agencies have expressed concerns as to the banking sector and advocate separate treatment for it in the Uruguay Round. One commentator has described the U.S. Department of the Treasury as being worried that a liberalized financial system may encourage foreign banks with insufficient reserves and shaky loan records to enter the U.S. market, thereby undermining the safety and soundness of the monetary system. [11]

Trade-Related Intellectual Property Rights

Background

The negotiating objective in the trade-related intellectual property rights (TRIPS) group is an agreement that will provide effective and adequate protection of intellectual property rights. Divergent opinions have emerged among the negotiators on the types of standards that should be devised to achieve this protection.

Most industrial countries generally agree on the necessity of effective and adequate standards for the protection of intellectual property rights (IPRs). Standards have been proposed in the areas of patents, trademarks, copyright, and semiconductor chip mask works. Other standards have been proposed in the areas of trade secrets, industrial

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• Ambassador Hills released the U.S. services proposal at a press conference held on Oct. 24, 1989.

'° Governments would notify the GATT Secretariat of their reservations for existing sectors that would not be brought into conformity under the framework agreement.

' See ch. 5, "Financial Sector."

" See initial report, USITC, *The Effects of Greater Economic Integration Within the European Community on the United States* (Investigation No. 332-267), USITC Publication 2204, July 1989, ch. 5, for more detailed discussion on the Second Banking Directive.

[13] Unlike the case of the United States comprehensive October services proposal, the EC has tabled five separate proposals covering different aspects of the negotiations. These included a list of sectors of interest (July 14, 1989), transparency (July 20, 1989), liberalization (July 20, 1989), definition of trade in services (Oct. 25, 1989), and nondiscrimination (Oct. 19, 1989).

" Sir Leon Brittan, Vice President of the EC Commission, "Developments in Banking Supervision on the Last Ten Decades and New Challenges, Address at the conference of the 10th anniversary of the EC Banking Advisory Committee, Brussels, Nov. 27, 1989.

[16] Peter Montagnon, "GATT Prepares to See Fair Play in Trade as 1992 Approaches," *Financial Times,* Jan. 8, 1989.

" The reciprocity provision is discussed in the initial USITC report, *The Effects of EC !migration,* USITC Publication 2204. Mutual recognition is discussed in ch. S of the present report, "Financial Sector."

European Communities Economic and Social • Committee, *Economic and Social Consultative Assembly Bulletin,* 267th Plenary Session, June 21-22,1989.

" Keith Rockwell, "Treasury to Brief Bankers, But Row May Hinder Talks," *Journal of Commerce,* Jan. 19, 1989.

design [15], appellations of origin, and neighboring rights.[20] Standards are needed, according to several industrialized countries, because inadequate, excessive, and discriminatory protection of IPRs constitute a major distortion of and impediment to trade and should be dealt with in the framework of the GATT.[21] Reflecting the importance of this issue for the United States, estimates of U.S. losses from inadequate and/or ineffective intellectual property protection range from $43 to $61 billion in 1986.[22]

EC Internal Market Process

Within the IPR area, particular measures adopted during the EC internal — market process may not follow the pattern of discussions in the Uruguay Round. The patentability of biotechnological inventions, the protection of computer software, and the geographical designation of appellations of origin are being discussed in both Brussels and Geneva. Currently, biotechnologically derived plants and animals are not patentable within the EC. However, agriculture andbiotechnologr industries and officials of the EC Commission are debating whether these inventions should be patented comrnunitywide.[23]

Most countries agree that computer software is copyrightable. However, EC Council discussions on the "extent of protection with regard to the specification of interfaces, and the analysis of programs without consent of the right holder (reverse engtheering)"[24] have been perceived by some U.S. industries as indicating that the legal rights of software publishers will be weakened.[25]

Another area of possible conflict between EC integration policies and its Uruguay Round stance concerns rules which incorporate geographical indications including the "appellations of origin." Labeling standards are being developed in the EC internal market process to cover the definition, description, and presentation of spirit drinks. In particular, the directives allows the use of geographical designations in defining a spirit drink.

EC Uruguay Round Position

In the EC's major submission on TRIPS, tabled in July 1988, these three matters are discussed. On the copyrightability of computer software, treated in general in section 3.c.3, it is stated that "creators of computer programs and their successors shall at least have the exclusive right of reproduction, adaptation, and translation."[27] Under the patents section, inventions of "plant and animal varieties or essentially biological processes for the production of plants and animals"[28] would not be granted patent protection.

Although the EC is currently working on a directive specifically for geographical indications in labeling, the European proposal in the TRIPs negotiations would group geographical indications with appellations of origin. The reported trade round position is that geographical indications designate a product as originating from a specific geographical location and should be protected from any use that may lead to unfair competition. Also, "where appropriate, protection should be accorded to appellations of origin, in particular for products of the vine, to the extent that it is accorded in the country of origin."[29]

U.S. Concerns

In the field of computer software, USTR Hills has emphasized that "all compilations are subject matter . . . and computer software ~~full~~ copyright protection." Ambassador Hills also declared that "patents must be granted for all products and processes that meet the criteria for patentability (novelty, utility, and unobviousness)," including full patentability of biotechnological inventions.[30] Another concern of the United States involves restricting the geographical naming of wines. Under the EC proposal, only wines from the regions of Champagne and Bordeaux could carry those names; in the United States, many wines are generically named.

Trade-Related Investment Measures

Background

The Uru y Round trade-related investment measures Ms) group is discussing those TRIMS which should be prohibited and the regulation of those that are trade distorting but not banned. Most developed countries agree that six core TRIMs

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" The EC has proposed that industrial models and designs that are novel or original should be protected under copyright authority.

" Under the EC submission, sound recordings would be protected under copyright authority.

[21] United Nations Conference on Trade and Development (UNCTAD), *Uruguay Round Papers on Selected Issues,* 1989, p. 187.

[12] United States Trade Representative Carla Hills, Statement before the Subcommittee on Courts, Intellectual Property, and the Administration of Justice of the House Judiciary Committee on July 25, 1989, as reprinted in *Department of State Bulletin,* November 1989.

" This issue is discussed in the initial report, USITC, *The Effects of EC Integration,* USITC Publication 2204.

" EC Council, "1382nd Council Meeting on Internal Market," Press Release 11045/89 (Presse 255-G), Brussels, Dec. 21-22, 1989.

[26] Louise Kehoe, "Battle Joined on Computer Copyright," *Financial Times,* Jan. 24, 1990.

See ch. 6, "Standards," for information on directive 89 1576.

[51] A copy of the EC proposal as tabled at the GATT appeared in *Inside U.S. Trade,* July 22, 1988.

" Sec. 3.a.(ii) of the EC's July 1988 proposal on TRIPs, cited in *Inside U.S. Trade,* July 22, 1988.

" Ibid., sec. 3.f(iii).

[21] Hills statement.

should be prohibited: export performance[31] local content,[32] trade balancing,[33] manufacturing) domestic sales,[35] and product mandating.[38]

EC Internal-Market Process and U.S. Concerns

In 1985, the European Commission announced its plan to unify the European market by eliminating barriers to trade and investment among the 12 member nations of the EC. American firms became concerned that the EC countries "may become more protectionist by replacing internal barriers with barriers placed on goods or firms outside the EC."[37] These fears seem to be further fueled by recent events in the EC.

One such measure is the directive entitled "Television Without Frontiers,"[36] introducing minimum European local-content requirements for cross-border television broadcasts. The United States has asserted that the directive, by reserving broadcast programming for European films, discriminates against non-European nations and is therefore inconsistent with the EC's GATT obligations.[39]

The EC's new anticircumvention regulations's° have heightened the speculation that their goal is effectively to force more EC investment through the use of local-content requirements.'" Regulations on specific products, such as integrated circuits, have redefined the criteria for determining origin for the relevant products. The result is to set a maximum content level for components, incorporated in finished products assembled outside the target country, that can originate in that country If the content level is exceeded, the finished can be assessed antidumping duties.[42] Reviewers have stated that it "appears EC anticircumvention provisions are being used for purposes that extend beyond the mere enforcement of antidumping measures."[43]

Finally, the new proposed VRA with Japan" continues to heighten the concern of other countries about the application of local-content requirements by the EC. France and Italy want vehicles assembled by the Japanese in the Community to be designated as Japanese imports subject to quotas unless mandatory levels of local content are achieved.[45] The EC Commission has reportedly considered several schemes offered by the member states, including the lifting of all national quantitative restrictions on cars under an open-market philosophy, but has failed to date to arrive at an agreed policy. The other view reportedly put forth is whether the EC should open its market without strict reciprocity from the Japanese.

EC Uruguay Round Position

With the growing, controversy on local-content requirements, Commissioner Andriessen reportedly reassured United States Trade Representative (USTR) Hills that "US concerns about local content were based on a misconception, that they remained necessary to prevent dumping,."[46] Even in late November 1989, after the EC tabled its proposal to prohibit local-content requirements, the proliferation of local-content regulations sought and received by European firms worries U.S. industries.[47]

Nontariff Barriers

Background

In negotiations on nontariff barriers (NTBs), the central aim is to liberalize global market access by reducing or eliminating nontariff barriers,

s' Such requirements typically oblige an investor to export a fixed percentage of production, a minimum quantity or value of goods, or (like the trade-balancing requirement) some proportion of the investment's import balance.

[32] Such requirements typically oblige an investor to produce or purchase from local sources some percentage or absolute amount of the value of the investor's production.

al Trade-balancing requirements typically restrain an investor from importing more than an equivalent amount or some proportion of exports. The investor may be obliged to earn through exports all foreign exchange necessary for the purchase of imported goods or components.

This TRIM reserves certain markets to local firms and is designed to counter international market allocation by transnational companies by assuring "countervailing market power" for local producers who might otherwise be eliminated by foreign competition.

[22] These requirements impose on the foreign investor an obligation to sell in the domestic market at prices below those in the world market.

[3°] Such requirements typically oblige the investor to earmark a specific product for export.

" James K. Jackson, *The European Community's 1992 Plan: Effects on American Direct Investment,* CRS Report for Congress, June 2, 1989.

" This directive has been described as ". . .as nakedly anti-U.S. as anything could get." Peter Erimalow, "The Dark Side of 1992," *Forbes,* Jan. 22, 1990.

" *News of the Uruguay Round of Multilateral Trade Negotiations (NUR),* No. 29, July 7, 1989. See also a discussion of the broadcasting directive in chapters on standards and origin rules.

[4°] See ch. 14 for a more detailed discussion of anticircumvention measures.

[41] For a more thorough discussion on local-content requirements, see ch. 14.

See ch. 14 and the USTR publication by ACTPN, *Europe 1992.*

USTR, *1989 National Trade Estimate Report on Foreign Trade Barriers.*

" For a more detailed discussion of the proposed EC VRA with Japan, see ch. 11, "Residual Quantiative Restrictions."

[42] Italian Commissioner Carlo Ripa di Meana pressed for a protectionist stance for Japanese cars. *International Trade Reporter,* Nov. 1, 1989. Fiat Chairman Giovanni pressured the EC Commission to limit imports into the EC of Japanese cars made in the United States. *Congressional Quarterly's Editorial Research Report,* Jan. 13, 1989.

[4°] *European Report,* No. 1523. Sept. 20, 1989.

"[7] The ACTPN report identified local-content requirements as an area where the U.S. Government and private sector need to monitor developments in the EC.

including quantitative restrictions. One significant topic being discussed is rules of origin.[48] As noted in chapter 14, origin rules are not directly specified or changed in any integration measures, but have been cited by many third-country interests as being of great concern.

At issue is whether rules of origin are intended to or should affect trade patterns or are merely neutral, technical mechanisms. Some GATT members maintain that, because there are no uniform international rules; importing countries have an "undesiredly-high degree of discretion, which includes the possibility of modifying the rules in a way which could make them operate as barriers to trade."[4] To reduce the possibility for trade distortion by rules of origin, participants are calling for rules that are nondiscriminatory, predictable, and transparent, and do not "nullify or impair the rights of contracting parties under the General Agreements's° Other members insist that rules of origin are technical in nature and should be handled by the Customs Cooperation Council.s[1]

EC Internal Market Process

Recent EC regulations and rulings have created uncertainty as to the EC standard for conferring origin. One such document, issued in 1989 by the EC s Customs Directorate (DG-21), applied to Ricoh, the Japanese photocopier-maker allegedly circumventing antidumping duties by evorting from its Californian plant to Europe. The EC regulation failed to define what would confer origin but did stipulate in detail those manufacturing processes that do not confer origin[52] Another action concerning integrated circuits redefined the criteria for determining the origin of semiconductor chips incorporated in circuitboards. Replacing its prior practice, that origin would be determined at the third stage of manufacturing when the wafer is cut into individual chips, the EC adopted the second stage as the determination point. This stage, the diffusion process, in which 30 to 40 semiconductor circuits are printed on a wafer, is now deemed by the EC as the "most substantial process," thereby conferring origin.s[3]

In a recent preis release, the EC continued to claim that the "Community has clear published rules on origin which it has interpreted and applied in a transparent and neutral manner for many years."[54] U.S. concerns are outlined in more detail in chapter 14.

" For a more detailed discussion on rules of origin, see ch. 14 of this report.
" GATT, *NUR,* No. 031, Oct. 16, 1989.
[103] Ibid.
[el] GATT, *NUR,* No. 029, July 7, 1989.
[aZ] ACTPN, *Europe 1992.*
" See Congressional Research Service, *European Community Issues Raised by 1992 Integration,* May 31, 1989.
" *European Community News,* No. 490, Feb. 14, 1990.

EC Uruguay Round Position

On February 20, 1990, the EC proposed that GATT members should devise rules of origin that are nondiscriminatory, neutral, transparent, predictable, consistent, and applied on an MFN basis. Moreover, contracting parties would be allowed to challenge the rules before ajudicial authority of the issuing country, and disputes arising from the application of rules would be handled by articles XXII and XXIII of the General Agreementss

The EC is also insisting that all GATT countries subscribe to the Customs Cooperation Council's (CCC) 1973 Kyoto Convention. This convention defines origin as the last substantial p [redacted] production. Furthermore, the CCC will have the responsibility to deal with technical questions concerning the interpretation of non referential origin rules. For this purpose, a CCC Origin Committee will be established se

At the present time, there is no indication as to whether or how EC rulings on the origin of goods, such as those decisions mentioned above, may affect the Uruguay Round negotiations. Future follow-up reports in this study may address this issue.

U.S. Concerns

The EC proposal is unlike the approach suggested by the United States, submitted on September 28, 1989. Most of the concerns raised by U.S. interests are reflected by implication in the U.S. paper, which does not recommend specific rules of origin but outlines the principles that should be applied to the rules. In this respect, the U.S. paper suggests that all origin systems be based on positive statements of standards, which would affirm rather than negate origin; be consistent be understandable; and be subject to review by an administrative or judicial authority.

MTN Agreements and Arrangements

Background

The Punta del Este declaration assigned the MTN Agreements and Arrangements group the task of improving the operation of the codes negotiated during the Tokyo Round. These codes include antidumping, subsidies and countervailing duties, standards, government procurement, customs valuation, and import licensing. Two of these areas—government procurement and standards—are the subject of integration measures and are, therefore, covered in more detail in part II of this report. This section addresses the antidumping code whereas a separate section covers subsidies, because a separate negotiating group was created to discuss the subsidies code and articles VI and XVI of the General Agreement.

[56] Ibid.
" Ibid.

EC Internal Market Process

Antidumping is not the subject of any integration measures, although (as indicated above) EC measures in this area are of concern to parties outside the EC. EC Commissioner Scrivener has indicated that the Community "did not intend for its dumping directives [anticircumvention measures and origin rules] . . . to affect the U.S. or third-party content of products from countries that have violated EC dumping rules."[57] The EC plans to clarify its dumping rules —which it describes as coherent and transparent — to avoid problems in the treatment of products like the Ricoh photocopiers. It is impossible at this time to predict how such efforts at clarification may affect the Uruguay Round negotiations on the antidumping code.

EC Uruguay Round Position

The EC has introduced proposals in the Uruguay Round on antidumping. Its December 1%9 proposal was largely related to investigative procedures and deadlines. The EC proposal also identified eight different minimum standards: (1) evidence required for the initiation of investigations; (2) minimum requirements for provisional measures; (3) transparency; (4) like product; (5) insufficient domestic sales; (6) threat of injury; (7) causality; and (8) judicial reviews.

U.S. Concerns

The United States has expressed concerns about diversionary dumping, "multiple offenders," and circumvention. Companies can now circumvent an antidumping action by shipping in parts for assembly in the importing country or by establishing assembly operations in a third country, so that the origin of a finished product changes or the imported goods are not classified in the tariff provision covered by an antidumping order.

Subsidies

Background

The subsidies negotiating group is examining subsidies-related provisions (arts. Wand XVI) of the General Agreement as well as the MTN code on subsidies and countervailing measures. The objective of the group is to improve all GATT rules and disciplines relating to those measures that affect international trade.

EC Internal Market Process

With no integration measures on this subject, the EC position at the Uruguay Round has been to maintain that domestic subsidies can be "legitimate instruments of economic and social policy."[58] In May 1989, the EC Commission published the results of its study on state aid programs in the member states.[59] In introducing the survey, the Commission emphasized the relationship of the internal market process to the recent suspensions of subsidies:

> *The 1985 White Paper on Completing the Internal Market as well as recent reports such as the Padoa-Schioppa Report on Efficiency, Stability and Equity and the Cecchini Rry "European challenge-1992" have all s* ***the importance*** *of control of state aids in the Internal Market context.*[60]

On December 6, 1989, the Commission reiterated its objective of dismantling state-aid programs.

EC Uruguay Round Position

In the subsidies area, the EC proposal maintains that domestic subsidies are "legitimate instruments of social and economic policy" that are "non-prohibited but countervailable."el

U.S. Concerns

As to subsidies, USTR Hills, in a statement announcing the U.S. Uruguay Round proposal, declared that "subsidies undermine the conditions of normal commercial competition.m Other officials have stated that domestic subsidies can be as trade distorting as export subsidies, although governments may assert that subsidies promote social and economic policy objectives.e[3]

Textiles

Background

The textiles negotiations are intended to lead to the eventual elimination of the Multifibre Arrangement (MFA) and to bring textiles and apparel under GATT rules. The MFA allows its signatories to establish quantitative limits on textile and apparel imports to prevent market disruption, a departure from the GATT requirement of nondiscriminatory treatment. This issue is of interest during integration while EC member states give up national quantitative restraints in favor of a Community system.

EC Internal Market Process

By agreement among member states, the EC established regional (country) allocation percentages for its members to be used in connection with control of textile imports. These percentages were used in allotting annual growth among member countries and might be used as a

" *International Trade Reporter,* Sept. 27, 1989.
" GATT, *NUR,* No. 33, Jan. 11, 1990.
" The survey was published by the Directorate-General for Competition (DG-W).
" EC Commission, *First Survey of State Aids in the European Community, May* 1989.
[e1] A copy of the EC proposal is reprinted in *Inside U.S. Trade,* Dec. 1, 1989.
[62] Reprinted in *International Trade Reporter,* Dec. 6, 1989.
[ee] Ibid.

basis for individual countries to request consultation under the basket-extractor provisions,[84] even when total EC imports have not reached the specified level.*

A resolution on how transitional measures will operate in the internal market process may ultimately determine the treatment otextiles in the EC. Until this happens, speculation continues on whether and how communitywide protection will be granted for sensitive textile products.

EC Uruguay Round Position

The EC's July 1989 paper argued that a general framework organizing the gradual process of textiles integration into the GATT must encompass both the progressive elimination of existing restrictions and the implementation of strengthened GATT rules and disciplines. However, any spirit of openness must, according to the paper, be accompanied by a transitional period and a specific safeguards clause "to ensure the orderly development of trade, to avoid the disruption of markets and to allow the restructuring of the industry to continue.*** In considering this paper, "[s]everal elements of the Community's proposal were a source of concern, in particular the introduction of a new provisional specific safeguard regime for the textiles and clothing sector:[167]

U.S. Concerns

The United States has focused on the appropriate method for "reintegrating" textiles into GAIT, because of the possibilities for market disruption and production pattern chants. Possible types of transition measures are global quotas, tariff-rate quotas, tariffs having equivalent effect with gradual reductions, or other agreed actions.

Agriculture

Background

One topic in the agricultural area that is being discussed in both the EC 1992 program and the Uruguay Round is phytosanitary and sanitary standards. The goal in the Round is the elimination of unjustifiable barriers to trade. Article XX(b) of the General Agreement allows a contracting party to adopt or enforce measures to protect human, animal, or plant life or health. At the April midterm review, members agreed to reform article XX(b) in order to require measures be based on sound scientific evidence.

EC Internal Market Process

Of the more than 100 directives that relate directly or indirectly to agriculture, about 70 involve plant and animal health legislation. In general, the EC Commission is seeking mutual recognition of standards* among member states, so that a product meeting standards (or a Community minimum standard) in one member state would be given free circulation within the Community. However, the EC Court of Justice has ruled that sanitary and phytosanitary issues can be exempt from the principles of mutual recognition, as the risks in this area are too great.

Some members of the EC Parliament and officials in the EC Commission advocate that approval or licensing of products be based on a fourth criterion—social and economic concern—as well as on safety, efficacy, and quality.** The EC Council has mandated that a comprehensive directive relating to food additives and the conditions of their use must be developed.

The use of the fourth criterion most likely means that technological innovations would be subject to "a non-objective criterion of social and economic near* in addition to international scientific evidence. Standards could then be based on nonscientific or social considerations.

EC Uruguay Round Position

Concern has arisen outside the EC that an EC Uruguay Round proposal on standards would include the fourth criterion. The EC's December 1989[71] proposal included a strengthening of article XX(b) by including scientific evidence plus such factors as technological feasibility, national inspection systems, cost efficiency of measures and actual' conditions of production, and the environment Since the EC has not made available any information that describes the nature of a "socio-economic" criterion, uncertainty remains over the nature of the above factors. Extensive discussion of the standards area appears in chapter 6 of this report

U.S. Concerns

U.S. concerns have centered on the use of social concerns as the basis for approval of agricultural products, rather than on sound and verifiable scientific evidence.

" These provisions define import levels at which the members can initiate consultations with a view to setting quotas on additional products.

-- For a discussion of the EC textiles policy, see ch. 14 of the initial USITC report, ***Effects of EC Integration,*** USITC Publication No. 2204.

Integ copy of the EC proposal as tabled at the GATT is reprinted in ***Inside U.S. Trade,*** July 28, 1989.

[67] GATT, ***NUR,*** No. 31, Oct. 16, 1989.

• See ch. 6 for detailed information of the current EC harmonization on standards.

" David Kelch, ***EC 1992 and the GATT: Setting World Plant and Animal Health and Food Safety Standards,*** 1988, p. 8.

TO Ibid.

• A copy of the EC's December proposal as tabled at the GATT was reprinted in ***Inside U.S. Trade,*** Dec. 22, 1989.

Standards, Testing, and Certification

Proposals discussed in 1989 to strengthen or expand the Standards Code (the Agreement on Technical Barriers to Trade) could partially ameliorate U.S. concerns with the standards, testing, and certification component of the 1992 program. These concerns relate to the impact on non-EC suppliers of the EC's proposed "Global Approach" to testing and certification, the transparency of the EC's standards-development process, and the formulation of regulations in terms of processes and production methods (PPMs). The renegotiation of the code, though technically separate from the Uruguay Round, is being timed to coincide with the scheduled conclusion of the Round.

Background

One major issue is the EC's proposed policy regarding approvals based on testing and certification. It appears that products not meeting "voluntary" European standards may be subjected to more cumbersome procedures than products that do not meet other standards. In addition, because U.S. testing laboratories and accreditation bodies may not be eligible to certify that U.S. products meet the EC's requirements, U.S.-based producers may be forced to &!co through laboratories in the EC to obtain proof that their products meet those requirements. The code's provisions do not *require* mutual recognition of test data generated by foreign laboratories; however, they do obligate parties to accord national treatment of products originating in the territories of other signatories.n

Another principal issue is that of transparency—that is, the adequate notice of EC or member-state regulatory activities. The code provides for such notice, but only of technical regulations.[73] not of "voluntary" standards[74] such as those developed by CEN/CENELEC, and has usually been described as being most faithfully adhered to at the central government level. The code requires that parties notify proposed technical regulations or standards "at an early appropriate stage," which means in the draft stage. It claims that normally third countries have much longer than the code-required 60 days to respond.[75] However, in some cases the EC has not notified technical regulations, as required. In 1988, for example, the EC notified only 12 measures;[78] in 1989, the corresponding figure was 11 out of a possible 70 measures."

Another concern pertains to PPMs, criteria to which the EC has often resorted in establishing health and sanitary measures. PPMs specify how a product is made, rather than the final characteristics of a product as set forth in product specifications. Several disputes between the United States and the EC have arisen under the code regarding the use of different technologies from those set forth in the PPMs, but which the United States believes achieve the same results as aimed at in EC legislation.

The Standards Code basically applies to product specifications. PPMs are referenced only in the dispute settlement provision of the codes and are not subject to provisions such as those applying to transparency and notification. To date, two dispute settlement cases have reached the Committee level of investigation involving agricultural PPMs, which have arisen under the code:n one involving the EC's directive for the spin chilling of poultry, brought by the United States in 1980, and the other involving the EC's ban of growth hormones in beef, also brought by the United States in 1987.[80]

" The general code criterion for testing procedures is the treatment accorded like domestic or imported products in a comparable situation. The siting of testing facilities and the selection of samples for testing are not to cause unnecessary inconvenience for importers or exporters. When possible, parties are to ensure that their central government bodies accept test results, certificates, or marks of conformity issued by other parties' relevant bodies or rely on self-certification by producers in territories or by other parties, even when test methods differ from their own, so long as the methods used are sufficient.

" "Technical specifications" detail characteristics of a product, such as dimensions, safety, or levels of quality or performance. They may include or deal exclusively with terminology, symbols, testing and test methods, packaging, or working or labeling requirements as they apply to products. "Technical regulations" are those technical specifications with which compliance is mandatory. See Annex 1 to the code.

Annex 1 to the code defines a "standard" as a technical specification approved by a recognized standardizing body for repeated or continuous application, with which compliance is not mandatory.

" USITC staff interview with staff of the EC Commission, Jan. 8, 1990.

" JoAnne R. Overman, ***GATT Standards Code Activities of the National Institute of Standards and Technology 1988,*** NISTIR 89-4074 (March 1989), p. 9. The United States notified 23 measures. Ibid.

77 Conversation on Jan. 31, 1990, with JoAnne R. Overman, author of ***GATT Standards Code Activities of the National Institute of Standards and Technology 1989*** (in draft).

" Art. 14.25. Although the Standards Code uses the term "process and production method," the International Organization for Standardization .... International Electrotechnical Commission (ISOIEC) Guide 2, used as the basis for definitions in the code, does not define it. Instead, the ISO Guide uses the related term "code of practice." The code's coverage of PPMs has been an issue from the time the code was drafted.

" Traditionally, PPMs have been associated with agriculture, but there are indications that the issue may apply to industry as well. For instance, some believe that PPMs could be used in the high-technology area in standards for the manufacture of semiconductors, because they are shipped in large lots and the inspection of the performance of each item would be extremely onerous.

" A January 1990 Nordic countries (Finland, Norway, and Sweden) proposal would amend the code to incorporate the results of discussions in the broader Uruguay Round Negotiating Group on Dispute Settlement and apply them to the Standards Code. It represents a substantive deviation from existing code procedures for dispute settlement by removing from the Code Committee to a policy panel the responsibility for establishing a "technical experts group."

EC Internal Market Process

Some individuals believe that the EC 1992 program is having a positive influence on efforts to expand and strengthen the Standards Code. They suggest that the process has been helped by the EC's thorough evaluation of the "technical barrier to trade problem," and believe that the principles and proposals developed by the EC as part of the process may be fruitfully extended through the code to other signatories. The EC is generally perceived as a constructive participant in the debate, but does appear to expect that its own solutions will be accepted without modification by other signatories. At the same time, the EC 1992 program has resulted in unprecedented pressure on the code to respond to issues such as PPMs and conformity assessments'

In July 1989, the EC Commission submitted to the EC Council a document entitled "A Global Approach to Certification and Testing."[82] In explaining the external aspects of the global approach, the EC Commission said that the starting point for the EC is its commitments in GATT under the Standards Code. The EC Commission stated further that the code does not lay down binding obligations, although Article 5.2 requires Parties "where possible" to accept declarations, tests and certificates from other Parties, subject to bilateral negotiations to ensure "a mutually satisfactory understanding."

EC Uruguay Round Position

When asked to identify the EC's objectives in current renegotiation of the code, staff of the EC Commission stated that the EC's two paramount goals were strengthening of the code's second-tier obligations and the modification and expansion of the code's coverage of testing and approval systems.[83] Indeed, the EC has recently suggested that failure to achieve adequate progress in these areas may mean that it will reexamine current U.S. access to CEN/CENELEC. With respect to the second goal, the EC's aim is to expand the scope of the code's disciplines on testing and certification to include quality assurance, self-certification, and accreditation.

Four proposals under discussion in 1989 address strengthening second-tier obligations, two of which have been introduced by the EC. The first EC proposal is entitled A *Code of Good Practice for Non-Governmental Bodies.* It would annex to the agreement a "code of good practice for non-governmental bodies (NGBs)" to be accepted by NGBs on a voluntary basis. The proposed code of good practice calls for the biannual publication of workplans by NGBs and the exchange of other information, such as that pertaining to draft standards.[84] Central governments (the signatories to the code) would be required to take all practicable measures to ensure acceptance of and adherence to this code and would notify the Standards Code Committee of NGBs within their territory as to which ones have accepted or withdrawn from the "code of good practice." A list would be prepared annually for review by the Code Committee.[85]

The extension of major obligations under the agreement to local government bodies has also been suggested by the EC. The goal is to strengthen obligations on central governments to ensure that local government bodies adhere to the obligations of the code. The proposal mentions extending notification obligations on parties to include local government activities, with the possibility for comment on and discussion of those notifications and with dispute settlement proceedings. The EC has indicated a text is forthcoming to define more clearly these new obligations.ss

U.S. Concerns and Efforts

The nonacceptance of test data generated in one signatory by other parties has been the single most important issue for the U.S. government and U.S. suppliers since the code's entry into force. Burdensome and time-consuming approval procedures are also problems.[87] The United States government has participated in bilateral and multilateral fora to persuade code signatories to work towards the acceptance of foreign-generated test data.[88]

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[81] AU information in this paragraph is based on USITC staff interviews in Geneva, Jan. 12, 1990.

[82] EC Commission, Com(89) 209 final, al, No. C 267 (Oct. 19, 1989), p. 3.

[83] USITC staff interview with staff of the EC Commission, Jan. 8, 1990.

[84] The ISO Information Network (ISONET) links the information centers of ISO members with the information center of the General Secretariat to facilitate the exchange of information on standards.

[85] The U.S. private sector has expressed reservations about this proposal. Sec. 403 of the Trade Agreements Act of 1979 authorizes the President to "take such reasonable measures as may be available to promote the observance by State agencies and private persons, in carrying out standards-related activities, of requirements equivalent to those imposed on Federal agencies" and of notification procedures. 19 U.S.C. sec. 2533. The U.S. private sector reportedly believes that this system is an effective one.

as At the January 1990 Code Committee meeting, the EC introduced a revised text of the proposed ***Code of Good Practice for the Preparation, Adoption and Application of Standards.*** The EC took into account comments and questions received regarding the initial proposed Code of Good Practice and extended it to cover all standardizing bodies, whether governmental or nongovernmental, local, national, or regional. Other changes include placing more emphasis on workplans of standardizing bodies and eliminating the transmission of notices of individual draft standards. The EC has stated that its second proposal on local governmental bodies remains valid, with the provision that it is now limited to technical regulations (and not standards) of local governmental bodies.

rf USTR, GATT Affairs, and others, ***Third Triennial Report to the U.S. Congress on the Agreement on Technical Barriers to Trade—"Standards Code,"*** • January 1986 to December 1988 (March 1989 draft), p. 18.

[88] USTR, GATT Affairs, and others, ***Second Triennial Report to the U.S. Congress on the Agreement on Technical Barriers to Trade—"Standards Code,"*** January 1983 to December 1985 (February 1986), p. 7.

Four proposals currently on the table in the renegotiations address conformity assessment procedures, and two are U.S. proposals. The first, on *Approval Procedures,* would expand the code discipline to cover procedures used by central government bodies for issuing product approval.[89] The second, on *Systems for the Accreditation or Approval of Testing Laboratories, Inspection or Quality Systems Registration Bodies,* would ensure nondiscriminatory access to such accreditation or approval schemes operated by central government bodies. "Best efforts" provisions are included for such schemes operated by local or nongovernmental bodies, and schemes for accreditation or approval could not prohibit outright applications by foreign entities.

The second major U.S. concern has been about lack of transparency. Five proposals to improve transparency have been introduced. One of the two proposals advanced by the United States is entitled *Improved Transparency In Regional Standards Related Agreements.* It would amend the code to include an additional obligation for central governments (the parties) to ensure that amendments to international standards made at the regional level, such as by CENICENELEC, do not create unnecessary obstacles to trade. The proposal also includes a draft "code of conduct" to be agreed upon by regional bodies themselves, which, among other things, would facilitate early exchange of information and an opportunity to the parties under the code to participate on the same basis as members of the regional bodies.[90]

In its third area of concern, PPMs, the United States has introduced one of the two proposals dealing with PPMs.[91] It would extend existing code obligations, which currently apply to technical regulations, to include PPMs. The proposal suggests that *this* be achieved by amending the definition of "technical specification" in the code's annex to specifically include PPMs. The proposal also contains a suggested definition for

Government Procurement Code

Background

Although not formally part of the Uruguay Round, the current phase of code renegotiations, which began in 1987, is being timed to coincide with the Round's scheduled conclusion in late 1990.[92] The goal of this phase is to broaden the code's coverage of goods and to extend the code's disciplines to services contracts not covered by the code. Both objectives are important to the United States and have, many analysts believe, become more achievable as a result of the 1992 exercise. In 1989, the major issue discussed was which types of entities not presently covered by the code should be on the table for negotiation in the code-broadening exercise. The renegotiations are also focusing on strengthening code disciplines and harmonizing signatory implementation. Some of the changes discussed in that regard during 1989 could favorably affect current and post-1992 U.S. access to the EC market.

Issues Under Negotiation

Entity Coverage

Signatories to the code are in agreement that negotiations to expand the current coverage of the code should include the broadest possible range of procurements. Various options for achieving that pal have been put forth, including expansion of the code to subfederal level procurement, to sectors previously not covered, such as telecommunications and energy, and to entities controlled by the government that perform commercial functions in the marketplace.

In 1989, signatories moved doser to agreement on specific entity coverage by establishing a framework for analyzing procurement that is not now covered. For analytical p , noncovered procurement was divided into rurcategories: (a) federal agency procurement (b) state, regional, and local procurement; (c) procurement substantially controlled or influenced by the government (not otherwise falling into category a or b); (d) purely

[89] Closely related to *Approval Procedures* are the Nordic proposal, *Testing and Inspection Procedures,* and the Canadian proposal, *Certification Systems.*

[90] The other proposals are one introduced by the United States *(Improved Transparency in Bilateral Standards-Related Agreements),* one introduced by the Nordics *(Improving Transparency),* two by Japan *(Transparency of the Operation of Certification Systems by Central Government Bodies* and *Transparency in the Drafting Process of Standards and Certification Systems by Central Government Bodies),* and one by India *(Languages for Exchange of Documents).*

[91] The other proposal was introduced by New Zealand.

[92] Periodic renegotiations of the Government Procurement code's coverage are authorized under the terms of the code itself. To promote its continued effectiveness, the code stipulated that within 3 years of its entry into force, the signatories would commence negotiations to expand the code's coverage to purchases that were not initially covered, including leasing and service contracts. The first phase of the renegotiations, under code art. IX: 6(b), lasted until 1986 and was implemented on Feb. 14, 1988.

Entities operating in the telecommunications, energy, water, and transportation sectors have different ownership structures and/or governmental control mechanisms in each signatory country. Many important entities operating in these sectors are government owned. However, some signatories have chosen to allow private companies to operate in these sectors by granting them "special rights" or exclusive licenses and thereafter regulating their activities. The reported rationale offered for this approach is that sectors exhibit natural monopoly tendencies. The policies and practices of these private companies can be controlled by governments through the licensing process or through regulations. For example, the terms of a license may require the licensee to procure all necessary equipment pursuant to the business for which the license is granted from suppliers in that country andor from products manufactured in that country. Regulations may dictate similar "buy national" requirements.

private company transactions. While general agreement existed about which entities would fall in categories (a) and (b), substantial debate on the dividing line between (c) and (d) occurred. It was agreed that negotiations should focus on entities falling in categories (a) through (c), not (d).

Defining Who Benefits

The GATT Procurement code extends national treatment and the principle of nondiscrimination to the products and suppliers of signatories. However, it does not clearly define how to determine where a supplier or product is from. It has become apparent that signatories to the code differ in the way they determine whether an offer is of a signatory country. Some signatories base such decisions on the location of the firm offering the product, others on the material content of the product, and others on the total value of signatory inputs into the product. For signatories using content-based rules, the basis for determinations about how research and development and other costs are allocated has important implications for potential bidders, particularly to suppliers that produce high technology products or products with a high "knowledge component, such as software. These differences not only affect the current reporting of actual levels of procurement from code signatories but also ultimately determine whether signatory suppliers are granted the procedural and other guarantees provided for under the code.

Balance of Interests

Some signatories have argued that "balance" implies that the same types of procurement activities, at the same levels of government and in the same sectors, should be covered by all parties to the agreement That balance would be defined in terms of the level and scope of obligations undertaken by all parties in each area. The EC has been one of the most vocal advocates of this position. Other signatories, notably the United States, have argued that balance should be contingent on providing equivalent market opportunities based on the value of procurements opened to third-country suppliers.[94] The means of achieving balance could include extending the code to subfederal level procurements and to quasi-governmental entities, but only if that is necessary to achieve a balance of code-covered opportunities among signatories. The U.S. Government has noted that it is bound by legislation to reserve the benefits of access to U.S. Federal procurement to countries that provide reciprocal opportunities to -,U.S. suppliers and to apply a yardstick of the actual value of procurements opened to measure such opportunities.

" Not necessarily absolute value; relative value of code-covered procurement to total procurement might be a more realistic goal.

EC Internal Market Process

The EC's 1992 procurement activities have major significance for the code renegotiations. In general, EC actions are commonly seen as having a positive effect on attempts to expand the code. Consideration of 1992-related directives on the excluded sectors and services has essentially created an opportunity for the United States to secure access for U.S. suppliers to these sectors in the EC as part of the code-broadening exercise. Such access, particularly in the telecommunications and energy sectors, has been an objective of the United States since the code's inception in 1979.

Absent agreement on the changes being discussed in the code renegotiations; however, there is some danger that current U.S. access to the EC market could be reduced by the adoption of a 50-percent EC origin rule. Thus far the EC has not clarified how member-state authorities should calculate the value-added limit, causing concern among suppliers in the United States and other EC trading partners. Member-state authorities will be empowered to *use* the requirement in determining whether bidders are entitled to price preferences or to the procedural guarantees called for under the "excluded sectors" directive. The draft "remedies" directive for the excluded sectors (not yet formally available) reportedly does not grant rights of redress to suppliers offering products not of EC origin.as

EC Position

The EC has the same fundamental objective in the renegotiations as the United States does, namely, theexpansion of opportunities for domestic suppliers in foreign markets. With its particular interest in securing guarantees of greater access to the U.S. and Japanese procurement markets, the EC is essentially using a "carrot and stick" approach to the renegotiations. As part of its 1992 program, the EC has proposed imposing price preferences for EC-origin products in the excluded sectors of water, energy, transport, and telecommunications. It has also reserved the procedural guarantees of its new rules to suppliers offering goods containing more than 50 percent EC value-added. At the same time, it has indicated a willingness to extend these benefits to signatory suppliers if satisfactory agreement can be reached in the code.

The EC has called upon code signatories to adopt a functional definition of entity coverage and to extend the code's disciplines to their federal, state, and local entities currently not covered by the rules. All of these are things it is doing internally as part of the 1992 program. With respect to category (c) entities, the EC argues that all entities performing public utility-type functions that are regulated by the government and face no true competition should be covered. The U.S. Regional

" USITC staff phone conversation with industry sources, Feb. 14, 1990.

Bell Operating Companies and the privately-owned utilities would[95] both potentially fall under the EC's proposed definition of coverage, because they have been given regional monopolies by the government and their rates and activities are substantially influenced by public authorities. The EC believes that the inclusion of such entities under the code would bring the EC closer to its ultimate aim of ensuring more predictable access for EC suppliers in the U.S. market for telecommunications, water, transport, and energy sectors. The EC is also interested in the removal of Buy-American price preferences on remaining Federal-level procurement, the expansion of the code to include State and local government procurement in the United States, the elimination of small business set-asides, and the removal of preferences for U.S. products in projects funded by federal monies, notably those funded by the Surface Transportation Assistance Act

U.S. Concerns

The United States was disappointed in the Tokyo Round in that the EC and other signatories were unable to agree on code coverage of the "excluded sectors" of water, energy, transportation, and telecommunications. It is a major U.S. goal in the renegotiations to bring under the code the major government-owned procurers in these sectors. However, the United States has asserted that both the GATT and the Government Procurement code are designed to discipline government behavior, not that of privately-owned firms.[96]

Other U.S. concerns involve the transparency and predictability in treatment of U.S. suppliers by signatories in both covered and non covered procurement The United States has urged signatories to adopt a common basis for determining who benefits from the code's provisions similar to that adopted in U.S. - Federal Acquisition Regulations—namely, signatory content It also hopes to forestall the potentially adverse consequences on U.S. suppliers caused by ambiguity in the EC's 50-percent value-added rule. Moreover, if coverage of the excluded sectors is agreed to in the code, all signatory content would be treated equally in determining which products are eligible to benefit from code-covered competition in the EC. Agreement on coverage in the code by the target date for completion of the renegotiations (December 1990) would, according to the EC, forestall the actual implementation of discriminatory treatment of U.S. suppliers offering products with less than 50 percent EC content[97] Coverage of such sectors by the code would mean that the EC would be prohibited from employing biased standards in member-state procurements.

Title VII of the Omnibus Trade and Competitiveness Act of 1988 requires the President to identify by April 1990 both signatory and nonsignatory countries that discriminate (as defined by the act) against U.S. suppliers and from which countries the Federal Government purchases goods or services in "significant amounts." The law empowers the President to impose a full or partial ban on all Federal Government procurement from such countries if negotiations to eliminate the discrimination are unsuccessful. In addition, Title I, subtitle C of the act requires the USTR to identify "priority countries" based on the extent of trade barriers to U.S. firms and on the potential for U.S. exports of telecommunications products and services.[98] In February 1989, the USTR designated the EC as one of its two "priority countries" in regard to telecommunications trade.

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[95] Informal communication from the Office of the United States Trade Representative, Feb. 26, 1990.

[96] USITC staff phone conversation with industry sources, Feb. 14, 1990.

[97] The President is required to initiate negotiations with each priority country and to take appropriate action.

CHAPTER 17
EC INTEGRATION AND OTHER EC COMMITMENTS

CONTENTS

CHAPTER 17
EC INTEGRATION AND OTHER EC COMMITMENTS

Developments Covered in the Initial Report

Background and Anticipated Changes

In the initial report, the chapter on EC integration and other EC commitments considered agreements other than the General Agreement on Tariffs and Trade (GATT), to which the United States and the member states of the EC are a party, that might impose on the member states obligations that conflict with aspects of the 1992 program. Specifically, the chapter analyzed the Code of Liberalization of Capital Movements (the Capital Movements Code) of the Organization for Economic Cooperation and Development (OECD) and the friendship, commerce, and navigation treaties (FCNs) between the United States and EC member states.

The OECD

The United States and the 12 EC member states are members of the OECD. The OECD Capital Movements Code sets forth the obligations of the contracting parties "to progressiveiy abolish . . . restrictions on movements of capital, and describes quite specifically the circumstances under which members are to be excused from their obligations under the code. Annex E to the code, adopted in 1986, reaffirms the goal of liberalization, and maintains that "measures and practices concerning reciprocity" should be subject to the procedures outlined for reservations in the body of the code.

The Secretariat of the OECD prepared a memorandum, "The Proposed Second Banking Coordination Directive for the European Communities: Issues for Consideration," analyzing the proposed directive and its relationship to the obligations of the OECD members under the articles of the OECD Convention. The memorandum concluded that, "if the proposed reciprocity requirements were put into effect by an OECD Member country, that Member could be in breach of its Code obligations" unless either the provisions relating to customs unions or those specified in annex E were applicable.

Six EC member states have reported domestic reciprocity provisions relating to the establishment of foreign banks. Having reported such existing provisions, these countries could implement the proposed EC reciprocity provisions without being in violation of their OECD obligations. Other EC states, however, have reported no such existing reciprocity requirements. Thus, according to the Secretariat, "it would appear that the implementation of the proposed EC reciprocity requirements would be incompatible with their obligations under the Capital Movements Code."

Friendship, Commerce, and Navigation Treaties

The United States has negotiated treaties identifying the commercial and related rights of each party (FCNs) with all member states of the EC with the exception of Portugal. Most of these treaties provide the United States most favored nation (MFN) and national treatment, and a number provide the right of establishment The previous report summarizes significant provisions of the various FCN treaties, describing their similarities and differences, and setting forth the circumstances under which a signatory can be excused from its obligations under the treaties. For example, the "standard" article 7 (2) of the Belgian, Dutch, French, Luxembourg, and West German treaties provides for the protection of established firms from any further restrictions based on national origin. FCNs with Greece, Ireland, and Italy incorporate additional reservations from national treatment for certain professional and financial activities. The Dutch, Greek, Irish, Italian, and West German treaties have provisions allowing the parties to make exceptions to terms of the agreement because of membership in a customs union.

Article 234 of the Treaty of Rome calls upon member states to resolve inconsistencies between EC and bilateral commitments and stresses unity of action and purpose among its members. All of the U.S.-EC member state FCNs have mechanisms allowing either party to terminate the agreement, and the Dutch FCN has a specific "escape clause" that cites EC obligations.

Possible Effects

Possible effects are under continuous study.

Developments During 1989

Overview

The FCN treaties and OECD Code discussed in the initial report are two examples of the large number of multilateral and bilateral ties the United States has negotiated with both the EC as an economic unit and with individual EC member states. Multilateral ties include, among others, military and political arrangements such as NATO and the Conference on Security and Cooperation in Europe (CSCE), membership in economic organizations such as the OECD, trade arrangements, such as the GATT and United Nations' commodity agreements,[1] and monetary arrangements, such as the IMF and World Bank.

[1] The EC *as* an economic unit participates as either a party or an observer in the Multifiber Arrangement, the International Tin Agreement, the International Wheat Agreement, the International Olive Oil Agreement, the International Coffee Agreement, the International Cocoa Agreement, and the International Rubber Agreement.

The United States also has bilateral agreements with third countries, including EC member states. [2] A great number of bilateral agreements negotiated by the United States are in the form of Memoranda of Understanding or MOUs. The primary focus of this chapter is on agreements that directly affect the EC-U.S. trade relationship.

International agreements involving the European Communities and third countries fall into three categories. If the subject matter of the agreement falls completely within the treatymaking competence of the EC, the parties to the agreement will be the EC acting alone and one or more non member states. The second type of agreement, referred to as a "mixed" agreement, is an agreement between, on the one side, the EC and the member states acting jointly and, on the other side, the non member state or states. The third category consists of agreements between the individual member states acting alone and the non member states? The international arrangements discussed in this chapter that may be affected by the EC's 1992 m and include FCN treaties, codes of the OECD, international treaties governing human rights, and certain bilateral MOUs, fall within the third category.

As a preliminary matter, it is useful to consider certain aspects of the EC's treatymaking power in relation to its member states, as well as possible implications of potential conflicts between 1992 initiatives and other commitments entered into between EC member states:' Article 113 of the Treaty of Rome grants to the Community the express power to make commercial agreements on behalf of its member states.s The term "commercial agreements" has been interpreted to mean all measures which serve to regulate economic relations with third countries and concern free movement of goods and related traffic in services and payments.[8] The power to conclude commercial agreements under article 113 is exclusive: the member states are precluded from entering into such agreements.[7] The EC's article 113 treatymaking power is an essential element in the EC's 1992 program. For example, in the EC Commission's proposed certification and testing program, discussed below, the EC Commission has stated that any existing bilateral agreements between EC member states testing and certification bodies and third country bodies will have to be renegotiated as bilateral agreements with the European Community once the program is fully implemented.[8] In addition to express treatymaking power, the EC also has implied authority to conclude international agreements pertaining to

*For example, the United States has approximately 140 government-to-government agreements with EC member states in the area of science and technology research and development and approximately 11 such agreements with the EC as an entity. Interview with personnel from U.S. Department of State, January 1990. Other examples of bilateral agreements between the United States and European countries are recently signed agreements between the U.S. Securities and Exchrtage Commission (SEC) and the Governments of France and thelsktherlands providing for mutual assistance in securities matters. The United States-French agreement was concluded by the SEC and the Commission des Operations de Bourse of France and provides for the two agencies to assist each other in attempting to take action against manipulation, insider trading and other abuses that may harm investors or undermine market security. The United States-Dutch agreement was entered into between the SEC and the Ministry oFinance of the Netherlands and covers essentially the same matters.

See T.C. Hartley, *The Foundations of European Community Law,* 2d ed. (Oxford: Clarendon Press, 1988) p. 153.

• The leeggal effect of international agreements between the European Community or its member states and third countries can be examined on three levels: that of international law, national law, and the law of the European Community. See Hartley, *Foundations,* p. 171. Whether a bindingobligation exists on the international level between the EC (or the member states) and a nonmember state is decided by international law and is not affected by the internal law of the EC. The effect of an international agreement within the EC legal system, however, is determined by EC law. Similarly, the effect of an international agreement at the national level will depend upon the law of the individual member state and upon EC law. Ibid., pp. 171 and 213-214.

• Art. 113 provides in relevant part:

1. After the transitional period has ended, the common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade such as those to *be taken* in case of dumping or subsidies...

3. Where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations...

The Treaty of Rome also grants the EC express treatymaking power in art. 238, which gives the EC the power to enter into association agreements with nonmember states. The provisions on relations with international organizations, found in arts. 229-231, come dose to granting an express treatymaking power. These require the EC Commission to maintain relations with international organizations. See Hartley, *Foundations,* p. 155. Before the Treaty of Rome went into effect, all treatymaking power was vested in the individual member states. Art. 234 of the treaty, discussed below, addresses the issue of the effect of the treaty on agreements previously concluded between the member states and third countries.

• Kapteyn and Van Themaat, *Introduction to the Law of the European Communities,* Laurence W. Gormley, ed., 2d ed. (Deventer: Kluwer , 1989), p. 790. The aim of the common commercial policy is to contribute to the progressive abolition of restrictions on international trade. David Vaughan, ed., *Law of the European Communities* (London: Butterworths, 1986), p. 505.

[7] See, Hartley, *Foundations,* p. 154; Kapteyn and Van Themaat, *Introduction to the Law of the* EC, p. 772. See discussion of art. 234, below, with respect to commitments entered into by the member states with third countries before the effective date of the Treaty of Rome. In practice, the division of competences between the EC and its member states may not be as clear as it appears to be in theory, as for instance when the EC finds it advantageous to continue to operate under agreements concluded by the member states in areas falling within the common commercial policy. According to one source, 'The Community annually authorizes the continuation in force of many bilateral agreements involving member states and third countries... which fall within the Community's competence.' Vaughan, *Law of the European Communities,* p. 485; and interview with Professor T.C. Hartley, Law Department, London School of Economics and Political Science.

• This is discussed under the heading "Bilateral MOUs and the Global Approach to Certification on Testing" below.

subjects falling within its internal jurisdiction.[9] Agreements, once concluded, are binding on the individual member states as well as on the Community.'[10] The European Court also has held that international agreements entered into by the member states before the European Community came into existence can also bind the Community.[11]

Article 234 of the Treaty of Rome, discussed in the previous report, deals with the relationship between the Treaty, and other international agreements entered into by the member states and non member countries before its, effective date. The statement in the first paragraph of article 234, that it shall not affect rights and obligations arising from such agreements, is a restatement of two general principles of customary international law, that a state's rights under a treaty cannot be altered, suspended, or abolished without its consent and that a treaty between two or more states ordinarily cannot create rights and duties for third countries.[12] The second paragraph of article 234 specifies that to the extent that such agreements with nonmember states are not compatible with the Treaty, member states are obligated to take all appropriate steps to eliminate the incompatibilities. Member states should, where necessary, assist each other and where appropriate, adopt a common attitude.[13]

With respect to agreements between individual member states and one or more non member states concluded prior to the date the Treaty of Rome entered into force, therefore, the Treaty makes it clear that such commitments are not affected by the Treaty. With regard to a possible conflict between an EC directive or other 1992 initiative and an agreement between a member state and a third country entered into subsequent to the Treaty of Rome, article 234 would appear relevant only by way of analogy. This is due to the fact that article 234 deals only with conflicts between Treaty articles and treaties with non member countries. It does not mention possible conflicts between such treaties and later clirectives.[14] Under international law, the validity of the treaty should not be affected, based upon the general principles of customary international law cited above, but the agreement's status under EC law is less clear.[15] According to several noted authorities on EC law, the position should be similar to that under article 234, namely that the agreement between the member state and one or more non member states should not be affected, provided the subject matter of the agreement was not, under EC law, within the exclusive competence of the EC.[16] The various treaties to which the EC member states and the United States are signatories and the possible effect upon them of several EC initiatives relating to the 1992 program will now be considered.

International Human Rights Treaties and the Broadcast Directive

An EC measure presenting a possible conflict with international commitments entered into by all EC member states and the United States is the EC's broadcast directive. The United States Government has argued that this directive may conflict with provisions in several international agreements safeguarding the free flow of information.[17] These agreements include the Universal Declaration of

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• This is sometimes referred to as the doctrine of "parallelism.' See Hartley, *Foundations,* p. 156. The European Court elaborated on the EC's impliedpowers in the *ERTA* case, *Commission v. Council,* Case 22/70, [1971] ECR 263. As that *case* illustrates, the adoption by the Community of provisions laying down common rules is the vital element bringing about a transfer of treatymaker power from the Member States to the Community." See Hartley, *Foundations,* p. 160. In more recent cases, however, the Court of Justice has not relied on the previous exercise of the internal power. See Vaughan, *law of the European Communities,* p. 478; see also, *Inland Waterway Vessels* case, Opinion 1/76 on the Laying-up Fund for Inland Waterway Vessels [1977) *Common* Market *Reporter,* par. 8405; *Oh* No. C 107, (1977) in which the Court adopted the position that the mere existence of internal power automatically gives rise to parallel external power, even if the internal power has not been exercised.

'° Treaty of Rome, art.228(2) and Vaughan, *Law of the European Communities,* p. 482. Commercial agreements are negotiated by the EC Commission, which makes recommendations to the Council regarding an agreement it considers should be negotiated. The Council must authorize the opening of the necessary negotiations, which are carried out by the EC Commission in consultation with a special committee set up for that purpose by the Council and in accordance with any instructions it may *be* given by the Council, which makes the final decision by a qualified majority.

" In the *International Fruit Co. cases, Cases* 21-24/7Z [1972) ECJ 1219; [1975) *Common Market law Reporter, vol. Z p. 1,* the European Court held that the Community was bound by the GATT, a treaty that each of the member states had sired before the Community *was* established. The international significance of this doctrine depends on whether the other party or parties to the treaty accept the succession. Vaughan, *Ulu* of *the Europous Communities,* p.485.

See *Vienna Convention on the Law of Treaties,* arts. 26, 30(4), 34, 35, 54, 56, 57, and 59; *Restatement (3d) of the Foreign Relations law of the United States,* sees. 324 and 334; and Vaughan, *Law of the European Communities,* p. 485.

" According to one source, 'While the Treaty states that this must be done through 'all appropriate means, there is, in fact essentially only one method available: negotiations with the party or parties to the agreement containing the incompatible provision.' Smit and Herzog, *The Law of the European Economic Community: A Commentary on the EEC Treaty,* (New York: Mathew Bender & Co., 1989) vol. 6, p. 6.285.

'4 See Kapteyn and Van Themaat, *Introduction to the Law of the European Communities,* p. 775.

1a See Smit and Herzog, *Law of the European Communities,* vol. 6, p. 6-284 and Churchill and Foster, 'European Community Law and Prior Treaty Obligations of Member States: The Spanish Fishermen's Cases,' *International and Comparative Quarterly,* vol. 36, p. 504. This issue was raised but not addressed in several cases brought before the European Court. See *Italian Republic v. Commission v. ("British Telecom)* Case No. 41/83, Mar. 20,1985; *Procureur General v. Arbelaiz-Ettsazable,* Case No. 181/80; *Directeur des Maims Maritimes v. Maticorena-Otazo,* Cases No. 138 and 139/81.

'• Hartley, *Foundations,* p. 174; Kapteyn and Van Themaat, *Introduction to the Law of the European Communities,* p. 775, and Churchill and Foster, "European Community Law and Prior Treaty Obligations of Member States." If the subject matter were within the exclusive competence of the EC at the time the agreement was concluded, the European Court might consider tt the EC's powers were not restricted by the agreement Whether the agreement was valid at the international level would be a matter for international law. Ibid.

"Interviews with U.S. Government personnel, January 1990; U.S. Department of State Telegram, October 1989, Washington, Message Reference No. 287079.

Human Rights,[18] and the Helsinki Final Act[19] and related documents of the Conference on Security and Cooperation in Europe ("CSCE").[20]

On October 3, 1989, the EC adopted a directive designed to permit television broadcasts to be received and transmitted freely in all member states.[21] The directive introduces, among other things, non-legally-binding limits on the amount of non-European pro ramming permitted for broadcast on television within the 12 member states.[22] Under the directive, all European nations, both EC and non-EC, will receive preferential treatment for their programming. The directive will apply to all broadcasts received in the Community via satellite, cable, or land transmitter. Member states, however, will be free to lay down more restrictive rules for broadcasters under their jurisdiction 2[3] Currently, each member state separately regulates such matters as advertising and program content.[24]

In its original "Television Without Frontiers" directive, the Commission proposed binding quotas requiring that at least 60 percent of programs broadcast in the EC be produced in the EC. This proposal was strongly opposed by both U.S. Government and industry, principally on the grounds that it violated GATT provisions prohibiting quotas.[25] In April 1989, the Council substantially altered the original proposal replacing the 60 percent provision with language providing that broadcasters, where practicable, should reserve a majority of broadcasting time for programming with EC content.[28] The annex to the directive, however, states that the provisions regarding EC content are politically but not legally binding on member states. While the revised version of the directive appears to be more liberal than its predecessor, the U.S. Government and U.S. industry have continued to object to the local content provisions of the directive both on the grounds that they are protectionist and that they interfere with freedom of expression.[27]

Article 19 of the 1948 Universal Declaration of Human Rights states that "Everyone has the right to freedom of opinion and expression: This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."[28] The 1989 CSCE Vienna Concluding Document, signed by the United States and each EC member state, commits all states to improving the free flow of information. The Information section of the document provides at paragraph 35 that "They [the signatories] will take every opportunity offered by modern means of communication, including cable and satellite, to increase the freer and wider dissemination of information of all kinds." At paragraph. 38 it provides that "They will encourage radio and television organizations to report on different aspects of life in other participating States and to increase the number of telebridges between their countries:[928] The 1975 Helsinki Final Act similarly states at article 2 that "They will encourage the wider showing and broadcasting of a greater variety of recorded and filmed information from the other participating states, illustrating the various aspects of life in their countries.[8o] The U.S. Government has raised the possibility that the TV broadcasting directive may contravene the specific

[18] The text of the Universal Declaration of Human Rights can be found in Whiteman, *Digest of International Law,* vol. 5, p. 237.

[19] The 1975 Helsinki Summit involved 33 European nations, including the Soviet Union, the United States, and Canada. The 1975 Helsinki Final Act (Basket III, art 2) states, They will encourage the wider showing and broadcasting of a greater variety of recorded and filmed information from the other participating states, illustrating the various aspects of life in their countries. *International Legal Materials (ILK, vol.* 14 (1975) p. 1295.

[20] "Conference on Security and Co-operation in Europe: Concluding Document From the Vienna Meeting; Nov. 4, 1986-Jan. 17, 1989," ILM vol. *28* No. 527 (1989) p. 545.

[21] *Council Directive No. 522/89 on the Coordination of Certain Provisions Laid Down by LAIC, Regulation or Administrative Action in Member States Concerninc the Pursuitof Broadcasting Activities, 01* No. L 298 (Oct. 17, 1989), p. 23.

[22] In addition to the content provisions, the directive limits the amount of advertising during broadcasts; sets guidelines to protect children from improper influences, such as pornography and excessive violence; sets standards for alcoholic beverage advertising; and bans advertisements for tobacco products and prescription medicines.

[23] Ibid.

[24] Ibid. The Broadcast Directive is discussed in greater detail in ch. 6, *Standards."

[25] For private sector opposition, see USTR, *Report of the Advisory Committee (or Trade Policy and Negotiations* (ACTPN), on Europe *1992,* Nov. 29, 1989, p. 44. The ACTPN is a private sector advisory committee established by Congress in the Trade Act of 1974 to ensure that U.S. trade policy and trade negotiation objectives adequately reflect the U.S. economic interest. The report was unanimously adopted by the ACTPN and represents the consensus view of a broad spectrum of U.S. industry and labor. See also Jack Valenti, Chairman and Chief Executive Officer, Motion Picture Export Association of America, Remarks before the American Club, Brussels, Oct. 31, 1989.

[30] Arts. 4 and 5 of the revised final directive state that The Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve for European works, a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services." Member states are also to reserve 10 percent of their transmission time and their budget to European works from independent producers. The directive also states that if this majority proportion cannot be achieved, the television station cannot reduce the transmission time allotted to European works below the level existing in 1988. For Greece and Portugal, the reference year will be 1990. The directive defines "European works as those that meet one of three conditions. "European works" are (1) works originating in EEC member states, (2) works from non-EEC European countries participating in the Council of Europe Convention on transfrontier television broadcasting, or (3) works originating in other third countries made, either exclusively or in coproduction, with producers established in an EEC member state, or made with the assistance of authors or workers residing in one or several EEC countries. *Council Directive No. 522189.*

[27] See Jack Valenti, Chairman, MPEAA, Remarks.

[28] See Whiteman, *Digest of International Law,* vol. 5, p. *237.*

[29] Conference on Security and Co-operation in Europe p. 545.

[30] The text of this document can be found in ILM, vol. 14 (1975), p. 1292.

provisions, as well as the spirit, of these documents. The text of these documents, however, has no legally binding effect[31]

The OECD Codes and Reciprocity

Chapter 16 of the initial report discussed reciprocity provisions incorporated in several proposed EC directives. At that time the directives were considered to present a potential conflict with international commitments entered into by EC member states requiring non discrimination and national treatment, including instruments of the OECD and bilateral FCN treaties.[32] The most important of these was the proposed Second Banking Directive,[33] which served as the Commission's model for additional directives governing investment services,[34] and life insurance.[35]

During the period covered by this report, the Second Banking Directive has been revised to incorporate a milder form of reciprocity and the revised version has been finally adopted. As of December 31, 1989, the Second Life Insurance Directive had also been informally revised but not formally adopted. These changes ameliorate, but do not eliminate, concerns of the U.S. Mission to the OECD and the OECD Secretariat, that if certain member state implemented the directive, they might breach their international obligations.[38]

Ibid.; 'interviews with Professor Dan Bodansky University of Washington School of Law, Seattle, WA, January 1990, and personnel from the U.S. Department of State.

[32] See U3. 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 (Initial Report), ch. 16. The proposed Second Banking Directive was also discussed in chs. 5 and 13 of the Initial Report. The OECD is an organization founded in 1961 to provide a forum for government representatives of industrialized nations to discuss issues of social and economic cooperation. It replaced the Organization for European Economic Cooperation, which had been instituted in 1948 as a part of the Marshall Plan. While the European Community itself is not a member, the EC Commission participates in the work of the organization with a special status that was formalized in a protocol signed at the same time as the OECD Convention. See Initial Report, ch. 16.

[33] Proposal *for* a Second *Banking Directive,* Com(87) 715, *01* No. C 84 ar. 31, 1988), p. 1.

[34] p *or a Council Directive on Investment Services,* Com(88) 778, O1 No. C 43 (Feb. 22, 1989), p. 7. This directive proposed by the EC Commission for adoption by the Council, would allow nonbank firms established in the EC to provide securities services throughout the EC either cross-border or by branching, by Jan. 1, 19S. The directive covers the broad range of primary and secondary market securities activities including brokerage, dealing, marketmaking, portfolio management, underwriting and advice in transferable securities, financial futures options, and other instruments. It is discussed in greater detail in ch. 5.

[35] *w Proposal for a Second Council Directive on the Coordination of Isms, Regulations and Administrative Provisions Relating to Direct Life Assurance, laying Down Provisions to Facilitate the Effective Exercise of Freedom to Provide Services and Amending Directive* 79/267, Com(88) 729, 01 No. C 38 (Feb.15, 1989), p. 7.

[31] Interview with personnel from U.S. Mission to the OECD, Paris; U.S. Department of State Telegram, Feb. 7, 1990, Paris, Message Reference No. 03446. These developments and the Second Banking Directive generally also are discussed *in chs.* 5 and 13.

The Second Banking Directive

The EC's initial proposal for a Second Banking Directive provided that banks legally established in one country would be free to operate throughout the EC under the supervision of their home coun try regulators. Its reciprocity provision provided, however, that non EC banks would be accorded the same benefits as EC banks only if the banks of each EC member state enjoyed the same degree of access to the foreign country's market as the foreign banks enjoyed in the EC.[37] The EC Commission initially did not explain what form of reciprocity it envisioned. Thus there has been wide-spread concern that if the EC required market opportunities abroad that were identical to those in the EC market as a condition for third-country firms to become established in the EC, U.S. banks might be denied entry into the EC market because U.S. legislation governing foreign, as well as domestic, banks in the United States is more restrictive than EC law 38

In December 1988, the U.S. Government Interagency Task Force on Europe 1992 published a report that stated the U.S. position on reciprocity requirements and the relationship of such requirements to certain international commitments:

> U.S. policy is national treatment With few exceptions, we provide foreign firms in the United States the same competitive opportunities as domestic firms. We ask the same of the EC. We expect the member states and the EC Commission to adhere to international commitments to non-discrimination, including those contained in the GATT, the Codes and Instruments of the OECD [Organization for Economic Co-Ordination and D evelopment], and bilateral FCN [Freedom of Commerce and Navigation] treaties.[39]

In addition, the OECD Secretariat, in the course of examining developments in the OECD member states that may affect their obligations to the organization, prepared a memorandum that concluded that the implementation by an OECD member state of the proposed EC reciprocity requirement would be incompatible with that state's obligations under the Capital Movements Code.[40]

" This provision would have been implemented by an automatic suspension-and-review procedure.

[39] Interview with personnel from U.S. Mission to the OECD, Paris; U.S. Department of State Telegram, Feb. 7, 1990, Paris, Message Reference No. 03446; Interviews with personnel from the U.S. Department of Treasury, January 1990. In the United States, laws require banks to separate commercial and investment banking and individual states have the power to regulate interstate banking.

[37] as See U.S. Government Interagency Task Force on Europe 1992, *An Initial Assessment of Certain Economic Policy Issues Raised by Aspects of the EC's Program: A Public Discussion Document,* Internal Market Public Document 1288, December 1988, p. I. For an earlier discussion of the possible conflict between the EC's reciprocity provision and its various international obligations, see Initial Report, ch. 16.

[40] Initial Report, p. 16-7.

The Second Banking Directive was revised on April 13, 1989, and the revised version of the directive was passed on December 15, 1989. The amended version of the directive is considered to represent a major improvement over the original proposal in that the reciprocity provision is more moderate and comes closer to a national treatment standard.[41] Nevertheless, in so far as the Directive continues to contain the concept of reciprocity, it appears to be incompatible with the OECD Codes, and principles embodied in FCN treaties.[42]

EC Commission officials have stated that although the directive continues to emphasize the importance of achieving reciprocity, the lack of reciprocity will no longer be sufficient in and of itself to deny access to foreign banks to the European market:* For example, the EC will not, as originally proposed, automatically suspend applications pending a reciprocity review, and existing foreign subsidiaries will be "grandfathered." The directive authorizes the EC to negotiate with third countries under certain circumstances. It also specifies that measures taken under its reciprocity provisions "shall comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking up and pursuit of the business of credit institutions."[44]

The U.S. Mission to the OECD, as well as the OECD Secretariat, has taken the position that the Second Banking Directive as amended continues to be inconsistent with the principles of non discrimination and the standstill and rollback of restrictive practices embodied in the OECD's codes of liberalization:* The compatibility of the banking directive with the OECD Codes is expected to be a major topic of discussion at the March meeting of the OECD's Committee on Capital Movements and Invisible Transactions.[46]

According to the U.S. Mission to the OECD, the concept, embodied in the Second Banking Directive, that EC liberalization will be extended only to businesses whose home country's regulatory systems are seen to be sufficiently liberal with regard to the EC, violates theprinciple of non discrimination embodied in the OECD Codes.[47] These Codes require OECD member countries to extend liberalization measures to all other OECD members, regardless of the recipient's level of liberalization. The prohibition on discrimination found in the Codes, however, is not absolute. Annex E to the Capital Movements Code was designed to accommodate existing member state restrictions in the financial services industry. That section of the code requires that member states notify the organization of reciprocal/discriminatory measures and practices and provides that such measures and ry should be progressively abolished. As of January 1990, 6 of the 12 EC member states had entered restrictions placed upon foreign financial institutions under their national laws into this annex. Nevertheless, the OECD Codes' principles of standstill and rollback are designed to encourage member states that have existing illiberal measures to eliminate them as soon as possible, and not to encourage the enactment of additional restrictive measures. By requiring every member state to adopt a measure that embodies reciprocity, the EC is

[41] *Council Second Banking Directive,* Com(89), *01* No. C 167 (July 3, 1989), p. 33. For certain private sector views on the issue, see USTR, *Report of ACTPN on Europe 1992,* Nov. 29, 1989, pp. 46-47. See also, U.S. Department of the Treasury, 'Statement on Europe 1992 p. 5, 'From the perspective of non-EC banks, the revisions represent a significant improvement over the initial draft? David C. Mulford, Under Secretary for International Affairs of the Treasury Department, stated that "EC proposals for reciprocity in financial services continue to concern us, but less so than last year at this time. Clearly, the recent improvements in the proposed reciprocity provisions in banking are a significant step in the right direction and reflect a willingness on the part of the EC to listen to U.S. views? Nevertheless, he stated that he continued to have concerns regarding the revised version of the directive *because* it continues to condition access to the EC market on the way in which EC firms are treated in third-country markets. He was concerned primarily with both what he perceived to be the implied threat in the directive and the fact that at that time, the Investment Services and Insurance Directives still contained the original, more restrictive version of the reciprocity provision. Honorable David C. Mulford, Undersecretary for International Affairs, Statement before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Committee on Banking, Finance and Urban Affairs, Sept. 28, 1989.

[42] The compatibility of EC directives containing reciprocity provisions with FCN treaties between the United States and Individual EC member states is discussed in chs. 13 and 16 of the Initial Report. See 'Convention to Regulated Commerce of July 3, 1815," with the United Kingdom (TS 110); 'Treaty of Friendship and General Relations of July 3, 1903," with Spain (TS 422); 'Treaty of Friendship, Commerce and Navigation of Feb. 2, 1948, with Italy (TIAS 1965), supplemented by 'Agreement of Sept. 26,1951,' (71AS 4685); "Treaty of Friendship, Commerce, and Navigation of Jan. 21, 1950; with Ireland (IIAS 2155); "Treaty of Friendship, Commerce, and Navigation of Aug. 3,1951," with Greece (AS 3057); "Treaty of Friendship, Commerce and Navigation of Oct. 1, 1951; with Denmark (TIAS 4797); "Treaty of Fnendship, Commerce, and Navigation of October 29,1954," with West Germany (AS 3593); "Treaty of Friendship, Commerce and Navigation of Mar. 27,1956; with the Netherlands (71AS 3942); Convention of Establishment of Nov. 25, 1959, with France (T1AS 4625); 'Treaty of Friendship, Establishment, and Navigation of Feb. 21, 1961, with Belgium (AS 5432); and *Treaty of Friendship, Establishment, and Navigation of Feb. 23,1962," with Luxembourg (IIAS 5306).

[43] Sir Leon Brittan attempted to reassure other countries that the reciprocity provisions of the directives will not be used against countries that provide genuine national treatment for EC banks. Nevertheless, he has stated that the EC intends to negotiate for the removal of banking restrictions in non-EC countries, and specifically mentioned reciprocal agreements between certain U.S. States that restrict expansion by banks with non-U.S.-owned banks, limits on overdrafts, and the Glass-Steagall Act, which separates the business of commercial banking from that of investment banking. See "Brussels to Press Non-EC Countries Over Bank Curbs,' *Financial Times,* Feb. 6,1990:

[44] C89/646, *01* No. L 386 (Dec. 30, 1989), p. 1.

[46] Interview with personnel from U.S. Mission to the *OECD, Paris; U.S. Department of State Telegram,* Feb. 7, 1990, Paris, Message Reference No. 03446.

[42] Ibid.

[47] Ibid.; Interview with personnel from U.S. Mission to the OECD, Paris.

requiring six of its members to embrace a more restrictive policy than their current policy, rather than following the OECD approach of urging them to remove reciprocity provisions as soon as pmible.[48] A memorandum drafted by the OECD Committee on Capital Movements and Invisible Transactions indicates that the OECD concurs in this analysis, and that consideration currently is being given to possible ways to resolve the conflicts between the Codes and the EC's directives.[49]

The Second Life Insurance Directive

The U.S. Mission to the OECD also believes that as currently proposed, the reciprocity provisions embodied in the Second Life Insurance Directive are inconsistent with the OECD Code of Liberalization of Current Invisibles Operations as well as the Capital Movements Code.[50] The Second Life Insurance Directive, like the Second Banking Directive, raised questions when proposed by the EC because U.S. insurance industry regulation is more restrictive than is EC insurance regulation. Strictly reciprocal treatment, therefore, is not "ble for EC insurers in the United States. On ber 18, 1989, before the directive was amended, the United States submitted a document to the Insurance Committee of the OECD stating its concerns that the reciprocity provisions in the proposed Second Life Insurance Directive at that time being considered by the European Community might run counter to OECD Codes to which EC countries subscribe. The United States was also concerned that it might jeopardize access to the [redacted] market by companies from OECD [redacted] states that are not EC members.[51] Although taking into account the fact that certain EC member states have lodged reservations to the relevant provisions of the Codes, the United States argued that such reservations are at odds with the trade-liberalizing intent of the codes and that member states that had not lodged reservations would be violating their commitments under the Codes and would therefore be obligated to seek a derogation.[52]

The EC Council of Ministers amended the reciprocity provision in the Second Life Insurance Directive at its December 20-21, 1989, meeting so that it now reflects the stance of the Second Banking Directive, which more closely approximates "national treatment" than the Commission's earlier proposaLs[3] The proposal for a Second Life Insurance Directive, however, has not been finally adopted, and many expect the proposal to be debated throughout much of 1990.[54] The proposed Investment Services Directive currently contains a reciprocity provision that is virtually identical to the original reciprocity provision in the proposed Second Banking Directive. It is expected that this reciprocity provision will be revised to parallel the Second Banking Directive.[55] Until it is revised, however, uncertainty concerning the meaning of reciprocity in the Directive and the scope of its application will continue.

Bilateral MOUs and the Global Approach to Certification and Testing

A third area in which 1992 initiatives may effect international agreements between certain EC member states and the United States is the EC's efforts to address the problem of divergent product standards. As discussed in the initial report, many EC directives are designed to ensure that divergent national standards do not operate as technical barriers to trade.[56] In connection with these efforts, the EC is devising a system of testing and certification to ensure that products marketed in the EC meet applicable standards. *As a* part of its proposed certification and testing program, the EC has stated that any existing bilateral agreements between EC member state testing and certification bodies and third-country bodies will have to be renegotiated as EC-wide bilateral agreements when EC directives covering those products are implemented.[57] Because the EC's approach is not yet fully developed, its effect on existing as well as future agreements between the United States and the European Communities or EC member states is difficult to predict.[6]a The following text describes the developing positions of the EC and United States on this topic.

In the United States, standards are promulgated by both governmental bodies and private sector bodies. Because most products are not regulated, the majority of standardssetting is done by private bodies.[50] Some Federal Government agencies responsible for regulated products in the United States have negotiated agreements for reciprocal acceptance of test data or inspectional information with their counterparts in individual EC member

de U.S. Department of State Telegram, Feb. 7, 1990, Paris, Message Reference No. 03446.

"bee OECD, Revised *Proposal for a Directive of the* EC *Council on Credit* Institutions: issues* *Consideration,* Nov. 14, 1989; Interview with personnel from U.S. Mission to the OECD, Paris.

" See Government of the United States of America, "Reciprocity to the Insurance Committee of the OECD, Sept. 18, 1%9.

II1 thid.

42 Ibid.

"The directive was amended without first going through the customary procedure of receiving the views of the European Pailiament, and therefore *the* amendment is not yet official.

" USITC staff meetings with insurance companies in Belgium, France, the United Kingdom, and West Germany in January 1990.

" Interviews with personnel from the U.S. Mission to the OECD, Paris, and U.S. Department of the Treasury.

" See ch. 6 for a more detailed discussion of the effort to harmonize standards in the EC.

·· EC Commission, "Mutual Recognition of Tests and Certificates, the Global Approach Inside and Outside the EEC,' Com (89) 209, p. 8.

as See U.S. Department of Commerce, Report of the U.S.-EC Standards Talks,' Oct. 4-5,1989; p. 8. U.S. Government bodies have indicated that they are unwilling to have current bilateral agreements with one member state extended to other EC member states unless they have adequate assurance that the other states have comparable regulatory systems. Ibid.

" Ibid.

states or are contemplating entering into such ?greements, but such agreements exist for only a few of the products that the United States exports to the European Community.[63] These agreements generally take the form of Memoranda of Understanding (MOUs). When they are between the U.S. Government agency and its European counterpart, they are generally cleared through the U.S. State Department.[61] In addition to government-to-government agreements, bilateral agreements also exist between private organizations, such as testing laboratories, in' the United States and EC member states. Underwriters Laboratory, the largest U.S. testing and certification body, currently has agreements with European laboratories to test a limited number of products for conformity to certain member-state requirements.[62]

The majority of U.S. government regulatory bodies currently do not appear to have bilateral agreements with EC member states dealing with mutual recognition of test results or other testing and certification issues.[63] The U.S. Food and Drug Administration (FDA), however, has a number of bilateral agreements with EC member states concerning the acceptance of inspection information on good manufacturing practice (GMP) and good laboratory practice (GLP) **conformity.[44] In its testing and certification proposals, the EC Commission has specifically mentioned these agreements as appropriate candidates for being renegotiated into EC-wide agreements.ss In addition, the EC Council has already charged the EC Commission to negotiate mutual recognition arrangements with third countries in this area** within **the OECD framework.[66] In a public discussion document issued in late 1988, the U.S. Government stated that before it will agree to facilitate the entry of EC products into the United States under future MOUs, FDA must be assured that the inspectional programs in place at the foreign manufacturing site are comparable to its own. It also stated that-**

> *. . . the USG will only negotiate and maintain bilateral agreements which are based on adequate quality control procedures and competent ment inspection programs as determined by direct FDA observations usually just prior to the time when the agreement is finalized. Bilateral agreements will not be extended from one EC member country to another without assurance that comparable regulatory systems exist for both countries. Further, FDA wishes to preserve the bilateral agreements that are currently in operation as they serve to facilitate trade and conserve inspectional and analytical resources.*[67]

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[60] Many of the existing MOUs between U.S. Government agencies and member-state authorities pertain to processed foods, pharmaceuticals, chemicals, and medical devices.

[61] Legal authority to enter into at least certain types of MOUs derives from the President's constitutional powers, including his authority to represent the nation in foreign affairs, as exercised by the Secretary of State on a day-to-day basis. U.S. Code, vol. 22, sec. 2526. Additional authority for some MOUs is contained in U.S. Code, vol. 2Z sec which makes the Secretary of State primarily responsible for coordinating all major science and technology agreements and activities between the United States and' foreign countries. The criteria generally used by the executive branch in selecting the form by which an international agreement should be approved, and the procedures for consulting with Congress as to the choice made, are set forth in Circular 175, *Foreign Affairs Manual, vol.* 11, ch. 700, reprinted in *Digest of* U.S. *Practice in International Law* (1974), pp. 199-215; See 3d *Restatement of thc Foreism Relations Law of the United States, vol.* 1(1987), p. 166.

[62] U.S. General Accounting Office, *European Single Market: Issues of Concern to U.S. Exporters,* Report to the Chairman, Subcommittee on International Trade, Committee on Finance, U.S. Senate, February 1990, p. 16.

[63] The following agencies have reported that they do not currently have such bilateral agreements: the Occupational Health and Safety Administration (OSHA), Consumer Product Safety Commission (CPSC), and the Federal Communications Commission (FC The National Institute of Standards and Technology (NISI) reports that while it does have agreements with EC member states on the mutual recognition of measurement statistics, none of these agreements is likely to be affected by the 1992 program. The Nuclear Regulatory Commission (NRC) reports that they have concluded agreements with certain EC member states. Their agreements generally fall into one of two categories: (1) technical information exchange and general cooperation arrangements; and (2) reactor safety research cooperation agreements. The NRC also anticipates no immediate adverse effects on these arrangements resulting from the EC Commission's "Global Approach" proposal. Communications and interviews with agency officials, January-February 1990.

as For example, an MOU exists between the FDA and the Pharmaceutical Service of the Ministry of Health of the Republic of Italy on Good Laboratory Practice. The purpose of the MOU is to ensure the quality and integrity of safety evaluation data that support the approval of applications for research and/or marketing permits for human and animal drugs, since safety evaluation data submitted to one national authority are frequently based on studies conducted by • laboratories located in another country. The MOU provides that each party will recognize the other country's good laboratory practice program, will accept test data collected in either country for evaluation of safety, and will implement lures for continuing cooperation between the countries. The MOU may be terminated by either party at any time by written notice to the other party. The FDA has MOUs in effect or in process with Belgium, Denmark, West Germany, France, Ireland, Italy, the Netherlands, and the United Kingdom. FDA's legislative authority to enter into certain MOUs derives from U.S. Code, vol. 21, sec. 381 (a) and the general responsibility of the Commissioner of Food and Drugs for enforcement of the Federal Food, Drug, and Cosmetic Act.

" See "Comments on the Public Discussion Document of the U.S. Government Interagency Task Force on the EC Internal Market: An Initial Assessment of Certain Economic Policy Issues Raised by Aspects of the EC's Programme," Brussels, Mar. 16, 1989, p. 11. The European Community has already adopted a directive on the inspection and verification of laboratory practices, and measures are being taken under the directive to ensure similar levels of competence and reliability in inspection bodies throughout the EC.

" Ibid. According to the EC Commissionfthe Community is satisfied that it will be able to demonstrate that its internal system of control through the EC directive will ensure conformity with GLP requirements by laboratories inspected under this system." With respect to GMP, the EC Commission stated that the EC Council has already decided that the same collective approach will be followed. Ibid. pp. 11-12.

[67] U.S. Government Interagency Task Force on Europe 1992, *An Initial Assessment of Certain Economic Policy Issues*

To assure the harmonization of the legislation of the member states covering products and services which are regulated for health, safety, and environmental concern, the EC Commission has developed a "new approach." [68] National legislation generally will govern in these regulated areas, but when there is a serious conflict in the national legislation of member states, EC directives will be issued. [86] These directives will define only the "essential requirements" covering products and services. CEN or CENELEC will then develop harmonized standards that incorporate these essential requirements. While the EC's "essential requirements" are mandatory, the CEN or CENELEC technical requirements are voluntary, so that a manufacturer need only establish that his product or service conforms to the EC directive, not necessarily to the CEN or CENELEC standard? [8]

In mid-1989, the EC Commission forwarded a two-part proposal to the EC Council dealing with standards and with testing and certification?' After noting that the method of certification and testing of products from third-countries is of great importance to the EC and its member states because European Community law directs that products from third-countries that enter one member state must be allowed to circulate freely within the EC, it stated that "access to an integrated Community market cannot be determined by agreements with third countries concluded by individual Member States." [12] In a later document the EC Commission explained, "where mutual recognition agreements prove to be necessary in areas where there is legislation either at the national or Community level, and where either national or Community public authorities are involved in controlling the placing of products on the market, the negotiation of the agreements (for mutual recognition of test reports or certificates) fall to the Community by virtue of Article 113 of the Treaty," because such international agreements "are primarily intended to promote international trade, and therefore are a matter of common commercial policy . . ." [73]

In the case of products that are not regulated, EC Commission officials have stated that EC will not be involved in mutual recognition agreements. The private sector must negotiate and finalize bilateral agreements relating to mutual acceptance of test data and related issues for these products. [74] The European Organization for Testing , and Certification is intended to supply the technical infrastructure for harmonization of conformity assessment procedures and for mutual recognition of tests and certifications. It may therefore provide a forum for negotiating mutual ition agreements with third countries, but recognition negotiations through the EOTC is not mandatory. Th

The EC Commission proposal set forth three conditions that must be met before the EC was prepared to negotiate agreements for mutual recognition of tests, reports, certificates and marks for products covered by either European Community or national member state regulations. These conditions are first, that the technical competence of the non member country is adequate, second, that the benefits flowing to each party from the agreement must be equivalent and guaranteed in an identical manner, and finally, that the agreement must be limited to the testing, certification and inspection activities of designated bodies and that they could not be extended to include third parties by further agreements on mutual recognition without the consent of the original parties. [76] EC Commission officials have stated that the EC's first priority will be to negotiate agreements covering products regulated by EC legislation, and that "[w]here there are no Directives and where mutual recognition agreements already exist with third countries, there will be a gradual move towards transforming them into Community-wide agreements. This will be done on a case by case basis with the Council giving the requisite mandates to the Commission to negotiate." [77]

On October 4 and 5, 1989, a U.S. delegation met with experts from the EC Commission and CEN/CENELEC to discuss U.S. concerns arising from the EC's testing and certification proposals. Experts from both sides compared S. and

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Raised by Aspects of the EC's Program: A Public Discussion Document, Internal Market Public Document 1288, December 1988, p. 27.

as For a more detailed explanation of this 'new approach,' see ch. 6, 'Standards.'

" See 'ANSI Global Standardization News: Report on ANSI and CEN/CENELEC Meeting, July 28, 1989, Brussels, Belgium,' Ministry of Public Works, Rue de la Loi 155, 1040 Brussels, September 1989.

" Ibid.

During interviews with USITC staff in Brussels on Jan. 8, 1990, EC Commission officials explained that the "Global Approach' document, *A Global Approach to Certification and Testing,* Com (89) 209 final, 0/ No. C 267 (Oct. 19, 1989), is essentially a policy statement that carries no legal weight.

[72] Com (89) 209 final, 01 No. C 267 (Oct.19, 1989), p. *27.*

" See EC Commission,"Mutual Recognition of Tests and Certificates, the Global Approach Inside and Outside the EEC, Com (89) 209," p. 8.

USITC staff interviews with staff of the EC Commission, Jan. 8, 1990.

" See EC Commission, 'A Global Approach to Certification and Testing, Section 4: The Need for a New European Organization for Certification and Testing,' Com (89) 209. In *Council Resolution on A Global Approach to Conformity Assessment, Of* No. C 10, (Jan. 16, 1990), pp. 1-2, the EC Council stated,'the setting-up of a flexible, unbureaucratic testing and certification organization at European level with the basic role of promoting such agreements and of providing a prime forum within which to frame them should significantly contribute to the furtherance of that objective.' It is still unclear what role, if any, the EC Commission and the EOTC would play in the negotiation of future private sector voluntary arrangements. USITC staff interviews with staff of the EC Commission, Jan. 8, 1990.

[7°] Com (89) 209.

" Com (89) 209, p. 9.

" U.S. Department of State Telegram.

European Community systems for conformity assessment, with a view to preparing future discussions on arrangements for mutual recognition of tests and certificates to take place after the European Community Council of Ministers' pronouncement on the EC Commission's proposals for a Global Approach to Testing and Certification.[78] In this meeting, EC officials explained that there will be a significant transition period before most of the regulations are implemented and that the EC Commission will do nothing during this time to discriminate against third country products or to disrupt normal business and trade flows.[80]

In December of 1989, Undersecretary of Commerce for International Trade, J. Michael Farren issued the U.S. Government's formal response to the EC's proposed approach.[81] On the subject of agreements between the EC and non member countries, it expressed the view that "Agreements that are already in place between some EC member states and third countries represent substantial negotiating efforts and established confidence and should be allowed to remain in place without changes."[82] The United States' response also stated that the proposal that the European Organization for Certification and Testing be involved in the negotiation of mutual recognition agreements, including those with non member countries, is inconsistent with EC proposals that mutual recognition agreements on EC-regulated products can only be concluded between governments.[83] Third, the United States objected to the strict reciprocity set forth in the EC Commission's proposal, stating that it "could be impossible to achieve and therefore would only serve to hinder the progress of our global market"[84] Noting that the U.S. levels of safety are as high as those in the EC, the document stated, "[w]e see no basis for such reciprocity requirements calling for equivalent mutual benefits guaranteed in an identical manner and suggest that the EC admit alternative, more flexible, criteria."[88]

On December 21, 1989, the EC Council passed a general resolution on testing and certification." The decision is considered to be encouraging because it states that "in its relations with third countries, the Community will endeavor to promote international trade in regulated products,' and it authorizes the EC Commission to establish negotiating priorities for mutual recognition agreement with third countries.[87] It also requests that the EC Commission begin "as soon as possible" to submit requests to the EC Council for negotiating mandates." The language of the decision is also more flexible than was the EC Commission's proposal with respect to the criteria that must be met for mutual recognition agreements with third countries. For example, rather than require that non EC bodies offer the "same guarantees as those located within the Community," the EC Council Resolution states that the "competence of the third country bodies is and remains on a par with that required of their community counterparts."" Furthermore, the EC Council Resolution does not contain the requirement found in the Commission's proposal that "the mutual benefits for the agreement are equivalent and guaranteed in an identical manner.[90]

Because the EC's proposals are not yet final, the likely fate of existing bilateral MOUs is difficult to predict. In interviews with USITC staff in January 1990, EC officials confirmed their earlier statement the EC has not indicated that mutual recognition agreements between member-state authorities and non member countries would become null and void, and that the EC Commission does not intend to do anything that would have a negative impact on current trade arrangements. Existing agreements will be reexamined with a view towards determining whether it would be desirable to translate them into EC-wide agreements. In negotiating or renegotiating agreements relating to regulated products, the EC Council will have to make the final decision, subject to assurances that the agreement does not put citizens at risk. EC Commission officials also indicated that existing bilateral agreements covering regulated products which meet the criteria for technical competence and safety could fail to be transposed if they do not measure up to the Council's criteria for mutual benefit.[81]

" Joint Press Communique, 'Talks Between U.S. and EC Commission Officials on Standardization and Certification, October 4-5,1989."

u ANSI report on the CEN/CENELEC meeting, p. 9.

u See Government of the United States of America, *Response to the European Community on Cons (89) 209, "A Global Approach to Certification and Testing" and EC Commission, Proposal fora Council Decision Coicerning Modules for Various PIUISCS of Conformity Assessment Procedures,* Dec. 11, 1989.

u Ibid.

ea According to the document:

> In view of the contemplated role for CEN/CENELEC in the pp ouganization, we are even more concerned. If C ELEC *has* primary or sole authority within the European Organization for Certification and Testing to prepare the codes of practice for conformity assessment, then essentially the Community seems to be devolving all authority to member state standards institutions instead of an independent advisory agency representing EC-wide objectives. This would not afford the guarantees of safety that the U.S. government would requ ire in certification programs.
>
> The U.S. position is that non-European entities should have the option of membership or other participation in an EC certification and testing organization. Ibid.

" Ibid.

°a Ibid.

"Council Resolution on a Global Approach to Conformity Assessment,' Of No. C 10 (Jan. 16, 1990), pp. 1-2. The European Parliament has yet to provide its opinion on the draft decision.

-- Ibid.

"Ibid.

ae Ibid.

-» Ibid. This language has been replaced with the requirement that "in cases where the Community wishes to have its own bodies recognized, the agreements establish a balanced situation with regard to the advantages derived by the parties in all matters relating to conformity assessment for the products concerned." Ibid.

In response to a question from an EC Commission official, regarding the relation of federal or national certifications to State or local certification schemes, U.S. officials observed that generally the congressionally authorized Federal regulations implied federal preemption of other State and local authorities' acceptances. U.S. officials also observed that there are many non-Federal acceptance systems and that these also are generally uniform nationally. Ibid.

CHAPTER 18
THE SOCIAL DIMENSION

CONTENTS

CHAPTER 18
THE SOCIAL DIMENSION

Introduction

The "social dimension" of EC 92 refers to the efforts to harmonize different EC member-state policies on labor markets, industrial relations systems, occupational safety and health regulations, social welfare, and social security systems. Although studies conducted for the EC Commission predicted an ultimate increase in employment as a result of EC 92, the same studies that worker adjustments and relocations wo d be necessary.' The "social dimension" aspect of EC 92 addresses labor's concern that workers' rights and benefits not be eroded as the European Community and its members adjust to economic integration. As such, the European unions, representing approximately 45 percent of European workers, advocated inclusion of a social dimension in the EC 92 program. Most member states as well as business concerns likewise recognize the overall need for some sort of social dimension to balance economic integration and to provide the incentive for people to move and find new jobs.

The critical questions concerning the social dimension do not ask whether there should be a social dimension in the EC 92program, but, rather, what subjects should be included, and what role the EC Community, rather than the individual member states, should play in this area. The importance of the social dimension to the EC integration efforts has been emphasized by EC Commission President Jacques Delors:

> *The Social Dimension permeates all our discussions and everything we do: our efforts to restore competitiveness and cooperate on macroeconomic policy to reduce unemployment and provide all young Europeans with a working future; common policies designed to promote the development of less prosperous regions and the regeneration of regions hit by industrial change; employment policy and the concentration of forts on helping young people to gain a foothold in the labor market and combating long-term unemployment; and the development of rural regions threatened by the decline in the number of farms, desertification and demogra phic imbalances. Think what a boost it would be for democracy and social justice if we could demonstrate that we are capable of working together to create a better-integrated society open to all.*[2]

Background

The overall need for *a minimum* floor of social cohesion has been recognized since the inception of the European Community in the 195 0s. The European Economic Community Treaty [hereinafter "EEC Treaty"' set forth certain social objectives, such as improvement of living and working conditions, collaboration on social security, occupational safety and health, equal pay for men and women, vocational training, and the creation of a "Social Fund" for the financing of programs to increase worker mobility.[3]

All along, social matters have been essential to the efforts of the Community to encourage people, as well as goods, to circulate among the member states.[4] For example, the six initial EC members immediately recognized the necessity of assuring workers that they could move from one country to another without loss of benefits; this concern resulted in the third EC regulation, which guaranteed that work in one country would be cumulated to determine social security benefits awarded in another country.[5]

In the early to mid-1980s, some developments in the social area fell under the umbrella commonly referred to as "People's Europe," which is in part the precursor of what is now called the "social dimension."[8] In that time period, the EC Commission adopted regulations addressing various social concerns, e.g., social security, training, and occupational safety and health. As of 1985, however, regulations in these areas often set broad guidelines, providing for treatment of specifics at the national level.

In 1985, the EC Commission initiated an ongoing social dialog between management and labor. This social dialog is generally known as the "Val Duchesse dialogue," after the Belgian chateau where discussions were begun! These meetings continue, with management chiefly represented by the employer's European-level organization, the Union of Industrial and Employers' Confederations of Europe (UNICE), and labor by the European Trade Unions Confederation (ETUC).

' For example, P. Cecchini, *The European Challenge 1992: The Benefits of a Single Market* (1988) [hereinafter Cecchini Report). Several economists question the EC Commission's ' regarding increased employment. See, e.g., D. Schuma , Employ t Effects oldie European NUrket," *Intereconomies,* NovemDecember 1989, pp. 259-267; C. Ciccone and G. McCallion, *EC-92: The Potential Consequences for European and U.S. Labor Markets,* CRS Report for Congress on Issues Raised by 1992 Integration (May 31, 1989), pp. 55-60.

[2] Jacques Delors, President of the EC Commission, Address at the College D'Europe, Bruges, Belgium (Oct. 17, 1989) (Working translation of the French original).

[3] EEC Treaty Arts. 117-128. See Audrey Winter, R. Sloan, G. Lehnar, and V. Ruiz, *Europe Without Frontiers: A Lawyer's Guide,* (Washington, DC: Bureau of National Affairs, 1989) pp. 183-184; and *'Deadline 9Z" European File: The Social Perky of the European Community: Looking Ahead to* 1992, (EC Commission, August-September 1988), [hereinafter "Deadline 921, p. 3.

[4] USITC staff conversation with a representative of the EC Commission, Dec 12, 1989 [hereinafter 12 conversation").

[5] Ibid.; EC *Regulation No.* 3, 1957.

[8] Dec. 12 conversation; See 'A People's Europe,' *Fact Sheets on the Eruopean Parliament and the Activities of the European Community,* (Strasbourg), sec. EN IIIN.

[7] Winter and others, *Europe Without Frontiers,* p. 184 and EC Commission, *Deadline* 92, p. 7.

In the White Paper, however, the EC Commission did not propose directives addressing the labor aspects of the internal market Only one mention was made of this topic:

> *The Commission considers it essential that in all programmes designed to achieve a unified internal market, the interests of all sections likely to be affected e.g. both sides of industry, commerce and consumers are taken into account. It further considers that such interests should be incorporated in the policy on the health and safety of workers and consumers... 8*

The absence of White Paper directives addressing labor issues undoubtedly resulted in part from a combination of the view that various aspects of the social area were already regulated, in addition to the EC Commission's desire to avoid stalling the entire internal market program by including controversial labor mattets.[9]

The social dimension fared somewhat better in the Sinee European Act, which added articles 118A and 118B to theEEC Treaty. Article 118B provides:

> *The Commission shall endeavor to develop the dialogue between management and labour at European level which could, if the two sides consoler it desirable, lead to relations based on agreement.lo*

This continued reliance on the "dialogue approach" reflected the EC Commission's recopition of the sensitivity of certain labor relations topics. Prior to the passage of the Single European Act in 1987, certain topics in the social arena remained controversial, such as the treatment of nationals, and workers' rights concerning consultation and participation in company affairs. As a result, the free movement of persons and employee rights and interests were among the few areas excepted from the general allowance of the Act for adoption of directives by a qualified majority rather than by unanimous vote.[11]

In contrast, the Single European Act placed special emphasis on another topic of concern to workers, namely occupational safety and health. New article 118A of the EEC Treaty directs the EC Commission to propose, and the Council of Ministers to adopt, directives to help achieve improvements in the working environment as regards worker safety and health.[12] Unlike the unanimous vote needed _ for adoption of measures regarding other employee rights and benefits, article 118A directives can be adopted by a qualified majority. Finally, worker safety and health, along with environmental protection, is singled out as one of the few areas in which a member state can apply its own stricter provisions.[13] This compromise has been labeled by some as "the act's most important compromise — the price paid for improvement in the Council's decision-making process."[14] It is also likely to be the subject of legal debate and court actions as to which directives are included within its reaches.[18]

Article 118A does require that occupational safety and health directives be implemented gradually and with regard to local conditions and technical rulesle Furthermore, Isjuch directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation of small and medium-sized undertakings."[17]

The European labor movement, principally through the ETUC, reacted strongly to the White Paper's silence on many pressing aspects of social Europe. The ETUC stated publicly that it would not support the single market program without a social dimension. Recognizing that the EC 92 concept would not receive public support without backing from labor, the EC Commission undertook to develop a social program for integration.[18]

Critical to labor's concerns is the concept of "social dumping." The European labor movement fears that companies will take advantage of the new open market by shifting investment and employment away from countries with high wages and high standards (e.g. West Germany, France, Belgium) to countries with lower wages and less social protection (e.g., Spain, Greece, Portugal).[19] Some workers are also concerned about migration of the workers from poorer countries to countries with higher labor standards and wages.[29]

To prevent both types of "social dumping," the European unions are calling for the EC "to adopt directives which reflect the higher national standards presently in place in several member states, while setting minimum standards to be

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• White Paper, p. 21. See Frederick T. Stocker, *"1992' The European Community's Internal Market Program—Opportunities and Challenges for U.S. Firms,* (Washington, DC: MAPI, 1989) pp. 57-60 jhereuiafter *Opportunities and C hallenges J.*

• *Ibid.,* Dec. 12 conversation, and Brian J. Glade, Vice President for International Labor Affairs, United States Council for International Business, Remarks to the Cosmetic, Toiletry, and Fragrance Association, Washington, DC, Sept. *71,1989* [hereinafter "Glade remarks'].

'° EEC Treaty, art. 118b, added by Single European Act ("SEK1 art. 22.

" EEC Treaty, art. 100a (2), added by SEA art. 18.

'² EEC Treaty, art. 118a (1), (2), added by SEA art. 21. EEC Treaty, arts. 100a(4) and 118a(3), added by SEA arts. 18 and 22.

'⁴ Europe *Without Frontiers,* p. 3).

'⁶ See ibid., Dec. 12 conversation, and Glade remarks.

le EEC Treaty, art. 118a(2), added by SEA art. 21. See George A. Bennann, 'The Single European Act: A New Constitution for the Community?" *Columbia Journal of Transnational Law, vol.* 27, No. 3 (1989), p. 558.

'ss Ibid.

'• Dec. 12 conversation, and USITC staff conversations with U.S. Dept. of Labor representative, Oct. 13, 1989, and Jan. 16, 1990. [hereinafter DOL conversation].

'• USITC staff conversation with official of the International Labor Organization, Nov. 29, 1989 [hereinafter 'ILO conversation"), DOL conversation and Gerd Muhr, Vice President of the German Confederation of Trade Unions, 'Now for the Workers; *ILO Bulletin,* p. 5.

" Ibid.

achieved over time by other countries."[21] They also advocate structural readjustment funds to support those countries that will have to raise their labor and other social standards.[22]

In contrast to the wide harmonization of labor standards advocated by the unions, employers' associations generally favor greater "subsidiarity" for social considerations. Under a broad application of the "subsidiarity" principle, fewer measures would be mandated on the Community level; specific obligations would be left to national or local legislation or to collective bargaining contracts. Areas in which there is general consensus regarding the desirability of harmonization are worker mobility, occupational safety and health standards, the recognition of professional qualifications, and education and training.[23]

EC Source Documents

Social Dimension of the Internal Market: EC Commission Working Paper24

In early 1988, then Commissioner for Employment and Social Affairs Manual Marin chaired a committee which drafted a comprehensive report assessing concerns in the social field.= The interim report was basically a "talking points" document, intended to introduce all "soaal and political actors" concerned with the social dimension. Based upon that interim port, the Commission subsequently issued a Wo Paper on the Social Dimension, which proposes actions and sets out priorities for a social policy program.

The paper proposes specific actions, 80 of which are to be implemented before 1993. These proposals are divided into four general areas.

Social Policy Measures for the Realization of the Internal Market

These proposals address efforts to reduce unemployment by providing for worker mobility, education and vocational training. These topics are discussed in more detail in chapter 7 (Customs Controls) of this Report and our initial report.[26]

Social Policy Measures to Achieve Greater Economic and Social Cohesion

This section addresses occupational safety and health standards and labor relations. These topics are discussed in more detail in chapters 7 (Customs Controls) and 9 (Competition and Corporate Structure) of this report and our initial report. One notably controversial topic involving labor relations, i.e, worker consultation and participation, is also discussed further below.

Other Measures to Stimulate Employment and Ensure Solidarity

This section proposes various studies and action programs concerning the labor market, social security, employment of women,poverty, and problems facing the elderly and the disabled.

Development of Social Dialog

In this section, the EC Commission recognizes the work of the Val Duchesse dialog. The EC Commission suggests that the dialog encompass, and possibly decentralize, consideration of more matters, such as social protection, equal opportunity, correspondence of professional qualifications, and training.

The Social Dimension Working Paper was approved by the EC Commission on September 7, 1988. However, it was judged too ambitious by the EC Council, and was never adopted as an official EC document[27]

European Community Charter of Fundamental Social Rights of Workers28

In 1989, the EC Commission focused its efforts in the social dimension area on the drafting of a Charter of Fundamental Social Rights (the Social Charter). The charter is based on a variety of rights already guaranteed in documents of the Council of

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a' Opportunities and Challenges, p. 59. See also *Bask Social : Actions, Not Words, From theMadrid Summit,* Resolution by the Executive Committee of the European Trade Union Confederation (Apr. 21, 1989).

" Ibid.

[21] Glade remarks; Zygmunt Tyszkiewicz, Secretary-General of UNICE, "European Social Policy—Striking the Right Balance,' *European Affairs,* Winter 1989, p. 73. [hereinafter "Tyszkiewicl; and Ivor Owen, 'UK 'to Resist EC Charter Provisions," *Financial Times* Oct. 30, 1989), quoting Norman Fowler, British Employment

[24] Sec (88) 1148 final, Sept. 14, 1978.

[26] EC Commission, *Social Europe: The Serial Dimension on the Internal Market,* Special Edition (Luxembourg: Office for Official Publications of the European Communities, 1988).

USITC, *The Effects of Greater Economic Integration Within the European Community on the United States (Investigation No.* 332-267), USITC Publication 2204, July 1989 [hereinafter 'Initial Report'], pp. 7-11 to 7-14.

Shellyn G. McCaffrey, U.S. Deputy Under Secretary of Labor for International Affairs, speech before the Council on International Compensation, Washington DC, Sept. 2C1, 1989 [hereinafter "McCaffrey speech'].

U Press release of the EC Council, '1357 Council Meeting on Labor and Social Affairs,' No. 9517/89, Oct. 30, 1989, p. 4. On Oct. 2, 1989, the EC Commission presented its final draft charter to the Social Affairs Council (Corn (89) 4711. At an Oct 30, 1989, meeting, the Social Affairs Council made several changes to the EC Commission's draft, and attached its version *as* an Annex [30.X.1989] to the draft Social Charter sent to the Dec. 12, 1989, . summit meeting of EEC heads of state and government At the summit meeting, the heads of state (with the exception of the United Kingdom) adopted the version prepared by the Social Affairs Council. EC Commission, *Charte Communautaire des Drafts Sociaux Fondamentaux des Travailleurs* (Luxembourg, 1990).

Europe and the International Labor Organization.[29] 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. These rights are —

1. Right to freedom of movement for all workers of the European Community;
2. Employment and remuneration: Right to choose one's occupation, to receive an "equitable" wage as established by each member state, and to free access to public placement services;
3. Improvement of living and working conditions: Improvements in duration and organization of working time, right to paid annual leave and to a weekly rest period;
4. Right to social protection: Right to "adequate levels" of social security, according to the arrangements applying in each country;
5. Right to freedom of association and collective bargaining
6. Right to vocational training;
7. Right of men and women to equal treatment and equal opportunities;
8. Right of workers to information, consultation, and participation;
9. Right to health protection and safety at the workplace;
10. A minimum employment age of 15;
11. Right of elderly persons to an income affording them a "decent" standard of living, according to the arrangements applying in each country;
12. Rights for disabled persons: Vocational training, ergonomic measures, accessibility, mobility, means of transport and housing.

Eleven member states—all except the United Kingdom—approved the Social Charter at the EC Strasbourg summit on December 8-9,1989. Within the context of the Charter, the European Council invited the Commission of the European Communities to present an action program, with initiatives addressing the various social rights.

Action Programme Relating to the Implementation of the Community Charter of Basic Social Rights for Workers30

In its action program stemming from the Social Charter, the EC Commission listed new measures that it "sees a need to develop in order to implement the most urgent aspects of the principles of the... Charter."[31] The EC Commission noted that, in accordance with the principle of subsidiarity, its proposals relate only to items whose set objectives can be reached more effectively at the Community level than at that of the member states.[32]

The action program is broken done into 13 chapters that closely track each of the Social Charter rights: The labour market, employment and remuneration; improvement of living and working conditions; freedom of movement; social protection; association and collective bargaining; information, consultation and participation; equal treatment for men and women; vocational training health and safety at the workplace; protection of children and adolescents; the elderly; and the disabled. Within each chapter, the program presents the current context of the particular topic, followed by proposals for new "initiatives" related to that area. These "initiatives" take various forms, including evaluation of activities, reports, opinions, regulations, and directives.

The discussion of "the Labour Marker reaffirms the EC Commission's commitment to combatting long-term unemployment. The EC Commission endorses various action programs on job creation, continuation of the annual "Employment in Europe" report analyzing the EC labor market, and monitoring of the European Social Fund.

Chapter 7 (Customs Controls) of this report and our initial report contain discussion of measures regarding improvement of living and working conditions; freedom of movement; social protection; vocational training equal treatment and workplace health and safety. Issues concerning employment and remuneration, association and collective bargaining, and worker consultation and participation are discussed in more detail below.[33] The remaining sections of the action program discuss topics that are basically noncontroversial (rights for the elderly and the disabled).

1990 Work Program as it Relates to the Social Dimension

On January 10, 1990, the EC Commission adopted a work program for the year.[34] With regard to the social dimension, the Commission promises to take "the first concrete steps. . . to implement the most urgent aspects of [its] action programme, namely the reorganization of working time, atypical work, and consultation, information and participation procedures for workers."[35] The EC Commission also states its intention to continue efforts regarding education, vocational training, and worker safety and health.[36]

ILO conversation.

[26] EC Commission, Corn (89) 568 final, Nov. 29, 1989 [hereinafter *Action Program].*

[31] *Action Program,* p. 3.

[32] Ibid., p. 4.

[33] Worker consultation and participation is also addressed in *ch.* 9, "Competition and Corporate Structure."

[34] EC Commission, *"Programme of the Commission for 1990—Final,"* Jan. 10, 1990 [hereinafter *Work Prognun].*

[38] *Work Program,* p. 9.

" Ibid.

The work program sets out 17 specific proposals to implement the Social Charter with regard to job transparency and creation, worker safety and health, equal treatment, and improvement of living and working conditions.[37] Six of these proposals suggest directives regarding worker safety and health.

Most of the proposals in the work program's social dimension chapter speak to "directives," which would mandate legislation by each member state. Procedures governing two of the more controversial items—subcontracting and worker information, consultation, and participation — are proposed merely as "instruments." It is unclear exactly what form these "instruments' will take. This ambiguity in description is not unintentional. Rather, it reflects the inability of business and labor to arrive at a satisfactory agreement as to whether these matters should be mandated by the European Community. Industry's view, as expressed by UNICE, is that these matters should be handled at the national or local level.[38] On the other hand, labor, represented chiefly by ETUC, believes that these issues must be mandated on a Community-wide basis, by regulations or directives.

A third area in which industry and labor have a similar disagreement relates to working hours. However, the work program proposes a *directive* on the "reorganization of working time." The actual drafting and scrutiny of such a directive is likely to entail the same type of dispute between business and labor regarding the extent of the Community's role in regulating the specifics of labor relations.

A decision reportedly issued by the EEC Court of Justice in the *Grimaldi* case on December 13, 1989, may affect the debate as to the form of the "instruments."[30] That decision involved a 1962 recommendation of the EEC's Council of Social Affairs Ministers, which listed the diseases that should be included on each member state's list of occupational illnesses for which occupational illness pensions would be provided. Although the recommended list included iDupuytren disease, that disease was not on the list recognized by Belgian law. A Belgian employee who had contracted this disease was denied a pension on the grounds that it was not on Belgium's list. The employee sued, and the Court of Justice ruled that the national judges should take the EEC's recommendations into account and give such recommendations some legal effect, although they are not absolutely binding.[40]

This case has the potential to affect both the form in which the new social dimension measures are couched, and the impact of any measures adopted as "recommendations:[41] t If fearful of the impact of this decision, industry groups and member states opposed to Communitywide mandates regarding labor relations could block even recommendations issued on a Communitywide basis. With respect to any recommendations that are issued, the EC Commission or individual petitioners could rely upon this case to convince national courts to follow a recommendation that the states' legislatures have not followed.[42]

Controversial Issues

Worker Participation

The most controversial topic in the social dimension area, and the topic of most concern to Americans doing business in Europe, is the degree to which workers participate in corporate decisionmaking.[43] At present, there is a great deal of difference among the various EC countries as to the manner in which they approach this question. The various systems are summarized in chapter 9 (Competition and Corporate Structure) of this report and our initial report[44] Countries such as West Germany, in which workers enjoy a large role in corporate decisionmaking, support strong worker consultation and participation provisions in the Communitywide directives. At the other end of the spectrum, the United Kingdom, which has resisted the imposition of any mandatory directives governing labor relations, vehemently opposes both the concept of mandatory worker participation as well as Communitywide regulation of this subject[46]

Three active proposed company directives contain provisions addressing worker participation: the Fifth Directive; the Tenth Directive, and the European Company Statute. These directives, includin their worker participation provisions, are in chapter 9 of this report and our initial report[46] As noted therein, the controversy surrounding the worker participation provisions is largely responsible for holding up adoption of these directives.

In addition, the business community is concerned that an earlier proposed directive will resurface in one form or the other. The initial version of this proposal, called the Vredeling proposal, was presented in 1983, prior to issuance of the White Paper. It would have required companies with more tFian 250 employees to consult with a worker body before making decisions that are likely to have a substantial effect on the interests of the workers. This would include decisions such as plant closings and transfer of work to another facility.

" *Work Pmram,* pp. 19-20.
" Eurobri#;vol. Z No. 10, Jan. 26, 1990, p. 114.
[30] See *European Report,* No. 1549, Dec 16, 1989, p. 1-2.
[40] Ibid.
[41] Ibid.
[42] Ibicl'
[43] McC-affrey speech.
" Report, pp. 9-25 to 9-28.
[46] See, e.g., Keith Rockwell, 'Thatcher Alone in Opposing EC Social, Monetary Proposals, *Journal of Commerce,* Aug. 18, 1989.
[40] Initial Report, pp. 9-25 to 9-28.

The proposal was controversial among the member states.[47] It was also the subject of severe criticism from business, including specific objection by U.S. multinational companies.[43] One of the most troublesome aspects of the Vredeling proposal for U.S. companies was its extraterritorial effect In this respect, the proposed directive would have required even multinational corporations headquartered *outside* the EC to consult with worker representatives before making a decision that affected any of its European facilities. The U.S. administration has promised "to actively oppose any EC legislation that might force U.S. companies doing business in the EC to modify their industrial relations practices outside the Community."[40]

Because of the controversy, the Vredeling I was tabled in June 1986. The EC proposal prepared a diluted redraft of Vredeling in 1988, but several member states and business concerns objected to the revised version as well, forcing the EC Commission to withdraw the redraft Although neither version of Vredeling itself is actively under consideration, the subject matter of the proposal is still alive, as demonstrated by the efforts to address some of the relevant questions in the company law directives and in the recently issued action program for implementation of the Social Charter.

Industry groups continue to express concern that Vredeling will be resurrectecL[53] This concern has been especially activated by the specification in the action progra for a Community "instrument" on the procedures for information, consultation, and participation of workers employed by European-scale undertakings.[51] In its action program, the EC Commission notes the desirability of Improving information and consultation procedures for employees of large companies, since these employees could be affected, and possibly unequally treated, by decisions made elsewhere by the corporation.[52] The EC Commission refers back to the Council decision in June of 1986 to put the Vredeling directive in abeyance until 1989.[53] Further, the action program indicates that the EC Commission, in drafting a new "instrument" on worker participation, "could" apply the following principles:

1. Establishment of equivalent systems of worker representation in all European-scale enterprises;
2. General and periodic information should be provided regarding the development of the enterprise as it affects the employment and the interests of workers;
3. Information must be provided and consultations should take place before any decision liable to have serious consequences for the interest of employees, in particular, closures, transfers, curtailment of activities, substantial changes with regard to organization, working procedures, production methods, long-term cooperation with other undertakings, etc;
4. The dominant associated undertakings shall provide the information necessary for the employer to inform the employees' representatives.[54]

The suggestion that *all* European scale enterprises may be required to establish equivalent systems of worker representation raises business concerns that the strong worker participation systems in countries such as West Germany will be imposed Communitywide. While companies headquartered in West Germany and Belgium may see this development as making it easier for them to compete in the single market ss UNICE opposes EC-wide imposition of worker representation rules.

European business has also voiced strong objection to the notion that employee consultation should be a prerequisite to company decision-making. The action program's reference to codetermination has angered the business community, which has expressed its intent to fight any revived Vredeling-type directive.

The EC Commission has placed worker information, consultation, and participation on the agenda for 1990 action. The 1990 work program reflects the Commission's intent to implement "the most urgent aspects" of the action [illegible], including this topic[56] As noted above, C[illegible]vrit program specifies only that the EC Commission will present an "instrument" on the procedures for information, consultation and participation of workers employed by European-scale undertakings or groups of undertakings. The exact form of this "instrument" and its content undoubtedly will comprise hotly contested items in the social dimension area.

Freedom of Association and Collective Bargaining

The Social Charter acknowledges every worker's right to belong to a union, and to resort to collective action, including the right to strike, unless otherwise specified by existing legislation. Although European management "certainly is not happy with the explicit reference to the right to strike,"[57] any negative reaction is tempered by the preservation of national legislation or collective bargaining agreements prohibiting strikes.

• DOL conversation.
[40] Glade remarks.
• McCa
[00] See, e.g. la remarks.
[0'] See J.M. Didier and C. Naett, 'Workers' Rights in the EC's Single Marker, pt. 2, 1992— *The External Impact of European Unification, vol. 1,* No. 12 (Jan. 12, 1990), pp. 14-15 [hereinafter "Didier").
[62] *Action Program,* p. 32.
[63] Ibid., pp. 31-32.
" Ibid., pp. 32-33.
[66] Dec. 12 conversation.
[66] *Work Program,* p. 9.
[63] Didier, vol. 1, No. 20, p. 13.

Of note to potential U.S. investors, the final version of the Social Charter was amended to explicitly recognize that workers are equally free "not to join a union" as to join one. This amendment was made at Ireland's insistence, in order to maintain specially convenient union arrangements for foreign investors, often from the United States.[58] Ireland's concern may well have been generated by the recent decision of Ford Motor Co. to shift its plans for a new plant from Ireland to Spain reputedly as a result of labor problems.sa

Another potentially controversial aspect of the EC Commission's collective bargaining position derives from the action promm. Both Article 118B of the EEC Treaty and theSocial Charter endorsed *dialog* on a European level between management and labor. To date, these discussions have produced nonbinding "joint options."[60] In the action program, the Commission goes a step further, by announcing the preparation of a communication on collective bargaining development, "including collective agreements at European level with special reference to the settlement of disputes."

The EC Commission's reference to Europewide collective bargaining agreements appears to be a concession to the demands of the labor movement European employers oppose EC-wide bargaining, and prefer to see the Social Dialogue result in nonbinding joint options.[81]

Related to the notion of EC-wide bargaining, European labor leaders have been actively discussing creation of a Europewide labor union as an outgrowth of ETUC.[62] Several Spanish union leaders have spoken out in support of such a union, noting that an EC union is needed to negotiate with EC businesses and government[63]

Adaptation of Working Time

In 1983, the EC Commission submitted to the Council a proposed recommendation on the reduction and reorganization of working time.[64] Although the proposal was only in the form of a "recommendation," the United Kingdom vigorously opposed and blocked adoption. This proposal relied upon balancing industry competitiveness, unit production costs, the difficulty of or hazards associated with the assignment, and the opportunity for investment in new technologies.[65]

The United Kingdom has continued to oppose the adoption of any Communitywide instrument on these types of labor matters. In an unsuccessful effort to gain the United Kingdom's support for the Social Charter, the EC Commission altered earlier versions of the charter so that the final charter spoke generally to the improvement of living and working conditions "as regards in particular the duration and organization of working time."[68]

In the action program, the Commission reasserts the importance of adaptation, flexibility, and organization of working time. While recognizing that the specifics can be left to the member states or collective agreements, the EC Commission notes the worthiness of defining "minimum rules of reference" at the Community level, "in order to avoid excessive differences in approach from one sector to another."[67] While the action program proposes to set minimum requirements at the EC level for the maximum duration of work, rest periods, holidays, night work, weekend work, and systematic overtime, the 1990 work program proposes a directive generally on "the reorganization of work time."[68] It is not clear whether all of the above-mentioned subjects will be covered by this proposed directive. What is clear from the explanation in the action program is that any such directive will encompass only minimum reference rules without details as to their implementation.ea

It is almost certain that the United Kingdom will continue in its efforts to block the proposed directive.[70] One significant aspect of the ensuing debate will entail the EC Commission's ability to frame this directive as one addressing worker health, as opposed to other employee rights. As discussed above in the background section, directives concerning employee rights generally must be adopted by unanimous vote of the member states, with the exception of those regarding worker safety and health, which can be adopted under article 118A by a qualified majority. Notably, in delineating the need for *this* directive in the action program, the EC Commission states, "as regards this diversity care should be taken to ensure that these practices do not have an adverse effect on the wellbeing and health of workers."[71] The debate surrounding this directive will test the EC Commission's ability to affect the adoption of labor measures by framing the proposal in article 118A safety or health terms.[72] It has been observed, however, that not all the EC Commissioners support this approach. Some Commissioners oppose liberal

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"D. Buchan, 'An Oddly Amicable Community Divorce,' *European News,* Nov. 1, 1989, p. 2.

Europ staff conversation with industry representative (Nov. 9, 1989).

°° Didier, vol. 1, No. 20, p. 13.

°' Ibid.

" /992— *The Erternal Impact of European Unification,* Oct 6, 1989, p. 6.

°I Ibid., quoting Manuel Bonmati, Secretary for International Relations, General Workers Union (the Spanish Socialist union confederation), and Javier Velasco, International Department of the Workers Commissions (the Spanish Communist union).

" *01* No. C 290 (Oct 26, 1983).

" EC Committee of the American Chamber of Commerce, *Business Guide to EC Initiatives* (Brussels, 1989), p. 16 [hereinafter "Business Guide"), and Didier, vol. 1, No. 12, p. 16.

" DOL conversation. Compare Com (89) 471 final (Oct Z 1989), p. 9 with the revised Social Charter (30.X1989) adopted by the Council of Ministers, p. 7.

" *Action Program,* pp. 1748.

Work Program, p. 19.

"*Action Program,* pp. 17-19.

" See Lucy Kellaway, "Brussels Acts on Social Charter; *Financial Times,* Nov. 21, 1989.

Action Program, p. 18.

" See Kellaway, "Brussels Acts,' and ILO conversation.

use of article 118A in principle, whereas others believe that drafting the directive to comply with this article will produce a weak directive.[73]

Cross-Border Subcontracts

Under the EC Commission's early October version of the Social Charter, workers performing cross-border services were guaranteed wages and benefits equal to those received by employees of the host state.[74] Portugal, and to a lesser extent Spain, op . - • this provision as it applied to public sector su • . • ntracts.[75] These low-wage countries objected to being forced to pay their employees working in another country higher wages than those paid to domestic employees. They viewed the equal treatment provision as depriving them of a comparative advantage they might enjoy in the single market because of their lower wage scale.[78]

Although these subcontractor provisions were omitted from the final version of the Social Charter prepared by the Social Affairs Council," they have resurfaced in the action program and the 1990 work program.[78] However, as noted above in the discussion of the work program, the Commission has proposed merely an undefined "instrument" on these employment conditions.

Wages

On this subject, the Social Charter provides only that "all employment should be fairly remunerated."[78] Fair remuneration is defined as an equitable wage, to be determined by each member state." The United Kingdom voiced opposition even to this mild language, based upon its overall objection to EC-wide regulation of any labor relations mafters.[81]

In the action program, the EC Commission recognizes that "wage-setting is a matter for the Member States and the two sides of industry alone," and that "lilt is not the task of the Community to fix a decent reference wage?'" However, the Commission states its intention to issue an "opinion" on the member states' introduction of an equitable wage." This subject is not included in the EC Commission's 1990 work program.

"Internal Market; *European Report,* No. 1541, Nov. 17, 1989, ipp._5-6.
"EC Commission, Com (89) 471 final (Oct. 2, 1989), pp. 7-8.
""Internal Market,' *European Report,* No. 1536, Nov. 1, 1989₄₄f■ ■G.

"See *Social Charter* (Annex 30.X.1989), pp. 5-6.
" *Action Program,* pop. 23-24; *Work Program,* p. 19.
"*Social Charter* (30(.1989), p. 6.
" Ibid.
" See Michael Cassel, "Charter Opens Chapter in Workers' Rights, *Financial Times,* Dec. 14, 1989, p. 8.
ee *Action Program,* pp. 14-15.
" Ibid.

Reaction of the Parties

The reaction of both management and labor to the Social Charter, action program, and work program has been lukewarm. As explained above, neither is satisfied with the ambiguity as to the manner in which critical items on the social agenda will be addressed [84] Further, both business and labor believe that certain compromises made in the final version of the Social Charter and in the action program detract from the value of these documents. For example, the EC Commission made several late changes in the Social Charter in an effort to gain the United Kingdom's approval of the charter. The United Kingdom still voted against adoption of the Social Charter, and some labor representatives believe that the charter was unnecessarily "watered-down," and see it as "insufficient Ito) protect workers against the risks inherent in completion of the single market initiative."" On the other side, industry representatives are concerned that the action program sets the stage for a revived Vredeling directive, which would set Community-wide obligations for worker consultation and participation. While UNICE takes no stand on the various models of worker participation per se, it strongly objects to Communitywide imposition of these practices."

Finally, the European Parliament has harshly criticized the Social Charter and action program. A Parliament majority, composed of Socialists and Christian Democratic groups, has objected to the watering down of the Social Charter, and to the dropping of protections such as mandatory minimum-wage provisions.[87] The European Parliament's adverse reaction to the status t social dimension could have significance for the progress of EC integration. First, the Parliament at one point threatened to slow other legislation on the single market absent assurance that there was adequate protection for workers." Second, the Parliament's power to censure, and thereby trigger the collective resignation of the EC Commission, although never successfully exercised, should not be overlooked."

U.S. Industry Response

The response of U.S. industry to social dimension issues has closely tracked the response of European industry. As such, representatives of U.S. companies agree on the need for EC-wide action in the following areas: job creation to reduce regional

-- DOL conversation. See Lucy KeUaway,"Changes in EC's Draft Social Charter Unlikely to Win Over UK," *Financial Times,* Oct. 25, 1989, p. 3,
-- Didier, vol. 1, No. 12, p. 14.
"T ysziwia, p. 73.
" Didier, vol. 1,No. 12, p. 14; 'Social Charter Under Fire From E.C. Parliament; Europe 1992: *The Report on the Single European Market,* Dec. 6, 1989, pp. 455-56; and Lucy Kellaway, "Changes to Social Charter Anger MEPs," *Financial Times,* Nov. 22, 1989.
" Ibid.
" See Initial Report, p. 1-14 and ftnt. 102.

displacement; worker mobility; education and training occupational safety and health; and social security.[90] In other labor relation areas more traditionally left to local legislation or collective bargaining, U.S. industry urges the EC Commission to respect the principle of subsidiarity.[91]

In this regard, U.S. industry, both nationally and abroad, has actively sought labor market flexibility to account for regional and sectoral diversities. Topics such as managerial decisionmaking, wage levels, and working conditions are viewed as unsuitable for cross-border regulation. Rather, in industry's view, these matters should remain decentralized.

Regarding the concept of an EC-wide union, it should be noted that, in the United States itself, there has been a distinct move away from national, industrywide bargaining to plantwide bargaining.[92] Given the preference among U.S. companies for collective bargaining on a unit basis, U.S. industry may well view EC-wide collective bargaining for its European facilities as a business obstacle.

As with European industry, the main social dimension concern for U.S. business is the worker participation issue. U.S. companies have actively campaigned against any type of EC-mandated codetermination. The U.S. companies are especially worried that a codetermination directive will have extraterritorial effect by requiring employee participation even in corporate decisions made by corporations headquartered outside the EC.

In 1982, several U.S. industry organizations responded to the proposed Vredeling directive by forming a group to present unified views to the EC Commission on matters of common concern to the business community. That group, the United States Industry Coordinating Group (USICG), coordinates the activities of five major U.S. business organizations regarding the EC.[93] The Employment Project of the USICG, headed by officers of several U.S. comorations, has since engaged in ongoing informal discussions with members of EC Commission staff on employment issues. Through these discussions, the U.S. industry representatives have expressed their opposition to centralized imposition of labor relations measures, such as codetermination. A USICG representative has summed up the group's aim as follows:

> *Throughout the series of dialogues, the main focus has been on U.S. in business' sucmsNly adapting to nge and creating jobs. The t&m.a. that the USICG stressed are fundamental to the U.S. story and, it washoped, would spur similar policies* in *the E.C.: entrepreneurship and risk-taking, encouraging small and medium sized enterprises, promoting local, plant-level initiatives and problem solving, and the negative impact of social regulation.*[94]

Impact on Investment Decisions of U.S. Companies

As discussed above in the background section, one of labor's major concerns is that, without uniform labor requirements, companies will engage in "social dumping" by setting *up* operations in the Southern EC countries where organized labor is weak and wages are low. There has been some evidence of businesses, U.S. and otherwise, setting up operations in EC countries with weak unions and low wages and benefits. This trend has been particularly apparent within the automobile industry, with several companies opening new plants in Spain.[98]

Nonetheless, there is a general consensus that labor costs are usually only one factor which companies take into account in making investment decisions. Other factors—such as worker productivity, housing costs, quality of life, and the nation's infrastructure—play an equally important role in location decisions.[98] Moreover, companies are sensitive to the likelihood that industrialization of an area will force wages up as the demand for labor increases.

The limited impact that labor costs have on location decisions is borne out by the current corporate distribution in the EC. After the United Kingdom, West Germany, despite its strong unions and wages, attracts more U.S. investment than any EC country.[97] West German facilities have achieved high worker productivity and good investment return.[98]

Relatedly, some U.S. companies have addressed the question of whether developments in the EC social dimension area will influence their decisions to locate in, or remain in, the EC at all. A Dow Chemical spokesman stated that, although the company has kept abreast of developments regarding the Social Charter, approval of the Charter will not alter the company's overseas investment strategy.[99] For companies first considering entry into the EC market, however, the costs of complying with mandated labor rigidities could discourage investment

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" Glade remarks and USITC staff conversation with industry representative and a representative of the National Association of Manufacturers, Washington, DC, Nov. 9, 1989 [hereinafter "NAM conversation'].

" Glade remarks.

as NAM conversation.

" These five organizations are the U.S. Council for International Business; National Association of Manufacturers; the American Chamber of Commerce in Brusaels; the U.S. Chamber of Commerce; and the National Foreign Trade Council.

" Glade remarks.

" For example, Ford, Citroen, and Fiat. See Keith Rockwell 'Social Dimension Creates Uncertainty for Business,' *Journal of Connne‣ce,* Aug. 28, 1989 [hereinafter Rockwell article], and ILO conversation.

" Ibid., NAM conversation, and Dec. 12 conversation.

" Rockwell article.

" Peter Norman, "Currencies Plan 'Will Fail to Win Backing in EC," *Financial Times,* Nov. 30, 1989, citing the National Institute.

se Paula Green, "EC Social Plan Fails to Ruffle U.S. Feathers," *The Journal of Commerce, Oct.* 3, 1989, quoting Thayne Hansen, a spokesman for Dow Europe, a subsidiary off ow Chemical Co.

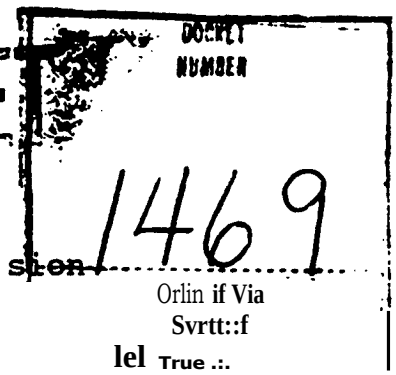
APPENDIXES

APPENDIX A
REQUEST LETTER

Congreog of tbe Iiintteb &tate%

Wilas'bington, IBC 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 B sen
Chairman
Committee on Finance

n osten owski
Chairman
Committee on Ways and Means

APPENDIX B
FEDERAL REGISTER NOTICE

§ 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 §f 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,

Secretory.

IFit Doc. 89-22212 Filed 9-19-89: 8:45 am/

1011.1.1/111 CODE 7020-0241

(332-2671

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. 332-287 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 332-287. 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 8 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 SUBMISSION& 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.

Secretory.

[FR Doc. 89-22210 Filed 9-19-89: 8:45 am)

BILLING COOS 7020-0241

New Steel Rails From Canada (Final); Determinations

On the basis of the record' 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

---

' The record is defined In I 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)).

* Chairman Brunsdale. Vice Chairman Can. and Commissioner Lodwick dissenting.

APPENDIX C
LIST OF EC 92 LismATIvEs ADDRESSED IN THIS INVESTIGATION

Key to Abbreviations and Symbols Used in Appendix C

EC initiative:

Dir = Directive (binding on member states as to the result to be achieved and requires national implementing measures)

Rec = Recommendation (a nonbinding request to member states or individuals)

Dec = Decision (binding on and applicable to member states or persons addressed and generally requires no national implementing measures)

Reg = Regulation (binding and directly applicable throughout the EC without any national implementing measures)

- **Initiative listed in *Fourth Progress Report of the Commission to the Council and the European Parliament Conccrmng the Implementation of the Commission's White Paper on the Completion of the Internal Market. Certain non-White Paper measures are being considered because of their importance in a single EC market.***

► **Initiative considered in preparation of this follow-up report.**

Initiative to be considered in preparation of second follow-up report most other initiatives in appendix were *initially* considered in original report.

Member -state implementation:

B [111] **Belgium**	**FR = France**		**Luxembourg**
G = West Germany	**GR = Greece**	NL	**Netherlands**
DK [lo] **Denmark**	**IT = Italy**		**Portugal**
S = Spain	**IR = Ireland**	**UK =**	**United Kingdom**

I **Initiative implemented by member state into national law.**

N **Initiative not implemented by member state.**

F = EC Commission infringement proceeding under way for failure to Implement

D = Derogation (e.g., exemption from implementation deadline).

= National implementation measure is not required or applicable.

Note. — The implementation status of adopted initiatives was obtained mostly from EC reports, ***Implementation of the Legal Acts Required to Build the Single Market,*** Com(89)422, Sept. 7, 1989; ***Application of Instruments for Completing the Internal Market,*** Sec (89) 2098, Dec. 4,1989; and ***Sixth Annual Report to European Parliament on Commission Monitoring of the Application of Community Law— 1988,*** Annex B, Com(89)411, ***Of*** No. C 330, Dec. 30, 1989. Not all adopted initiatives are listed in the 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, orefforts by EC and internal - institutions to achieve implementation may be ongoing.

Potentially all

Potentially all

Potentially all

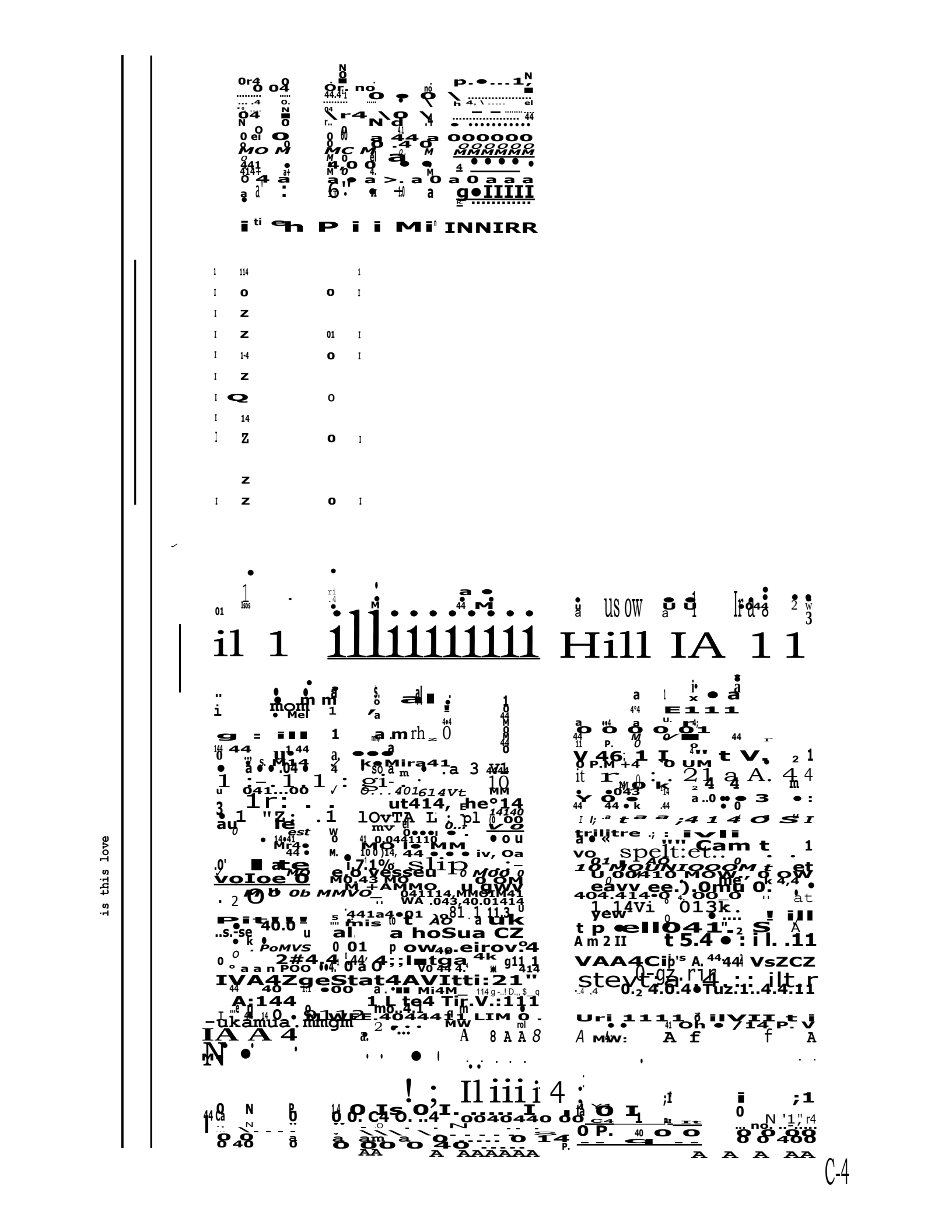
Potentially all

Insurance

Securities

mentation 7/1/90.

mentation1/1/90.



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in this investigation—Continued

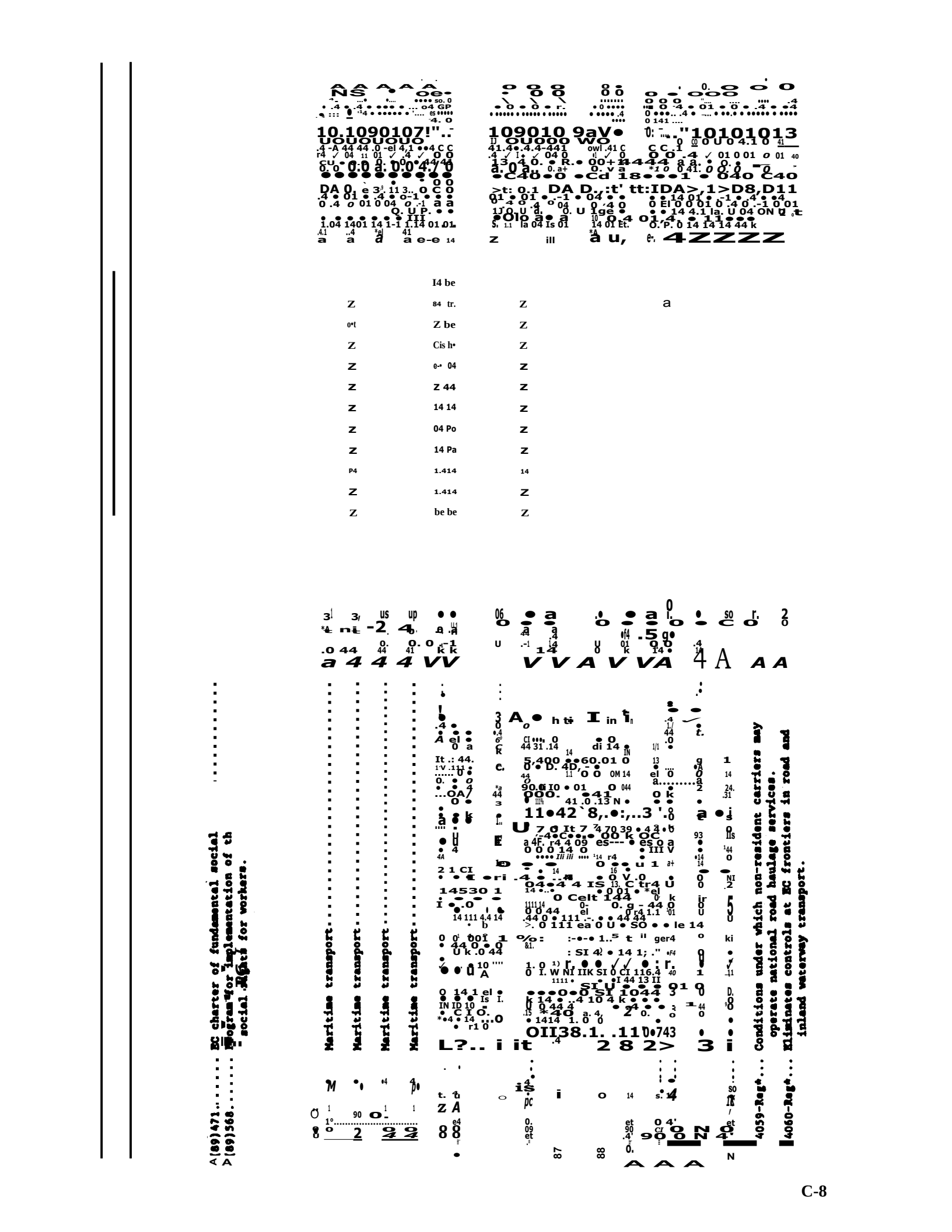
Implementation 10/1/$5.

Potentially all

Weapons
Motor vehicles
Potentially all

0 4 CI 1.	Increases the exemption from turnover tax and excise duty on imports in intra-EC travel (as amended by 88/664-Dir).	Potentially all	I	I	D	I	I	D	N	D	I	I	I	I	Implementation, as amended, 7/1/89.
85/368-Dece....	Comparability of vocational training qualifications...	Potentially all	-	-	-	-	-	-	-	-	-	-	-	-	Non-implementation justified as factors noted in Dir do not yet exist.
[illegible]	[illegible]	[illegible]	I	I	I	N	I	I	F	I	I	I	I	I	Implementation 10/1/87.
[illegible]	[illegible]	[illegible]	I	I	I	N	I	I	F	I	F	I	I	I	Implementation 10/1/S7.
			-	-	-	-	-	-	-	-	-	-	-	-	
			-	-	-	-	-	-	-	-	-	-	-	-	
[illegible]	[illegible]	[illegible]	I	F	I	I	I	I	F	I	-	I	I	I	[illegible]
									D	D				D	
[illegible]	[illegible]	[illegible]													Applies as of1/13/$6.

Measures to protect workers and work activities.	Potentially all	Implementation 1/1/90.		
Improvement of information and health at work.	Potentially all	Adopted 2/24/68.		
Measures to encourage health of workers at work.	Potentially all	Implementation 12/31/92.		
Minimum safety and health	Potentially all	**Implementation 12/31/92. Derogation to 12/31/94.**		
Funding begins 1/1/91. Program began in 1988.	Potentially all	**Implementation 12/31/92.**		
	Potentially all	Implementation 12/31/92.		



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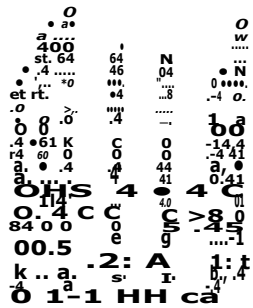
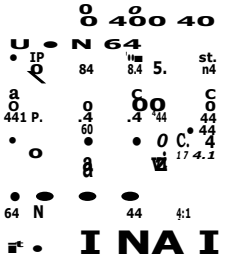
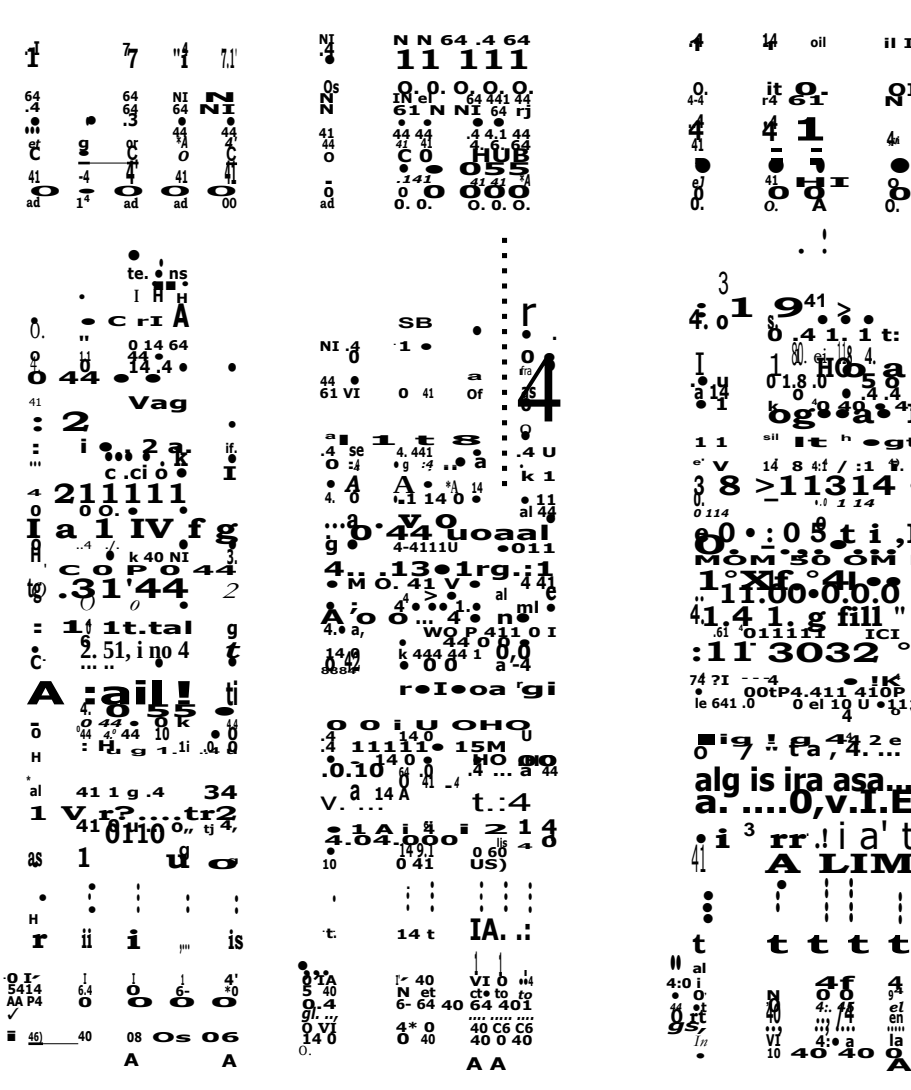
Z	1.414	Z	
Z	be be	Z	

in this investigation—Continued

ncept of public service in
and inland waterway.
high speed trains.....
types of combined carriage
states.
e international carriage of
quota for 1990-92).







Tax systems--Continued

Initiative	Description	Relevant U.S. Sector/Industry	Member state implementation B G DK S FR GR IT IR L NL P UK	Comment

... Liberalization of certain products subj
national quantitative restrictions.

Propose
√(89)xxx ... A single EC motor-vehicle market..... Motor vehicles

Enacted:
87/54-Dir.
89/104-Dir.

Implementation
Implementation
Derogation to

Implementation da
yet fixed.
Implementation da
yet fixed.
Implementation 1/

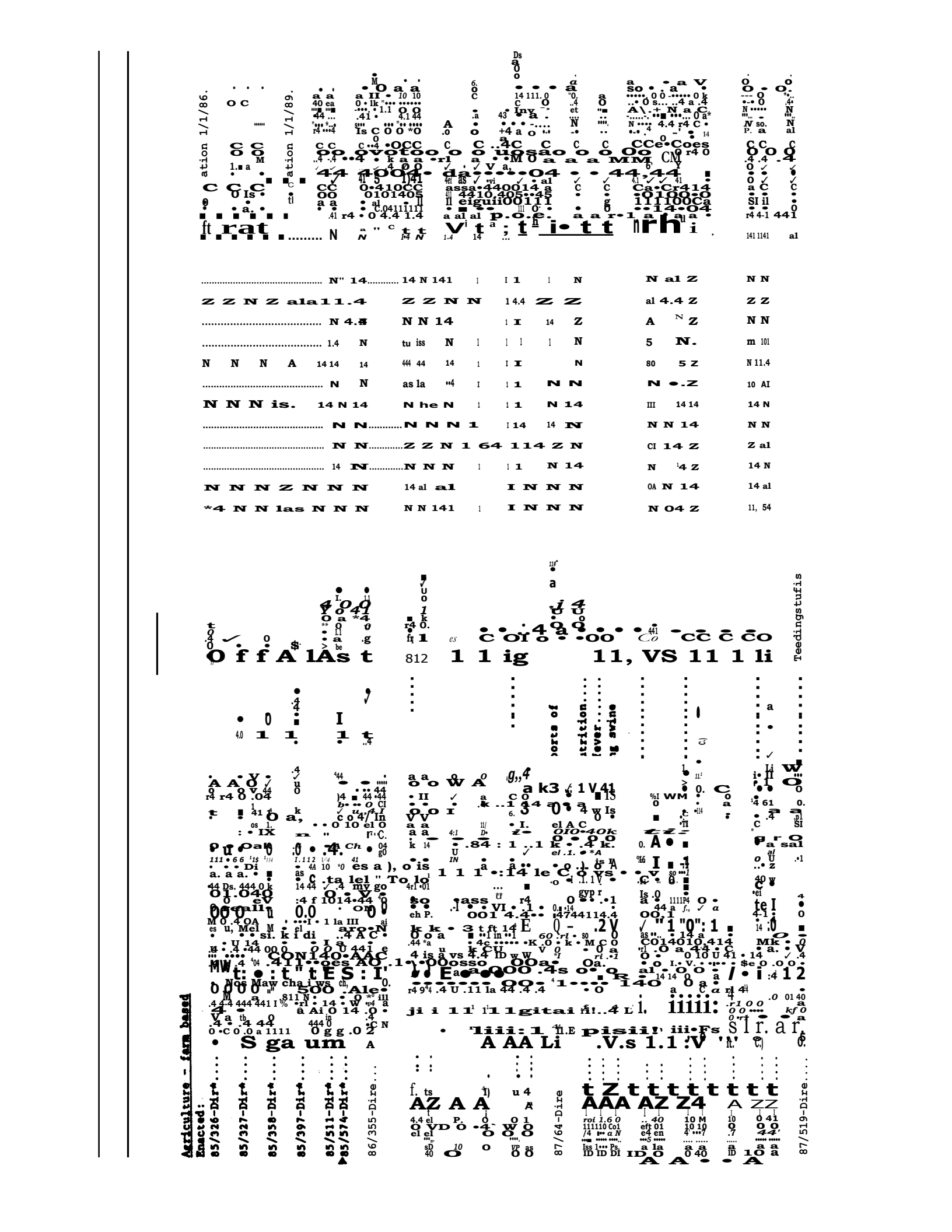
Agriculture

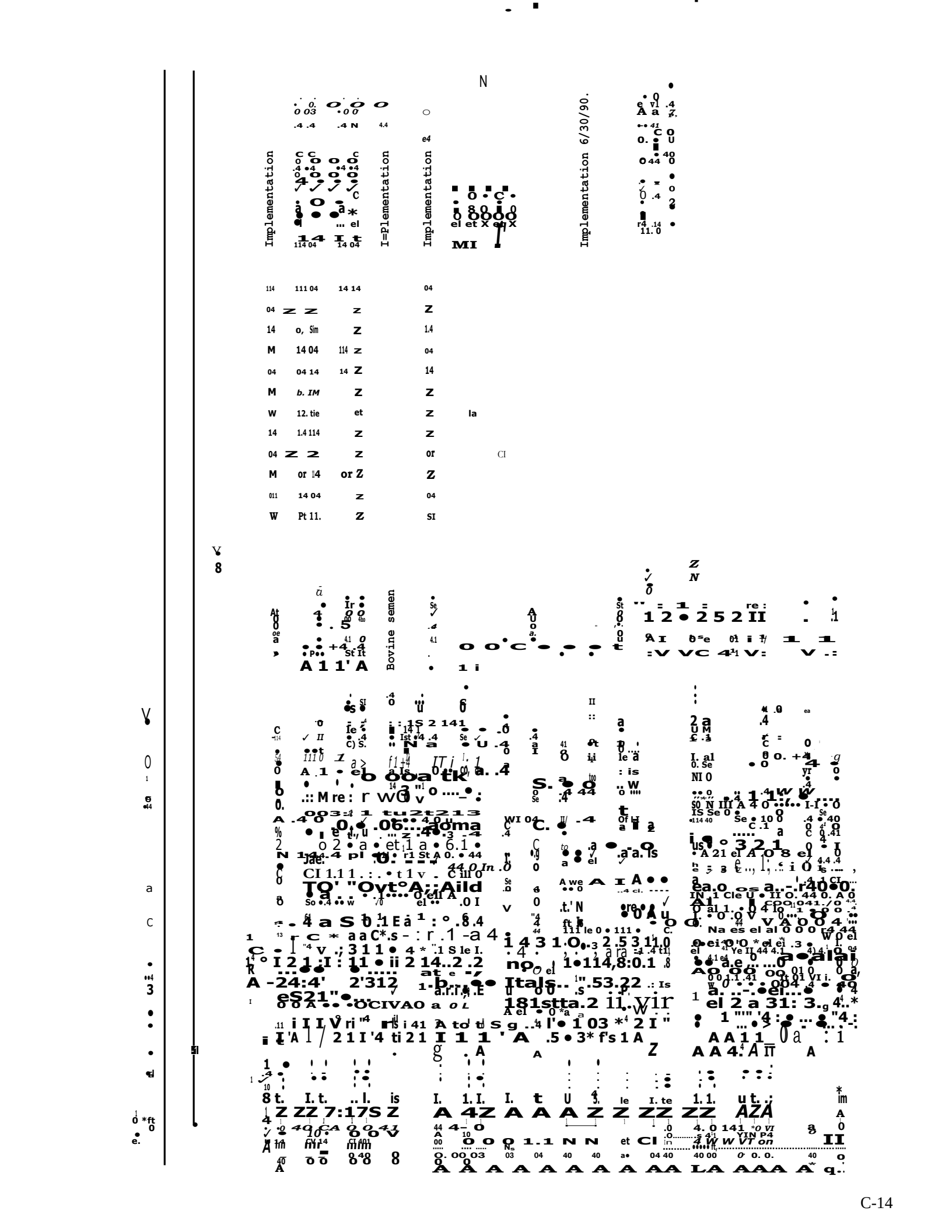
Swine

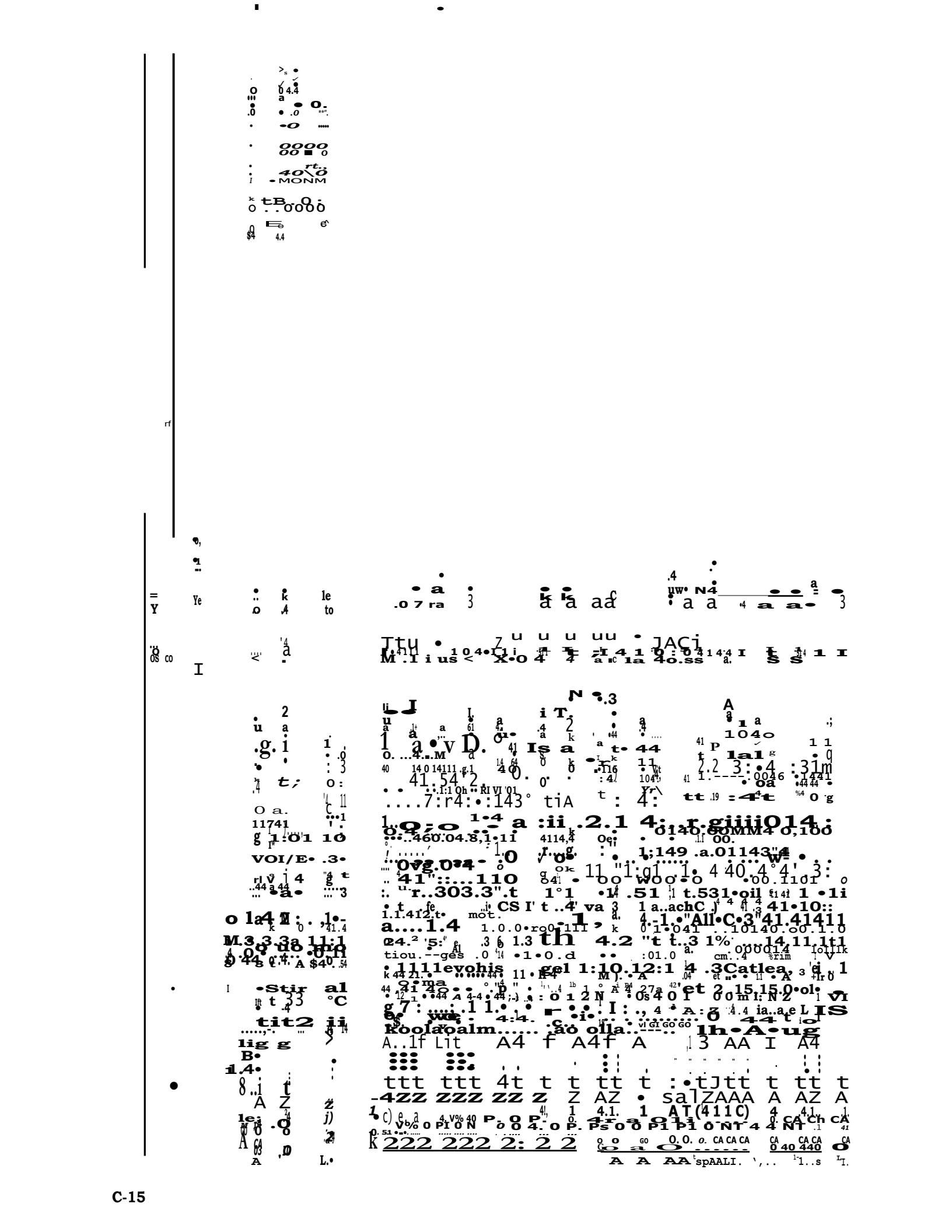
Swine

Health inspection of poultry-production plants .....

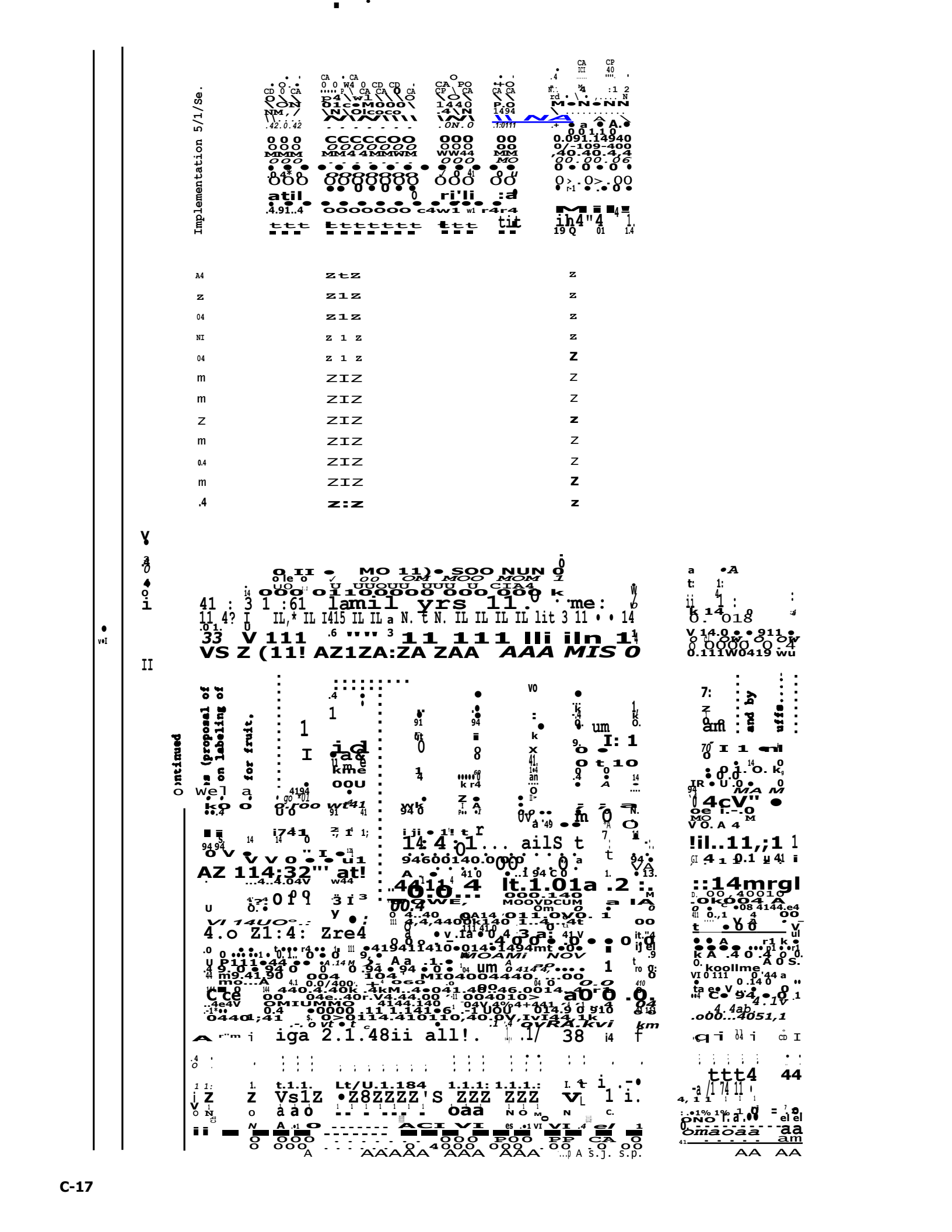
Medical certification of persons employed in the handling of fresh meat.

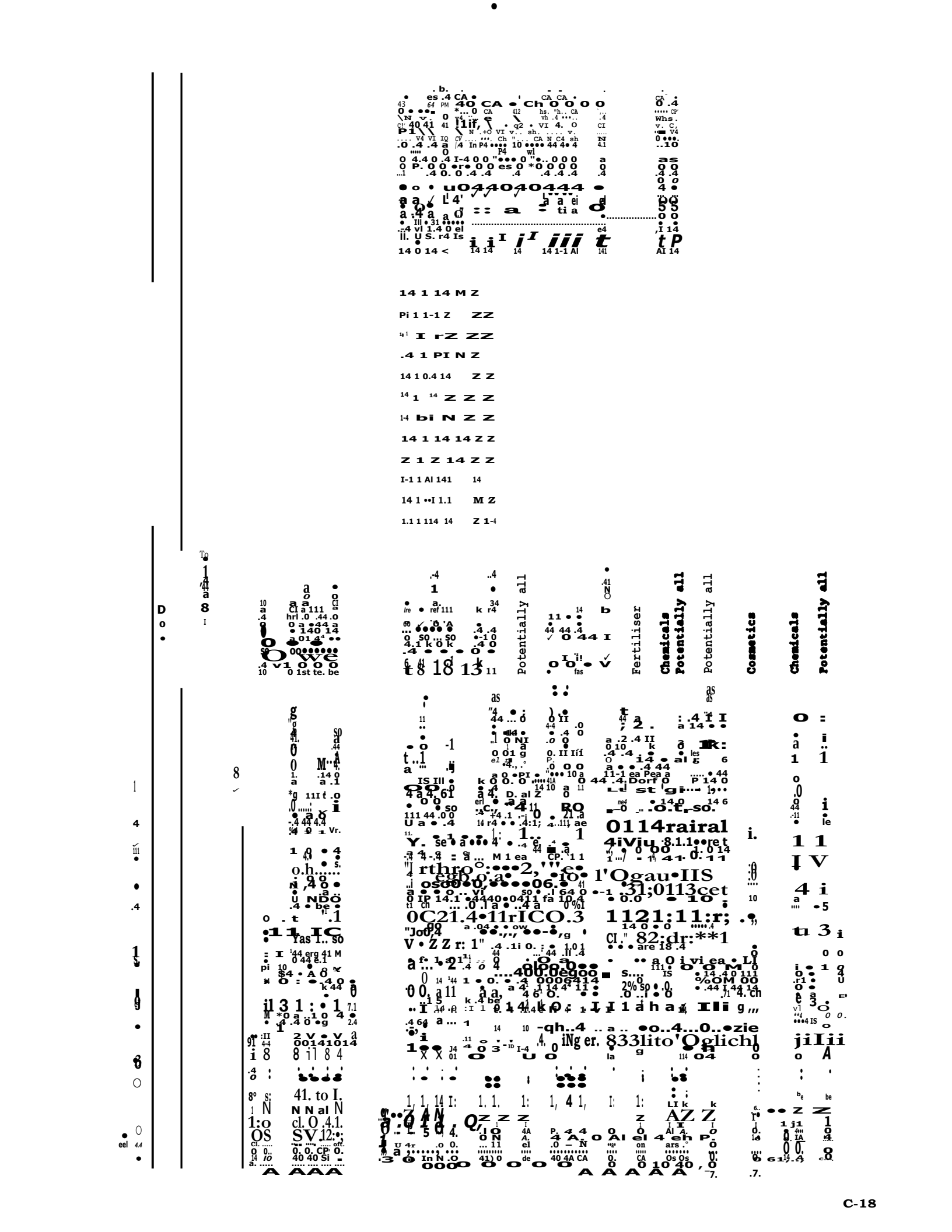

Agriculture - farm based
Enacted:
85/326-Dir
85/327-Dir
85/338-Dir
85/397-Dir
85/511-Dir
85/374-Dir
86/355-Dire
87/64-Dire
87/519-Dire
Teedingstufis


Implementation
I=Plementation
Implementation
Implementation 6/30/90.
Bovine semen



Food products
Enacted:
85/572-Dir.
85/573-Dir.
85/585-Dir.
85/591-Dir.
86/102-Dir.





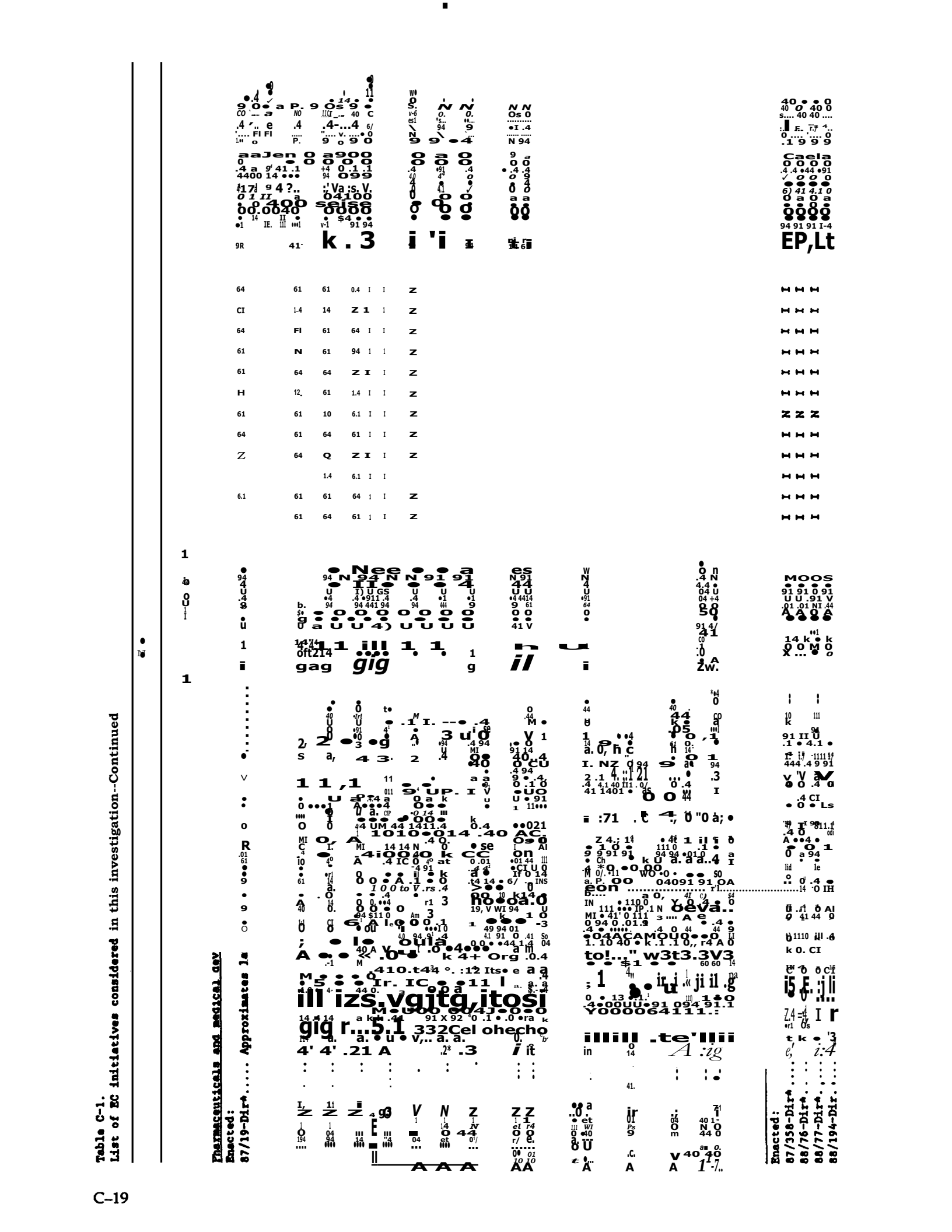
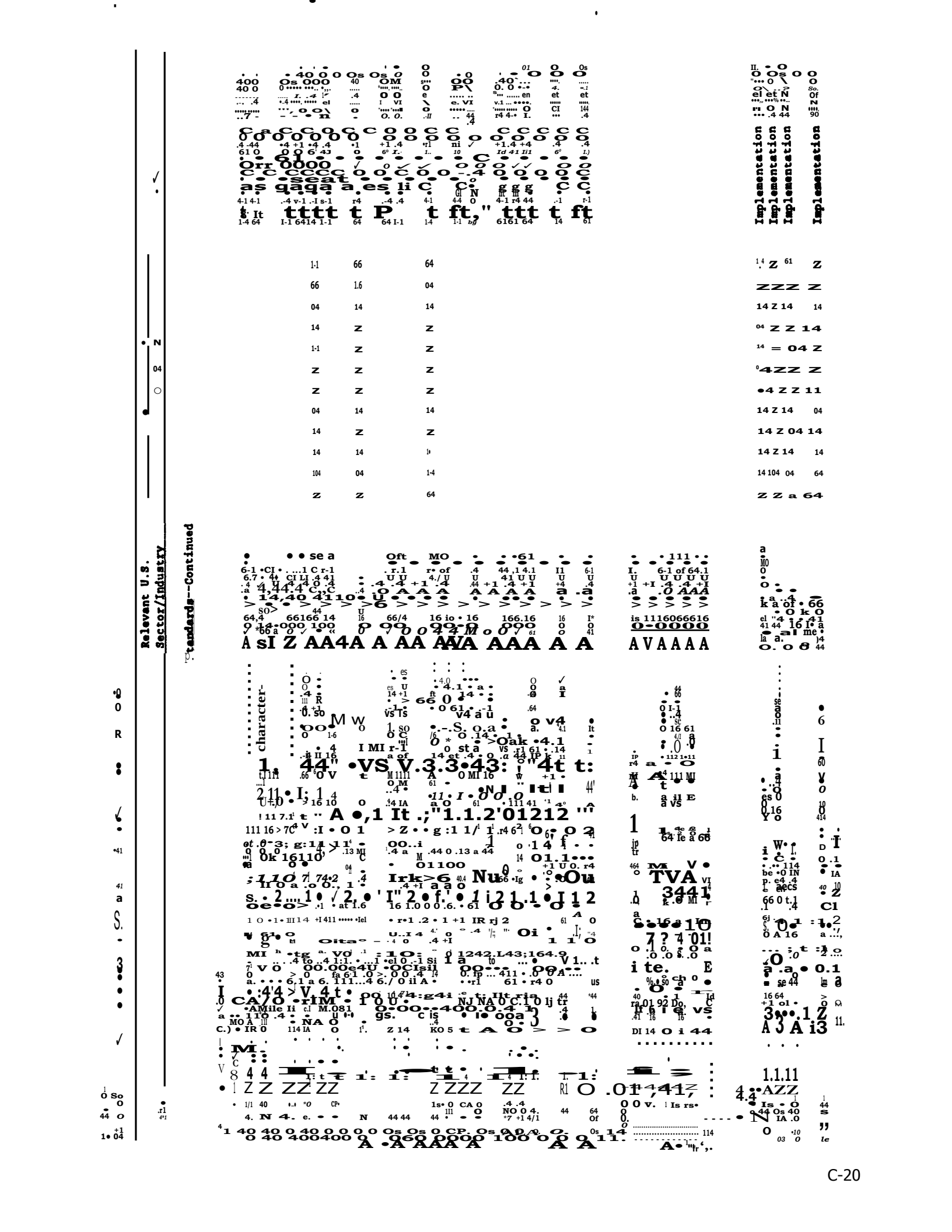
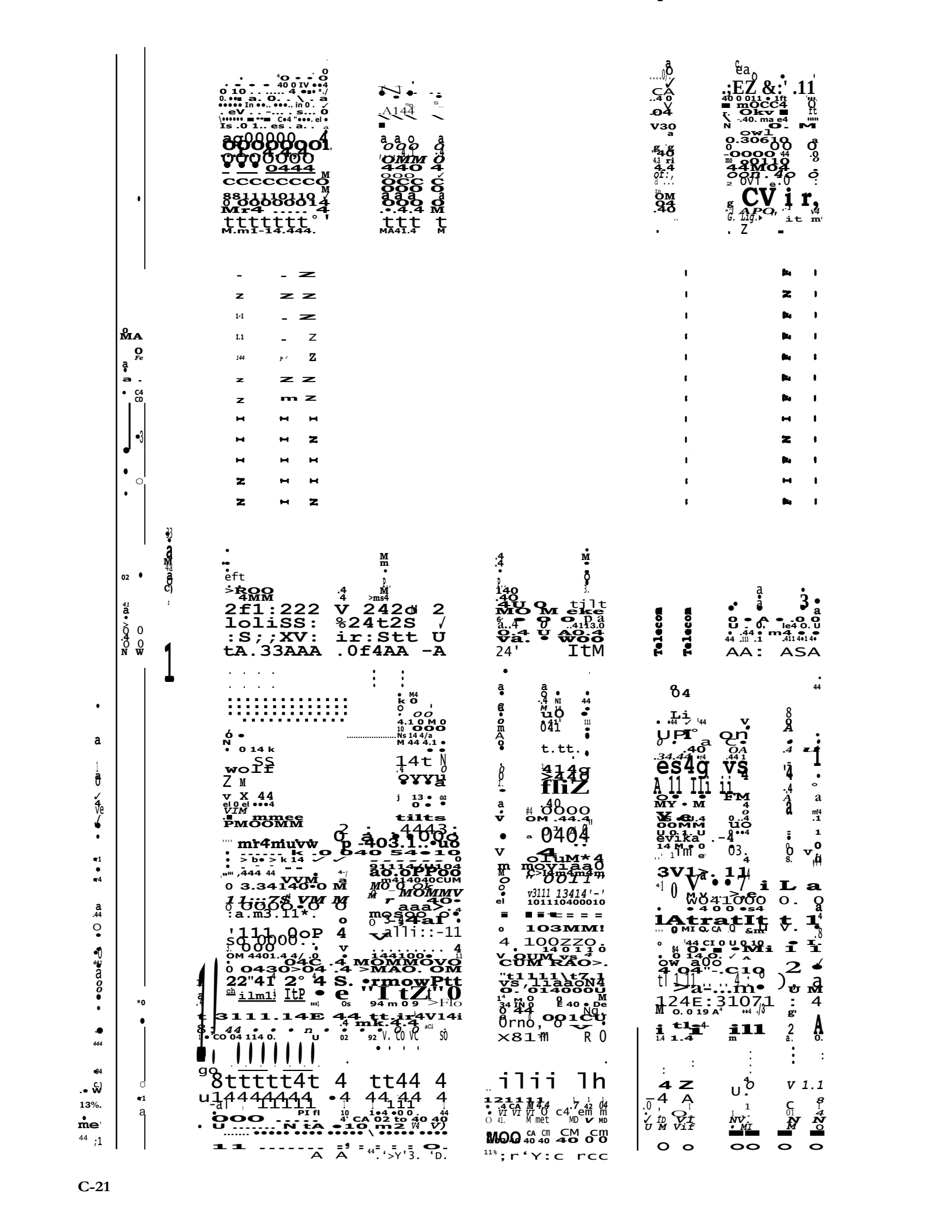


Table C-1.
List of EC initiatives considered in this investigation--Continued

Pharmaceuticals and medical dev
Enacted:
87/19-Dir
Enacted:
87/350-Dir
88/76-Dir
88/77-Dir
88/194-Dir


Implementation
Implementation
Implementation
Implementation



Telecommunications--Continued:

Enacted--Continued:

▶89/336-Dir.... Electromagn.... Broadcasting

▶89/552-Dir.... Pursuit of .... Broadcasting

Implementation 1/1/92.

Proposed:

▶(88)588-De.... Potentially all

▶(89)166-Re.... Potentially all

▶(89)166-Di....

▶(89)289-Dir....

P(69)325-Dir.... Potentially all

■(69)452-Dec.... Potentially all

Implementation 1/1/87.

Implementation 12/1/90.

Implementation 1/10/91.

Environmen

Enacted:

▶86/279-Dir....

▶89/369-Dir....

p89/427-Dir Potentially all

Proposed:

▶(89)7-Dir.... carrying waste..... European ion Network.

Implementation 6/27/91.

Approximates laws, regulations and administrative provisions on construction products.

A

Table C-1.
List of EC initiatives considered in this investigation--Continued

			Member implementation												
			B	G	DK	FR	GR	IT	IR	L	NL	P	UK		
	Standardized information in existing hotels														
Proposed:															
▶(89)348-Dir....	Package travel, including package holidays and tours..	Tourism													
Generic															
Enacted:															
85/374-Dir.....	Liability for defective products	Potentially all													
87/357-Dir*.															
88/182-Dir*.															
8 /314-Dir*.		Potentially all												Implementation	
Proposed:															
▶(89)162-Dir.															
▶(89)209-Dec.															

APPENDIX D
INDEX OF INDUSTRY/COMMODITY ANALYSES CONTAINED IN REPORT CHAPTERS 4 THROUGH 12

Note. — The industries listed in this index are those industries found to be potentially the most significantly affected by each of the various categories of EC 1992 directives. This listing is not a comprehensive listing of all U.S. industries.

INDEX OF INDUSTRY/COMMODITY ANALYSES

APPENDIX E
TRADE TABLES

CONTENTS

Page

Tables

Table E-1

All commodities: S1TC-based U.S. exports to the European Community and rest of world. by leading markets, 1985-89

(In thousands of dollars)

Market	*1985*	*1986*	*1987*	*1988*	*1989*
European Community:					
United Kingdom	10,657.191	10,579,464	13,140,470	17,255.779	19.642.736
West Germany	8,560.208	9,782.804	10,921,061	13,207,099	16.069,190
France	5.810.187	6,877,322	7,504.518	9.572,988	10,919.097
Netherlands	7.057.765	7.580.579	7.868,764	9.504,410	10.876,043
Belgium and Luxembourg	4.676.316	5.197.739	5,942,610	7,131,083	8.376.121
Italy	' 4.433,936	4.667,600	5,305,449	6.457,502	6.928.581
Spain	2.468.438	2,536,657	3,050,673	3.931.387	4.702,732
Ireland	1.324.872	1.409,114	1,752,008	2.104,344	2.389.077
Denmark	683.429	727.013	831.511	877.337	1.016,577
Portugal	648,338	572.282	569.497	718.383	907.894
Greece	392.066	321,260	343,517	545.312	696.662
Total	46.712.746	50,251.834	57.230,077	71,305,625	82,524.708
Rest of world:					
Canada	51,064,947	53.165,113	57,001.048	65,910,336	74.977.469
Japan	21.602.930	22.890,847	26.903,632	36.041,575	42.764,273
Mexico	13.084.252	11.924,851	14,045,175	19,853,345	24.117.255
South Korea	5,666,503	5,795,704	7.486,064	10.381.436	13.207,742
Taiwan	4,337,499	5,057,124	7,019.239	11.599.286	10.974.696
Australia	5.057 .846	5 ,150 .286	5.329,630	6.671 ,722	8.130 ,170
Singapore	3.339.825	3.240.763	3.865.229	5.423,053	7,001,752
Hong Kong	2,614.817	2.863.408	3,746,011	5.356.076	5.892,622
China	3,796.200	3.076.023	3.459,595	5.004,317	5.775,478
Brazil	3,058,782	3,746.982	3.889,272	4.106,260	4.636,110
Soviet Union	2.421,948	1.246,831	1.477,399	2.762,754	4,262,336
Switzerland	1,960,211	2.049,020	2.479,298	3.276.890	4.119.530
Saudi Arabia	3.886.687	3.227.443	3.010,754	3,534,532	3.495,164
Sweden	1,847,532	1.772,604	1.770,747	2,542.386	2,998.921
Venezuela	3.093,805	3.062,210	3.476,057	4.429,959	2.994,651
All other	39,414,738	38,033.487	41,669.494	49.813,918	51.560,070
Total	166.248,529	166.302,693	186.628.641	239.040.700	266.908.239
Grand total	212.961.275	216,554,527	243,858,718	310,346,325	349.432,947

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

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

Table E-2

All commodities: SITC-based U.S. Imports for consumption from the European Community and rest of world, by leading sources, 1985-89

(In thousands of dollars)

Source	*1985*	*1986*	*1987*	*1988*	*1989*
European Community:					
West Germany	20.330,266	25,300.982	27,053.535	26,491.655	24.774,389
United Kingdom	14,816.391	15,307,926	16.930,902	17,752.304	17,924,428
France	9,336,941	9,961,897	10,501,843	11,910,300	12,666,411
Italy	9,632,277	10.505,016	10.819.220	11,459,798	11,785,957
Netherlands	4,067,686	4,057,041	3,941,770	4,532.008	4,734.241
Belgium and Luxembourg	3.375,010	3,970,234	4,135,233	4.492,624	4,541,557
Spain	2.503.035	2,670,767	2,792,105	3.145,993	3.253,897
Ireland	893,588	1,000.327	1,097,547	1,362,264	1,558,928
Denmark	1,656.561	1,757,624	1,777,546	1.665.879	1,526,625
Portugal	543,454	550,649	660,352	691,668	786,637
Greece	397.574	391,874	434,294	531,712	472,283
Total	67,552,783	75.474.337	80,144,348	84,036,204	84,025,352
Rest of world:					
Japan	68.241,856	81.985,873	84,008,499	89.110,486	91,841,766
Canada	68.883,572	68,146,979	70,850,625	80,678,621	87,987,651
Mexico	18,938,246	17,196,360	19,765.789	22,617,177	26,556,570
Taiwan	16,354,353	19.770,612	24.575,682	24.710.730	24,203,285
South Korea	9,986,363	12.682,819	16,888,153	20.071,989	19.566.725
China	3,863,385	4,671,469	6,243,877	8,412,930	11,859,172
Hong Kong	8,393,281	8.865,395	9.832.528	10,184.949	9,668,914
Singapore	4.241,779	4.713,065	6.178.365	7,958,537	8,886,073
Brazil	7,545,259	6,682,597	7,612,206	9,058.916	8,483,765
Saudi Arabia	1.901,389	3.604,469	4,412,861	5,549.315	. 7.081,853
Venezuela	6,444,598	4.982.012	5,374.366	5,044,996	6,492.623
Nigeria	3,001,892	2,521,601	3,573.685	3,284,465	5.228,107
Sweden	4,118,486	4,408.841	4,742,026	4,960,256	4.860,183
Switzerland	3.427,567	5,180,543	4,183.379	4.553,135	4,669,555
Malaysia	2,296,704	2,406,792	2,884,574	3,697,181	4.668,791
All other	48,361,629	45,362.830	50.795.043	53.210.301	62,121,636
Total	276.000,367	293,182.257	321,921,654	353,103.980	383.986,669
Grand total	343,553,150	368,656,594	402.066.002	437,140,184	468,012,021

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

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

Table E-3

SITC divisions providing the largest impact on the U.S. trade balance with the EC. 1989

(In millions of dollars)

SITC division	*U.S. imports*	*U.S. exports*	*Balance*
75	2.275	10.314	8,039
79	3.514	9.535	6.021
87	1,933	3,911	1.978
22	4	1,789	1.785
72	5,728	3,067	(2.661)
78	9.487	2,087	(7,400)

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

Table E-4

SITC revision 3, division 79-Transport equipment, n.e.s.: SITC-based U.S. exports to the European Community and rest of world, by leading markets, 1985-89

(In thousands of dollars)

Market	*1985*	*1986*	*1987*	*1988*	*1989*
European Community:					
United Kingdom	1.202.374	862.447	1,694,631	2,081.236	2,622.113
West Germany	798,231	1,028,584	979,537	1,099.251	2.292,975
Netherlands	144,471	497,972	471.211	557,274	1,057,433
Spain	100.465	173,073	403,903	649,959	1.054,632
France	227,205	634,619	395,026	787.826	882,738
Italy	658,704	449,695	417,166	534,892	567,699
Belgium and Luxembourg	129,162	283,241	329,733	300,665	469,381
Portugal	30,848	69.653	35.825	81,528	201,998
Denmark	102,680	116,634	172.639	123,490	183,245
Ireland	19,766	21,538	97,456	24,171	145,003
Greece	22,805	16.761	21.217	41.542	57,909
Total	3.436,711	4,154.217	5.018.345	6,281,835	9.535,127
Rest of world:					
Japan	1.500,716	1.861,335	1.926.049	2,212.560	2.140.507
Canada	720.892	798,079	842,712	1.463,519	1,668.798
South Korea	495,454	271,791	315,557	790,862	1,203,341
Australia	935,054	1.221,050	881,477	1.040,384	1.136,241
Singapore	553.505	469.388	344,417	412,295	889,209
Brazil	356,526	354.625	780.388	806,130	671,461
Sweden	383,517	331,041	214,846	535.810	663,193
China	718,780	463.591	501.185	340,191	539.977
Mexico	305,658	178,544	196,749	257.432	406.093
Egypt	127,489	91.153	112,354	424.399	366,412
Hong Kong	129.026	238,247	336.297	151,949	357.022
Bahrain	9.480	7,511	9.101	151,607	338.669
Israel	264.021	233,550	409,429	325,051	325,457
Switzerland	89.038	170,619	233.842	230.673	310,634
Saudi Arabia	687,786	663.927	183,316	236,765	242,600
AN other	4.409.204	4,484,313	5.328,582	5.405,962	4.243.102
Total	11.686,145	11,838,760	12,616,298	14,785.595	15.502,716
Grand total	15,122,856	15,992.977	17,634,643	21,067,430	25.037,842

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

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

Table E-5

SITC revision 3, division 75—Office machines and automatic data proccessing equipment: SITC-based U.S. exports to the European Community and rest of world, by leading markets, 1985-89

(In thousands of dollars)

Market	*1985*	*1986*	*1987*	*1988*	*1989*
European Community:					
United Kingdom	1,825,360	1.863.070	2,276,359	3.027.759	3,017,109
West Germany	1,397,780	1,564,842	1.849.515	2.217,736	2.338,748
Netherlands	816,761	872,720	984,341	1,427,004	1,479,547
France	912,522	949.536	1,075,887	1.331,281	1,273.634
Italy	419.078	487,969	689,553	892,568	683,272
Ireland	531,589	584.724	674,337	644,377	600,838
Belgium and Luxembourg	275,616	344,685	390,124	536,628	484,717
Spain	150.344	165.716	231.137	236.072	277,674
Denmark	74,725	74,282	102,328	89,574	88,591
Portugal	34,164	45.948	43.531	55.567	58,551
Greece	13,361	13,700	13,875	16,449	11,704
Total	6,451,299	6,967.192	8.330,988	10,475.015	10,314.384
Rest of world:					
Japan	1.305,634	1.375.977	1,701,991	2,420.535	3.001.178
Canada	2,348,878	2.122.109	2.835,039	2.771,346	2,572,258
Australia	602,370	636,249	735,867	864.659	977.832
Singapore	432.228	478.639	735.050	1,170.985	921,472
Mexico	469,875	419,430	504,220	678.389	690,799
South Korea	206,288	249.872	331,404	505,544	624.019
Taiwan	228.800	267.997	378,800	456.807	434.563
Hong Kong	354.154	283,814	339.115	465.961	412.779
Brazil	267,684	292.820	252,956	340.762	366,472
Switzerland	246,558	222.023	291.611	330,425	322.671
Sweden	198,356	207.459	236.277	276.903	318,129
Israel	176,672	162,808	149,261	157.131	182,305
China	188.002	239.512	184,758	196.882	146,953
Venezuela	116,184	149,623	156,401	260.417	144.801
South Africa	124.342	125,318	128,663	174.829	129.720
M other	1,193,143	1,219,328	1.334,222	1.519,858	1.623.486
Total	8.459,172	8.452,976	10.295,638	12.591.432	12,869.437
Grand total	14.910.471	15,420,168	18.626,626	23,066.447	23.183.820

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

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

Table E-6

SITC revision 3, division 71-Power generating machinery and equipment: SITC-based U.S. exports to the European Community and rest of world, by leading markets, 1985-89

(In thousands of dollars)

Market	*1985*	*1986*	*1987*	*1988*	*1989*
European Community:					
France	832,424	888,481	1.020.505	1.327.203	1,916,856
United Kingdom	507.708	562,157	744.664	1,063.784	1.157,769
West Germany	298,005	371,591	450.163	514,536	659,245
Netherlands	119,653	173,407	199,732	283.193	443,476
Belgium and Luxembourg	314,733	276,502	277,998	367.571	435,994
Italy	123.113	144,105	114.668	177.761	202,820
Spain	73,534	105,233	111.554	114.462	154.848
Ireland	34,920	53.581	51.272	97.104	93,638
Denmark	16,971	13.227	17.710	30,308	32.895
Greece	7,873	7,025	9.118	12.087	23,105
Portugal	6,411	13,832	7,403	12,357	15.994
Total	2,335.346	2.609,141	3.004.787	4,000,366	5,136.640
Rest of world:					
Canada	2.668.802	2.374,460	2.594.634	3.008,009	2,914.948
Mexico	625.247	646.896	607,182	809.591	852.409
Japan	422.063	483.187	532,497	701.194	778.828
Taiwan	260.515	139,955	159.635	239.556	522.575
Singapore	172,510	165.459	271,090	263.832	465,922
Australia	262.418	240.208	340,254	386,844	393.218
Brazil	127.638	176,239	190.116	293.386	253.597
South Korea	132.735	178.583	113.878	166.111	219.155
Sweden	120,096	- 120.960	142.769	169.991	'203.649
China	86,890	98,790	128,439	141,649	200.189
Israel	106,106	111,917	107,618	197.295	174,868
Switzerland	74,624	98.951	128.232	95.523	157.199
Saudi Arabia	200,558	139,107	159.759	168,738	137.544
Venezuela	172.885	169,507	200,641	245.107	122.976
Egypt	111.271	37.059	67,143	77.247	103.274
All other	1,282.375	1,212,796	1,269.514	1.640.334	1.528.950
Total	6,826,735	6,394,072	7,013,399	8,604,413	9.029.301
Grand total	9,162,081	9,003.213	10.018,186	12.604,779	14,165.942

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

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

Table E-7

SITC revision 3, division 77-Electrical machinery, apparatus and appliances: SITC-based U.S. exports to the European Community and rest of world, by leading markets, 1985-89

(In thousands of dollars)

Market	*1985*	*1986*	*1987*	*1988*	*1989*
European Community:					
United Kingdom	803.858	774,881	948,116	1.245.098	1.437,279
West Germany	609.342	616,802	691,063	865.102	1.133.525
France	354.209	389,143	464,317	646,165	725.240
Netherlands	212,610	236,034	255,971	315,662	437,386
Italy	147,383	184.037	231,874	97,401	436.498
Ireland	87.865	83.411	106,027	188.036	271,160
Spain	54,524	69.309	79.541	127.572	179.209
Belgium and Luxembourg	114.082	126.461	148.941	115,042	145,547
Denmark	27.579	33.475	31,019	38,012	48,153
Portugal	10,487	16.344	27.813	32,605	33.498
Greece	7,343	7,896	8,940	12.313	17.924
Total	2.429.281	2.537.793	2.993,621	3.983.007	4,865.420
Rest of world:					
Canada	1.866.274	1.902.100	2,435.307	2.995,733	3,751,800
Mexico	1,504,984	1.681,117	2,085.694	2,918,317	3.476,599
Japan	690,426	806.252	1.030,737	1.429.704	1.926,494
Malaysia	846.699	976,353	1,209,681	1.271.150	1.414.019
SkiciaPore	513,878	644.063	744,435	967,534	1.275.970
Taiwan	347.135	510,310	792,366	1,053,540	1,216,221
South Korea	567,726	624,119	753.495	981.315	1,088,396
Hong Kong	258,254	292,267	403.670	604.144	716,792
Philookups	466,672	464.472	532.228	543,509	589.917
Thailand	135.429	265.658	409.435	501,181	497.816
Austral*	152,782	150,796	163.821	229,504	362.478
Brazil	130.989	160.763	159.370	212.258	321,801
Israel	159.042	143,478	141.157	171.561	206,567
Sweden	103,887	93.879	103.846	139,463	190.976
Switzerland	122,647	142,249	134.993	156.982	190.128
Al other	1.214,552	1.175.534	1,223,704	1.558.891	1,829.532
Total	9,081.381	10,033,410	12.323,933	15,734,789	19,055,506
Grand total	11,510,662	12.571,203	15,317,554	19.717,796	23,920,927

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

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

Table E-8

SITC revision 3, division 89—Miscellaneous manufactured articles: SITC-based U.S. exports to the European Community and rest of world, by leading markets, 1985-89

(In thousands of dollars)

Market	1985	1986	1987	1988	1989
European Community:					
United Kingdom	521.586	545.927	698.889	1,005.405	1.318.290
West Germany	240.357	313,816	422.483	613,427	1.131.416
Netherlands	158,139	193.773	224,437	297,213	533,022
France	175.449	211,341	284,396	355,715	457,367
Italy	79,000	99.838	142.223	198.024	253.736
Belgium and Luxembourg	43,498	79,461	96,057	114,133	146,997
Spain	29,058	39.631	49,763	82.485	144.279
Greece	7,391	5,445	7.480	11,924	110.217
Ireland	50.879	46,939	52,454	88,198	98.615
Denmark	38,143	47.624	53.878	61.381	72,161
Portugal	3,434	3.748	6,796	9,203	30.747
Total	1,346,935	1,587.544	2.038,855	2.837,109	4.296,845
Rest of world:					
Canada	1,299,791	1.331.609	1.755,013	2,129.071	2.165,619
Japan	420.753	577.560	874,401	1.225,709	2.244,569
Mexico	316.493	335.134	437.985	696,413	925,527
Switumiand	189.740	193,862	248,444	390.133	587.505
Amaral'	232,671	253.090	275,722	374,391	486,186
Singapore	81.660	75,889	134,258	285.832	441,821
Taiwan	44.538	60,136	90,029	150,950	379,426
South Korea	60,375	67.004	96.674	162,105	317,951
Hong Kong	110,908	107.256	129.315	195.094	244.355
Egypt	12.709	12.179	15,044	18.402	211,405
Thailand	12,913	11,114	16.797	29,520	207.420
Israel	29,219	33.886	33.046	40,302	188.966
Sweden	42,360	58,547	79.947	111.943	173.490
Saudi Arabia	66,451	47,631	46,432	64,348	126.134
Austria	9,787	16.186	16,715	24.595	113.021
Al other	3,336.762	2,895,327	2.949,203	3.332.356	1,288,722
Total	6,267,126	6.076,408	7,199.026	9.231,163	10,101.917
Grand total	7.614.061	7,664,952	9.237,881	12.068.272	14,398,782

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

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

Tab,* E-9

SITC revision 3. division 78—Road vehicles (Including air-cushion vehicles): SITC-based U.S. Imports for consumption from the European Community and rest of world, by leading sources, 1985-89

(In thousands of dollars)

Source	*1985*	*1986*	*1987*	*1988*	1989
European Community:					
West Germany	7.490.980	9.315.431	10.111,179	7.760,498	6,093,691
United Kingdom	958,929	1,118,401	1.581.113	1,401,026	1,343,062
Italy	379.793	439.512	559.161	540,861	688.406
France	829.613	781,373	942.415	884,208	639.098
Belgium and Luxembourg	193,978	211.347	365,967	380.227	531.008
Spain	67.555	85.288	108.075	149,591	170,016
Nettie'lands	22.438	18.617	20.665	29,048	29,201
Portugal	5.060	8,874	8,565	7,130	10.019
Denmark	4.342	4.952	6,220	9.304	7,553
Ireland	8.943	4,704	5,120	5.434	3,825
Greece	551	295	278	2.448	43
Total	9.962.182	11.988.791	13,708,758	11,169,775	9,486,778
Rest of world:					
Japan	23.776.613	32.187.673	31,957,375	30,715,822	30.192.629
Canada	20,773,827	20,871,434	20,499,514	24.789.139	25,724,064
Mexico	944,775	1,402.500	2,157.520	2,711,489	2.888,233
South Korea	69.320	880,383	2.209.758	2,702,200	1,781,858
Sweden	1.723,133	1,900.515	2,013.878	1,773.966	1,743,173
Brazil	273,173	500.446	830,970	1,001,938	911,728
Taiwan	447,099	592,895	749.737	684,073	783,566
Hungary	36.943	18,907	33.398	33,900	49,561
Australia	34.927	22.202	30.499	41,146	42,918
China	2.534	1,925	5,766	13.766	30,010
Switzerland	13,461	19,047	32.181	27,843	29,950
Venezuela	5.308	8.663	13,910	23,994	29,300
Singapore	21.214	14.701	15.780	24.615	25,373
Thailand	1,436	2,482	3.938	7,841	20,434
Norway	4.611	5.379	11,930	21,882	18,296
M other	89.763•	181,421	237.658	200.812	135,118
Total	48,218.136	58.610,576	60.803.812	64.774.429	64,406,211
Grand total	58,180,318	70,599,367	74,512,570	75.944.204	73.892,989

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

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

Table E-10

SITC revision 3, division 72—Machinery specialized for particular industries: SITC-based U.S. Imports for consumption from the European Community and rest of world, by leading sources, 1985-89

(In thousands of dollars)

Source	*1985*	*1986*	*1987*	*1988*	*1989*
European Community:					
West Germany	1.764,162	'2,397.420	2.626,157	2,848.152	2.706.981
United Kingdom	692,384	902,398	982.265	1.129,292	1,040.641
Italy	450.280	588,369	614,487	773.739	765.608
France	323,910	455,002	556.634	581,735	575,134
Belgium and Luxembourg	202,765	226.745	200.832	268.595	305.391
Netherlands	175,544	208.693	233,299	230,558	188,079
Denmark	55,699	91,801	66,193	88.263	66,763
Spain	35,079	42,302	53,426	48.818	52.763
Ireland	20,877	20,456	19.046	17.226	14.798
Portugal	8.857	11,166	12,944	13.978	10,542
Greece	1,052	500	1,888	1,930	1.498
Total	3.370,609	4,944.852	5,367.171	6,002,285	5,728.198
Rest of world:					
Japan	2,097.398	2.581,886	2,914.422	3.328.281	3.585,087
Canada	1.022.060	928.954	1.217,532	1.493.721	1.554,501
Switzerland	372.553	458.993	511,596	456.650	384,803
Taiwan	185.864	203,621	285,580	338.544	327,026
Sweden	170.405	215.286	208.908	245.244	250,436
Finland	63,990	70,052	57.043	118,293	235,287
Brazil	114,513	90,941	148,134	207.395	215,691
Mexico	49.150	52.786	100.049	173.773	149,881
Austria	77.718	78.610	83.433	86.758	90.753
South Korea	99,648	41.177	57.844	98.223	81.278
Phlippines	1,227	1,721	2,821	5,728	48.238
Australla	15.174	26.221	25.570	37.949	40.949
Israel	26.039	21,078	28.823	46.297	32,783
Norway	10.317	9.672	14.593	17.426	31.291
South Africa	14,193	21,405	16.902	16.125	25.383
Mother	124,485	145.169	200,709	241.738	141.677
Total	4.444,735	4,947,575	5,873.959	6.912,143	7.195,064
Grand total	8,175.344	9.892.427	11.241,130	12.914,428	12.923,262

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

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

Table E-11

SITC revision 3, division 89—Miscellaneous manufactured articles: SITC-based U.S. Imports for consumption from the European Community and rest of world, by leading sources, 1985-89

(In thousands of dollars)

Source	*1985*	*1986*	*1987*	*1988*	*1989*
European Community:					
Italy	1,364.677	1,448,731	1,394,286	1,469,309	1.672.525
United Kingdom	1,060,539	1.182,726	1.188,828	1.249,556	1,316.958
West Germany	584,583	772,651	756.730	782.197	870.335
France	463.045	548,505	540,867	607,209	747,671
Spain	145.645	144,651	134,864	140.594	162.957
Netherlands	151.463	170.364	122.218	117.138	137,994
Denmark	76.661	84.355	79.759	103,697	112,407
Belgium and Luxembourg	68,259	96,681	177,563	198.972	99,524
Ireland	33.550	46,395	44,544	41.437	53,656
Portugal	25,386	21,018	20,723	21.359	17,173
Greece	15,740	11,865	12,556	11.474	11,093
Total	3,989.548	4,527,943	4.472,938	4.742.942	5.202.292
Rest of world:					
Japan	2,370.950	2,747,158	2.980,399	3,655,815	4.104.214
Taiwan	2.108,159	2.576,169	3.330,883	3,153.197	3.291.262
China	472,555	670,403	1.166.136	1,686,270	2,529,369
South Korea	933,368	1.241.467	1.636,743	1,700,945	1.616.567
Canada	1,099,040	1,175.038	1,275.998	1,414,645	1.441,414
Hong Kong	1,370,984	1,536.525	1,591,485	1,522.906	1.383.858
Mexico	406,097	427,692	512,134	697,685	728,254
Thailand	106,381	191.391	318,077	398.906	617,278
Switzerland	439,524	478,373	420,102	517,901	597,452
Israel	201,404	222,276	218,009	233,044	255.295
Singapore	97.313	146.044	199,411	244.502	206.310
Macao	120.075	137,423	143,798	154,534	197.652
Phillppkies	94,377	95.575	116,258	132.734	186.316
Malaysia	41,837	46,935	56,580	82.381	147.206
Austria	77,575	109,194	118.133	130.464	123.660
Al other	751,317	729,589	861,746	925,301	1,128,599
Total	10,690,962	12,531,251	14.945.892	16,651.229	18.554,706
Grand total	14,680,510	17,059,194	19,418.830	21,394,171	23,756,999

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

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

Table E-12

SITC revision 3, division 71-Power generating machinery and equipment: SITC-baied U.S. Imports for consumption from the European Community and rest of world, by leading sources, 1985-89

(In thousands of dollars)

Source	1985	*1986.*	*1987*	*1988*	*1989*
European Community:					
France	968,581	1,312,010	1.090.593	1,228,055	1,672,413
United Kingdom	1,011,267	1,014.580	1.094.318	1,037,005	1,441,683
West Germany	623,482	899,998	1,046,483	1,168,932	1,038,205
Italy	112,548	159,346	175.165	206,447	174,198
Belgium and Luxembourg	75,190	63.339	73,250	76,665	55,924
Netherlands	25.107	36,191	34,721	38,211	44,010
Denmark	150,455	109,522	36,249	22,994	38,127
Spain	14,703	19.303	17,953	20,449	22,690
Ireland	7,737	4,155	5,113	9,248	13,384
Portugal	574	1,376	563	2,104	3,588
Greece	130	115	636	109	60
Total	2,989,775	3,619.936	3,575,043	3,810,219	4,504,280
Rest of world:					
Canada	2.198.965	2.046.394	2.237,706	2.623.639	2.853,478
Japan	1.014.603	1,291,720	1.506.570	1,781.412	1,974,180
Mexico	857.234	889,464	981,436	974,061	880,296
EirazN	353,901	287,244	318.669	455,803	391.534
Sweden	101.518	139.275	202.202	276.933	261.018
Switzerland	111.721	77,575	102,167	163,449	227.532
South Korea	25.016	25,711	52,553	93.252	94,163
Taiwan	59.236	63.463	68,679	89.671	90,758
Singapore	47.149	56,310	63.279	65.147	82,840
Austria	10,455	14.863	20,770	47,275	70,052
Israel	61,050	55.230	96,579	83.798	67,806
Hong Kong	46,412	53,296	72,395	70,381	65,279
Finland	2.851	12,514	18,414	10.814	53.476
Norway	16,057	11,426	28.353	30.177	45.389
Australia	18.726	21.123	18,794	20,146	36,979
AN other	37,754	47,115	34,933	79,393	90,572
Total	4,962.650	5,092.721	5,823,504	6.865.355	7.285,352
Grand total	7,952,425	8,712,657	9,398.547	10,675,574	11.789,632

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

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

Table E-13

SITC revision 3, division 74—General industrial machinery and equipment: SITC-based U.S. Imports for consumption from the European Community and rest of world, by leading sources, 1985-89

(In thousands of dollars)

Source	*1985*	*1986*	1987	*1988*	1989
European Community:					
West Germany	1.162,026	1.605.964	1,682.984	1,924,820	1,934,300
United Kingdom	525.546	610,927	699.447	899,902	944.393
Italy	422.314	551.521	622.290	652.799	671.718
France	190.822	256,517	269,506	317.365	371.296
Netherlands	60,749	98.348	99.118	110.495	121,965
Belgium and Luxembourg	80.351	95.290	107.062	135,576	113,252
Denmark	46,363	65,017	77,763	79,948	110,373
Spain	42,967	45.675	52.376	62,645	66,115
Portugal	41.892	38.078	45,735	40.244	40,732
Ireland	41.660	43,981	34.904	49,886	42,277
Greece	410	1,023	915	464	247
Total	2.615,100	3.412,340	3.692.100	4.274,143	4.416,668
Rest of world:					
Japan	2.417,971	2.816.308	3,228,587	3,445,617	3.927.355
Canada	1,165.074	1.180,480	1.256.865	1,388.486	1.728.390
Taiwan	623,927	713.357	889,809	965.271	920,782
Mexico	202.229	309.797	434,131	575,242	709.430
South Korea	107,846	177,339	275.040	443,986	435,100
Sweden	225.355	241.156	280.867	335,791	341,428
Singapore	159,334	137,662	240,899	347,534	302.206
Switzerland	166,611	204.830	201,533	234,530	253,127
Brazil	135.651	146.069	191,628	255.705	235,460
China	14,649	15,491	43.583	119,826	211,887
Malaysia	3.181	5,665	31,056	48,817	116,488
Finland	54.235	46.552	59.026	88,112	112.790
Hong Kong	198.753	162,467	154,714	115,986	91,802
Austria	45.958	41.709	31.621	48,217	61,877
Israel	33.799	37,141	43,307	45,492	60,040
Al other	131.486	140.139	165,761	232.204	264,649
Total	5.686.065	6,376,158	7,528.226	8.690.820	9.772,811
Grand total	8,301.165	9,788.498	11,220,326	12,964,963	14.189.479

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

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

Table E-14

All commodities: EC Imports from the Europear Community, Eastern Europe, and rest of world, by sources, 1984-87

(In thousands of dollars)

Source	*1984*	*1985*	*1986*	*1987*
European Community:				
West Germany	79,136,558	85.888.647	117.280.728	147,691.269
France	51.584.439	54,816,141	71,138,298	88,894.155
Netherlands	50,431.899	52.740.729	61.542.862	71.850.133
Italy	34.529.882	36.667.885	51.063,347	64.371.870
Belgium and Luxembourg	35.228.562	37.531.481	49.612.601	61,230,885
United Kingdom	42,219,770	46.105,845	49,190.910	60.304,835
Spain	12.196,115	13.405.294	17.096.184	22.354,322
Denmark	7.203.958	7,774,426	10.013.085'	12.447.042
Ireland	6,404,985	6,982,030	8,739,489	11.414,729
Portugal	3,391,872	3,789.830	5,164.159	6,883.744
Greece	3,128,484	3,145.748	3,963.418	5,094,599
Total	325,456.524	348.848.056	444.805,080	• 552.537.562
Eastern Europe:				
Soviet Union	18.333.752	15.810,164	13.688,733	14,947,512
Poland	2.641.873	2.695.947	2.865,119	3,386.153
Romania	2.363,812	2,210.872	2.409.208	2,739,411
Czechoslovakia	1.706,520	1.734,897	2,094,029	2.393.644
Hungary	1,504,915	1.557.931	1,889.812	2,348.406
East Germany	1.309,880	1.368.827	1,567,920	1,587.120
Bulgaria	447.072	474.526	552.624	602,668
Total	28,307.824	25.853,163	25.067.446	28.004.915
Rest of world:				
United States	52.374.629	53,007.909	56.787,541	66,263,945
Japan	20,986.038	22.643.134	33.962.270	41.979.057
Switzerland	16.095,420	16.315.882	23.244.619	28.913,976
Sweden	14,526.284	14,897,504	19,015.230	23,197.537
Austria	8,900.349	9,767.230	13.744.330	17,552,132
Norway	12,947,662	13.784.154	12.058,380	14,126,422
Finland	5,794,317	5.922,635	7.132,837	9.260.980
Bran	7.441,133	7,957.014	7,212.166	8,359,274
Canada	6,101.000	5.736.789	6.398,826	7,934,209
Taiwan	3,154,899	3.151,159	4.794,805	7,904.390
Hong Kong	4,361,804	3.985,737	5.569.093	7.393.656
South Korea	2.386.394	2.641.656	4,319.050	7,057.118
Said Arabia	8.711,648	6.724.401	8,748,030	6,556,023
Algeria	7.852.235	8,959,767	6.618,387	6,162,085
Yugoslavia	3.440,482	3,665.260	4,813,290	6.075.244
Al other	104,573,748	105,991,841	92.524,871	110,413.147
Total	279.648,041	285,152,072	306.943.725	369.149.195
Grand Total	633.412.389	659.853,291	776,816.251	949,691.692

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

Source: Complied from official statistics of the United Nations OECD External Trade Database.

Table E-15

MI commodities: EC exports to the European Community. Eastern Europe, and rest of world, by markets, 1984-87

(In thousands of dollars)

Market	*1984*	1985	1986	1987
European Community:				
West Germany	72,496,638	76,974,497	96,205,828	115,818.961
France	63.590,880	66,586,957	84,314,136	105,629.507
United Kingdom	46,228,860	49,386,249	62,500,549	76,947,436
Italy	36,769,165	39,736,634	52,556,184	67,263,690
Netherlands	39,604,231	43,324,589	52,134,321	63,558,138
Belgium and Luxembourg	36,797,505	38,701,153	50.296,784	61,291,687
Spain	10,637,239	11,989,726	19,331,828	28,857,202
Denmark	8,182,134	9,286,978	12,229,548	13,557,805
Ireland	6,645,770	6,998,646	8,123,337	9,489,471
Portugal	3,415,457	3.628,393	5,445,306	8,656,003
Greece	5,431,351	5,646,787	6,861,494	8,080,508
Total	329,799,229	352.260,607	449,999,315	559,150,407
Eastern Europe:				
Soviet Union	9,839,763	9,509.898	9,692,459	10.616,985
Hungary	1,730,028	1.890,245	2,398.484	2,734.370
Poland	1,903,737	2,078,545	2,312.016	2,686,929
Czechoslovakia	1,299,500	1,504,694	1,921,970	2,399,835
Bulgaria	982,584	1,252,310	1,453,744	1.678,497
East Germany	736,716	728,584	1,057,244	1,249,025
Romania	827,177	883,691	966,706	751,689
Total	17,319,505	17,847.967	19.802,622	22,117,330
Rest of world:				
United States	57.582.372	65,014,752	73,398,032	82.727,945
Switzerland	20,759,457	22.093,968	30.554,579	37,494,936
Sweden	14,644,159	15,832,476	18,707.810	23.226.116
Austria	12,685.374	13,763,116	18.949,326	23,193,320
Japan	7,373,108	7,909,085	11,219,821	15,675,913
Norway	6,460.055	7,267.984	9.857,763	10,915,434
Canada	6,195,757	7,586,087	8.987,952	10,458,579
Saudi Arabia	11,111,562	8,300.678	8.053.697	8.892,195
Finland	4,423.065	4.895,352	6,434,938	8,084,688
India	3.765,324	4,360,934	5,599.522	6.553.780
Turkey	3,375.402	4,111.275	4,643,708	6,429,735
Australia	4,764,609	5,465,462	5,705.489	6,408,682
China	2,917,582	5,458,232	6,398,934	6,352,602
Yugoslavia	3.999,859	4,514,145	5,746,972	6.230,769
South Africa	5,825.483	4,354,491	4.625,169	5.886,035
M other	94,597,763	92.866,232	99,666,477	111,030,209
Total	260,480,931	273,794.269	318.550.189	369,560,938
Grand total	607,599,665	643,902.843	788,352,126	950.828,676

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

Source: Compiled from official statistics of the United Nations OECD External Trade Database.

All countries	307,983	61,800	127,0	31,37	6,082	14,129	326,900	59,8	133,0	16.	7,130	15,168
Canada	120	56	377	12,	2,1	3,754	126,502	2,033	64,	1,349	2,922	2,216
Japan	5a	1	MW	2,	1	1,38	11,71	2,084	6	1,772	1,522	4,2
United Kingdom	61,6											

Table E-17

Foreign direct investment position' In the United States, by partner and by Industry sector, at yearend 1987 and 1988

(In millions of dollars)

Partner	All industries	Petro-leum	Manu-factoring.	Wholesale trade	Banking	Finance	Insur-ance	Real estate	Other serv-ices
				1987					
European Community:									
Belgium	2,638	(2)	701	412	32	(2)	0	13	(2)
France	10,119	(2)	8,567	656	648	-661	124	57	(2)
Italy	1,707	(2)	245	482	428	30	(2)	(2)	(2)
Luxembourg	133	(2)	50	(2)	6	-16	0	16	2
Netherlands	49,115	(2)	16,137	4,085	2,518	2,586	3,861	3,311	(2)
West Germany	20,315	148	9,294	6,170	367	649	1,630	1,143	914
United Kingdom	79,669	(2)	27,061	12,480	2,022	(2)	6,106	5,140	7,969
Other EC	1,732	(2)	347	(2)	565	(2)	(2)	(2)	(2)
Total	165.427	32,604	62.400	24,803	6,587	4,227	11,764	9,850	13,192
Canada	24.013	1.426	7.636	3.626	1,354	484	2,588	4,417	2,483
Japan	35,151	-2	5.345	15,678	3.513	2,115	(2)	6,098	(2)
All countries	271,788	35,598	94,745	50.009	14,455	3,828	17,392	27,516	28,245
				1988					
European Community:									
Belgium	4,024	(2)	989	695	34	56	(3)	12	(2)
France	11,364	(2)	9,908	520	687	-764	139	95	(2)
Italy	667	(2)	107	515	446	(2)	(2)	(2)	(2)
Luxembourg	525	(2)	346	(2)	12	15	0	10	46
Netherlands	48.991	(2)	17,153	5,153	2,729	3,190	4.685	3,340	(2)
West Germany	23,845	172	13,268	6,851	293	-626	1,776	1,079	1,034
United Kingdom	101,909	18,779	37,021	18.647	3,669	870	6,863	5,323	10.737
Other EC	2.587	(2)	733	(2)	935	(2)	(2)	(2)	(2)
Total	193,912	31,169	79525	32.898	8.804	1.745	13,535	10.016	16,220
Canada	27.361	1,614	9.391	3,513	1.458	600	2.993	4,169	3,624
Japan	53,354	-79	12,222	18,736	3,895	2,863	(2)	10,017	(2)
All countries	328,850	34,704	121,434	64,929	17,453	2.124	20.252	31,929	36,024

' 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 Suppressed to avoid disclosure of data of Individual companies.

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

APPENDIX F
STATUS OF CEN/CENELECIETSI WORK ON 1992-RELATED STANDARDS

CONTENTS

Directive and number of mandates	Entry into force of the directive	Corresponding mandates and numbers of standards	Mandate's target dates				Present situation		Delays (effective and foreseen) not counting time needed for transposition
			Target date for presentation of Pr EN	Target date for adoption of EN	New target for Pr EN			Adoption of EN	
Toys (88/378) 5 mandates	Jan. 1, 1990	BC/CEN/2/86 1 standard	Dec. 1, 1988	Mar. 21, 1987 ( )		Nov. 30, 1987	March 1987	Dec. 20, 1988	
		BC/CEN/3/87 2 standards	(1)	Dec. 31, 1987		Oct. 15, 1988	(1)	1988	
		BC/CEN/4/87 1 standard	(1)	June 30, 1988		Oct. 15, 1988	(1)	1988	
		BC/CEN/1/88 2 standards	(1)	Jan. 1300 Jan. 1031	(1)	(1)	Apr. 5, 1989	(1)	
		BC/CEN/5/87 1	(1)	Dec. 31, 1988	(1)	June 30, 1990	(1)	(1)	
Simple pressure vessels (87/404) 2 mandat	July 1, 1990	BC/CEN/6/88 3 standards	Dec. 31, 1988	Dec. 31, 1989	(1)	(1)	June 1989 July 1989 November 1989	(1)	One foresees a delay of 7-12 months.
		BC/CEN/2/89 39 standards	June 30, 1989 Dec. 31, 1989	Feb. 28, 1990 Dec. 31, 1990	from Mar. 1989 to Dec. 1991[2]	from Feb. 1990 to Dec. 1992[2]	Work program received, not yet agreed.		Considerable delays (in some cases up to 2 years).

Directive and number of mandates	Corresponding mandates and numbers of standards	Mandate's target dates: Target date for presentation of Pr EN	Mandate's target dates: Target date for adoption of EN	Prolongation of target date: New target for Pr EN	Prolongation of target date: New target for adoption of EN	Present situation: Presentation of Pr EN
Building products (89/106) 5 mandates		Dec. 31,1989	June 30, 1991	from Sept. 1989 to Dec. 1992	from Sept. 1990 to June 1993	Detailed work program received: not yet agreed
			Dec. 31, 1990		from Sept 1991 to Dec. 1991	
			Dec. 31, 1990		Nov. 1991	
			Dec. 31, 1990		from Mar. 1991 to Dec. 1991	
		Dec. 31, 1989 (with the exception of 3 standards)	Oct. 30, 1992			
	Dec. 31. 1992 BC/CEN/13/88 ( )		Dec. 31. 1992 (')			
Personal protective equipment— Proposed Directive (88)141/03 10 mandates	BC/CEN/3/88	Dec. 1989	June 1992	('		Program not received
	BC/CEN/4/88	Dec. 1989	June 1992	('		Program received
	BC/CEN/5/88 11 standards	Dec. 1989	June 1992	('		Program received

See footnotes at end of table.

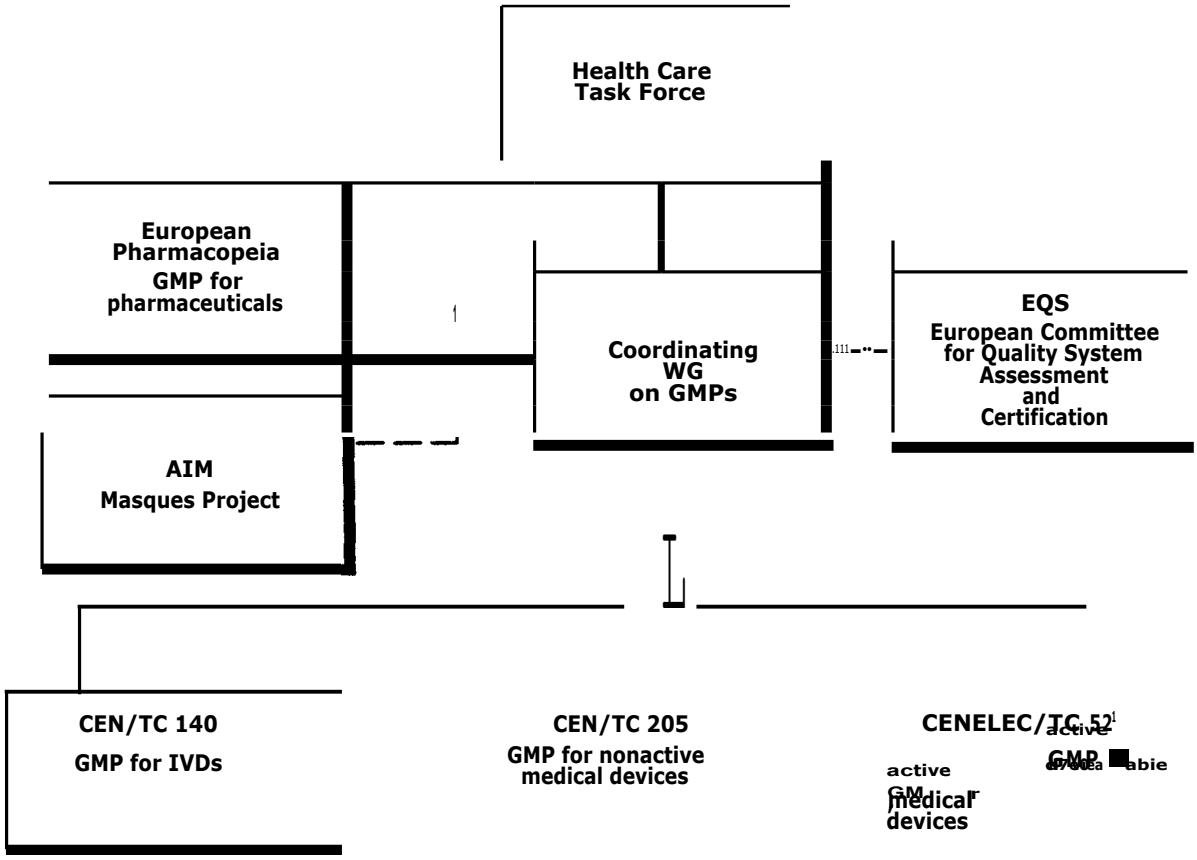
Directive and number of mandates		Corresponding mandates and numbers of standards	Target date for presentation of Pr EN	Target date for adoption of EN	Prolongation of target date: New target for Pr EN	Prolongation of target date: New target for adoption of EN	Present situation	Delays (effective and foreseen) not counting time needed for transposition
							Program received	
		BC/CEN/9/88						
Gas appliances—Proposed Directive (89)42/04 1 mandate	Dec. 31, 1992	BC/CEN/6/89		up to June 30, 1992	(1)		I work program ed.	
Medical equipment 2 mandates in preparation	Jan. 1,	BC/CEN/63/89	June 30, 1991					
		BC/CENELEC/ 64/8	Dec. 31,	Dec. 31, 1992				
Electro-magnetic compatibility 89/336 1 mandate CENELEC	Jan. 1,	BC/CLC/3/88 approx. 30 standards and revision of 120 existing standards	(1)	Sp t4 2			Global program asked for Dec. 31, 1989	

[1] Information not available.
[2] Tentative, based on CEN proposals for target dates.

Source: CEN.

Medical Devices

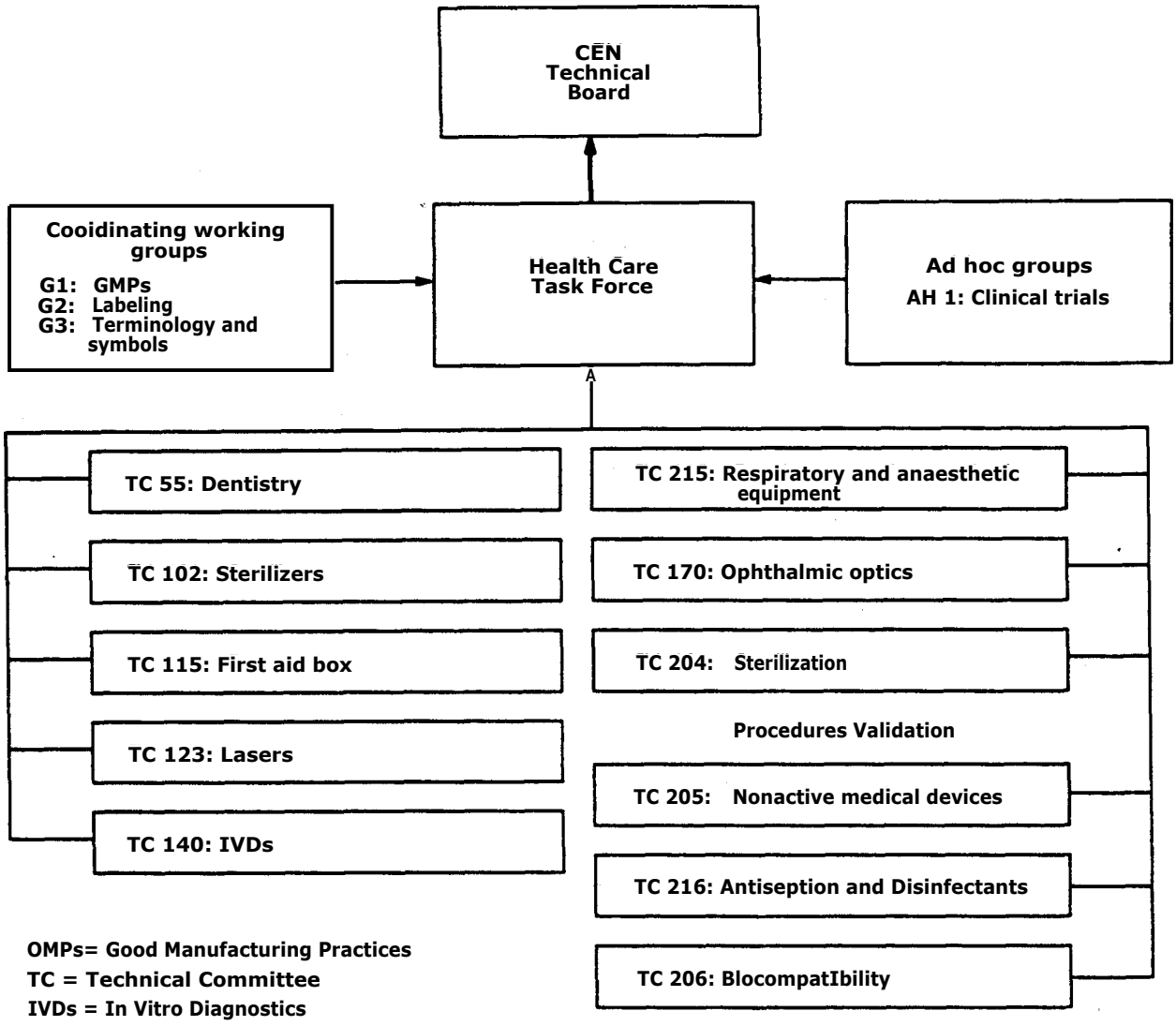
Figure F-1
Coordinating structure for the establishment of GMPs



GMP = Good Manufacturing Practices
IVD = In Vitro Diagnostics
WG = Working Group
EQS = European Quality System

Source: CEN.

Figure F-2
Health care structure within CEN



OMPs= Good Manufacturing Practices
TC = Technical Committee
IVDs = In Vitro Diagnostics

Source: CEN.

Machinery

Table F-2
CEN/CENELEC work on safety of machinery standards

Standard group	Title	CENELEC CEN TC 44X	TC 114	TC 122	TC 137	Special
'A' Standards						
A-02 G1	Basic concepts and principles for design					
A-03 G1	. Instruction handbook					
A-04 lalson)	Terminology WG3	(9	(L			
A-05 WG4	Rules for drafting safety standards					
'B1' Standards						
81-01	Safety distances		WG2			
81-02	Hand/arm speed		WG5			
B1-03	Surface temperatures (touchable surfaces)	(Liaison)'		WG3		
B1-04	Anthropometry (dimensions for access)	(Liaison)'		WG1		
81-05	Climate at workplace				Ed.Comm.	
B1-06	Blomechanics	(Liaison)'	WG4			
B1-07	Vibration			WG7		
B1-08	Noise'		(Liaison)			CEN/ AdHoc
B1-09	lighting'		(Liaison)			TC 169
131-10	Ergonomic design principles	(Liaison)	WG2			
131-11	Ergonomic require-ments for VDTs	(I)	(Liaison)	WG5		
81-12/ B2-09	General principles for design of SCS	(JWG) [2]	WG6			
B1-13	Safety symbols, etc. [3]	(JWG)	WG			
B1-14	Assessment of workplace (hazardous substances) Monitoring strategy Performance require-ments of methods Particulate matter				WG WG1 WG2 WG3	
B1-15	Radlation/laser•	(Liaison)'				TC 123

See footnotes at end of table.

Table *F-2—Continued*
CEN/CENELEC work on safety of machinery standards

Standard group	Title	CENELEC TC 44X	CEN TC 114	TC 122	TC 137	Special
'B2' Standards						
B2-01	Two-hand controls	(JWG)[2]	WG7			
B2-02	Electrosensitive safety systems (Ualson/review/ technical support)	WG2 WG3				
B2-03	Pressure-sensitive mats	(JWG) a	WG8			
B2-04	Emergency stop, safety hold	*(JWG)*[2]	WG9			
82-05	interlocking devices	(Liaison)	WG10			
82-06	Guards (fIxad. movable)	WG11				
B2-07	Controls and signals	(Liaison)	WG6			
82-08	Platforms, ladders, railings used with machines'					
B2-[5]	Principles for designing to combat fatigue In materialsa					
B2-[0]	Fluid power system and components		WG12			
'C' Standards						
C-01	Woodworidng machinos-safety					TC 142
C-02	Metal-working machines—safety'					TC 143
C-03	Industrial robots—safety					ISO/TC 184/ SC 2
C-04	Agricultural and forestry machines—safety					TC 144
C-05	Rubber and plastics machines—safety					TC 145
C-06	Packaging machinery—safety					TC 146
C-07	Cranes—safety					TC 147
C-08	Continuous mechanical handling equipment—safety					TC 148

See footnotes at end of table.

Table *FA—Continued*
CEN/CENELEC work on safety of machinery standards

Standard group	Title	CENELEC CEN TC 44X	TC 114	TC 122	TC 137	Special
'C' Standards—Continued						
C-09	Automatic storage and retrieval equipment—safety					TC 149
C-10	. Industrial trucks—safety ,					TC 150
C-11	Construction equipment—safety					TC 151
C-12	Leisure and recreational machines and equipment—safety					TC 152
C-13	Food processing industry machines—safety and hygiene					TC 153
C-e	Thermoprocessing technology					TC 186
C-°	Conveyor belting					TC 188
C-°	Mining and quarrying machines—safety					TC 196
C-[6]	Textiles machines—safety					
C-°	Printing and paper machines—safety					TC 198
C-°	Refrigerating systems—safety and environmental requirements					TC 182
C-[6]	Tannery machines and plant—safety					TC 200
C-[0]	Leather products machinery—safety					TC 201
C-[6]	Machinery for hot-metal processing—safety					TC 202
	Machines using propulsive charges—safety					TC 213
C-[6]	Textiles and allied machinery					TC 214

' CENELEC TC 44X Is to provide support.
[2] CENELEC TC 44X Is to form a Joint working group with voting rights.
To be assigned, may be part of another activity.
• As yet to be decided.
[6] The number of this standard group could not be ascertained by press time.
• Title of CEN/TC 143 Is still listed as Cold Metal Working Machines—Safety.

Source: National Machine Tool Builders' Association, CEN.

Construction Products

Table F-3
Technical standardization committees in CEN working on standards relating to the Construction Products Directive

Technical committee number	*Product*
TC10	**Elevators**
GT1	Elevators
GT2	Escalators
GT3	Fire tests on doors
TC19	**Petroleum products**
GT20	Tests on asphalt
TC33	**Doors and windows**
GT1	Windows
GT2	Doors
GT3	Shutters
GT4	Hardware
GTX	Plastic sections
TC38	**Durability of wood and derived materials**
GT1	Risk classes
GT2	Natural durability
GT3	Performance of treated wood
GT4	Performance of preservatives
GT5	Field tests, out of soil
GT6	Test on off-ground area
GT7	Wood-based panels
GT8	Soft rot
GT9	Effectiveness of preventive means
GT10	[French: Lyctus, not found in dictionary]
TC.50	**Lighting columns and spigots**
TC51	**Cement and lime**
GT1	Mechanical strength/resistance
GT2	Physical tests
GT3	Chemical tests
GT4	Content/grade/amount
GT6	Definitions, terminology
GT7	Sampling
GT8	Specifications
GT9	Compliance
GT10	Masonry cement
GT11	Lime for mortar
TC57	**Boilers, central heating**
TC67	**Ceramic tiles**
GTX	Adhesives for ceramic tiles
TC72	**Fire detection**
GT2	Onsite tests
GT4	Flame detectors
GT5	Revision EN54
GT6	Manual systems
GT7	Control and signaling equipment
GT8	Signal emitters

Technical committee number	*Product*
TC88	**Thermal insulating materials and products**
GT1	Common general test methods
GT2	Coordination committee
GT3	Mineral wool
GT4	Formed polystyrene
GT5	Extruded polystyrene
GT6	Polyurethane and polylsocyanurate foam
GT7	Phenolic foam
GT8	Cellular glass
GT9	Mineral bonded wood wool
GT10	Insulation of equipment
GT11	Lightweight concrete, lightweight. aggregate, expanded clay
GT12	Bonded expanded perlite
GT13	Cork insulating materials
GT14	Terminology
GT15	In situ formed Insulation products
AH	Thermal tests
TC89	**Thermal efficiency in buildings**
GT1	Thermal bridges and surface condensation
GT2	Transthermal coefficients
GT3	Calculations for equipment insulation
GT4	Calculations for energy consumption
GT5	Calculation of heat transfer to and through the ground
GT6	Calculation of internal temperature in buildings in summer based on simplified energy balance
GT7	Thermal properties of doors and windows
GT8	Test methods for determining thermal properties of building materials. products, and components
TC92	**Water meter, cold water**
TC93	**Ladders**
TC99	**Wall coverings**
GT1	Textile wall coverings
GT2	PVC wall coverings
TC	**Adhesives for timber**
GT1	Structural adhesives
GT2	Nonstructural adhesives
TC104	**Concrete**
GT1	Performance
GT2	Aggregates
GT3	Adjuvants
GT4	Flying ash
GT5	Waste water
GT6	Prestressed injection
GT7	Ducts for prestressed cables
GTX	Products for the repair of concrete

Table *F-3—Continued*
Technical standardization committees In CEN working on standards relating to the Construction Products Directive

Technical committee number	*Product*
TC	Faucets for radiators
TC	Tubing for urban heating
TC112	Wood-based paneling
TC	Gas heating
GT1	Particle boards
GT2	Plywood
GT3	Fiber boards
0T4	Test procedures
TC	Heat pumps
TC	
GT1	Mechanical characteristics
GT2	Thermal characteristics
GT3	Durability
GT4	General characteristics
TC	Watertight characteristics of plastic
TC124	Wood structures
GT1	Test methods
GT2	Classes and drronsions
GT3	Laminated/glued
GT4	Nomenclature
GTS	Mechanical connectors
TC125	Masonry
GT1	Elements of masonry
GT2	Mortar
GT3	Auxiliary elements
GT4	Mechanical connectors
TC126	Acoustic properties of building products and buildings
GT1	PQ based on ISO
GT2	Product circulation within buildings
GT3	Acoustic measures, hydraulic equipment
TC127	Fire safety
GT1	Harmonized tests
GT2	Classes of reactions to fire
GT3	Resistance to fire
TC128	Outer protection
GT1	General requirements
GT2	Cement tiles
GT3	Terra cotta tiles
GT4	Asbestos cement products

Technical committee number	*Product*
TC128	Outer protection
GTS	Reinforced cement products
GT6	Shingles and asphalt tiles
GT7	Sheet metal
GT8	Slate and stone
GT9	Prefabricated accessories
GT10	Gutters/drainpipes
TC129	Building glasswork
GT1	Basic glass products
GT2	Tempered glass
GT3	Laminated glass
GT4	Insulating glasswork
GT5	Glass mirrors
GT6	Layered glass
GT7	Glass bricks
GT8	Mechanical resistance
GT9	Light transmission and thermal insulation
GT10	CF and PF windows
GT12	installation procedures
GT13	Passive security
GT14	Active security (bulletproof, explosion proof...)
GT15	Active security (vandalism. break-ins...)
GT16	Exterior glass. Installed with adhesives
TC130	Radiators and convectors
TC133	Copper
GTX	Copper tubing
TC134	Flexible floor coverings and textiles
GT1	Textile floor coverings
0T2	Rubber flooring
GT3	Plastic flooring
GT4	Cork flooring
GT5	Linoleum flooring
TC135	Steel structures
GT1	Manufacture
GTX	Rivets
GTX	Welding
GT4	Assembly
TC139	Paints and varnishes
GT1	Mineral frames covering
GT2	Preservation of wood
GT3	Products with nuclear applications
GT4	Anticorrosive paints
TCX	Security equipment

Table *F-3—Continued*
Technical standardization committees In CEN working on standards relating to the Construction Products Directive

Technical committee number	*Product*
TC154	**Aggregates**
SC1	Aggregates for mortar
SC2	Aggregates for concrete
SC3	Aggregates with hydrocarbon binders
SC4	Aggregates with hydraulic binders
SC5	Artificial aggregates
SC6	Test methods
TC155	**Drainage and plastic ducts**
GT1	PER, PV, PVCC ducts
GT2	PRV ducts
GT3	PVC drains
GT4	PVC-I drains
GT5	PE-HD drains
GT6	PP drains
GT7	ABS drains
GT8	PVC-C drains
GT9	Vent pipes, PVC
GT10	Vent pipes, light plastic
GT11	Vent pipes, PE-HD
GT12	Vent pipes, PP
GT13	Storm sewers in PVC
GT14	Agricultural drainage using PVC
GT15	Agricultural drainage using PE
GT16	Underground system PVC
GT17	Underground system PE
GT18	Budding main PE
GT19	Building main PE and PP
TC156	**Ventilation**
GT1	Terminology
GT2	Residential ventilation
GT3	Ductwork
GT4	Terminals
TC163	**Sanitary equipment**
GTX	Ex TC7
GTX	Ex TC86
TC164	**Main transport and distribution of water**
GTX	General demands of water mains
GTX	Demands of residential installation
GTX	Metal tubing
GTX	Fiber-cement tubing
GTX	Plastic tubing
GTX	Concrete tubing
GTX	Building faucets
GTX	Copper tubing
GTX	Sanitary plumbing
GTX	Storage systems
TC165	**Effluence of water drainage and sewerage**
GTX	General requirements
GTX	Sandstone conduits
GTX	Plastic conduits
GTX	Crown bit systems
GTX	Cast iron conduits
GTX	Steel conduits
GTX	Separators
GTX	Conduits in concrete and reinforced concrete
GTX	Installation
GTX	Conduits of malleable cast metal
GTX	Waste-water treatment
TC166	**Chimney flues**
GTX	General requirements
GTX	Metallic conduits
GTX	Concrete conduits
GTX	Terra cotta conduits
TC167	**Structural bearings**
TCX	**Water heating**
TC171	**Calorimeters**
TC189	**Geotextiles**
TC177	**Ught reinforced concrete**
TC178	**Paving and small blocks**
TG1	**General definitions**
TG2	**Geometric definitions**
TG3	**Resistance**
TG4	**Physical characteristics**
TGS	**Chemical characteristics**

Source:CEN.

Telecommunications and Information Technology

PROGRESS Of

VOUCHERS GIVEN TO CEN/CE
Supervised by ITSTC

Part 1

BC Pi' SOGITS 11* Profile ITEM Standard Status										
100-38	112•11 h'6LN		ISDN - PLUG: Safety and dimensions	10011	N3Ɔd/N3	331ƎN33	59/60/91	S8/01/8I	S8/10/01	
8100-38	192 N		ISDN • PLUG: Contact assignement	28877	EN/	N33	89/11//2	88/21/5I	/ /	P 03.88 09.88 03.89 A 07.89 10.89 10.90 R /Job
200-08	2'06•N	1f/1	PSON CONS •Permanent access corum Completed	41104	ENV/ENV	1d33I	9II/20//10	98/10/11	98/11/10	P 03.86 05.86 07.87 A 10.86 02.87 08.87 R 09.86 05.87 08.87
2d200-38	2'06•01	1f/1	PSDN - CONS • Permanent access to PSON. Conversion into EN	h011h	AN3/N3	331ƎN33/N33 15I3	98/20/10	99//0/11	/ /	P 06.90 11.90 11.91 A 09.90 11.90 11.91
£00.011	112•N 2'06.11	2h/1	CSDN - CONS Permanent and switched access Completed	L0111	AN3/AN3	1d33	9II/20//0	94/10/11	98/11/10	P 03.86 05.86 07.86 A 01.87 06.87 12.87 R 06.87 01.88 06.88
h00-38	2•06-N	1ŧ29/1	CL - LAN Single IAN-CSMA/C0 Completed	1011,	AN3/AN3	331ƎN33/N33	9II/20/,0	98//0/11	98/11/10	P 03.86 05.86 07.86 A 03.86 05.86 11.86 R 12.85 03.86 06.86
2d,00•08	2•06-11	1129/11	CL • LAN Single LAN-CSMA/CD. Conversion of ENV into EN	1011	AN3/N3	331ƎN33/N33 SOM3	99/20,0	98/10/11	/ /	P 11.89 03.90 03.91 A 11.89 03.90 03.91
S00-30	1 112 N 2'06-N LI2-N	122/V	X01010I 3I95 8 -1131 10W010I	/OW1	AN3Ɔd/N3	1d33	99/20/h0	98/10/11	99/11/10	P 05.88 09.88 03.89 A 06.88 03.89 05.89 R 06.88
900.08	[illegible]	11f/V	MHS- UA • MTA - PRMD/ADM0 UA • MTA to ADM° Completed	41202	ENV/ENV	1d33	98/20/ 70	9II/10/11	99/11/10	P 05.86 07.86 09.86 A 01.87 06.86 12.87 R 01.87 07.87 08.87
2d900-38	2'06-N	11ŧ/V	MHS - UA • MIA • PRMD/ADMO UA + MTA to ADMD. Conversion into EN	2021•7	EN/ENV	CEN/CENELEC ETSI	99/20/70	98//0/11	/	P 06.90 11.90 11.91' A 06.90 11.90 11.91
200.38	2 06-N £12•N	112c/V	MNS - UA • MTA - PRMD/PRMD Completed	41201	ENV/ENV	CEN/CENELEC	99//20/0	99/10/11	98/11/10	P 05.86 07.86 09.86 A 05.86 07.86 03.87 R 02.86 05.86 10.86
A800-38	2'06-N LI2-N	X12/0	Character sets and their coding	10S',	AN3/AN3			11/07/86		

BC N°	SOGITS N°	Profile	ITEM	Standard	Status	Work assigned to	SOGITS	83/189	CEN/CLC/ETSI	I II III
BC-008A2	N-90.2 N-217	Q/21X	Character sets and their coding. Conversion of ENV into EN	41501	EN/ENV	CEN/CENELEC	04/02/86	11/07/86	/ /	P 02.90 04.90 04.91 A 02.90 04.90 04.91 R
BC-008B	N-90.2 N-217	Q/21X	Character sets and their coding	41502	ENV/ENV	CEN/CENELEC	04/02/86	11/07/86	01/11/86	P 05.88 09.88 03.89 A 05.88 09.88 03.89 R 10.86 01.87 07.87
BC-008B2	N-90.2 N-217	Q/21X	Character sets and their coding. Conversion of ENV into EN	41502	EN/ENV	CEN/CENELEC	04/02/86	11/07/86	/ /	P 02.90 04.90 04.91 A 02.90 04.90 04.91 R
BC-008C	N-90.2 N-217	Q/21X	Character sets and their coding	41503	ENV/ENV	CEN/CENELEC	04/02/86	11/07/86	01/11/86	P 05.88 09.88 03.89 A 05.88 09.88 03.89 R 10.86 01.87 07.87
BC-008C2	N-90.2 N-217	Q/21X	Character sets and their coding. Conversion of ENV into EN	41503	EN/ENV	CEN/CENELEC	04/02/86	11/07/86	/ /	P 02.90 04.90 04.91 A 02.90 04.90 04.91 R
BC-008D	N-90.2 N-217	Q/21X	Character sets and their coding	41504	ENV/prENV	CEN/CENELEC	04/02/86	11/07/86	01/11/86	P 05.88 09.88 03.89 A 05.88 09.88 03.89 R 09.89
BC-008E	N-90.2 N-217	Q/21X	Character sets and their coding	41505	ENV/prENV	CEN/CENELEC	04/02/86	11/07/86	01/11/86	P 05.88 09.88 03.89 A 05.88 09.88 03.89 R 09.89
BC-008F	N-90.2 N-217	Q/21X	Character sets and their coding	41506	ENV/prENV	CEN/CENELEC	04/02/86	11/07/86	01/11/86	P 05.88 09.88 03.89 A 05.88 09.88 03.89 R 09.89
BC-009	N-90.2 N-217	Q/32X	Page moveable viewpoint Replaced by A/4x		ENV/	CEN/CENELEC	04/02/86	11/07/86	01/11/86	P 06.88 09.88 03.89 A 06.88 09.88 03.89 R
BC-010	N-90.2	Y/11	Access to PAD - X.29 Completed	41901	ENV/ENV	CEN/CENELEC	04/02/86	11/07/86	01/11/86	P 03.86 06.86 08.86 A 10.86 12.86 06.87 R 12.86 06.87 06.87
BC-010P2	N-90.2	Y/11	Access to PAD - X.29. Conversion of ENV into EN	41901	EN/ENV	CEN/CENELEC	04/02/86	11/07/86	/ /	P 06.90 11.90 11.91 A 06.90 11.90 11.91 R
BC-011	N-90.2	Y/12	Access to PAD - X.28 Completed	41901	ENV/ENV	CEN/CENELEC	04/02/86	11/07/86	01/11/86	P 03.86 06.86 08.86 A 10.86 12.86 06.87 R 12.86 06.87 06.87
BC-012	N-90.2 N-217	A/111	Simple file transfer Completed	41204	ENV/ENV	CEN/CENELEC	04/02/86	11/07/86	01/11/86	P 03.88 05.88 12.88 A 03.88 05.88 12.88 R 12.87 04.88 06.88

Date: 11/12/89 Page N'

SC N'	SOWS N'	Profile	ITEM	Standard	Status	work assigned to				
f10-311	2'06•N 212-11 T'L7Z-N		0$1 Basic Reference Model (Amendment included)	27498	EN/EN	N33	99/20/V0	99/20/1t	99/11/10	P 05.86 08.86 12.86 A 07.88 10.88 02.89 R 08.88 12.88
,t0.31	2'06-N		Graphical Kernel System	?MI?	EN/EN B	N33 N	99/20/,0	99/20/11	99/11/10	05.86 08.86 12.86 A 05.86 10.86 01.87 R 04.86 08.86
St0-38	2•16-N	2129/1	LAN • CLNS CSMA/C0 - Multiple Completed	ZOtt,	AN3/AN3	CEN/CENELEC	99/ZOPY0	99/L0/ti	99/11/10	03.86 05.86 07.86 A 03.86 05.86 11.86 R 12.85 03.86 06.86
ZdSt0.311	2'06-N	2129/1	LAN • CLNS CSMA/00 - Multiple. Conversion of ENV into EN	ZO,t/	N3Jd/N3	CEN/CENELEC ENDS	99/20/10	911/20/tt	/ /	
SC-016	VLIZ-11 LtZ-N 2'06-N	t2/11	Relay LAN/LAN • CLNS		/AN3	CEN/CENELEC ENDS	911/20/,0	99/20/11	99/11/10	P 07.88 10.88 09.89 A 07.88 10.88 09.89 R
SC-017	112-N St-N	Z1t/V	MNS (private) UA - ADND (P3 • P2) Merged with SC-097		/AN3	3313,433/N33	99/0t/Lt	9V/21/10	L9/90/10	P 08.87 12.87 08.88 A 09.88 12.88 08.89 R
SC-018	112-N St-N		HS - Teletex terminal to AOMO (PS) Withdrawn		/AN3	CEN/CENELEC	99/01/21	99/21/,0	L9/90/10	d.c R
8C-019	112-N Sft-N	22f/V	Interpersonal messaging us • SCE to PANS Merged with SC•097			CEN/CENELEC	911/01/L1	99/21 1,O	/	P.04.87 07.87 03.88 A R
020-38	Sft-N	Ztt/3	asic Teletex on PSON		/AN3	1d33	911/01/Lt	911/2t/hO	69/20/91	04.87 08.87 04.88 A 02.89 08.89 10.89 R
120-38	Sft-N	t1t/3	Basic Teletex on CSON		/AN3	1d33	99/0t/1t	99/21//O	69/20/91	P 04.87 08.87 04.88 A 02.89 08.89 10.89 R
220-38	112-N Sf1-N	121/O	Text processable format Merged with 0C-056		/AN3	1d33	99/0t/L1	04/12/86	/ /	
EZ0-38	1tZ-N St-N	1,Z/O	Videotex Merged with 8C-008							
120.38	LIZ-141 St-N	tt/11	CO-NS LAN/LAN				17/10/86			

ROC N' SOGITS N' Profit* ITEM ' Standard Status '										
520.38	LI2-N Sft-N	21/11	CO-NS LAN/YAM		AN3/	3313,63/N31 SOM3	99/01/11	99/21/Y0	89/90/10	P 11.88 02.89 08.89 A 11.88 02.89 08.89 R
920-38	LI2-14 Sft•N	2E/1	Switched access to PSON Completed	41105	ENV/ENV	1d33	99/01/11	911/21/,0	19/90/10	P 04.87 08.87 04.88 A06.87 11.87 07.88 R06.87 01.8806.88
120 38	LI2-N Sft-N	11,/1	Data circuit - permanent circuit CO-NS case Completed	9011,	AN3/AN3	1d33	99/01/11	911/01//0	19/90/10	P 04.87 08.87 04.88 A06.87 11.87 07.88 R 06.87 01.88 06.88
028-38	LI2-N Sft-N	1191/1	LAN • CO-NS • CSMA/CO Completed	EOM	ENV/ENV	331311133/N33	99/01/11	99/21//0	19/90/10	P 04.87 07.87 04.88 A 06.87 11.8707.e8 R 07.87 10.87 12.87
620-38	I'LI2-N LI2-11 S51-8	1229/1	TOKEN-BUS : simple LAM		AN3/	CEN/CENELEC BIOS	98/01/11	99/21/Y0	19/90/10	P 06.88 09.89 03.89 A 12.88 03.89 09.89 R
0f0-381	I 112-11 LI2-N 551-N	2229/1	TOKEN-BUS : multiple LAN		AN3/	CEN/CENELEC ENOS	99/01/11	92/21/70	19/90/10	P 06.88 09.89 03.89 A12.88 03.89 09.69
150-381	112-N Sft-N,	12/A	Videotex (non OSI) terminal access Superseded		AN3/	1e133	99/01/LI	92/21/,0	/ /	P 04.87 07.87 03.88 A R
9250.38	I 951-11		Lexel Le2150l 'NOV - 4 110 43edmo3	09962'	EN/EN	N33	90/21/b0	111/20/50	99/01/10	P 08.87 11.87 04.88 A 03.88 07.88 07.89 R08.88 12.88
8250.38	112-N I 951•N		Compact Disk - ROM. Physical level (ISO/IEC DIS 10149) Completed	6,10F	4AN3/AN3	331ЭN33/N33	98/12/90	29/70/50	99/01/10	P 12.88 06.89 08.89 A 12.88 06.89 95.0Z R10.88 03.89 05.89)
28250.38	112•N 1'9El-N		Compact Disk • RON. Physical level (ISO/IEC DIS 10149) Conversion into EN	6,10F	41018/03	N33	(111/21/70	10/20/50	/	P 11.89 03.90 03.91 A 11.89 03.90 03.91
3250-38	N-138.1 N-217		Compact disk • ROM. Interface level Covered by BC•099			CEN/CENELEC	98/21/b0	92/20/50	/ /	
4520 38	LI2-NI LE1-11		Trade Data Interchange. Syntax rules	SE162	IEN/EN	N33	94/21/t01	18/20/50	30/07/87	P 10.87 01.88 09.88 A 10.87 01.88 09.68 R 04789 88;09
8520 f38	1 112-111 E12-14 LE1-N				1EN/EN					

BC N°	SOGITS N°	Profile	ITEM	Standard	Status	Work assigned to	SOGITS	83/189	CEN/CLC/ETSI	I II III
BC-034	N-158 N-217.1		Identification card. Numbering system and registration proc.	27812	EN/EN	CEN	11/03/87	19/06/87	06/05/88	P 07.88 10.88 02.89 A 07.88 10.88 02.89 R 08.88 03.89
BC-035	N-158 N-217.1		Identification Cards. Physical characteristics	27816-1	EN/EN	CEN	11/03/87	19/06/87	06/05/88	P 07.88 10.88 02.89 A 07.88 10.88 02.89 R 08.88 03.89
BC-036	N-158 N-217.1		Identification cards.Oimensions and location of the contacts	27816-2	EN/EN	CEN	11/03/87	19/06/87	06/05/88	P 07.88 10.88 02.89 A 07.88 10.88 02.89 R 08.88 03.89
BC-037	N-158 N-217.1		Identification Cards. Magnetic stripe - Track 3	24909	EN/EN	CEN	11/03/87	19/06/87	06/05/88	P 07.88 10.88 02.89 A 07.87 10.88 02.89 R 08.88 03.89
BC-038	N-158 N-217.1		Identification cards. Machine readable passport		HD/	CEN	11/03/87	19/06/87	/ /	P 12.87 04.88 01.89 A R
BC-039	N-158 N-217.1		Identification cards. Physical characteristics	27810	EN/EN	CEN	11/03/87	19/06/87	06/05/88	P 07.88 10.88 02.89 A 07.88 10.88 02.89 R 08.88 03.89
BC-040	N-158 N-217.1		Identification cards. Recording technique. Embossing	27811-1	EN/EN	CEN	11/03/87	19/06/87	06/05/88	P 07.88 10.88 02.89 A 07.88 10.88 02.89 R 08.88 03.89
BC-041	N-158 N-217.1		Identification cards. Recording technique. Magnetic stripe	27811-2	EN/EN	CEN	11/03/87	19/06/87	06/05/88	P 07.88 10.88 02.89 A 07.88 10.88 02.89 R 08.88 03.89
BC-042	N-158 N-217.1		Identification cards. Location of embossed characters	27811-3	EN/EN	CEN	11/03/87	19/06/87	06/05/88	P 07.88 10.88 02.89 A 07.88 10.88 02.89 R 08.88 03.89
BC-043	N-158 N-217.1		Identification cards. Location of read-only magnetic tracks	27811-4	EN/EN	CEN	11/03/87	19/06/87	06/05/88	P 07.88 10.88 02.89 A 07.88 10.88 02.89 R 08.88 03.89
BC-044	N-158 N-217.1		Identification cards. Location of read-write magnetic tracks	27811-5	EN/EN	CEN	11/03/87	19/06/87	06/05/88	P 07.88 10.88 02.89 A 07.88 10.88 02.89 R 08.88 03.89
BC-045	N-158 N-217.1		Identification cards. Financial transaction cards	27813	EN/EN	CEN	11/03/87	19/06/87	06/05/88	P 07.88 10.88 02.89 A 07.88 10.88 02.89 R 08.88 03.89
BC-046	N-158		Identification cards. Complementary work programme			CEN	11/03/87	19/06/87	06/05/88	P 11.87 A 11.88 R

BC N°	SOGITS N°	Profile ITEM	Standard Status		Work assigned to	SOGITS 83/189 CEN/CLC/ETSI 1 11 111			
			21539	EN/EN	CEN	13/05/87	19/06/87	06/05/88	P 12.87 08.88 01.89 A 12.87 08.88 01.89 R 08.88 03.89
BC-047A	N-176 N-217	Programing languages. FORTRAN	21989	EN/EN	CEN	13/05/87	19/06/87	06/05/88	P 12.87 08.88 01.89 A 12.87 08.88 01.89 R 08.88 03.89
BC-047B	N-176 N-217	Programing languages. COBOL	26160	EN/EN	CEN	13/05/87	19/06/87	06/05/88	P 12.87 08.88 01.89 A 12.87 08.88 01.89 R 08.88 03.89
BC-047C	N-176 N-217	Programing languages. PL/I	26373	EN/EN	CEN	13/05/87	19/06/87	06/05/88	P 12.87 08.88 01.89 A 12.87 08.88 01.89 R
BC-047D	N-176 N-217	Programing languages. Minimal BASIC	28405	EN/	CEN	13/05/87	19/06/87	06/05/88	P 12.87 08.88 01.89 A 12.87 08.88 01.89 R 08.88 03.89
BC-047E	N-176 N-217	Programing languages. APL	28652	EN/EN	CEN	13/05/87	19/06/87	06/05/88	P 12.87 08.88 01.89 A 12.87 08.88 01.89 R
BC-047F	N-176 N-217	Programing languages. ADA	28632-1	EN/	CEN	13/05/87	19/06/87	06/05/88	P 12.87 08.88 01.89 A 12.87 08.88 01.89 R
BC-048A	N-176 N-217	Information processing systems computer graphics. Part 1	28632-2	EN/	CEN	13/05/87	19/06/87	06/05/88	P 12.87 08.88 01.89 A 12.87 08.88 01.89 R
BC-048B	N-176 N-217	Information processing systems computer graphics. Part 2	28632-3	EN/	CEN	13/05/87	19/06/87	06/05/88	P 12.87 08.88 01.89 A 12.87 08.88 01.89 R 08.88 03.89
BC-048C	N-176 N-217	Information processing systems computer graphics. Part 3	29293	EN/EN	CEN	13/05/87	19/06/87	06/05/88	P 12.87 08.88 01.89 A 12.87 08.88 01.89 R 08.88 03.89
BC-049A	N-176 N-217	Information processing systems. ISO 9293	27487-1	EN/EN	CEN	13/05/87	19/06/87	06/05/88	P 12.87 08.88 01.89 A 12.87 08.88 01.89 R 08.88 03.89
BC-049B	N-176 N-217	Magnetic support media. ISO 7487/1	27487-2	EN/EN	CEN	13/05/87	19/06/87	06/05/88	P 12.87 08.88 01.89 A 12.87 08.88 01.89 R
BC-049C	N-176 N-217	Magnetic support media. ISO 7487/2	27487-3	EN/EN	CEN	13/05/87	19/06/87	06/05/88	P 12.87 08.88 01.89 A 12.87 08.88 01.89 R
BC-049D	N-176 N-217	Magnetic support media. ISO 7487/3							

Subject	Work assigned to	83/189 CEN/CLC/ETSI
Magnetic support media. 1=771		
Magnetic support media. ISO 8387/3		
Magnetic support media. ISO 8630/1		
Magnetic support media. ISO 8630/2		P 12.87 08.88 01.89 A 12.87 08.88 01.89 R
Magnetic support media. ISO 8860/1	41	
[illegible]		
Magnetic support media. ISO 8630/3		
ISDN -PAIIX (interface). Work programme		
Safety equipment connected to the Telecom Network		
Safety of IT equipment		
FTAM - Positional File Transfer (2)		P 02.89 06.89 08.89 A 02.89 06.89 08.89 R 06.89 09.89 11.89
FTAM - Positional File Access (3) Completed		03/07/87 115/09/87 106/05/88

BC N°	SOGITS N°	Profile	ITEM	Standard	Status	Work assigned to	SOGITS	83/189	CEN/CLC/ETSI	I II III
BC-055	N-190 N-217.1	A/323	MHS - MTA -MTA (Intra - PRMD) (P2 + P1) Merged BC-97		ENV/	CEN/CENELEC	03/07/87	15/09/87	/ /	P 02.89 06.89 08.89 A R
BC-056	N-190 N-217.1	Q/111	ODA-DAP Basic Character content	41509	ENV/ENV	CEN/CENELEC EWOS	03/07/87	15/09/87	06/05/88	P 02.89 06.89 08.89 A 02.89 06.89 08.89 R 03.89 10.89
BC-057	N-190 N-217.1	Q/112	ODA-DAP Extended Mixed mode	41510	ENV/ENV	CEN/CENELEC EWOS	03/07/87	15/09/87	06/05/88	P 02.89 06.89 08.89 A 02.89 06.89 08.89 R 03.89 10.89
BC-058	N-190 N-217.1	Q/113	ODA-DAP Enhanced mixed mode		ENV/	CEN/CENELEC EWOS	03/07/87	15/09/87	06/05/88	P 02.89 06.89 08.89 A 02.89 06.89 08.89 R
BC-059	N-190 N-217.1	T/21	Telephonic circuit. Permanent CO-NS		ENV/	CEPT	03/07/87	15/09/87	06/05/88	P 09.88 02.89 03.89 A 09.88 02.89 03.89 R
BC-060	N-190 N-217.1	T/22	Telephonic circuit. Switched CO-NS		ENV/	CEPT	03/07/87	15/09/87	06/05/88	P 09.88 02.89 04.89 A 09.88 02.89 04.89 R
BC-061	N-190 N-217 N-217.1	T/612	LAN - CO-NS. Token bus		ENV/	CEN/CENELEC EWOS	03/07/87	15/09/87	06/05/88	P 02.89 06.89 08.89 A 02.89 06.89 08.89 R
BC-062A	N-191 N-217 N-217.1		AMT - OSA. Part 1 : Programme			CEN/CELELEC	03/07/87	15/09/87	06/05/88	P 09.88 A 09.88 R 04.89
BC-062B	N-191 N-217 N-217.1		AMT - OSA. Part 2 : Stand.		ENV/	CEN/CELELEC	03/07/87	15/09/87	06/05/88	P 04.89 12.89 03.89 A 04.89 12.89 03.89 R
BC-063A	N-195 N-217 N-217.1		AMT - Part 1 : Stand. library.		ENV/	CEN/CENELEC	03/07/87	15/09/87	06/05/88	P 09.88 02.89 08.89 A 09.88 02.89 08.89 R
BC-063B	N-195 N-217 N-217.1		AMT - Part 2 : Work programme.			CEN/CENELEC	03/07/87	15/09/87	06/05/88	P 02.90 A 02.90 R
BC-063T	N-195 N-217 N-217.1		AMT. Translation			CEN/CENELEC	03/07/87	15/09/87	06/05/88	P 02.90 A R
BC-064	N-196 N-217 N-217.1		AMT - Extension to mech. standards. Work programme.			CEN/CENELEC	03/07/87	15/09/87	04/08/88	P 12.88 A 12.88 R 10.89

BC N' SOGITS N' Profile ITEM Standard Status work assigned to SOGITS 83/189 CEN/CLC/ETSI I II III									
590-38	0-02-0 t02-N L12 N	1f29/1	LAN - CL-NS - Token ring. Single LAN Completed	601i,1	ENV/ENV3	CEN/CENELEC	T6/01/11	06/05/66	P 10.87 02.88 06.88 A 10.87 02.88 06.88 R 10.87 02.88 06.88
990-38	0-02-N L12 0	2E29/1	LAN CL-NS Token ring. Multiple LAN Completed	111',1)	ENV/ENV	33I3N33/033	T6/01/63	06/05/66	P 10.87 02.88 06.88 A 10.87 02.88 06.88 R 10.87 02.88 06.88
290-38	0-02-0 L12-0	f19/1	LAN • CO-NS • Token ring Completed	9011,1	AN3/AN3	33I3N33/N33	T6/01/63	06/05/88	P 01.88 04.88 08.88 A 01.88 04.88 08.88 R 02.88 05.88 08.88
V890-31I	902-N		Nome Electronic Systems Workprogramme: Mains sign. systems			CENELEC	04/10/21	99/10/21	P 06.88 A 09.91 03.92 09.92 R
8090.38	902-N		Nome Electronic Systems Workprogramme: Part 8 and Part 9			CENELEC	99/10/21	99/02/09	P 06.00 A 16'20
690.35	902-N		Nome Electronic Systems Vorkprogremee: EMC			CENELEC	99/10/21	99/02/09	
[V0Z0.381	902-N		Nome Electronic Systems Workprogramme: NES Architecture		ENV	CENELEC	99/10/21	99/20/91	P 06.88 A 03.90 09.90 03.91 R
8070-8	902-N		Nome Electronic Systems Workprogramme: NES Architecture			33I3N33	99/10/21	99/20/91	Op Op Cl de Of
1102-01	1		Nome Electronic Systems workshop			33I3N33	99/10/21	09/20/91	22 33 o. de de
220-38	012-0		Sectorial application of EN 29000 to IT		AN3/	N33	0I1/f0/11	00/20/11	9 . Cl a OC
VEL0-30	[		VDU - Ergonomics requirements. General introduction (9241/1)		EN3/0	N33I	88/90/E0	00/10/10	22 Cl a Cc
8C-073-8	152-N		VDU - Ergonomics requirements. Task requirements (9241/2)		EN3/	033	1111/90/f0	00/10/10	22 Cl de ce
3EL0.38	N-iii		VDU - Ergonomics requirements. Visual requirements (9241/3)		EN3/	N33	00/90/t0	1111/10/f1	22 Cl de Cc

BC N' SOGITS N'Profile — Standard Status Work assigned toSOGITS83/189CEN/CLC/ETSI 1 II 111

OLLO•38	ISZ-N I		VDU - Ergonomics requirements. Others requirements (9241/4)		/N3	N33 I	99/90/f0 I	99/LO/f1	69/10/10	P 12.88 08.89 08.90 A 12.88 08.89 10.89 R
VUO.38	f1E-81		**!PBX**- Reference configuration	Mai	AN3.140/AN3	3313N33	99/90/10 I	99/10/,1	01/01/89	P 09.88 12.88 03.89 **A**03.89 07.89 11.89 R 05.89
fn-N1 18,LO-311			ISPBX - Architectural model		/AN3	3313833	99/90/f0	99/LO/,1	69/10/10	**P**11.88 02.89 05.89 **A**06.89 10.89 02.90
f,8-ǂ ZO,LO-38			!UNIX - Architectural model. Supplementary Services	SOOTI	A83.10/683	3313N33	99/90/f0	911/LOPA	69/10/10	P 11.88 02.89 05S.89 **A**06.89 10.89 02.90 R 05.89
3,10.38	f,2-01		suoiTTuIIOO - XIdSI		/AN3	3313833	99/90/f0	14/07/88	69/10/10	11.88 02.89 05.89 A 03.90 07.90 11.90
LYSLO.31	fn•N		**ISPBX** -Network scenarios		/AN3	CENELEC	29/9M°	99/LO/V1	69/10/10	12.88 03.89 06.89 A 09.89 01.90 05.90 It
21(SLO-38	08-N		**ISPBX** -Network scenarios		/AN3	CENELEC	911/90/f0	99/LO/V1	69/10/10	12.88 03.89 06.89 **A**09.69 01.90 05.90
IIISLO-31	fn-11		ISPBX - Signalling t Protocols. ISPBX - Public !SON		/AN3	3313N33	03/06/88	99/10/VI	69/1 0/1 0	P 07.89 10.89 01.90 **A**09.90 01.91 05.91
BC-07582	**N•Z,3**		ISPBX • Signalling i Protocols. ISPBX - Public ISDN		/AN3,	3313N33	03/06/88	99/LO/,1	69/10/10	07.89 10.89 01.90 A 09.90 01.91 05.91
13UO.38	ER•11		ISPBX • Specific functional Standards		/AN3	3313833	03/06/88	99/10/V1	69/10/10	06.90 09.90 12.90 A 06.90 10.90 02.91 It
23SLO-39	DZ-N		ISPBX - Specific functional Standards		/AN3	CENELEC	911/LO/t1	99/90/f0	69/10/10	06.90 09.90 12.90 A 06.90 10.90 02.91
10520.39	OZ-N		ISPBX - Signaling S Protocols Supplementary services		/AN3	CENELEC	99/90/f0	99/LO/,1	69/10/10	**P**06.89 09.89 12.89 A 06.89 10.89 02.90
20520.39	f,2•11		**ISPBX**• Signaling S Protocols Supplementary services		/AN3	CENiLEC	99/90/f0	99/LO,1	69/10/10	06.89 09.89 12.89 **A**06.89 10.89 02.90

BC N°	SOGITS N°	Profile	ITEM	Standard Status	Work assigned to	SOGITS	83/189	CEN/CLC/ETSI	I II III
BC-075D3	N-243		ISPBX - Signaling & Protocols Supplementary services	ENV/	CENELEC	03/06/88	14/07/88	01/01/89	P 06.89 09.89 12.89 A 09.90 01.91 05.91 R
BC-075D4	N-243		ISPBX - Signaling & Protocols Supplementary services	ENV/	CENELEC	03/06/88	14/07/88	01/01/89	P 06.89 09.89 12.89 A 09.90 01.91 05.91 R
BC-075D5	N-243		ISPBX - Signaling & Protocols Supplementary services	ENV/	CENELEC	03/06/88	14/07/88	01/01/89	P 06.89 09.89 12.89 A 06.89 10.89 02.90 R
BC-075D6	N-243		ISPBX - Signaling & Protocols Supplementary services	ENV/	CENELEC	03/06/88	14/07/88	01/01/89	P 06.89 09.89 12.89 A 06.89 10.89 02.90 R
BC-075D7	N-243		ISPBX - Signaling & Protocols Supplementary services	ENV/	CENELEC	03/06/88	14/07/88	01/01/89	P 06.89 09.89 12.89 A 06.89 10.89 02.90 R
BC-075D8	N-243		ISPBX - Signaling & Protocols Supplementary services	ENV/	CENELEC	03/06/88	14/07/88	01/01/89	P 06.89 09.89 12.89 A 06.90 10.90 02.91 R
BC-076A1	N-243		ISPBX - Numbering, Routing, Addressing	ENV/	CENELEC	03/06/88	14/07/88	01/01/89	P 12.88 03.89 06.89 A 06.90 10.90 02.91 R
BC-076A2	N-243		ISPBX - Numbering, Routing, Addressing	ENV/	CENELEC	03/06/88	14/07/88	01/01/89	P 12.88 03.89 06.89 A 06.90 10.90 02.91 R
BC-0768	N-243		ISPBX - Numbering, Routing, Addressing. Private ISPBX	ENV/	CENELEC	03/06/88	14/07/88	01/01/89	P 03.89 06.89 09.89 A 03.90 07.90 11.90 R
BC-076C	N-243		ISPBX - Supplementary services. ISDN through ISPBX	ENV/	CENELEC	03/06/88	14/07/88	01/01/89	P 03.89 06.89 09.89 A 06.90 10.90 02.91 R
BC-0760	N-243		ISPBX - Supplementary services. Private ISPBX	ENV/	CENELEC	03/06/88	14/07/88	01/01/89	P 07.90 10.90 01.91 A 06.90 10.90 02.91 R
BC-076E1	N-243		ISPBX - Non standardized suppl. services through Public ISDN	ENV/	CENELEC	03/06/88	14/07/88	01/01/89	P 07.90 10.90 01.91 A 06.90 10.90 02.91 R
BC-076E2	N-243		ISPBX - Non standardized suppl. services through Public ISDN	ENV/	CENELEC	03/06/88	14/07/88	01/01/89	P 07.90 10.90 01.91 A 06.90 10.90 02.91 R

! BC N'	SOGITS N'	Profile	ITEM	Standard	Status	Work assigned to	SOGITS	83/189	CEN/CLC/ETS	I	II	III
			ISPBX • Network technical performances		/AN3	331394 3	03/06/99	99/10/V1	69/10/10	P 06.89 09.89 12.89 A 09.89 01.90 05.90 R		
	02-11		ISPBX - Network technical performances. Synchronization		/AN3	3313933	06/06/99	99/LO/V1	01/01/89	P 06.89 09.89 12.89 A 09.89 01.90 05.90 R		
1/10.38	02-14		ISPBX - Basic requirements transmision, bearer capability		/AN3	3313933	03/06/88	99/LO/71	69/10/ 10	06.89 09.89 12.89 A 09.89 01.90 05.90 R		
910.31	**9/2•1**		Audio, Video, Computer (AVC)		/N3	3313933	06/06/99	99/LO//1	/	12.88 06.89 06.90 A 12.88 06.90 12.90 R		
1620 31	9/Z-11		Audio, Video, Computer (AVC). Audio Signals		/93	CENELEC	06/90/119	99//0/01	/ /	03.90 09.90 09.91 A 09.90 03.91 09.92		
1610.31	9,Z•N		Audio, Video, Computer (AVC). Control Signals		/N3	3313N33	06/90/917	99/10//1	/ /	P 03.90 09.90 09.91 A 03.90 09.90 09.01 R		
3610.35	**et-N**		Audio, Video, Computer (AVC). Data Signals Not accepted CLC		/113	CENELEC	06/06/99	99/LO/11	/ /	P 03.90 09.90 09 91 A 03.90 09.90 09.91 R		
0610-35	11,2-11		Audio, Video, Computer (AVC). Video signals Not accepted CLC		/93	3313N33	06/06/99	99/10/01	/ /	P 03.91 09.91 09.92 A 03.91 09.91 09.92 R		
090.31	6-VZ-9		Audio, Video, Computer (AVC). V/C connector		/113	3313N33	06/90/9111	179/10/01	/ /	P 03.89 09.89 09.90 A 12.89 06.90 06.91 R		
V190-31	9,2•11		AVC. Interconnection Architecture. Feasibility study			3313N33	03/06/88	99/20/V1	/ /	6910 V V		
0190.38	911-9		AVC. Interconnection Architecture. Work programme			CENELEC	06/06/99	99/LO/Lt	/ /	P 06.89 A R		
Z90-39	6 12-9		Electromagnetic compatibility. ENC Standards for IT terminal		/N31	3313N33	06/06/99	99/LO/Lt	/ /	P 12.88 06.89 12.89 A		
f90.311	6,2-9		Electromagnetic compatibility. EMC stand. for TELECOM term. Merged with 8C•082				/ /	/ / /	/	P ~~12.88 06.89~~ 69,21		

BC N°	SOGITS N°	Profile	ITEM	Standard Status		Work assigned to	SOGITS	83/189	CEN/CLC/ETSI	I	II	III
BC-084A	N-250		Technical specif. for Electronic comp. in IT and TELECOM		CECC Spec.	CENELEC (CECC)	03/06/88	14/07/88	01/01/89	P 09.88 A 04.90 R 10.89	02.89 08.90	01.90 12.90
BC-084B	N-250		Technical specif. for Electronic comp. in IT and TELECOM		CECC Spec.	CENELEC (CECC)	03/06/88	14/07/88	01/01/89	P 09.88 A 04.90 R	02.89 08.90	01.90 12.90
BC-084C	N-250		Technical specif. for Electronic comp. in IT and TELECOM		CECC Spec.	CENELEC (CECC)	03/06/88	14/07/88	01/01/89	P 09.88 A 04.90 R 10.89	02.89 08.90	01.90 12.90
BC-084D	N-250		Technical specif. for Electronic comp. in IT and TELECOM		CECC Spec.	CENELEC (CECC)	03/06/88	14/07/88	01/01/89	P 09.89 A 04.90 R	02.89 08.90	01.90 12.90
BC-084E	N-250		Technical specif. for Electronic comp. in IT and TELECOM		CECC Spec.	CENELEC (CECC)	03/06/88	14/07/88	01/01/89	P 09.88 A 04.90 R 10.89	02.89 08.90	01.90 12.90
BC-084F	N-250		Technical specif. for Electronic comp. in IT and TELECOM		CECC Spec.	CENELEC (CECC)	03/06/88	14/07/88	01/01/89	P 09.88 A 04.90 R 10.89	02.89 08.90	01.90 12.90
BC-084G	N-250		Technical specif. for Electronic comp. in IT and TELECOM		CECC Spec.	CENELEC (CECC)	03/06/88	14/07/88	01/01/89	P 09.88 A 04.90 R 10.89	02.89 08.90	01.90 12.90
BC-084H	N-250		Technical specif. for Electronic comp. in IT and TELECOM		CECC Spec.	CENELEC (CECC)	03/06/88	14/07/88	01/01/89	P 09.88 A 04.90 R	02.89 08.90	01.90 12.90
BC-084I	N-250		Technical specif. for Electronic comp. in IT and TELECOM		CECC Spec.	CENELEC (CECC)	03/06/88	14/07/88	01/01/89	P 09.88 A 04.90 R 10.89	02.89 08.90	01.90 12.90
BC-085	N-214.1 N-214.2		Bar code - Standards for article numbering		EN/	CEN	03/06/88	14/07/88	01/01/89	P 12.88 A 12.88 R	06.89 06.89	12.89 12.89
BC-086	N-214.1 N-214.2		Bar code - Generic Standards		EN/	CEN	03/06/88	14/07/88	01/01/89	P 12.88 A 12.88 R	06.89 06.89	12.89 12.89
BC-087	N-214.1 N-214.2		Bar code - Stand. for ident. and routing of mail and parcels		EN/	CEN	03/06/88	14/07/88	01/01/89	P 12.88 A 12.88 R	06.89 06.89	12.89 12.89
BC-088	N-247		Test standards for implementation of N-IT-03. Work programme			CEN	03/06/88	14/07/88	01/01/89	P 06.89 A 06.89 R 11.89		

18C N' SOGITS N' Profile ITEM Standard Status Work assigned to											
690-3117	SZ-N	L£1/1	ISON (Public/Private) Circuit switched bearer services.		/AN3	1433	03/06/88	99/10/V1	68/10/10	09.88 03.89 05.89 A 09.88 03.89 05.89 R	
060-311	SZ-N	121/1	ISDN (Public/Private) Circuit switched bearer services. X.31		/AN3	1433	03/06/88	O1'1/LOP/1	69/10/10	P 09.88 03.89 05.89 A 09.88 03.89 05.89	
160-38	SZ-N	ZZ1/1	ISON (Public/Private) Circuit switched bearer services. x.3		/AN3	1433	99/06/f0	91/LO/V1	69/10/10	09.88 03.89 05.89 A 09.88 03.89 05.89	
260.31	SZ-N	1f1/1	ISDN (Public/Private). Port access to a PSDN (X.31/X.32)		/AN3	1d33	99/06/f0	99/LO/,1	69/10/10	09.88 03.89 05.89 A 09.88 03.89 05.89	
f60.38	S,Z-N	F1 1/V	Full file transfer. Hierarchical		/AN3	331N33/N33 SOM3	99/06/f0	a/2O/%1	69/10/10	02.89 06.89 07.89 A 02.89 06.89 08.89	
60.3111	SVZ-11	**£21/V**	Full file access. Hierarchical		/AN3	331N33/N33 SOM3	99/06/O	1111/20//1	69/10/10'	P 02.89 06.89 07.89 A 02.89 06.89 08.89	
S60.31	SZ-N		file store. Management	41205	ENV/ENV	331N33/N33 SOM3	99/06/f0	99/LOPA	69/10/10	02.89 06.89 07.89 A 02.89 06.89 08.89 R 04.89 10.89	
960.30	**SZ-N**	1ff/V	[MNS - IPM: 1DM end system to IPM end system		/AN3	1433	99/06/f0	99/LO/,1	69/10/10	02.89 06.89 07.89 A 02.89 06.89 08.89	
L60-31	SVZ-N	Zff/V	NHS - !PM: UA to message store		/AN3	CEN/CENELEC EWOS	03/06/88	99/LO/,1	69/10/10	02.89 06.89 07.89 A 02.89 06.89 08.89	
960-38	SU.N	SII'Z	Character I Control repertoire. Eastern European repertoire		/A113	CEN/CENELEC	99/06/f0	99/LO/,1	69/10/10	02.89 06.89 07.89 A 02.89 06.89 08.89	
660.30	19Z-NI		Smell Computer System Interface			N33	90/09/91	99/01/tZ	/	P 09.88 06.89 12.89 A 08.89 12.89 12.90 R O I/	
9001-39	6SZ		Computer Graphics. GKS language bindings. FORTRAN				16/09/88				

BC N• SOGITS Or Profile ITEM Standard Status Work assigned to SOGITS 83/189										
3001-30	N•ZS9		Computer Graphics. GKS language bindings. PASCAL		/N3	N33	91/09/99	99/01/,2	/ /	10.88 06.89 12.89 A 07.89 10.89 10.90
BC-1000	N•Z99		Computer Graphics. GKS language bindings. AOA		/N3	N33	91/09/99	99/01/tZ	/ /	P 01.89 09.89 03.90 A 07.89 10.89 10.90
V101-30	N-6SZ		Identification i payments cards. ICC with contacts		/N3	N33	91/09/99	99/01/92	/ /	P 09.88 06.89 12.89 A 01.90 04.90 04.91 R
1101.31	N-6SZ		Identification i payments cards. Commands In async. trans*.		/93	N33	91/09/99	99/01/,Z	T	09.88 06.89 12.89 A 01.90 04.90 04.91
1C-102	N-Z60		xiSoe		/AN3	N33	91/09/99	911/01/,2	/ /	06.89 01.90 04.90 A 06.89 01.90 04.90
VfO1-31	N•Z9i		SGML. Tait and Office Systems	kati3	/NJ	N33	99/11/12	99/21/61	/ /	01.89 06.89 12.89 A 05.89 09.89 09.89 pad
11E01.38	N-69Z		SGML. Support facilities SOIF (9069)	6904;	/N3	N33	99/11/12	99/21/SI	/ /	01.89 06.89 12.89 A 10.89 02.90 02.91 R
3501.311	N-Z9i		SGML. Support facilities. Registr. proc. for public text		/N3	(Na	99/11/12	99/21/SI	/ /	01.89 06.89 12.89 A 01.90 04.90 04.91
0E01.38	N•Z9ƒ		SGML. Interaction OOA-SGML. feasability study			N33 SOI13	99/11/12	99/21/SI	/ /	06.89 A 11.89 01.90 04:90.
vt01.38	116Z•11	1119/V	Basic Class (A mode) VT • Line scrolled		/AN3	331393/N33 SOM3	611/10/12	69/60/f1	/ /	03.90 07.90 09.90 A 03.90 09.90 11.90
1,01.34	T'96Z•I	111V/V	1 Basic Class (A mode) VT • Line scrolled, Test specifications			331393/N13 9OM4	69/10/AZ	69/60/St	/ /	P 11.89 02.90 04.90 A 11.89 02.90 04.90 a
VS01•38	1145Z•11	2119/V	Basic Class (A mode) VT • Paged • •		IAN]	331N33/N33 SOM3	69/10/Ai	69/to/it		12.89 04.90 06.90 A 03.90 09.90 11.91 a
461.38	t•96Z-	2119/V	Basic Class (A mode) VT • Paged. Test specifications			331393/933 SORB	69/10/AZ	69/60/t1		11.89 02.90 04.90 A 11.89 02.90 04.90 - • - -

BC N°	SOGITS N°	Profile	ITEM	Standard	Status	Work assigned to	SOGITS	83/189		
BC-106A	N-298.1	A/4121	Basic Class (S mode) VT - Forms		ENV/	CEN/CENELEC EWOS	27/01/89	13/03/89		
BC-106T	N-298.1	A/4121	Basic Class (S mode) VT - Forms. Test specifications			CEN/CENELEC EWOS	27/01/89	13/03/89		
BC-107A	N-298.1	A/4122	Basic Class (S mode) VT - Paged		ENV/	CEN/CENELEC EWOS	27/01/89	13/03/89		
BC-107T	N-298.1	A/4122	Basic Class (S mode) VT - Paged. Test especifications			CEN/CENELEC EWOS	27/01/89	13/03/89		
BC-108A	N-298.1	A/711	Directory : Access to centralised directory		ENV/	CEN/CENELEC EWOS - ETSI	27/01/89	13/03/89		
BC-108T	N-298.1	A/711	Directory : Access to centralised direc. Test specifications			CEN/CENELEC EWOS ETSI	27/01/89	13/03/89		
BC-109A	N-298.1	Q/121	ODA : Single document processing	41511	ENV/ENV	CEN/CENELEC EWOS	27/01/89	13/03/89		
BC-109T	N-298.1	Q/121	ODA : Single document processing. Test specifications			CEN/CENELEC EWOS	27/01/89	13/03/89		
BC-110A	N-298.1	Q/511	Directory Application Profile: Common Directory Usage		ENV/	CEN/CENELEC EWOS - ETSI	27/01/89	13/03/89		
BC-110T	N-298.1	Q/511	Directory Application Profile. Test specifications			CEN/CENELEC EWOS - ETSI	27/01/89	13/03/89		
BC-111	N-321		Information Processing Systems - Computer Graphics. GKS-3D		EN/	CEN	29/06/89	27/06/89		
BC-112A	N-322		Magnetic Support Media.Flexible disk cartridges.Characterist		EN/	CEN	29/06/89	27/06/89		
BC-112B	N-322		Magnetic Support Media.Flexible disk cartridges.Track format		EN/	CEN	29/06/89	27/06/89		

IIC 11• SOGITS M' Profile ITEM Standard Status Work assigned to SOGITS 83/189 CEN/CLC/E1S1 I II lit 1

3Z11-311	ZZE_N		Magnetic Support Nedia.Flexible disk cartridges.Design		/N3	N33	Z9/06/69	1/06/69	/ /	08.89 04.90 10.90 A 11.89 02.90 02.91 R
VF1i-3I	fZt-N		Identification and linking Cards. Country codes		/N1	N33	Z9/06/69	LZ/06/69		P 06.89 10.89 12.89 A 11.89 02.90 02.91 R
11t1-30	fZi-N		Identification and Banking Cards. Currency Codes		/031	N33I	Z9/06/69	LZ/06/69	/ /	06.89 10.89 12.89 A 11.89 02.90 02.91
3EI1.30	fZS-N		uoTmiunimmoaeTal xueg •spre3 6444w/a pue uoTTeaTmuopi		/N3I	N33	69/90/6Z	LZ/06/69	/	P 06.89 10.89 12.89 A 11.89 02.90 02.91
OEII-3II	tiE-N		Identification and Banking Cards. Originated messages		/N3	N33	Z9/06/69	LZ/06/69	/	P 06.89 10.89 12.89 A 11.89 02.90 02.91
Y,11-30	VZi-N		Exchange of Product Data (STEP). Evaluation report and study			CEN/CENELEC CADDETC - GOSET	Z9/06/69	LZ/06/69	/	P 10.89 A 11.89 02.90 03.90
11,11-3II	12E-N		Exchange of Product Date (STEP). Programme			CEN/CENELEC GOSET	Z9/06/69	LZ/06/69	/ /	d 10,09 Λ 06,10 06,50 06,20 Λ
3,11.3II	12E4		Exchange of Product Data (STEP). Standard		/AN3	CEN/CENELEC	Z9/06/69	LZ/06/69	/	12.89 04.90 09.90 A 06.90 10.90 02.91
ISII•3I	SZI-N		Advanced Manufacturing Technologies. Report on ergonomics			3313N33/N33	Z9/06/69	LZ/06/69	/	P 09.89 A 03.90 06.90 09.90
11St-3II	52f-N		**Advanced Manufacturing Technologies. Standards**		/AN3Γ	(N33)	Z9/06/69	LZ/06/69	/ /	o.•.ctx
911-011	9Et-IF	111/O	**00A-OAP Basic character content.** Test specifications		/AN3	3313N33/N33 ISTa - SOM3	Z9/06/69	LZ/06/69	/ /	P 01.90 05.90 07.90 A 11.89 02.90 04.90
LII-38	9Zt-N		00A-DAP**Extended mixed mode. Test specifications.**		/AN]	3313N33/N33 SOM3	Z9/06/69	LZ/06/69	/ /	01.90 05.90 07.90 A 11.89 02.90 04.90
1111-3II	92E4	E11/O	**00A-OAP Enhanced mixed mode. Test specifications.**		/AN3	3313N33/N33 SOM3	Z9/06/69	LZ/06/69	/ /	P 03.90 07.90 09.50 A 11.89 02.90 04.90

18C N' SOGITS N' Profile ITEN • Standard Status										
611.311	92f_N	2129/1	LAN-CLNS CSNA/CO multiple. Test specifications			CEN/CENELEC ENOS - ETSI	69/90/62	69/90/L2	/ /	03.90 07.90 09.90 A 11.89 02.90 04.90
021.38	92f-N	1t29/1	Cl-LAN Single LAN CSNA ICO. Test specifications		/AN3	CEN/CENELEC ENOS	69/90/62	69/90/22	/ /	
V121.38	N-fff't		Automatic Identification of Containers and Vehicles.			CEN CENELEC - ETSI	69/60/St	69/0t/f0	/ /	P 01.90 04.90 06.90 A 01.90 04.90 06.90
8121.38	N-fff't		-sepiisaA pue soikuJetuo3 yo uo,3116111ap] altswoINV			N33	69/60/51	69/0t/f0	/ /	P 08,90 10.90 11.90 A 08.90 10.90 11.90
3121.38	N-fff't		Automatic Identification of Containers and Vehicles.			N33	69/60/51	69/01/t0	/	11.90 03.91 05.91 A 11.90 03.91 05.91
1121.3$	095-N	tt1/V'	Directory. Dynamic behaviour of OVAS		/AN3	33139331933 ISI3 - SOM3	611/60/51	69/0t/f0	/	P 12.89 03.90 06.90 A 12.89 06.90 08.90 ft
122t-38	09E-11	"IL/V	Directory. Dynamic behaviour of OVAS. Test specifications		/AN3	33139331933 1513 SOM3	611/60/St	69/01/f0	/	P 11.89 02.90 04.90 A 11.89 02.90 04.90
1121-38	095-N	1t,/0	VT-Control objects application/sequenced	L07 yl	/AN3	CEN/CENELEC ENOS	69/90/St	69/0t/f0	/ /	12.89 03.90 06.90 A 09.89 02.90 04.90 *n.12.-*
1E21.38	09f-N	tt't/0	suoizez3iipeds 3sel•powenbes/noiteaiidde siasfqo 1o.i3u03-1A		/AN3	CEN/CENELEC ENOS	69/90/St	69/01/10	/ /	11.89 02.90 04.90 A 11.89 02.90 04.90
9,21 3$	09f-R	2t,/0	VT-Control objects apptication/unsequenced	SON,	/AN3	CEN/CENELEC ENOS	69/90/St	03/10/89	/ /	12.89 03.90 06.90 A 09.89 02.90 04.90 R 17
1,21 32	09f-N	21//0	VT-Control objects application/unsequenced. Test specific.		/AN311	CEN/CENELEC ENOS	69/90/St	03/10/89	/	P 11.89 02.90 04.90 A 11.89 02.90 04.90 R ----
VS21-38	091-N	12,/0	VT-Control objects terminal/sequenced	6dti	/AN3	CEN/CENELEC ENOS	69/90/St	69/01/10	/	P 12.89 03.90 06.90 A 09.89 02.90 04.90 Rif./z.
1521-38	09f-N	t2,/0	VT-Control objects terminal/sequenced. Test specifications				15/09/89			

SCN' SMITS N' Profile ITEM Standard Status Work assigned to SOGIIS 83/189 CEN/CLC/ETSI I II III										
V921-38	09f-N	UWO_	**VT-Control objects terminal/unsequenced**		/ANЗ	[EWOS 3313N33/N33	2222t]	03/10/89	/ /	
8C-1261	09fN	22,/01	**VT-Control objects terminal/unsequenced. Test specifications**		/ANЗ	CEN/CENELEC EWOS	69/60/51	69/01Ø40	/	
V121•38	N-Ø9f	0/0	**VI•Control objects general**		/ANЗ	3313N33/N33 SOM3	613/60/51	69/01/f0	/ /	
1/21.38	09f-N	DID	**VT-Control objects general. Test specifications**		/ANЗ	CEN/CENELEC EWOS	AV/60/S1	45111/0140	/ /	
V921-38	N-9S0	?WV	**Directory access to centralized directory**		/ANЗ	3313N33/N33 1513 - SOM3	611/60/51	69/01/f0	/ /	
1821-38	09f-N	?WV	**Directory access to centralized directory. Test specificat.**		/ANЗ	CEN/CENELEC EWOS • ETSI	AV/60/SL	69/01/f0	/	**P** 11.89 02.90 06.90 **A** 11.89 02.90 06.90 R
V62173Ø	09t-N	f1L/V	**Directory. Behaviour of OSA*s for distributed operations**		/ANЗ	3313N33/N33 1513 - SOM3	69/60/51	69/01/f0	/ /	
1621:3fH	09f-N		**Isa•suolzeJado palm:wimpJO# s,YSO#OJnolActa•ksoauuld**		/ANЗ	CEN/CENELEC EWOS • ETSI	611/60/51	69/01/f8	/ /	**P** 11.89 02.90 04.90 **A** 11.89 02.90 04.90 R
Øft•38	UF-N1	1Lf/V	**MNS-VOMIA•PRMO/AMD to AND (P201). Test specifications** **Related to BC-006**		/ANЗ	CEN/CENELEC EWOS • ETSI	/	/ /	/ /	
1f1-311		1127f/V	**101S•VONTA•PMMD/PRMO (P2•1) Full service. Test specificat.** **Related to** 8C•007		/ANЗ	3313N33/N33 1513 • SOM3	/	/	/ /	**P** 03.91 08.91 10.91 A R
2ft•38	***tf-N***	111/V	**FTAM Simple file transfer(unstructured). Test specifications** **Related to** BC-012		/ANЗ	3313N33/N33 SOM3	/ /	/	/ /	P 03.91 08.91 10.91 **A** R
BC•133 [	N	211/V	**'TAM Positional file transfer (FLAT). Test specifications** **Related to** 8C-053		/ANЗ	3313N33/N33 SOM3	/ /	/	/ /	
/f1-311	***7Lt-N***	f1/V	**'TAM File Management. Test specifications** **Related to** 8C-09S		/ANЗ	CEN/CENELEC **EWOS**	/ /	/ /	/	**P** 03.91 08.91 10.91 **A**

BC N°	SOGITS N°	Profile	ITEM	Standard Status		Work assigned to	SOGITS	83/189	CEN/CLC/ETSI	I	II	III
BC-135	N-374	T/31	PSDN Permanent Access. Test specifications Related to BC-002		ENV/	CEN/CENELEC ETSI	/ /	/ /	/ /	P 03.91 A R	08.91	10.91
BC-136	N-374	T/32	PSDN Switched Access. Test specifications Related to BC-026		ENV/	CEN/CENELEC ETSI	/ /	/ /	/ /	P 03.91 A R	08.91	10.91
BC-137	N-374	T/41	CSDN T-70 case. Test specifications Related to BC-027		ENV/	CEN/CENELEC ETSI	/ /	/ /	/ /	P 03.91 A R	08.91	10.91
BC-138	N-374	T/42	CSDN CO HS case. Test specifications Related to BC-003		ENV/	CEN/CENELEC ETSI	/ /	/ /	/ /	P 03.91 A R	08.91	10.91
BC-139	N-374		OSI Transport layer. Test specifications		ENV/	CEN/CENELEC	/ /	/ /	/ /	P 03.91 A R	08.91	10.91

the Commission to CEN/CENELEC/ETSI to be carried out in cooperation with CEPT.

I: date of the publication of the draft standard.
A: date of acceptance of the standard according to the voting procedure applicable
R: date of introduction of the standard in the national standardization according to the procedure.

SC N'	SOGITS N'	Profile	ITEM	Standard	Status	Work assigned to SOGITS				
10IS-35	rai-N		OS1 Conformance Testing Methodology		APTISS	IWOS	Z9/06/69	L2/06/69	/	
20IS.311	9Z£-11		Development and Implementation of Open Systems		APra s	331ƎN33/N33 SOMA	69/90/Z	L2/06/89	/ /	
SC-5103	62£-N		Taxonomyand Directory of ISP		Apnts	CEN/CENELEC NOS	69/90/Z	L2/06/69	/ /	
tOIS-30	0ff-11		Library OS1 Applications		APTIIS	CEN/CENELEC EWOS	69/90/Z	L2/06/69	/	P 12.89 03.90 A 11.89 12.89 03.90 R
VSOIS-31	1ff-11		7Standardization in Medical Informatics. General report		Apn1S	CEN/CENELEC EPOS	69/90/Z	L2/06/69	/ /	
15015.311	tff-11		Standardization in Medical informatics. Report on MEDIA		ApriTS	331ƎN33/N33 SOM3	69/90/Z	L2/06/69	/	P 01.90 04.90 A 02.90 04.90 07.90 R
901$-30	2fe-11		Remote Data ease Access		Asmts	331ƎN30/N33 SOM3	69/90/Z	U/06/69	/ /	P 12.89 03.90 A 02.90 04.90 07.90 R
IOIS-31	N-S61		Harmonised taxonomy MMS		APTITS	CEN/CENELEC EWDS	IS/09/69	10/01/69	/	P 01.90 04.90 A 01.90 03.90 04.90 R

o to CEN/CENELEC/ETSI tobe carried out incooperation with CEPT.

date of the submission of the draft report.
date of the submision of the final report.
date of acceptance of the final report.