EUROPEAN UNION

The European Union (EU) and the United States share the largest two-way trade and investment relationship in the world. In 1996, the U.S. trade deficit with the EU was $15.2 billion, an increase of $6.9 billion from the U.S. trade deficit of $8.3 billion in 1995. U.S. merchandise exports to the EU were $127.5 billion, an increase of $3.9 billion (3.2 percent) from the level of U.S. exports to the EU in 1995. U.S. imports from the EU were $142.7 billion in 1996, an increase of $10.8 billion (8.2 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) into the EU in 1995 was $315.4 billion, an increase of 18.6 percent from the level of U.S. FDI in 1994. U.S. FDI in the EU is concentrated largely in the manufacturing, financial, and wholesale sectors.

IMPORT POLICIES

Customs Classification of Information Technology Products

Increased tariff rates resulting from the reclassification by the European Commission and EU Member State customs administrations of certain local area network equipment and multimedia personal computers have raised concern with information technology equipment manufacturers. On February 25, 1997, the WTO Dispute Settlement Body established a WTO dispute settlement panel to examine whether the following measures were inconsistent with the EC's obligations under Article II of the GATT 1994: (1) Regulation No. (EC) 1165/95, which reclassifies certain LAN adapter cards from category 8471, "automatic data processing machines and units thereof," to category 8517, "telecommunications apparatus;" (2) the actions of customs authorities in Member States in reclassifying and increasing tariffs on imports of all types of LAN equipment - including hubs, in-line repeaters, converters, concentrators, bridges and routers; and (3) the actions of customs authorities in Member States in reclassifying and increasing tariffs on imports of PCs with multimedia capacity. On March 7, 1997, the United States requested establishment of panels to examine the actions of the UK and Ireland in reclassifying and increasing tariffs on various types of LAN equipment and multimedia PCs.

EU Implementation of Uruguay Round Grain Tariff Commitments

During the Uruguay Round, the United States obtained a tariff concession from the EU establishing a ceiling on the duty that could be charged on grains. The ceiling is based on the duty-paid import price of grains into the EU. However, the EU subsequently established a reference price system for grain imports. The reference price system deprived U.S. exporters of the significant duty reductions that they expected to receive on high-value grains, such as malting barley and packaged rice.

The United States held unproductive consultations with the EU under WTO dispute settlement procedures in September 1995 and requested a WTO panel later that month. The United States and the EU subsequently reached an agreement under which the EU committed to establish a cumulative recovery system for duty underpayments and overpayments on brown rice, and a side commitment to establish a system that would permit imports of a limited amount of malting barley at 50 percent or less of the duty that would otherwise be charged. The U.S. Government is working with the EU to ensure that it implements both commitments, and will proceed to a WTO panel if the problems in not resolved satisfactorily.

Implementation of EU Import Quotas for U.S. Rice

As part of the concessions made to the United States as compensation for the accession of Finland, Austria, and Sweden to the EU, the EU agreed to implement tariff rate quotas for imports of 38,000 metric tons of milled rice and 8,000 metric tons of brown rice from the United States. The EU has not implemented these tariff rate quotas, but has agreed to “roll over” the unused 1996 tariff rate quota into 1997. The U.S. Government continues to encourage the EU and the U.S. rice industries to address outstanding issues.

Broadcast Directive and Motion Picture Quotas

In 1989, the EU issued the Broadcast Directive which included a provision requiring that a majority of entertainment broadcast transmission time be reserved for European origin programs “where practicable” and “by appropriate means.” By the end of 1993, all EU Member States had enacted legislation implementing the Broadcast Directive.

Since 1993, the Commission, Council, and European Parliament have been struggling to come to agreement on a revised directive. In June 1996, the Council reached a common position that essentially reaffirmed the flexibility of the original directive as regards the quota provision and rejected efforts to expand the scope of the directive to include new audiovisual services. However, in November 1996, the European Parliament voted amendments that are a source of further disagreement; the amendments call for guarantees of public access to major sports programs and for a "v-chip" type of system for coding programs according to their possible detrimental effect on minors. Since the Council decided not to accept the amendments as formulated by the Parliament, the Dutch presidency will now have to convoke a conciliation committee which will try to iron out the differences between the institutions and arrive at a workable compromise.

The United States continues to monitor developments with respect to the Broadcast Directive. The EU remains on the Special 301 "Priority Watch List" because the quota provisions of the directive appear to violate Member States' obligations under the GATT.

Several countries have specific legislation that hinders the free flow of broadcast materials. A summary of some of the more salient restrictive national practices follows:

France: The EU Broadcast Directive was transposed into French legislation in 1992. France, however, chose to specify a percentage of European programming (60 percent) and French programming (40 percent) which exceeded the requirements of the Broadcast Directive. Moreover, the 60 percent European/40 percent French quotas apply to both the 24-hour day and to prime-time slots. (The definition of prime time differs from network to network according to a yearly assessment by France's broadcasting authority, the “Council Superieur de l'Audiovisuel,” or CSA.) The prime time rules in particular limit the access of U.S. programs to the lucrative French prime time market. France's broadcasting quotas were approved by the European Commission and became effective in July 1992.

In December 1993, the French Parliament approved a law imposing a 40 percent quota of French songs on almost all French private and public radio stations. The 40 percent quota went into effect January 1, 1996, and applies only to prime time. Some 1,700 AM and FM stations are affected. French songs are defined as “variety music” written or interpreted by French or Francophone writers and artists. In addition, half of the 40 percent radio quota will have to be either new French songs (songs released within the previous six months) or French songs interpreted by new French or Francophone singers (singers or groups who have not yet had two albums sell at least 100,000 copies each).

The effects of the French radio broadcast quota are hard to evaluate. The French Government claims a high compliance rate, but there is little objective public information available on compliance and enforcement. The law has the effect of limiting the broadcast share of American music.

Italy: In keeping with the EU Broadcast Directive, Italy's 1990 Broadcast Law requires that upon conclusion of three years from concession of a national broadcast license, a majority of TV broadcast time for feature films be reserved for EU-origin films. The Italian law also requires that half of the European quota be dedicated to Italian films. The Italian law is more narrowly focused than the Broadcast Directive, since it encompasses only films produced for cinema performance, and excludes TV films and series and other programming. The film sector decree-law enacted on January 18, 1994, calls for application of the Italian broadcast quotas proportionally during evening viewing hours, but its language is strictly hortatory.

In 1996, the Italian Government introduced legislation to make European content restrictions more binding, by applying a 51 percent European quota to prime-time specifically, not counting news, sports, variety shows, and other non-film programming. The bill containing this proposal remains before the Italian Parliament, despite the European Parliament’s November 1996 decision to leave in place the more flexible EU quota regime.

Portugal: Television legislation passed in 1990 contains language taken from the EU Broadcast Directive requiring a “majority proportion” of works broadcast be of “Community or European” origin. In practice, however, this rule has not been enforced because Portuguese television production is minimal and production from other EU countries is inadequate to satisfy the networks' broadcasting commitments. The United States will monitor closely the implementation of this restrictive legislation.

Spain: In December 1993, the Government of Spain adopted legislation transposing the EU’s Broadcast Directive. Program restrictions for private television are contained in a law authorizing private television in Spain. The law includes restrictions on non-EU programming to be shown on private TV, including movie quotas. Government-owned and private television networks meet their quota restrictions. These restrictions, which are intended to encourage Spanish language production, follow the Broadcast Directive.

While the principal government-owned television networks now show more U.S. programs than the quota restrictions on private channels would permit, private network licenses match the private TV program quotas. U.S. programs would have greater sales without the quota restrictions.

Spain requires a license for distributing each non-EU film dubbed domestically. Dubbing is deemed essential since dubbed movies account for about 95 percent of box office revenues for imported films. The rest is earned by subtitled original language films. On January 24, 1997, the government approved implementing regulations for the 1994 cinema law which established a system under which up to three licenses may be earned by showing a single EU-produced film: the first when the film’s box office receipts exceed 10 million pesetas (about $77,000), the second when they exceed 20 million pesetas (about $154,00), and the a third when they exceed 30 million pesetas (about $231,000). If the film is dubbed, it must be dubbed into a minority language, and earn at least 5 million pesetas (about $38,500) in the minority language to qualify for the third license.

The implementing regulations also established screen quotas requiring theaters to show at least one day of new EU-produced films for every three days of non-EU-produced films. When the non-EU produced films are dubbed into a recognized minority language, a more generous proportion of one day of EU-produced films for every four days of non-EU-produced films applied.

The film dubbing license and screen quota requirements established in the regulations were reached after negotiations in which industry, including the distributors of U.S. films, participated, and in fact are less stringent than those established in the text of the 1994 law (which did, however, allow the Government of Spain some flexibility in implementation). Nonetheless, U.S. industry continues to object both to the added costs and to the restriction on freedom to make commercial decisions which the requirements entail.

Restrictions Affecting U.S. Wine Exports to the EU

The United States seeks assurance of long-term access for U.S. wine exports to EU markets. Current EU regulations require imported wines to be produced with only those oenological practices (i.e., wine treating materials and processes), which are authorized for the production of EU wines. Since the mid-1980's U.S. wines have been permitted entry to EU markets by means of a series of extensions to temporary EU regulatory exemptions. Without these “derogations,” the majority of U.S. wines would be immediately barred from entering the EU. This leaves in doubt both the foothold U.S. exporters have secured in the EU market and the prospects for export expansion in the future. The derogations have been renewed for 1997.

EU regulations also require that a wine-import certification document be provided for each wine in each shipment. While certain qualifying U.S. producers are permitted to use a simplified procedure, others must go through the full documentation and testing process.

The United States has renewed consultations with the EU on these and other wine-related issues. The main U.S. objective in the consultations is to ensure that the EU market remains open to U.S. wine.

Ban on Fur from Animals Caught in Leghold Traps

In November 1991, the EU adopted a regulation banning the use of leghold traps in the EU. The regulation also requires a ban on imports of fur and fur products of certain species from countries which either do not ban leghold traps or do not conform their trapping practices to internationally agreed (though not yet developed) humane trapping standards. Implementation of the import ban, now expected in 1997, could hinder U.S. fur exports to the EU. In August 1995, the U.S. Government, the European Commission, and the Canadian Government (later joined by the Russian Government) agreed to facilitate the work of an experts group charged with developing a consensus on humane trapping standards. The work of the experts group led to negotiations beginning in 1996 aimed at fostering consensus among the four parties on humane trapping standards. The EU, Canada, and Russia initialed the text of an agreement on humane trapping standards in December 1996. The U.S. Government, which could not initial the December agreement text, has since continued talks with the EU in hopes of reaching a settlement which would allow the United States to join the consensus on humane trapping standards reached by the others.

Import and Distribution of Bananas

On July 1, 1993, the EU, as part of its Single Market exercise, implemented a new banana regime to replace individual Member State rules for banana imports. Elements of the new regime include a tariff-rate quota which limits imports of bananas from Latin America and a licensing system that burdens Latin American banana imports and favors EU firms to the detriment of third country importers and distributors. A GATT panel ruled in 1994 that the EU's new banana regime was not consistent with GATT rules, but the EU blocked adoption of the panel report. After efforts to resolve this issue through direct negotiations with the EU failed, the United States in 1996 joined Ecuador, Guatemala, Honduras, and Mexico in a WTO dispute settlement panel process. The panel is expected to issue its final report in spring 1997.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

EU Member States still have widely differing standards, testing and certification procedures in place for some products. These differences may serve as barriers to the free movement of these products within the EU and can cause lengthy delays in sales due to the need to have products tested and certified to account for differing national requirements. Nonetheless, the advent of the "New Approach," which streamlines technical harmonization and the development of standards for certain product groups, based on minimum health and safety requirements, generally still points toward the harmonization of laws, regulations, standards, testing, quality and certification procedures in the EU. The European standardization process is still closed to U.S. firms' direct participation, although European standards bodies can be sympathetic to U.S. concerns when approached.

Standardization

Standardization continues to play an increasingly significant role in U.S.-EU trade relations. For example, the Transatlantic Business Dialogue (TABD) considers standards issues to be a major concern. The U.S. Department of Commerce anticipates that EU legislation covering regulated products will eventually be applicable to 50 percent of U.S. exports to Europe. Given the enormity of this trade, EU legislation and standardization work in the regulated areas is of considerable importance. Although there has been improvement in some respects in 1996, a number of problems related to this evolving EU-wide legislative environment have caused concerns to U.S. exporters, including lags in the development of EU standards; lags in the drafting of harmonized legislation for regulated areas; inconsistent application and interpretation by Member States of the legislation that is in place; overlap among directives dealing with specific product areas; grey areas between the scope of various directives; and unclear marking and labeling requirements for regulated products before they can be placed on the market. While many such problems are not deliberate "trade barriers," their existence can impede U.S. exports to the EU.

Mutual Recognition Agreements

The EU is implementing a harmonized approach to testing and certification, as well as providing for the mutual recognition within the EU of national laboratories designated by Member States to test and certify a substantial number of "regulated" products. The EU encourages mutual recognition agreements between private sector parties for the testing and certification of non-regulated products.

One difficulty for U.S. exporters is that only "notified bodies" located in Europe are empowered to grant final product approvals of regulated products. While there are some laboratories in the U.S. which can test regulated products under subcontract to a notified body, the limited number of such labs means that such subcontracting procedures are unlikely to provide sufficient access for U.S. exporters. Moreover, these labs cannot issue the final product approval but must send test reports to their European affiliate for final review and approval, delaying the process and adding costs for U.S. exporters.

The United States and the EU are involved in negotiations to address trade problems caused by certification and testing procedures through Mutual Recognition Agreements (MRAs). MRAs will permit a U.S. exporter to have its products undergo various conformity assessment procedures (such as testing and inspection) in the United States according to EU requirements. MRAs will similarly facilitate EU exports to the United States. U.S.-EU discussions concerning MRAs have been ongoing since October 1992. In 1996, U.S. and EU officials held several rounds of negotiations on "priority" sectors. The negotiators have narrowed the focus of the package to include telecommunications and information equipment, pharmaceuticals good manufacturing practices, medical devices, electrical safety, electromagnetic compatibility, and recreational craft. As a result of recommendations at the Chicago TABD meeting, the U.S.-EU Summit in December 1996 called for the conclusion of a package of MRAs by January 31, 1997. Substantial progress was made by the deadline and negotiators continue to work to conclude a package of MRAs.

Approval Process and Labeling Requirements for Agricultural Biotechnology Products

Both U.S. and European companies have had difficulties in having agricultural products developed with biotechnology approved in the EU. Existing laws for the approval of these products have not been applied in a predictable and transparent manner. Two recent U.S. product approval requests were subject to delays because of political opposition to biotechnology rather than legitimate health or safety concerns. It is extremely difficult for companies to plan their business activities given this regulatory environment.

The new EU Novel Foods Regulation, expected to come into force in April 1997, should improve the approval process. However, concern exists that the Novel Foods Regulation contains provisions for mandatory labeling of biotech foods that may, depending on how they are implemented, serve to mislead consumers by implying that there are legitimate health or safety heighten concerns with the food.

Ban on Growth Promoting Hormones in Meat Production

The EU bans the importation of animals, and meat from animals, to which have been administered any of six particular hormones for purposes of promoting the growth of the animals, even though scientists have reviewed these hormones and concluded that they are safe in normal use. At the same time, the EU permits some of these same hormones to be administered for herd management and other purposes. The ban has effectively eliminated most U.S. red meat and meat product exports to the EU.

The United States launched a formal WTO dispute settlement procedure in May 1996 challenging the EU's ban. Canada initiated a second WTO case against the EU hormone ban in October 1996. Panel reports are expected in the spring of 1997.

Veterinary Equivalency

As a part of the Single Market Initiative, the EU harmonized animal and public health standards among the Member States. In harmonizing these standards, the EU introduced new import controls for animal and animal products, which threatened to disrupt U.S. exports to the EU. The implementation of these new import requirements, which were to be effective at the end of 1993, has been postponed, most recently in December 1996, to allow for the completion of negotiations aimed at mutual recognition of U.S. and EU sanitary standards. On December 20, 1996, the EU Commission adopted a decision which would allow EU Member States either to implement the EU's harmonized import requirements or to continue applying their national rules until April 1, 1997. Some trade disruptions continue to occur as individual Member States implement their own policies. U.S. and EU negotiators continue to work toward an agreement concerning veterinary equivalence to provide a framework for continued trade.

Voluntary Ecolabeling Program

On March 23, 1992, the EU Council of Ministers approved an EU-wide ecolabeling program which permits a manufacturer to obtain an ecolabel for a product when its production and life-cycle meet general and specific criteria established for that particular product. The program is intended to encourage consumers to purchase products according to their overall environmental performance. EU ecolabel criteria have been adopted and published for twelve consumer product categories: washing machines, dishwashers, soil improvers, toilet paper, paper towels, laundry detergents, light bulbs (single-ended and double-ended), paints and varnishes, bed linens and t-shirts, photocopy paper, and refrigerators. The Commission plans to develop criteria for converted paper products (e.g., notepads), woolen and synthetic textiles, personal computers, and footwear in 1997.

U.S. and EU technical and policy officials met three times in 1996 to discuss the EU process for developing ecolabeling criteria, and in particular to address U.S. industry concerns about the adequacy of the scheme's programs, transparency and opportunity for meaningful participation by U.S. firms, and its potential for discrimination against U.S. firms whose production processes and methods differ from those used in the EU while having comparable environmental impacts. The U.S. industry concerns were focused on the paper and textile ecolabels and their criteria, as well as the process leading up to the establishment of those criteria. As a result of these consultations with the United States, the European Commission agreed to a continuing dialogue on ecolabeling, including bilateral environmental discussions commencing in 1997. The Commission also agreed to brief U.S. consumer, environmental and business groups on the EU ecolabeling program at the first bilateral meeting taking place in the United States.

In October 1996, as it had the year before, the Office of the U.S. Trade Representative included the EU ecolabeling scheme in its annual report to Congress under the "Super 301" program as a practice which is the subject of ongoing consultations, but which is nonetheless a topic of continuing concern. In that report the U.S. Government expressed its concern that the process for developing ecolabeling criteria has been insufficiently transparent and has failed to provide for adequate participation by non-EU interest groups. The United States wants to ensure that these changes do not create de facto trade barriers that place U.S. producers at an unfair advantage. Despite the EU's stated commitment to improve the meaningful participation of non-EU interests, the U.S. Government believes there is considerable room for improvement. The United States has also urged that the criteria not reflect a single approach to environmental protection without adequate attention having been given to other potentially comparable approaches and that the EU ecolabeling program provide sufficient and accurate information to consumers regarding the relative environmental impacts of competing products. The United States will continue to monitor closely the development of and revision to the EU ecolabeling scheme.

Packaging Labeling Requirements

In 1996, the Commission approved a directive that would establish marking requirements for packaging, to indicate recyclability and/or reusability. The United States has expressed two potential concerns with this directive. First, to the extent that the EU's new marking requirements differ from other marks widely used in the United States and being developed in the ISO, the U.S. is concerned that packaging, marketing and distribution operations will become more complicated and costly for both U.S. and European firms wishing to sell their products abroad, without achieving any concomitant environmental benefit.

The second concern is related to Article 4 of the proposed directive, which would prohibit the application of other marks to indicate recyclable or reusable packaging. Based on U.S. experience, this requirement is likely to pose a particular problem for glass and plastic containers, as it would require companies to create new molds solely for use in the European market.

Market Access for Gas Connector Hoses in Europe

A U.S. producer of gas connector hoses has experienced difficulties in obtaining market access in some Member States for its products due to design-restrictive standards that arguably have no bearing on the safety and performance of the product. Although progress has been made in resolving the U.S. exporter's concerns in the UK market (see Member State Practices below), the problem has been extended to European markets generally with the establishment of a CEN Technical Committee to begin work on a harmonized standard for Europe. Reports of initial technical discussions within the committee indicate consideration is being given to standards containing design-restrictive requirements. The initiation of work on a European regional standard results in a "standstill" on standards work in individual Member States and thus can delay or, if it results in unnecessarily restrictive standards, prevent improved access to EU markets. The U.S. Government has been actively pursuing a resolution to this problem and in cooperation with industry will be closely examining the committee's progress.

Member State Practices

Some EU Member States have their own national practices regarding standards, testing, labeling, and certification. A brief discussion of the national practices of concern to the United States follows:

Austria: Certification procedures for telecommunications equipment and state-of-the-art technologies (now vested in the Austrian Federal Ministry of Science, Transportation, and Arts) have presented problems for U.S. exporters. The Ministry has been apprised of U.S. industry concerns, and has promised to improve the standards-setting process.

France: France's advance implementation in September 1996 of EU harmonized regulations has effectively cut off U.S. exports to France of pet food products. In 1995, U.S. pet food exports to France amounted to about $20 million, with every expectation that the market and U.S. market share would continue to grow. Although the United States has shown its willingness to resolve the issue at a technical level, as of early 1997, the French Government has been unwilling to modify its position. The United States regards the French position as being non-scientific and without justification.

Italy: Italy's interpretation of EU sanitary and phytosanitary requirements has caused, or threatened to cause, problems for the following U.S. agricultural exports: processed meat products, wood products, poultry meat products, game meats, and seafood. Finally, Italy's qualitative standards for bull semen, which limit the number of foreign bulls in favor of domestic animals, and the numerous testing fees, which are used to fund the national industry association, have proven to be cumbersome and expensive. In the absence of these restrictions, U.S. exports of these products to Italy could increase by an estimated $25 - 100 million.

Spain: In recent years, the transparency of Spain's product standards and certification processes has improved. Difficulties faced by telecommunications equipment suppliers have eased as Spain adapted its national regulations to conform to EU directives. Despite these changes, however, there is still some uncertainty as to whether the earlier exemption from homologation and certification requirements for equipment imported for military use is still valid. Pharmaceuticals and drugs still must go through an approval and registration process with the Ministry of Health requiring several years unless previously registered in another EU Member State or with the equivalent EU body, in which case the process is shortened to a few months. Vitamins are covered under this procedure; however, imports of other nutritional supplements are restricted, and they are dispensed only at pharmacies. In 1996, this had an impact on U.S. nutritional supplements exporter's efforts to develop the Spanish market.

United Kingdom: With support from the U.S. Government and cooperation from the British Government, a U.S. company has made progress in resolving its problems with design elements of a British Standards Institution (BSI) standard for commercial gas connector hoses. The BSI appears ready to finalize modifications to its standard which will allow the U.S. firm to certify its products to the standard and thereby enhance its marketing opportunities in the UK.

GOVERNMENT PROCUREMENT

Discrimination in the Utilities Sector

In 1990, in an effort to open government procurement markets within the EU, the EU adopted a Utilities Directive covering purchases in the water, transportation, energy, and telecommunications sectors. The directive, which went into effect in January 1993, requires open, objective bidding procedures (a benefit for U.S. firms) but discriminates against non-EU bids absent an international or bilateral agreement. Under the directive, EU procuring utilities may exclude bids with less than 50 percent EU value without additional justification. In addition, acceptable bids with a majority of EU-content must receive a three percent price preference over otherwise equivalent non-EU bids.

On May 25, 1993, the United States and the EU signed a bilateral Memorandum of Understanding (MOU) under which the EU agreed to waive the discriminatory provision of the Utilities Directive with respect to procurement by electrical utilities. At the same time, the EU agreed to expand coverage of the GATT Government Procurement Code procedures to procurement of services and construction by its Member States. In return, the U.S. agreed to remove “Buy American” preferences in procurement by federally-owned utilities (Tennessee Valley Authority and the five Department of Energy Utilities) and by executive branch agencies not previously subject to the GATT Government Procurement Code. The U.S. also agreed to waive “Buy American” requirements for construction contracts and to provide Code treatment to procurement of services. However, because the EU would not eliminate discrimination in telecommunications procurement, the U.S. simultaneously imposed sanctions on goods and services from the EU Member States. These sanctions do not apply to Spain, Greece, Portugal, and Germany, because these countries do not apply the discriminatory provisions of the Utilities Directive. The EU retaliated by imposing limited sanctions on U.S. goods and suppliers.

On April 15, 1994, the United States and the EU concluded a procurement agreement that expanded upon the 1993 MOU. The 1994 agreement extends non-discriminatory treatment to over $100 billion of procurement on each side, including all goods procurement by all EU subcentral governments, as well as to selected procurement by 37 U.S. States and seven U.S. cities. Much of the 1994 agreement is implemented through the WTO Government Procurement Agreement which took effect January 1, 1996. The 1994 agreement, however, did not end the discrimination with respect to telecommunications procurement. Consequently the U.S. retained the May 25, 1993, sanctions imposed against the EU. With the accession of the three new Member States on January 1, 1995, the U.S. extended to them the benefits of the 1993 MOU and the 1994 procurement agreement, as well as the sanctions.

On April 30, 1996, Acting USTR Barshefsky cited Germany under Title VII of the Omnibus Trade and Competitiveness Act of 1988 for its failure to implement its procurement obligations. On October 1, 1996, she announced that agreement had been reached with Germany to reform its procurement system (see below).

Member State Practices

Some EU Member States have their own national practices regarding government procurement. A brief discussion of some of the national practices of particular concern to the United States follows:

Denmark: The Danish Government, its institutions, and entities owned by it are obligated to apply environmental and energy criteria on an equal footing with price, quality and delivery terms in their procurement of goods and services in a manner consistent with EU procurement rules. In practice, this will likely mean specification of products bearing the EU "eco-label" or products produced by firms with a satisfactory "ecoaudit." The environmental/energy requirement is likely also to spread to procurement by lower level governmental entities. The trend toward specification of environmentally certified products in government procurement raises concerns, given broader U.S. concerns with the EU ecolabeling scheme (see above).

Germany: German implementation of the EU Utilities and Remedies Directive was accomplished through modifications to the German basic budget law in February 1994. Under the terms of the 1993 U.S.-EU Memorandum of Understanding on government procurement (and since January 1, 1996, the WTO Government Procurement Agreement), the system established for reviewing bid awards covered by the EU Utilities Directive has also been available to U.S. firms bidding on supply contracts in the heavy electrical equipment sector. The review mechanism has provided an administrative means for challenging procurement practices in the electrical utilities sector, considered by many to be relatively closed to foreign suppliers.

Since then, two U.S. firms have availed themselves of this review mechanism, alleging irregularities in public procurement bid procedures. Despite Germany's obligations in the 1993 MOU, however, there proved to be no effective remedies available to challenge these procedures. German authorities took no corrective measures in either case.

In October 1995, the European Commission formally challenged the adequacy of Germany's implementation of the EU Remedies Directive. Moreover, in April 1996, the U.S. Trade Representative identified Germany under Title VII of the Omnibus Trade and Competitiveness Act of 1988 for discrimination in the heavy electrical sector. USTR suspended the imposition of the sanctions available under Title VII on October 1, 1996, following a decision by the German Cabinet in late September to address U.S. concerns and reform German procurement regulations by providing for court-based review of bid challenges, in line with EU requirements. The German Government has drafted new legislation and plans to incorporate the new procurement regulations, which will combine administrative and judicial review, into existing German competition law. The draft bill will likely enter the formal legislative process in early spring 1997 and is expected to enter into force on January 1, 1998. The U.S. Government, in consultation with industry, is studying the proposed legislation.

Greece: Greek laws and regulations concerning government procurement nominally guarantee nondiscriminatory treatment of foreign suppliers. Officially, Greece also adheres to EU procurement policy, and Greece joined the WTO Government Procurement Code in 1992.

Nevertheless, many of the following problems still exist: occasional sole-sourcing (explained as extensions of previous contracts), loosely written specifications which are subject to varying interpretations, and allegiance of tender evaluators to technologies offered by longtime, traditional suppliers. It is also a widely-held belief that firms from other EU Member States have an automatic advantage over non-EU contenders in winning Greek Government tenders. It has been noted that U.S. companies submitting joint proposals with European companies are more likely to succeed in winning a contract. Greece continues to insist on offset agreements as a condition for purchase of defense items. In December 1996, the Greek Parliament passed legislation which allows public utilities in the energy, water, transport, and telecommunications sectors to sign "term agreements" with local industry for procurement. "Term agreements" are contracts to which Greek suppliers are given significant preference in order to support the national manufacturing base. This was made possible as a result of Greece's receipt of an extension until January 1, 1998, to implement the EU Utilities Directive.

Italy: Italy's fragmented, often non-transparent government procurement practices and previous problems with corruption have created obstacles to U.S. firms' participation in Italian government procurement. Italy has, however, made some progress over the past year in making the laws and regulations concerning government procurement more transparent, although Italy has not yet fully implemented its government procurement obligations under either the WTO Government Procurement Agreement or EU directives.

EXPORT SUBSIDIES

Agricultural Product Subsidies

The EU grants export subsidies (restitutions) on a wide range of agricultural products including wheat, wheat flour, beef, dairy products, poultry, and certain fruits, as well as some manufactured products such as pasta. Payments are nominally based upon the difference between the EU price and the world price, usually calculated as the difference between the EU internal price and the lowest offered price by competing exporters.

The Uruguay Round agreement requires the EU to reduce export subsidies over six years by 21 percent in volume and 36 percent in value from a 1986-90 base period. Under the agreement, the EU is required to cut export subsidies by about $5-7 billion from recent levels.

LACK OF INTELLECTUAL PROPERTY PROTECTION

The EU has adopted five intellectual property rights (IPR) directives since 1991 deemed essential to implementation of the Single Market. The Software Directive entered into force on January 1, 1993, and by now all Member States have implemented it in their national legislation. The Commission also has proposed a Directive aimed at harmonizing Member State legislation on the legal protection of designs together with a regulation on Community design that would create a Community Design Office. As currently drafted, the Directive would provide protection for up to a maximum of 25 years for registered industrial designs. U.S. firms, while supportive of the Commission's initiative in this area, argue that certain measures will make it more difficult than at present to qualify for valid design rights. U.S. car manufacturers object in particular to the regulation's "repair clause," which would effectively eliminate design protection for spare styled car body parts after three years and might well encourage copying of designs. Insurance companies and spare parts manufacturers, however, do not share these objections.

The proposal submitted to the Council in 1993 to expand the regulation of counterfeit goods from trademarks to copyrights, related rights, and design rights is a positive development. The American business community would like it to be expanded even further to include patents and be made to apply to parallel imports from outside the community. However, progress remains slow on other directives in the copyright area. These include directives on home copying and reprography. Some of these directives would establish rights based on reciprocity, rather than on national treatment. One possible consequence of providing protection based on reciprocity is that in certain areas U.S. right holders and their assignees might not be granted those rights in EU Member States unless the United States were to enact the same rights under its laws. The U.S. Government is monitoring developments in these areas closely, and senior U.S. officials have intervened a number of times to discourage the EU from adopting directives establishing rights based on the principle of reciprocity.

Patent filing and maintenance fees in the EU and in its Member States are extraordinarily expensive relative to other countries. Fees associated with the filing, issuance and maintenance of a patent over its life far exceed those in the United States. However, it is encouraging that the EU has lobbied the European Patent Office (EPO) to reduce its fees. It appears that the Administrative Council of the EPO has decided to enact a 35 percent reduction.

In March 1995, the European Parliament rejected the text agreed by the Conciliation Committee that had been set up to work out differences between the Parliament, the Council, and the Commission on the directive on biotechnological inventions, including revised language on the patentability of human body parts. In December 1995, the Commission approved a new proposal for a directive aimed at striking a balance between the need to promote research in the biotechnology field and the need to address ethical concerns. It distinguishes clearly between inventions and discoveries; excludes completely from patentability methods of germ line gene therapy on humans; and makes an explicit derogation for farmers as regards breeding stock. With these changes, the directive may get approval more readily from both the Council of Ministers and the Parliament, which may complete its first reading by mid-1997. The 1993 Council regulation setting up a centralized marketing authorization procedure for human and veterinary medicinal products requires applicants to use a single trademark. This compromises pharmaceutical companies' ability to select different trademarks in different Member States, which they might prefer to do for linguistic or legal reasons, and sets an unfortunate precedent that might in the future affect other sectors.

Member State Practices

Some EU Member States have their own special practices regarding intellectual property protection. A brief discussion of those which are of concern to the United States follows:

European Union

Austria: Austria's April 1, 1996, amendment to its copyright law introduced a statutory license requirement for exhibiting films via video cassettes in hotel rooms and other lodging accommodations. The United States has urged the government to rescind this provision of the law, which appears to be inconsistent with Austria's international obligations.

Belgium, France, Germany, and Spain: Belgium, France, Germany, and Spain collect levies on blank tapes and recording equipment to compensate right holders for the private, home copying of their works and to provide a source of funding for local productions. These levies are distributed by national collecting societies to the various categories of right holders according to statutory provisions. National treatment is denied to some U.S. right holders, however, and the U.S. motion picture and recording industries have not been able to collect their rightful share of these proceeds. Recently, the Motion Picture Association (MPA) and the General Society of Authors of Spain (SGAE) reached an agreement granting MPA access to levies collected on behalf of screenplay authors through the levy on blank video cassettes and recording equipment. This agreement does not, however, include performers' or producers' rights. According to SGAE, some payment has already been remitted to the Hollywood studios, and the United States will continue to watch very closely to see impact from this agreement.

Denmark: Denmark's intellectual property law are generally adequate. However, certain problems exist. Enforcement is made difficult by the fact that the Danish Government does not make available provisional relief to prevent ongoing infringement or preserve evidence in the context of civil litigation, both after a case is filed and on an ex parte basis. The TRIPs Agreement requires that such provisional relief be made available in civil or criminal litigation. The availability of such relief is particularly important to the U.S. software industry because of the ease with which the evidence of infringing use can be eliminated if the infringers are forewarned of the right holder's interest. Furthermore, Denmark's equivalent of the Environmental Protection Agency is permitting competitors, in contravention of TRIPs Article 39.3, to rely upon extremely valuable test data that a U.S. firm must submit in order to receive approval to market its biocide chemical product in Denmark.

Germany: The level of software piracy continues to be a source of concern in Germany, as in other large developed markets. The effects of Germany's 1993 implementation of the EU's software directive, as well as an educational campaign by the software industry, may have helped reduce piracy from previous levels.

Greece: Copyright protection in Greece, especially of U.S. films and television programs, is inadequate and Greece remains on the Special 301 "priority watch list," where it was placed in November 1994, after several years on the Special 301 "watch list." Just prior to an out-of-cycle review in December 1996, the Greek Government presented an "action plan" of specific steps it will take by April 1997 to enforce its 1995 media law to end piracy of copyrighted audio-visual products and to protect copyrighted software.

Another IPR protection problem is lack of effective protection of trademarks, particularly in the apparel sector.

Ireland: U.S. motion picture industry representatives maintain that Ireland's 1963 copyright law does not comply with EU directives or the TRIPs Agreement (the latter's obligations came into effect for Ireland in January 1996). Faulting cumbersome procedures for prosecuting violators and insignificant penalties, U.S. industry estimates video piracy at 26 percent of all rentals/sales, costing the industry an estimated $15 million in lost revenue annually. U.S. software producers claim that Ireland has the highest incidence of software piracy in the EU, estimated at 70 percent. Although government officials have begun drafting a new copyright law intended to implement Ireland's TRIPs obligations, it is unlikely to be submitted to the Parliament until sometime in 1998, at the earliest, due to funding and staffing constraints. In addition, compulsory licensing provisions of Ireland's patent law fail to conform to the TRIPs Agreement, and Irish officials have not yet decided what legal action is required to bring them into compliance.

Italy: Italy has been on the Special 301 "watch list" since 1989, primarily due to problems with protection of copyrighted audio and visual material and computer software, despite substantially increased enforcement actions against copyright piracy.

Computer software piracy, while according to industry estimates falling from 60 percent in 1995 to 58 percent in 1996, remains a problem. In March 1996, the Italian Government raised criminal penalties (fines and prison sentences) for software piracy. Nonetheless, duplication of software internally by some Italian companies remains a problem, and there are reports of illicit software holdings in public institutions such as schools and universities.

Film video piracy remains a serious problem. U.S. motion picture distributors estimate that some 40 percent of the video market consists of pirated material copied in Italy. U.S. industry has noted persistent enforcement efforts involving police raids and confiscation of illegal cassettes and copying equipment.

Piracy of musical recordings is also a problem and may be on the rise due to the availability of more sophisticated reproduction equipment and rapid growth of the lucrative market for compact discs. Pirated products accounted for 22 percent of the market in 1996, down from 33 percent in 1995, according to industry estimates. There have also been reports of large-scale illegal photocopying of textbooks in and around Italian universities.

The U.S. Government has been monitoring the progress of an Italian Government bill to enhance protection of copyrighted material in Italy. The Italian Government introduced the bill in October 1996. In the November 1996 out-of-cycle review of Italy under "Special 301," the U.S. Government took note of the Italian Government's bill. However, the United States also expressed concern that the bill did not raise criminal penalties for most copyright violations, and urged Italy to enact penalties sufficient to deter piracy prior to the April 1997 "Special 301" review.

Spain: Public and private sector enforcement actions (especially private sector initiatives), using Spain's patent, copyright, and trademark legal framework, have sharply reduced the level of video piracy. Unlicensed "community video" systems illegally operating in neighborhoods and apartment blocks remain a concern, especially with regard to enforcement in Andalucia. A new legal framework for granting commercial cable television franchises has been created. As cable television becomes established, illegal "community video" systems are likely to disappear. Copyright holders also remain concerned with unauthorized public performances on local television stations and in buses and bars, and unauthorized exports to Latin America.

Despite overall improvement, software piracy remains a serious problem in Spain. Although the rate has been declining, U.S. software producers estimate that approximately 73 percent of the off-the-shelf personal computer software in use in Spain has been copied illegally, resulting in one of the highest piracy rates within the European Union. In 1993 the Spanish Government enacted legislation that transposed the EU's Software Directive, including a provision that allows authorities to conduct unannounced searches in civil cases. However, judges have been reluctant to exercise these powers. In any event, pursuing piracy cases through the Spanish courts remains a lengthy process, which diminishes the deterrent power of initial searches and arrests.

In October 1992, Spain finally modernized its patent regime to provide protection for pharmaceutical products as required by the EU. However, the law offers no pipeline protection for products in the research and development stage, effectively postponing any practical effects another 10 years. The U.S. industry remains concerned about Spanish reluctance to provide full protection for pharmaceutical products and points to Spanish efforts to dilute EU requirements. These efforts include exempting itself from parts of EU rules, postponing implementation of other parts, challenging EU protection in the European Court of Justice and maintaining the most extensive system of compulsory licenses in Europe.

Sweden: While Sweden’s intellectual property laws are adequate, its enforcement of them has been problematic. The Swedish Government has not provided sufficient financial and personnel resources or training to the police and to the prosecutor’s office nor has it indicated that IPR enforcement is a top priority. Enforcement is made more difficult by the Swedish determination that it need not change its laws to establish provisional relief in the context of civil searches. This forces companies to pursue cumbersome criminal actions that militate against settlements between the parties involved, which harms the copyright holders’ interests. Sweden has also invoked its constitutional guarantee of freedom of information to publicly disseminate a copyrighted but apparently unpublished work against the wishes of the copyright holder.

United Kingdom: The UK maintained for some time that compulsory patent licensing provisions inconsistent with the TRIPs Agreement are rendered void by Section 53 (5) of the Patents Act 1977. This section provides that no compulsory patent shall be granted if to do so “would be at variance with any treaty or international convention to which the UK is a party.” Therefore, in the UK view, its ratification of the TRIPs Agreement voided existing compulsory licensing provisions in UK law. The UK has, however, come around to the view that specific amendments to the Patents Act to incorporate TRIPs commitments would make UK patent law more transparent. Amending legislation has been prepared and circulated for public comment. The UK patent office believes that legislation will be passed in 1997 although, with a general election scheduled for no later than May, passage could slip into 1998.

SERVICES BARRIERS

Computer Reservation Services

U.S. computer reservation systems (CRS) companies have had difficulty cracking the EU market, as some Member State markets tend to be dominated by the CRS owned by that Member State’s flag air carrier. The EU’s 1993 CRS “Code of Conduct” compelled one U.S. CRS firm to establish subsidiaries in virtually every Member State, at a cost of more than $10 million. The Code may be used to establish "charging principles" which could further erode the ability of U.S. firms to gain market share. In addition, German Rail, which owns one-third of the German marketing arm of the largest European CRS firm, has thus far refused to deal on an equal basis with U.S. CRS firms, severely affecting their ability to operate in the German market. German Rail's refusal to provide fare data to a U.S. CRS firm was the subject of a recent Statement of Objections issued by Germany's antitrust authority. U.S. CRS firms face similar problems in Spain and France.

Swedish data protection regulations also are discriminating against non-EU CRS firms. One U.S.-owned CRS firm maintains that Sweden is the only EU Member State in which it has not either already received or will soon receive data protection-related permits for its operations. Proposed Swedish requirements related to data privacy would be more stringent for U.S.-based CRS firms than for those based in the EU, based apparently on the assumption that U.S. data privacy laws are insufficient when compared to Swedish statutes (even though U.S. laws are regarded as sufficient by all other EU Member State data protection authorities).

Airport Ground Handling

In December 1995, the Council agreed on a common position liberalizing the market to provide ground-handling services at EU airports above a certain size by January 1, 1998. While generally welcoming this move, U.S. airline companies and ground-handling service providers remain concerned that airports can continue to have a monopoly service provider through January 1, 2002, and can also limit the number of firms which can provide certain services on the airport tarmac (ramp, fuel, baggage and mail/freight handling) either for themselves or for other carriers. To some extent, these potential barriers are offset by more liberal provisions in bilateral air services agreements with the individual Member States.

Postal Services

U.S. express package services like UPS and Federal Express remain concerned that the prevalence of postal monopolies in many EU countries restricts their market access and subjects them to unequal competitive conditions. Proposals to liberalize many postal services and to otherwise constrain the advantages enjoyed by the monopolies have not made sufficient progress to redress these problems.

Discriminatory Value-Added Tax Treatment

The United States has raised concerns with proposals by the EU to allow Member States to levy a value-added tax (VAT) on offshore suppliers of telecommunications and online services (i.e. companies not established or with their principal place of business in the EU). For EU Member States to levy the VAT in this manner, suppliers of these services would become liable for the VAT on the basis of where their services are consumed and would be taxed as if they were established in the EU (versus the standard practice, applicable to European service suppliers, of levying VAT on the basis of where the service was supplied or corporation established). As the proposals are currently drafted, EU providers of similar services are already captured under existing EU VAT practices. In its schedule of commitments in the

General Agreement on Trade in Services (GATS), the EU has undertaken obligations to provide national treatment to value-added telecommunications services suppliers.

Exemptions from Most-Favored-Nation Treatment

In January 1995, the EU notified the WTO of its intent to present a new draft GATS schedule, with accompanying list of MFN exemptions, to reflect the enlargement of the EU to include Austria, Finland, and Sweden. Two years later, in January 1997, the EU presented the draft document, which was discussed for the first time at a meeting of the WTO Working Party examining the consistency of the enlarged EU with Article V of the GATS (Article V is the services counterpart to GATT Article XXIV). At that meeting, the United States and other countries raised legal concerns that the draft expands to the three new Member States a number of MFN exemptions contained in the already existing EU-12 GATS MFN exemption list, thereby creating new opportunities for the three new Member States to discriminate against service providers of non-EU countries. The United States will seek to ensure that EU enlargement in the services area is consistent with the EU's WTO obligations.

Legal Services

France: In 1992, the French Government made significant changes in its legal services system, including eliminating the "legal consultant" category under which most American lawyers practiced in the past. New-to-market lawyers must now pass one of two exams, the full French bar exam (which requires 200 hours of study and covers all aspects of French law), or the short form for foreign lawyers, which is more specialized but still time-consuming. Both exams have a large oral component and require substantial knowledge of French. To help facilitate better access to the French market by U.S. lawyers, the American Bar Association and the Paris Bar signed an agreement November 22, 1996. Under the agreement the two associations will work together to try to resolve mutual access issues. In the case of U.S. lawyers trying to gain access to the French market, the agreement calls for the Paris Bar to use its best efforts to ensure that exams take into account the professional experience of American lawyers. Meaningful access for U.S. lawyers now depends on the successful implementation of this agreement.

Auditing Barriers

Greece: In November 1994, the Government of Greece mandated that the government-controlled accountancy organization SOL must be the auditor for all state-owned enterprises, financial institutions, publicly listed companies, and companies over a certain size. While Greece did not bar other companies, including U.S.-owned accounting firms, from providing auditing services, the law would effectively have denied them 70 percent of the auditing market in the country. The United States repeatedly emphasized to the Greek Government, as well as in multilateral fora such as the OECD, that this action would be inconsistent with Greek commitments under the General Agreement on Trade in Services. In November 1995, the Greek Council of State (Supreme Administrative Court) ruled that the Greek legislation was unconstitutional because it violated EU Directives, and the status quo ante liberalization of the audit sector was reaffirmed. The status quo ante has been maintained and is due to be formally established on July 1, 1997, when the transition period for liberalization of the audit sector ends.

Shipping Restrictions

Spain: In 1992, the EU established a calendar for liberalizing cabotage practice. While cabotage within peninsular Spain has been liberalized, the EU has allowed Spain to restrict merchant navigation to and within the Balearic Islands, the Canary Islands and Ceuta and Melilla to Spanish flag merchant vessels until January 1, 1999.

Telecommunications Market Access

U.S. access to basic telecommunications service markets remains constrained by several EU practices. The United States has requested that the European Union ensure that non-EU competitors have access to reserved services on an equal basis with EU competitors once those services are liberalized. U.S. subsidiaries incorporated under the laws of one of the Member States are afforded national treatment -- with certain exceptions -- by some Member States in the mobile telephone sector. As of July 1, 1996, the EU opened up infrastructure competition in mobile telephony.

The European Union is in the midst of proposing and implementing the legal framework necessary to prepare Europe for facilities- and, hopefully, resale-based competition in the infrastructure and voice telephony markets by January 1, 1998. Certain Member States received derogations from this requirement so they could open voice telephony to competition at a later date (provided below). Specific EU commitments regarding third country access to EU telecommunications markets will flow from the results of the recently concluded WTO negotiations on basic telecommunications services (WTO/GBT).

In the WTO/GBT, EU Member States made a variety of individual commitments, summarized in brief below:

France: France allowed 100 percent indirect investment in all telecommunications services and facilities. It retained a 20 percent direct investment limit for radio-based networks and a limit on investment in France Telecom.

Greece: Greece made commitments on all basic telecom services, with phase-in of some commitments. For instance, market access and national treatment for public voice telephony and facilities-based services will be provided in 2003. Greece adopted the reference paper on regulatory commitments.

Ireland: Ireland made commitments on all basic telecom services, with phase-in of some commitments. For instance, market access and national treatment for public voice telephony and facilities-based services will be provided as of January 1, 2000. Ireland adopted the reference paper on regulatory commitments.

Italy: Italy made commitments on all basic telecom services. It adopted the reference paper on regulatory commitments. Italy retained the ability to limit foreign investment in Stet.

Portugal: Portugal made commitments on all basic telecom services, with phase-in of some commitments. For instance, market access and national treatment for public voice telephony, telex, and telegraph will be provided as of January 1, 2000. It adopted the reference paper on regulatory commitments. Portugal made no commitment regarding investment limits and establishment requirements.

Spain: In the recently concluded WTO negotiations on basic telecommunications services, Spain made commitments on all basic telecom services as of December 1, 1998. It adopted the reference paper on regulatory commitments.

With respect to access to the EU telecommunications market generally, the United States will continue to have direct interest in EU and Member State implementation of EU liberalization directives, the effects of those directives on suppliers outside the EU, and the ultimate effects of adjusting EU and national practices to the results of the WTO/GBT.

INVESTMENT BARRIERS

The EU has a growing role in defining the way in which U.S. investments in the Member States are treated. Although Member State governments traditionally were responsible for policies governing non-EU investment, in 1993 the Maastricht Treaty shifted competence over third country investment from the Member States to the Union. Member State barriers existing on December 31, 1993 remain in effect, but these may now be superseded by EU law. Direct branches of non-EU financial service institutions remain subject to individual member country authorization and regulation.

In general, the EU supports the notion of national treatment for foreign investors, and the Commission has traditionally argued that any company established under the laws of one Member State must, as a "Community company," receive national treatment in all Member States, regardless of its ultimate ownership. However, some restrictions on U.S. investment do exist under EU law and others have been proposed:

Ownership Restrictions

The benefits of EU law in the aviation and maritime areas are reserved to firms majority-owned and controlled by EU nationals. In addition, the Commission has proposed that companies wishing to benefit from the mutual recognition of licenses for the provision of satellite network or communications services be 75 percent owned, and effectively controlled by, EU nationals.

Reciprocity Provisions

EU banking, insurance and investment services directives include "reciprocal" national treatment clauses, under which financial services firms from a third country may be denied the right to establish a new business in the EU if the EU determines that the investor's home country denies national treatment to EU service providers. In the recently adopted Hydrocarbons Directive , this notion may have been taken further to require "mirror-image" reciprocal treatment, under which an investor may be denied a license if its home country does not permit EU investors to engage in activities under circumstances "comparable" to those in the Union. It should be noted, however, that thus far no U.S.-owned firms have been affected by these reciprocity provisions.

Access to Government Grant Programs

The European Union does not preclude U.S. firms established in Europe from having non-discriminatory access to EU funded research and development grant programs, although in practical terms association with a known "European" firm helps win grant awards. In another area, the Commission in November 1995 proposed that only firms majority-owned and effectively controlled by EU nationals could receive loan guarantees to develop and distribute European films. This proposal has not yet been adopted and the United States is not aware that any U.S. firm has complained about this proposal.

International Negotiations

The EU and its Member States are participating actively in the OECD negotiations toward a Multilateral Agreement on Investment (MAI), which should help reduce existing and preclude any further discriminatory measures. The EU approach to the negotiations has been generally constructive, although in recent international negotiations the Union has argued for an "economic integration" provision that would allow it, and its Member States, to deny U.S. firms most favored nation treatment and potentially other rights and benefits under EU law.

The role of the EU in the treatment of foreign investment is still evolving, however, and in many instances Member State practices are of more direct relevance to U.S. investors. EU Member States negotiate their own bilateral investment protection and taxation treaties, and generally retain responsibility for their investment regimes.

Member State Practices

Principal national barriers include:

Austria: U.S. firms report that the Austrian Government's generally positive attitude toward foreign direct investment often contrasts with the arbitrary behavior of various authorities administering and enforcing regulations. In purchasing land for commercial purposes and in obtaining resident and work permits for key personnel (from countries outside the EU), U.S. firms are clearly at a disadvantage vis-a-vis EU competitors. Although no formal discrimination exists or is sanctioned by the Austrian Government, U.S. and other foreign investors must confront a complex and cumbersome regulatory system. Obtaining permits for operating plants is often cited as particularly complicated.

France: Effective in 1996, the French Government eliminated general screening and prior approval requirements for non-EU foreign investment. Certain restrictions, including notification requirements, continue to apply to all foreign investments, EU and non-EU, which affect national defense, public safety, or public health. The French Government also eliminated the restriction in the 1993 Privatization Law that prevented the French Government from selling to non-EU investors more than 20 percent of state-holdings in a firm being privatized. The Government has retained the ability the exert influence over privatized firms through "golden share" provisions, which it has invoked in a number of cases. France continues to apply reciprocity requirements to non-EU investments in a number of sectors. For the purpose of applying these requirements, the French Government generally determines a firm's residency based on the residency of its ultimate owners rather than on the basis of the firm's place of establishment or incorporation.

Greece: Both local content and export performance are elements which are seriously taken into consideration by Greek authorities in evaluating applications for tax and investment incentives. However, they are not legally mandatory prerequisites for approving investments.

Foreign exchange controls have been progressively relaxed since 1985. Medium and long term capital movements for EU and non-EU countries have been fully liberalized. Most restrictions on short term capital movements were lifted in 1994. This move brought Greece in line with EU rules on the movement of capital. However, some administrative obstacles in short-term capital movements still remain. For example, compliance with tax laws must be demonstrated prior to the transfer of capital.

Greece restricts foreign and domestic private investment in public utilities. Private power production for sale to the national grid is currently limited to "non-traditional" energy sources (e.g. wind and solar). U.S. and other non-EU investors also receive less advantageous treatment than domestic or other EU investors in the banking, mining, maritime and air transport sectors, and in land purchases in border regions and on islands near Turkey.

Italy: Implementation of EU financial market Directives in 1996 voided a 1992 Italian law requiring financial service firms to incorporate in Italy to operate on the Italian stock exchange. U.S. financial service firms wishing to trade on the Italian exchange no longer need to establish a subsidiary, and can operate based on administrative approval granted by the securities oversight body CONSOB.

Portugal: Portugal amended its foreign investment law via decree-law 321/95, effective December 4, 1995. Foreign investments are now subject only to post facto registration. The new regime replaces the prior declaration regime that in principle constituted a latent barrier to foreign investment. A new "safeguards" provision applies only in situations involving public order and security and applies equally to investment by EU and non-EU firms.

Portugal limits foreign investment in state-owned companies being privatized on a case-by-case basis. This barrier is relevant to U.S. business in the energy and telecommunications sectors. It is estimated that the potential increase in U.S. exports associated with greater U.S. investment in the energy and telecommunications sectors is in the range of $10-15 million.

OTHER BARRIERS

Canned Fruit

The U.S. cling peach industry has complained that the EU provides excessive support to certain Member State's canned fruit industry and that the EU has failed to observe and enforce a commitment made in the 1985 U.S.-EU Canned Fruit Agreement (CFA) not to subsidize EU processing operations for peaches in syrup. The U.S. industry also has claimed that fraud by Greek peach processors and growers in the EU's minimum grower price and fruit withdrawal programs is undermining the no-processing subsidies commitment made by the EU in the CFA, and that the sale of subsidized Greek canned peaches in the U.S. and a number of foreign markets is harming the U.S. industry. Because several other countries are having similar difficulties with the EU on this matter, in late 1996 Argentina, Australia, Brazil, Chile, South Africa, and the United States requested joint consultations with the EU. The consultations are occurred in February 1997. The United States is continuing to work with the U.S. industry and the other concerned countries on the canned fruit issue.

France's Poultry Regulations

Currently, France's regulations prohibit the import of poultry products, except offal, from the United States. A French decree of 1962 bans imports of poultry products from countries using arsenicals in poultry feed, as is the case with American poultry. The U.S. has recently renewed its objection to this barrier, which is imposed only by France. While harmonization of policies within the EU may end this ban, the United States will continue to monitor this issue closely.

Government Support for Airbus

The governments of Airbus Industrie consortium countries -- France, Germany, Spain, and the United Kingdom -- provided extensive support to their national company partners in the consortium to aid the development and production of large civil aircraft. The individual Airbus partner companies are leading aerospace and defense manufacturers in their home markets and, in some cases, have substantial government ownership. For example, 97 percent of Aerospatiale's shares are owned by the French Government.

Government funds facilitated the growth of Airbus Industrie and its introduction of a range of large transport aircraft by allowing the Airbus consortium companies to avoid bearing the commercial risks that U.S. manufacturers face when investing in new civil aircraft programs. The Airbus partner governments bore 75 to 100 percent of the development costs for all major lines of Airbus aircraft and also provided other forms of support including equity infusions, debt forgiveness, debt rollovers and marketing assistance. Airbus had approximately one third of the total value of the outstanding orders for large civil aircraft at the end of 1996.

In 1992, the United States and the EU signed a bilateral Agreement on the Application of the GATT Agreement on Trade in Civil Aircraft. This agreement expands on the 1979 GATT Agreement on Trade in Civil Aircraft to limit government support, both direct and indirect, for aircraft development and requires adherence to established repayment schedules for past supports, although in some cases those repayment arrangements were lax. In addition, the bilateral agreement includes a prohibition on production support for large civil aircraft programs and a clarification of disciplines on government intervention in aircraft marketing and procurement decisions. It also provides for increased transparency of direct and indirect government support and government-funded research activities.

The United States held formal consultations with the European Commission in February and October 1996 under the terms of the bilateral aircraft agreement. At these meetings, the parties discussed the operation of the agreement, information previously exchanged under its transparency provisions on direct and indirect government supports, and government aeronautic research activities, as well as other issues of concern. These included concerns about increased pressure for additional support on Airbus partner governments from their aircraft manufacturers which continued to experience profit and cash flow difficulties.

At the end of 1996, the Airbus partners agreed to transform Airbus into a limited public company by 1999; at present, it is an "economic interest group," meaning that all its profits and losses go directly to the four partners and work shares are allocated among the partners rather than determined by business efficiency criteria. At the beginning of 1997, Airbus stated its intention to pursue development of a 550-seat aircraft despite serious questions raised about the extent of the market for a super-Jumbo aircraft. These decisions could lead to Airbus requests for additional government direct and indirect support.

In 1996, the U.S. Government received reports that the EU and its Member States attempted to influence several commercial aircraft competitions in favor of Airbus aircraft in a manner inconsistent with the 1992 aircraft agreement, for example: In Fiji, the EU and EU Member State ambassadors were reported to have linked, in meetings with government officials, Fiji's access to preferential treatment for sugar under the Lome Convention to the purchase of Airbus aircraft by Fiji's national airline. In Croatia, EU-member governments reportedly tried to influence the Government of Croatia on the purchase of aircraft by Croatia Airlines by suggesting a linkage between acceptance of Croatia's application to join the Council of Europe and the purchase of Airbus aircraft by Croatian Airlines. In France, the French Minister of Transport said in Parliament, in November 1996, that he had instructed the government's three directors on the board of Air France to support the purchase of Airbus aircraft in a commercial competition in order to promote the interests of France's aircraft manufacturing industry. The Minister further indicated that the French Government had persuaded Air France to be the launch company for the Airbus A340-600 aircraft.

Political pressure may be less direct than in the above examples. In its most recent report on Japanese trade barriers, the EU cited Japan for Airbus' low penetration of that market, implying that the Japanese Government should encourage its airlines to substitute purchases of U.S. aircraft with Airbus aircraft to help ease European-Japanese trade frictions.

The United States will continue to monitor compliance with the terms of the 1992 U.S.-EU large aircraft agreement and the 1979 Agreement on Trade in Civil Aircraft.

Belgium: The Government of Belgium and Belgium regional authorities are reported to subsidize Belgian aircraft component manufacturers which supply parts to Airbus Industrie. According to information received, the subsidy is provided in a foreign exchange rate guarantee program under which payments are made to a consortium of Belgian companies, Belairbus, which is an "associate member" of Airbus. The Government of Belgium and Belgian regional governments provide payments to the Belairbus companies to cover the difference between actual (i.e., marketplace) foreign exchange rates and a guaranteed rate. The specific level at which the guaranteed exchange rate was established has varied with different levels set for various Airbus aircraft programs and for different numbers of aircraft within each aircraft program. The Belgium program appears similar to a foreign exchange rate guarantee program provided by the German Government to the benefit of its Airbus partner and its suppliers which, following a GATT Subsidies Code complaint by the United States, was found to be a prohibited export subsidy by a reviewing panel and dismantled in 1992. The United States has undertaken consultations with the European Union to address the Belgian foreign exchange rate program.

Government Shipbuilding Industry Support

Member States of the EU provide subsidies and other forms of aid to their shipbuilding and repair industries. These have included subsidized restructuring of domestic shipbuilding industries, direct subsidies for operations and investment, indirect subsidies, home credit schemes, subsidized export credits, and practices associated with public ownership of yards. The European Commission sets annual ceilings for subsidies under its Seventh Directive covering shipbuilding aid. In 1996, the ceiling was nine percent of gross investment for new ships and 4.5 percent for conversions and small vessels (under 10 million ECU, about $13 million).

U.S. shipbuilders have operated without U.S. Government subsidies since 1981. On June 8, 1989, the Shipbuilders Council of America (SCA) filed a petition, seeking the elimination of subsidies and trade distorting measures for the commercial shipbuilding and repair industry. In response, USTR undertook to negotiate a multilateral agreement in OECD Working Party six (WP6) to eliminate all subsidies for shipbuilding. WP6 members include the EU, Japan, Korea, Norway, Sweden, and the United States, which collectively account for roughly 80 percent of global shipbuilding.

An agreement was reached in July 1994 and signed in December 1994, to take effect on January 1, 1996, with a review after three years. The agreement will restrict direct and indirect subsidies for shipbuilding, extend antidumping rules to the industry, establish strict rules for government financing of shipbuilding, and authorize sanctions on imports of goods from participants found to be violating the agreement. Belgium, Portugal, and Spain have temporary derogations for their restructuring aid predating the accord. The agreement must be ratified by all Parties to it, including the United States, before it can enter into force. Korea, Norway, and the EU deposited their instruments of ratification in 1995. Japan ratified the Agreement in May 1996, leaving the United States as the only remaining non-ratifying Party.

U.S. implementing legislation was introduced in Congress in Fall of 1995, but was not acted upon in that year. In June, 1996, the U.S. House of Representatives passed, by a large margin, an amended form of implementing legislation that was inconsistent with the agreement and did not constitute a basis for U.S. ratification of the agreement. Subsequent attempts to develop compromise legislation in the Senate were unsuccessful and the 104th Congress adjourned without taking action on implementing legislation. At a March 1997 meeting of WP6, the United States pledged its intent to submit new implementing legislation to the 105th Congress that addresses the concerns previously expressed by the Congress. Other Parties expressed a willingness to consider U.S. legislative proposals to facilitate ratification but also warned against altering the agreement's text.

The EU's Seventh Directive governing shipbuilding aid was scheduled to expire on December 31, 1995. It has been extended until the OECD agreement enters into force, but not beyond December 31, 1997. If the agreement is not in force by June 1, 1997, the Commission will submit a proposal regarding shipbuilding aid rules as of 1998.

European Union

Data Privacy

The Council of Ministers formally adopted the Directive on the Protection of Personal Data in October 1995. This directive tries to strike a balance between the protection of an individual's right to privacy in regard to transmission of personal data and the need to facilitate the flow of such information within the EU. The directive allows for data transfer to third countries if they provide an adequate level of protection for the data under their own laws or through international obligations they have undertaken. U.S. companies are concerned because the text lacks clarity about data transmission to non-EU countries. The ease with which data moves across borders will depend on how individual Member States define what constitutes an adequate level of protection.