EUROPEAN UNION

The European Union (EU) and the United States share the largest two-way trade and investment relationship in the world. In 1997, the U.S. trade deficit with the EU was $16.7 billion, an increase of $1.5 billion from the U.S. trade deficit of $15.2 billion in 1996. U.S. merchandise exports to the EU were $140.8 billion, an increase of $13.3 billion (10.4 percent) from the level of U.S. exports to the EU in 1996. U.S. imports from the EU were $157.5 billion in 1997, an increase of $14.8 billion (10.4 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) into the EU in 1996 was $348.4 billion, an increase of 10.6 percent from the level of U.S. FDI in 1995. U.S. FDI in the EU is concentrated largely in the manufacturing, financial, and wholesale sectors.

IMPORT POLICIES

Import and Distribution of Bananas

Since the late 1980's Latin American countries and the United States have urged the Member States of what is now the EU to implement the "Single Market" for bananas in a manner consistent with their international obligations under the GATT and the subsequent international agreements under the WTO. A group of Latin American countries -- Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela -- tried twice in the GATT to convince the EU to reform its discriminatory and burdensome banana rules; twice GATT panels found that EU banana rules were GATT-inconsistent (1993, 1994); twice the EU ignored those GATT panels and proceeded to extend and compound unfair and discriminatory trade barriers.

On July 1, 1993, the EU implemented a new banana import regime to replace individual Member State rules for banana imports. Elements of the new regime have caused significant adverse effects on U.S. distribution companies in the EU banana market. As a result of the EU's failure to reform its discriminatory system, a case was filed by the five complaining parties (Ecuador, Guatemala, Honduras, Mexico, and the United States) with the WTO in February 1996, and a dispute settlement panel was established to review the EU banana regime on May 8, 1996. The panel's May 22 report listed violations of fundamental WTO provisions in goods and services. The Appellate Body report, released on September 9, confirmed the panel's major findings of WTO-inconsistency of the EU regime and reversed two panel findings that had been favorable to the EU.

The EU agreed to implement the WTO reports' recommendations and rulings within a "reasonable period of time," which was determined in arbitration to be the period from September 25, 1997 to January 1, 1999.

On January 14, 1998, the European Commission adopted a proposal on modifying the banana regime. This proposal contains several WTO-inconsistent elements. The U.S. government will continue to press the EU to adopt a new regime that is WTO-consistent before the EU-agreed date for implementation of January 1, 1999.

Ban on Fur from Animals Caught in Leghold Traps

European Union

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 humane trapping standards.

After over eight years of discussions on this topic, the United States and the EU signed an agreed minute on humane trapping standards on December 18, 1997. Signature of the agreed minute should permit continuing access of U.S.-sourced fur and fur-products to the European market. Nevertheless, some problems could still emerge as the EU has not yet ended its requirement for certification as previously indicated. USTR will continue to monitor closely developments on this issue in the months ahead.

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 EU'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 20, 1997, the dispute settlement body modified the terms of reference of the Panel to include U.S. complaints against Ireland and the UK.

The Panel's final report, released on February 5, 1998, found that the tariff concessions on "automatic data processing machines" (category 8471) in the EU's Uruguay Round tariff schedule apply to computer networking equipment. Since the EU has been applying higher tariffs to computer networking equipment than the tariffs provided for in category 8471, the EU is in violation of its tariff obligations.

On the EU's tariff treatment of multimedia PCs, the Panel found that (1) PCs that incorporate a TV tuner can be regarded either as PCs capable of receiving TV or televisions that can also function as computers, and (2) it could not make a decision in the United States' favor on the basis of the evidence before it. However, the United States raised this issue due to concerns that the EU might treat any PC with multimedia capabilities as a television for tariff purposes. In July 1997, when the EU published its tariff rates and phase-down schedule for products covered by the Information Technology Agreement, these concerns were dispelled.

The EU now has to indicate whether or not it intends to appeal the Panel's ruling.

Tariffs on Information Technology Products

The EU is one of the signatories of the Information Technology Agreement of 1997, which eliminates tariffs on over $500 billion worth of world trade in computers, telecommunications equipment, semiconductors, and other information technology products. The EU will eliminate tariffs on all ITA products by the year 2000.

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 1998. 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.

Beyond the consultations mentioned above, in late 1997, the United States proposed consideration of broad-ranging discussions on wine, potentially to include such issues as U.S. and EU oenological practices, the use of semi-generic designations in the United States, and tariffs. After further consultation with the EU and with industry, discussions could begin along the above lines.

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 (CRS) 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. After the threat of further WTO action, the EU implemented these concessions in mid-1997. The EU is currently reauthorizing the regulations regarding 1997 and 1998 imports of malting barley. On the CRS, the Commission is reviewing its operation during the last half of 1997. The United States and EU will soon begin consultations on the future of the CRS.

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. In late 1997, the EU, with the consent of the United States, implemented one year's quota. While progress has been made on implementation of these tariff quotas for future years, they have yet to be made operational.

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, as evidenced by the Transatlantic Business Dialogue (TABD) adopted goal of "approved once accepted everywhere in the Transatlantic Marketplace." The United States 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 some progress in implementation, a number of problems related to this evolving EU-wide legislative environment have caused concerns to U.S. exporters. These include 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, which delays the process and adds costs for U.S. exporters.

The U.S. and the EU have negotiated a Mutual Recognition Agreements (MRAs) for several important sectors as a means of addressing this issue. MRAs will permit a U.S. exporter to test and certify his products to the requirements of the EU in the United States, and vice versa. Both sides have targeted mid-1998 for entering into the transition implementation periods provided for in the MRAs.

Product Approvals

Despite EU Commission approval in 1996-1997 of several agricultural and food products that contain genetically modified organisms (GMOs), the products still face lengthy and highly unpredictable approval processes that are affected by political concerns about consumer opposition in several Member States. Approval of products of modern biotechnology for environmental release and commercialization is governed by directive 90/220. However, this legislation is being revised, a process that may take several years to complete. The approval process remains the subject of internal EU executive and parliamentary debate. In the 1997-1998 crop year, four varieties of maize have been caught in the current review processes. These products have been subjected to unexplained delays, additional procedural steps added at the completion of the designated process and additional scientific reviews established for political, rather than scientific purposes. The problems are likely to intensify in 1998 as the number of products proposed for introduction increases.

The United States recognizes the right of the European Union to ensure products introduced into the market are safe and do not harm the environment. However, the EU's process has become highly politicized and the addition of procedural steps and new, additional scientific reviews at the conclusion of an already intensive scientific review process places in question the EU's impartiality in these matters. Several products have been under review for over two years, as compared to the average six to nine month processes available in Canada, Japan and the United States.

Even when products are approved, market access for products of modern biotechnology is not guaranteed. For example, Austria and Luxembourg have imposed marketing bans on GMO products. These bans run counter to EU regulations.

Labelling

In addition to directive 90/220, in May 1997, the EU adopted the Novel Foods Regulation, which governs food safety assessments and labelling for genetically-modified foods. The regulation requires labelling of all new processed foods and food ingredients, including those made from GMOs. Neither the novel foods regulation, nor directive 90/220 makes clear which products processed from GMOs must be labeled.

In July 1997, the Commission announced new EU-wide guidelines for labeling of biotechnology products, intended to provide consistency in labeling of GMO food, feed and seeds. The guidelines provided for voluntary labeling for certified non-GMO products, but gave no guidance as to who would provide the certification.

In September 1997, a new EU law provided for labeling of foods processed from Bt-corn and herbicide-tolerant soybeans (which were approved prior to the implementation of the novel foods regulation). This law became effective November 1 but failed to specify labeling criteria or label wording. In December 1997, the Commission proposed labeling criteria that would require foods containing detectable levels of DNA or protein from genetically-modified corn and soybeans to be labeled. This proposal did not meet the approval of the Member States and discussions continue on the approach to be taken. It is expected that whatever is eventually adopted for corn and soybeans will provide the basis for labeling of other GMO foods.

In the United States, production processes do not have to be labeled. That is, companies do not have to label a product simply because it is produced through biotechnology. Rather, the United States requires labeling only for safety or health reasons. For the past several years, the United States has argued against labeling of a process. However, most European officials, including those that are pro-biotechnology, have come to believe that "process" labeling (i.e., labeling all GMOs regardless of risk) is necessary to ensure consumer acceptance.

Specified Risk Materials Ban

On July 30, 1997, the European Union adopted a ban on the use of "specified risk materials" (SRMs) for use in food and feed and medical, pharmaceutical, cosmetics and other industrial products. This measure results from EU concerns over the transmission of BSE, or bovine spongiform encephalopathy, commonly known as "mad cow disease." The ban, originally scheduled to go into effect on January 1, 1998, was subsequently deferred until April 1, 1998. Specified risk material is defined as (a) the skull, including the brains, eyes, tonsils and spinal cord of cattle, sheep, and goats aged over 12 months, and (b) the spleens of sheep and goats. The decision also prohibits the use of the vertebral column of cattle, sheep, and goats for the production of mechanically covered meat, and allows for a derogation for the feeding of fur animals. Industry sources estimate that the potential trade effect of the ban could exceed $20 billion if all products currently covered are ultimately affected.

Beyond the direct trade impact of the ban which is potentially significant, the SRM ban raises a number of concerns with respect to WTO requirements, including those set out in the Sanitary and Phytosanitary Agreement. It fails to recognize regional disease differences in animal disease status; and it fails to account for available scientific information and advice relating to the control of bovine spongiform encephalopathy (BSE) and other transmissible spongiform encephalopathies (TSE) in products of animal origin. As a result, the ban is unnecessarily restrictive. For example, products of the United States and other trading partners, which have no evidence of BSE, are currently affected.

The EU is currently examining a series of measures that would modify the ban and could minimize its trade impact. A derogation was recently adopted for tallow derivatives processed according to specified procedures, in the production of cosmetics. A similar approach is being explored for addressing problems in the pharmaceutical area resulting from the medicinal use of gelatin, tallow derivatives, medical devices and biological products that require SRMs for their efficacy. Exemption of industrial and other products containing SRMs but not used for food or feed purposes is also under consideration. At this writing, EU officials are trying to define an acceptable alternative approach to reducing the risk of BSE transmission via SRMs while at the same time minimizing the commercial implications. It is not yet clear whether this effort will be successful.

Ban on Growth Promoting Hormones in Meat Production

For almost 10 years, the EU has banned imports of beef produced with growth promoters. The United States launched a formal WTO dispute settlement procedure in May 1996 challenging the EU's ban. The WTO Appellate Body (AB) upheld the original WTO Panel finding that the EU's actions are inconsistent with the

WTO agreement on sanitary and phytosanitary (SPS) measures and calls for the EU to comply with its WTO/SPS obligations. The AB clearly affirms the earlier Panel's findings that the EU ban was imposed and maintained without evidence to indicate there were health risks posed by eating beef from cattle treated with growth promotants, and despite scientific evidence showing such meat to be safe. The EU must indicate in the near future its intentions with regard to compliance with the WTO dispute settlement results.

Veterinary Equivalency

The United States and the European Commission concluded negotiations on a veterinary equivalency agreement in April 1997 after over four years of often contentious negotiations. This agreement translates the principles of the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures into practical and workable terms. The agreement establishes a framework for the exporting Party to make an objective demonstration to the importing Party that its sanitary measures achieve the importing Party's appropriate level of protection when such measures differ. By establishing clear criteria for reaching a determination of equivalence, this agreement will facilitate trade in live animals and animal products. When implemented, the agreement will establish the terms of trade for nearly all animal products between the United States and the EU, over $3.0 billion annually.

During the negotiations, U.S. and EU officials were not able to resolve the issue on the use of anti-microbial treatments in poultry production. The EU would not accept the use of anti-microbial treatments despite the fact that such treatments significantly improve the microbiological quality of the product. As a result, U.S. poultry exports to the EU have been blocked since April 1, 1997 representing a loss of $50 million annually to U.S. poultry exporters. The EU committed to study anti-microbial treatments in use in the United States with the goal of resolving this outstanding poultry issue. Approval and implementation of the agreement, now expected in March 1998, could open new opportunities for red meat exports and preserve most pre-existing trade in products such as pet food, dairy products, fishery products, and egg products.

Proposals on Aflatoxin Limits

In January 1998 as part of the ongoing harmonization of the single market, the EU notified to the WTO a proposal setting new maximum limits for aflatoxin in several products including several grains, milk, nuts and dried fruit. The proposed new limits will severely affect EU imports of a number of U.S. products while providing no additional protection to EU consumers. In addition, the sampling procedures proposed are likely to lead to large numbers of lots being rejected when in fact the commodities are safe.

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. The problem has been extended to European markets generally with the establishment of a CEN (European Committee for Standardization) 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.

Beef Labeling

Beginning March 31, 1998, labels on beef packaged for consumer sales must be approved by EU and Member State authorities, to provide consumers information regarding the products. Although the labeling is voluntary, any claims on labels, such as country of origin or production method, must be verified. These requirements currently do not apply to sales of beef for use in hotels, restaurants or institutions in the EU.

An EU-wide compulsory beef labeling system is legislated to take effect on January 1, 2000. Detailed application procedures currently are pending within the European Commission. There is considerable concern that a lack of timeliness in announcing and transparency in implementing these regulations could disrupt U.S. beef sales to the EU. The EU and U.S. currently are discussing measures to ensure access for U.S. product.

Voluntary Ecolabeling Program

On March 23, 1992, the EU Council of Ministers approved an EU-wide ecolabeling scheme. The scheme is a voluntary 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 eleven consumer product categories: washing machines, dishwashers, soil improvers, tissue paper products, 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.

Despite an ongoing dialogue between the EU and U.S. interest groups, the U.S. government is concerned that technical bilateral talks on concerns about the scheme that were committed to in 1996 did not materialize. Recently, however, EU representatives committed to meet on the subject in 1998.
The United States looks forward to these meetings and will continue to monitor closely the development of, and revision to, the EU ecolabeling scheme.

Packaging Labeling Requirements

In 1996, the Commission put forward a proposed 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 United States 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. Discussions underway in the ISO may go a long way to resolving the potential problems, especially as the Commission has indicated its willingness to review the proposed EU marks in light of an eventual ISO agreement.

The European Parliament began examining the Commission's proposal in late 1997. The chief rapporteur was concerned that the Commission was not considering sufficiently the developments in ISO. Some of the Parliament's comments will be incorporated into the Commission's proposal. The U.S. government will continue to monitor this as it proceeds through the legislative process.

Metric Labeling

The 1980 Directive adopted to harmonize systems of measurement throughout the EU mandates metric-only labeling on most products entering the European Union from January 1, 2000. Exporters, both European and American, have publicly voiced their objections, citing the costs of complying with conflicting EU metric-only and U.S. mandatory dual labeling requirements. Faced with strong industry opposition, the Commission - with EU Member State backing - committed to put forward a proposal postponing the Directive's implementation date from January 1, 2000 to January 1, 2010. The U.S. government will monitor the legislative progress of this proposal, which is expected to be forwarded to the European Parliament and the Council of Ministers by the second half of 1998.

Acceleration of the Phase-outs of HCFCs

The Euroean Commission has been considering moving up the EU's phase-out of some hydrochlorofluorocarbons (HCFCs) by several years, to the year 2000 or 2001, in a proposed amendment to EU Regulation 3093/94. While the United States government is concerned about substances that deplete the ozone layer, it believes that the benefits to the ozone layer in this phase-out acceleration would be minimal and could be offset by disadvantages in terms of energy efficiency and in creating uncertainty about the future of these compounds among developing nations, who have yet to make the switch from the more damaging chloroflurocarbons (CFCs). The United States also believes that, because both the EU and U.S. have in place standards to protect the stratospheric ozone layer that go beyond the requirements of the Montreal Protocol, a high premium should be placed on the stability of regulations. As currently drafted, the proposed amendment would severely affect the export to the EU of U.S. refrigeration and air conditioning equipment. The United States has raised this issue with the Commission on a number of occasions and is continuing its efforts to press all relevant parts of the Commission to take U.S. concerns fully into account as amendments to Regulation 3093/94 are considered.

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:

France: In December 1997, the United States and France worked out an arrangement which allows U.S. pet food exports to return to the French market. U.S. exports, valued at about $20 million annually, had been blocked since September 1996. Under the new agreement, U.S. pet food exports to France will now be accompanied by a veterinary certificate.

Greece: Greece has raised questions regarding U.S. phytosanitary certificates for U.S. wheat shipments not only to Greece but also trans-shipped through Greece to other countries. While working with Greek authorities to further their understanding of U.S. testing and quarantine procedures for karnal bunt, U.S. wheat exports have been effectively shut out of Greece and several other Balkan countries.

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. (In the case of poultry and game meat, announcement of a veterinary equivalency agreement inclusive of poultry would help ameliorate these problems significantly.) Finally, Italy's qualitative standards for bull semen, which limit the number of foreign bulls in favor of domestic animals, and the trade-inhibiting testing and registration 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. This has an impact on U.S. nutritional supplements exporter's efforts to develop the Spanish market.

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. The directive's discriminatory provisions were waived for the heavy electrical sector in a Memorandum of Understanding (MOU) between the United States and the EU, signed in May 1993.

On April 15, 1994, the United States and the EU concluded a procurement agreement that expanded upon the 1993 MOU. The 1994 agreement extended 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 on January 1, 1996. The 1994 agreement, however, did not end the discrimination with respect to telecommunications procurement.

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:

Austria: In 1997, at least two Austrian government tenders were not open to U.S. bidders: procurement of the 1998 Austrian motor highway vignettes and procurement of printing paper for the printing plant of the Austrian National Bank. Both contacts were restricted to manufacturers in the European Economic Area and the European Union respectively, presumably for safety and quality control reasons. While this may be in accordance with EU regulations, it is inconsistent with the spirit of the Transatlantic Business Dialogue.

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: After four years of German implementation of the EU Utilities and Remedies Directive, U.S. firms continue to allege irregularities in public procurement bid procedures. 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. This review mechanism has proven ineffective because it does not contain effective remedies.

In October 1995, the European Commission formally challenged the adequacy of Germany's implementation of the EU Remedies Directive. Moreover, in April 1996, the United States 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 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 entered the formal legislative process in early September 1997 and is scheduled to enter into force by late spring/early summer 1998. The U.S. government, in consultation with industry, is monitoring the progress of the legislative process.

Greece: Greek laws and regulations concerning government procurement nominally guarantee non-discriminatory 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. Actually, before expiration of the extension, numerous term agreements worth billion of dollars were signed by Greek public utilities with Greek suppliers. Some of these term agreements have no less than 3-5 years duration, with an option of extending for another 3 years, thus excluding U.S. suppliers from vital sectors of government procurement for several years.

Italy: Italy's fragmented, often non-transparent government procurement practices still present obstacles to U.S. firms' participation in Italian government procurement, despite some progress. Corruption, particularly at the local level, is still regarded as a problem in public procurement.

Most recently, American companies have reported greater access to public and parastatal contracts. Italy has implemented EU regulations relating to procurement of goods and services and has made progress, with passage of the so-called “Merloni” legislation, towards more transparent laws and regulations for public procurement and open market competition. However, Italy must still complete implementation of national, EU and WTO procurement rules and regulations, through implementing regulations which are currently being discussed in Parliament. One proposed revision would allow project management services to be contracted out to private firms -- potentially opening up an entire new market in the engineering services sector with opportunities for U.S. firms.

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. However, in a number of areas including poultry, beef, dairy, rice and olive the EU appears to be “rolling-over” unused subsidy from one year to the next. The United States is currently investigating this action as a possible violation of the WTO Agricultural Agreement.

Processed Cheese Exports

On October 1, 1997, Ambassador Barshefsky announced that USTR was invoking WTO dispute settlement procedures in the context of a Section 301 investigation to challenge practices by the EU that circumvent the EU's commitments under the WTO to limit subsidized exports of processed cheese. Under its inward processing system for dairy products, the EU produces cheese for export from dairy components such as nonfat dry milk and butter. The processor receives a subsidy upon the cheese being exported, but the EU does not count these subsidies against its export subsidy ceiling on cheese. The United States contends this is a breach of the EU's export subsidy requirements. Initial WTO Article XXII consultations with the EU on these practices were held in November 1997. The United States is considering next steps.

LACK OF INTELLECTUAL PROPERTY PROTECTION

The EU and its Member States support strong protection for intellectual property rights. The Member States are members of all the relevant WIPO conventions, and they and the EU regularly join with the United States in encouraging other countries, primarily developing ones, to sign up to and fully enforce high IPR standards, including those in the TRIPs Agreement. However, there are a few Member States with whom the United States has raised concerns either through Special 301 or WTO Dispute Settlement, about failure to fully implement the WTO TRIPs Agreement.

Designs

The Commission’s 1993 proposed directive aimed at harmonizing Member State legislation on the legal protection of designs was reviewed by the Council and went through a second parliamentary reading in 1997. 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 Arepair clause,A 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 Council has adopted a position against including the Arepair clause,@ but Parliament has proposed an amendment to re-insert it. In 1998, it is likely that a compromise will be required -- through a conciliation process -- for the two sides to reach agreement and finalize the directive.

Trademarks

Registration of trademarks with the European Community Trademark Office (CTMO) began in 1996. The CTMO, located in Alicante, Spain, issues a single Community trademark which is valid in all 15 Member States and in any future EU countries. National marks continue to co-exist with the Community trademark.

EU Member States are divided over the issue of trademark exhaustion, a principle that relates to limiting the trademark owner’s ability to resort to remedies against persons who import or distribute goods bearing a trademark with permission outside the authorized distribution channels. Some have asked the European Commission to consider introducing the concept of Ainternational exhaustion@ into European IPR law. Essentially, international exhaustion would render a rightholder powerless to enforce trademark rights once the trademarked goods were placed on the market in any other part of the world with the rightholder's consent. However, the Commission strongly supports ACommunity exhaustion@ (applicable in EU Member States) in all intellectual property fields and has upheld that principle in current and proposed directives and regulations. In 1998, the European Court of Justice is expected to rule on the pending Asilhouette@ case involving trademark exhaustion. Informed observers believe the court will uphold the principle of Community exhaustion.

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.

Patents

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, the European Patent Office (EPO) took a first step toward reasonable patent costs by reducing fees for filing by 20 percent effective July 1997. National patents continue to exist alongside (and can conflict with) the embryonic European patent granted by the EPO in Munich.

In 1997, the European Commission approved a green paper initiated by the Internal Market Directorate General to explore the question of whether the Community patent convention, concluded by Member States in 1975, should be replaced by full scale Community legislation to ensure secure patent protection throughout the EU on the basis of a single patent application. The Commission intended the green paper to serve as a basis for consultation with industry, inventors, patent agents and other interested parties. The European Parliament will offer its opinion on the green paper some time in 1998. It is doubtful, however, that the Commission will propose a legislative initiative on a Community patent system in 1998.

Biotech Patenting

In 1997, the EU made progress toward agreement on a biotechnology patent law after nine years of discussions. The current proposed directive would harmonize Member State rules on the application of patent protection to biotech inventions. Specifically, it would allow patenting of new biological material inventions (as opposed to discoveries, or finding a substance present in nature) that may be used in industrial applications, and processes making it possible to produce, treat or use biological material. However, plant varieties and animal species, or essentially biological processes for obtaining plants or animals, would not be patentable. Neither would be inventions whose commercial exploitation would be Acontrary to public policy or morality.@ The proposal also considers unpatentable processes for cloning human beings, and processes for modifying the germ line genetic identity of human beings. The directive is expected to be adopted in 1998 and would require Member States to bring their national laws into compliance within two years.

Copyrights

In 1997 the European Commission proposed a directive to harmonize Member State legislation on copyrights and related rights intending to establish a clear definition of protected material and set an equivalent level of protection across the EU. The proposal covers rights of reproduction, communication to the public, and distribution, and protection of anti-copying systems but does not address copyright infringement liability by on-line service providers. Copyright liability is to be included in a directive covering broader liability issues forthcoming in 1998. The directive on copyrights and related rights would also require Member States to implement the obligations in the 1996 WIPO copyright and performances and phonograms treaties, and requires approval from the Parliament and adoption by the Council before it takes effect.

Member States were required, by January 1, 1998, to transpose into national law the directive on legal protection of databases, adopted in 1996. The directive provides copyright protection to electronic and manual databases. A new Asui generis@ right extends copyright protection for 15 years to the contents of a database, whether or not the material is otherwise eligible for copyright protection. However, this right is available to non-EU creators of databases only on the basis of reciprocity. The United States business community, while supportive of protection for databases as essential to a sound legal framework for Europe's information society, remains concerned about the impact the reciprocity provisions of this directive will have on U.S. publishers of databases. Scientists worry that the directive will make access to databases prohibitively expensive although the directive allows exemptions for groups accessing data for research or education.

Member State Practices

Some EU Member States have their own special practices regarding intellectual property protection and enforcement that do not necessarily comply with international obligations. A brief discussion of those which are of concern to the United States follows:

Austria: Under Austrian copyright law Atourist establishments@ (hotels, inns, etc.) may show cinematographic works or other audiovisual works, including videos, to their guests. While the license fee to the copyright owners is mandatory, Austrian law does not require prior authorization by the copyright holder. The United States holds this provision to be inconsistent with Austria's obligations under the Berne Convention and TRIPs.

Following bilateral U.S.-Austrian talks in the summer of 1997, the Austrian Arbitration Commission determined the rates to be paid for such public showings. Austria considers this step sufficient compensation for the interests of the copyright holders and in compliance with both the Berne Convention and TRIPs. The United States expressed reservations to this position. Further talks are scheduled to be held later this year.

Austrian copyright law also requires that a license fee be paid on imports of home video cassettes and cable transmission. Of these fees, 51 percent are paid into a fund dedicated to social and cultural projects. In the United States's view the copyright owners should receive the revenues generated from these fees and any deductions for cultural purposes should be held to a minimum.

Belgium, France: Belgium and France 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 United States motion picture and recording industries have not been able to collect their rightful share of these proceeds.

European Union

Denmark: Denmark's intellectual property laws are generally adequate. However, certain problems exist. Enforcement is made difficult by the fact that the Danish government does not make available provisional relief on an exparte basis to prevent ongoing infringement or preserve evidence in the context of civil litigation. 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 United States 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 at present compelled by a Supreme Court ruling to permit competitors to rely upon extremely valuable test data for certain chemical products that a U.S. firm has submitted in order to receive approval to market its products in Denmark. This contravenes the objective of the TRIPs Agreement and perhaps TRIPs Article 39.3.

Greece: Greece has been on the Special 301 Apriority watch list@ since 1994. Just prior to an out-of-cycle review in December 1996, the Greek government presented an "action plan" laying out the steps it would take by April 1997 to reduce audio-visual piracy. While some of these steps were taken, the Greek government has lagged behind severely in licensing television stations in accordance with the provisions of the 1995 media law. A U.S. government team visited in November 1996 and 1997 to assess progress, and during the 1997 meetings the team informed the Greek government that the U.S. government is preparing a WTO dispute settlement case to address the continued failure to comply with TRIPs enforcement obligations that may soon be launched unless rapid action is taken to close down permanently pirate broadcasters. Two other significant IPR problems are lack of effective protection of copyright software and of trademarked products in the apparel sector.

Ireland: Ireland's 1963 copyright law does not comply with the TRIPs Agreement (which came into effect for Ireland in January 1996). Faulting cumbersome procedures for prosecuting violators and insignificant penalties, the U.S. motion picture 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.

In 1997, the United States filed a WTO case against Ireland regarding its failure to implement TRIPs. The United States and Ireland held three rounds of consultations on this issue in 1997. Due to insufficient progress in the negotiations, in January 1998, the United States requested the establishment of a WTO Panel against Ireland and the EU on the grounds that the legal regime in Ireland fails to conform to the TRIPs Agreement and nullifies or impairs benefits accruing to the United States under the TRIPs Agreement. Ireland and the EU subsequently promised to accelerate significantly work on a new copyright law to remedy the TRIPs deficiencies, and also to pass separate expedited legislation addressing two pressing enforcement problems. In view of these commitments, the United States has not proceeded further with dispute settlement proceedings as of the publication of this report. The United States will closely monitor implementation of these commitments throughout 1998.

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.

Piracy of computer software for business applications, although falling from 58 percent in 1996 to 43 percent in 1997 according to industry estimates, 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 30 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 20 percent of the market in 1997, down from 22 percent in 1996, 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, and the Senate Justice Committee passed it in July 1997, after amending it to raise the criminal penalties for aggravated cases of copyright violation. The same committee also received the Parliament's authorization to re-examine the bill on a Afast-track@ basis, on behalf of the full senate. However, no "fast-track" activity has been observed.

Portugal: Portugal's laws on the protection of intellectual property do not provide adequate protection for test data submitted to regulatory authorities for marketing approval of certain products (including pharmaceuticals) as required by the WTO TRIPs Agreement. Portugal is currently in the process of updating several articles of its existing legislation, including the section which covers the protection of test data. The United States has informed Portugal of its concerns in this regard and will monitor the development and implementation of changes to the legislation.

Spain: In Spain, the Motion Picture Association and the General Society of Authors of Spain (SGAE) reached an agreement several years ago that grants screenplay authors access to a portion of the levies collected on blank tapes and recording equipment. More recently, the MPA and the entity that represents the rights of audiovisual producers also reached agreement on sharing levies collected. However, negotiations with the group that represents performers rights are still in progress. So far, the distribution of funds collected appears to be functioning satisfactorily.

Sweden: While Sweden's intellectual property laws are satisfactory, its enforcement of them has been problematic. The Swedish government has not provided sufficient financial or personnel resources or training to the police and prosecutor's office, nor has it indicated that IPR enforcement is a top priority. During the past year, however, the government has begun the process of changing its laws to allow for provisional relief in the context of civil searches in copyright enforcement cases, which if implemented will ameliorate considerably the software industry's greatest copyright enforcement problem. Another problem area, in which an apparent conflict exists between the constitutional guarantee of freedom of information and the rights of the copyright holder of unpublished works, remains unsolved.

SERVICES BARRIERS

European Union

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.

The process begun by the Commission in 1993 to revise the Broadcast Directive in an effort to strengthen quotas was concluded in April 1997 through a conciliation committee that resolved differences between the European Parliament and the Council. By the time an agreement was reached on a revised directive, the divisive issue of strengthening European content quotas and expansion of the directive's scope to new services had fallen by the wayside despite the Parliament's protectionist line. The United States continues to monitor developments with respect to the Broadcast Directive.

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

France: The language of the EU Broadcast Directive was introduced 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 "Conseil 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 addition, the United States continues to be concerned about the French radio broadcast quota (40 percent of French songs on almost all French private and public radio stations) which entered into force on January 1, 1996. The measure has the effect of limiting the broadcast share of American music.

Italy: On December 18, 1997, the European Commission announced a European Court of Justice case against Italy for failing to implement fully the Broadcast Directive, including its quota provisions. The Commission said its court case is the culmination of infringement proceedings brought against Italy in January 1996, based on Italy's "incorrect transposal" of the directive in its "mammi law" of August 1990.

With regard to the quotas, the Commission cited Italy's 1990 law applying quotas specifically and solely to the broadcast time devoted to "cinematographic films," rather than "European works," as under the directive. The EU also found fault with the mammi law's reservation of more than half of the Italian European content quota (or 25-percent-plus of total broadcasting time devoted to films) to Italian product. The EU holds that this discriminates against other European product, in violation of Article 59 of the EU treaty.

In 1996, the Italian government introduced legislation to make European content restrictions more binding. (The film sector decree-law enacted on January 18, 1994, calls for application of the Italian broadcast quotas proportionally during evening hours, but its language is strictly hortatory.) The bill would apply a 51 percent European quota both overall and to prime-time specifically not counting news, sports, variety shows, and other non-film programming. The bill would also apply quotas “as a rule,” despite the European Parliament’s November 1996 decision to leave in place more flexible EU quota language.

Portugal: As in the case of other EU Member States, Portuguese television legislation passed in 1990 contains language taken from the EU Broadcast Directive requiring that a "majority proportion" of works broadcast be of "Community or European" origin “whenever possible.” Cinema legislation passed in 1993 includes language providing for the possibility of the introduction of distribution and screen quotas. In practice, however, these rules have not been enforced because Portuguese television and film production is minimal and production from other EU countries is inadequate to satisfy broadcasting needs. Portugal is currently considering drafts of new legislation to replace both of these existing laws. Early drafts also include language concerning quotas. The United States will monitor closely the implementation of this restrictive legislation.

Spain: Legislation implementing the 1989 Television Broadcast Directive was adopted in 1993. New legislation adopting the revised directive has been prepared and is expected to be enacted by mid-1998. The proposed new law maintains the same restrictions on non-EU programming as in the earlier law. Both government-owned and private television networks readily meet the EU content requirements and according to government officials, no operator has had to alter its programming to comply with the directive since the viewing public has a preference for content that is culturally and linguistically Spanish. Although U.S. programs might have increased sales without the quota provisions of the directive, in fact American films and popular TV serials form a sizeable portion of prime time viewing.

In January 1997, Spain issued regulations implementing the 1994 cinema law. The screen quota provision requires motion picture exhibitors in the course of each year to show one day of EU-produced films for every three days of non-EU produced films. If dubbed into one of Spain’s recognized minority languages (e.g., Catalan), then the proportion becomes one for every four days of non-EU-produced films shown. In order to earn dubbing licenses for non-EU-produced films, companies must distribute EU-produced films. The law stipulates that the first license is earned when box office receipts exceed 10 million pesetas ($65,000); a second when they exceed 20 million ($130,000); and a third when they exceed 30 million ($195,000). If a film is dubbed, it must be dubbed into a minority language and earn at least 5 million pesetas ($32,500) in the minority language version to qualify for the third license.

The film dubbing license and screen quota requirements established in the 1997 regulations, reached after extensive negotiations that included film industry representatives, are less stringent than those established in the 1994 law. U.S. industry would prefer not to have to face requirements that impose additional costs and curb its freedom to make commercial decisions.

Computer Reservation Services

U.S. computer reservation systems (CRS) companies have had difficulties in the EU market, because some Member State markets tend to be dominated by the CRS owned by that Member State's flag air carrier. Most such cases have eventually been resolved to the U.S. CRS vendor’s satisfaction after U.S. government intervention or recourse to national administrative and court systems.

In 1996, as a result of a complaint filed by a U.S. CRS firm, the United States Department of Justice (DOJ) asked the EU competition authority to investigate possible anticompetitive practices by a European firm. This is the first case of its kind under the positive comity provision of the 1991 EU-US Antitrust Cooperation Agreement. The EU investigation is on track, and, while the Commission cannot say when it will be complete, the final ruling may address some of the above concerns.

There is also concern over how Swedish data protection regulations apply to U.S. CRS operations in that country. 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. Resolution of the matter is being sought in the Swedish court system and under the U.S. Sweden aviation agreement.

Airport Ground Handling

In October 1996, the EU issued a directive to liberalize 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 apply for exemptions to 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 the bilateral air services agreements which the United States concluded with eight EU Member States (Austria, Germany, Belgium, the Netherlands, Luxembourg, Denmark, Sweden and Finland).

In January 1998, Commission competition authorities - acting on a complaint by several EU airlines - ruled that Frankfurt Airport Terminal Two and the western portion of Terminal One would have to permit airlines to handle baggage for their clients (self-handling) and by January 1, 1999 would have to authorize a third independent baggage handling service provider. Frankfurt had requested a derogation from the directive until January 1, 2001. This is the first decision under the 1996 directive.

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 continues to be concerned about 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: As part of France's restructuring of its legal services regime in 1992, the "legal consultant" category, under which most American lawyers practiced, was eliminated. Since then, the number of U.S. trained attorneys able to practice in France has been severely limited by a requirement that a rigorous examination on French law be passed. A 1996 agreement between the United States and Parisian bar associations, which takes into account the professional experience of the lawyer, appears to have allowed for a higher passing rate for American lawyers. The test, however, remains ultimately subjective and the small, recent increase in the number of Americans passing the French bar could simply reflect a greater degree of personal preparedness.

Auditing Barriers

Greece: The transition period for demonopolization of the Greek audit industry officially ended on July 1, 1997. Numerous attempts to reserve a portion of the market for the former state audit monopoly during the transition period (1994-97) were blocked by the European Commission and peer review in the OECD. In November 1997, the government issued a presidential decree which effectively undermines the competitiveness of the multinational auditing firms. The decree established minimum fees for audits, and restrictions on utilization of different types of personnel in audits. It also prohibited audit firms from doing multiple tasks for a client, thus raising the cost of audit work. The government has defended these regulations as necessary to ensure quality and objectivity of audits. In practical effect, the decree constitutes a step back from deregulation of the industry.

Shipping Restrictions

Spain: In 1992, the EU established a calendar for liberalizing cabotage restrictions, but only to vessels registered in a member country. The 1992 agreement among the EU member countries on a common cabotage regime is to be implemented during a transition period from 1993 to 2004. 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. The Spanish government has begun to liberalize merchant navigation for these routes, most recently holding a bid for a six-year contract for routes with inadequate service levels. However, state-owned company Transmediterranea was the only bidder for these routes.

Telecommunications Market Access

U.S. telecommunications equipment industry access to EU member nations varies widely from relatively open to nearly closed. As described in the section on government procurement, most EU Member States discriminate against non-EU bids in the telecommunications sector. In addition, market access is impeded through standards and standard-setting procedures, testing, certification and attachment policies.

Under the WTO Agreement on Basic Telecommunications Services, eleven Member States made commitments to provide market access and national treatment for voice telephony services as of February 5, 1998, the date the agreement entered-into force. Four Member States will phase-in these commitments after the entry-into-force of the agreement: Spain (December 1, 1998), Ireland and Portugal (January 1, 2000) and Greece (January 1, 2003). Four Member states qualified their commitments further by maintaining foreign investment restrictions: France permits only 20% direct investment for radio-based networks and limits investment in France Telecom; Italy limits foreign investment in STET; Portugal limits foreign investment at 25 percent; and Spain limits foreign investment by government-owned operators. The European Communities and its Member States also adopted the pro-competitive regulatory commitments set forth in the Reference Paper associated with the WTO Agreement.

Belgium is the only EU Member State that has failed to give its formal acceptance to the agreement and bind itself to the commitments it promised during the negotiations. As of the date of this publication, formal ratification of the agreement appeared imminent, as the Belgian legislature had just taken action on it and the only remaining step was the King's formal approval.

The European Commission is monitoring and reporting regularly on the implementation of telecom liberalization within the EU. In its report of February 1998, the Commission found that nine Member States had not completely or adequately implemented European telecom directives that provided for an open EU market as of January 1, 1998. Greece was cited by the Commission in October 1997 for failing to allow the private mobile GSP operators to interconnect their networks directly with foreign fixed or mobile networks, and also for failure to liberalize the establishment of new infrastructure for the provision of liberalized services (all services other than voice telephony). After requesting a delay until 2003, the Commission decided that Greece will be required to open its voice telephony market to other EU competitors by January 2001.

Although the Commission found that Italy has implemented all EU directives regarding telecom liberalization, there are problems accessing the Italian market. These include a delay in granting the third cellular license (originally intended to be issued in late 1996, currently scheduled to be issued in late March or early April 1998) and the perceived competitive advantages enjoyed by Telecom Italia, including overly high interconnection fees. It is not only necessary for all Member States to transpose EU directives on the liberalization of telecom services into national telecom policies and regulations, but also just as important for the Member States to successfully apply and implement those requirements to ensure that effective competition develops in the telecom marketplace.

Implementation of the WTO agreement will present major challenges to EU Member States, most of whom had closed markets and telecom monopolies in place until the beginning of 1998. Close monitoring by the U.S. government of this process will be necessary to ensure full compliance by Member States with their WTO commitments. Some of the earliest challenges facing the Member States will be full implementation of the pro-competitive regulatory principles in the reference paper associated with the WTO Agreement. For example, in Italy, an independent regulatory authority has yet to be established and firms are unable to apply for licenses, as rules or procedures for licensing do not appear to be in place. In Germany, the newly established independent regulator already is addressing Deutsche Telekom's attempt to impose excessive fees on customers seeking to change carriers. The issue of determining cost-oriented, non-discriminatory interconnection charges will be critical in all markets, and already controversy is developing in France and Germany over the level of and method for determining such charges. France Telecom, the recently partially privatized national carrier, has been slow in negotiating interconnection fees with new carriers. Initial agreements are expected by March 1998, at which time we will be better able to appraise market liberalization.

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.

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.

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 favoured 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: Austria's 1993 Banking Act presents a number of obstacles to U.S. banks. While EU Member States' banks may operate branches on the basis of their home country license, non-EU banks must obtain an Austrian license to open branches in Austria. In addition, as of December 31, 1998, limits for single large loan exposures and open foreign exchange positions will decrease considerably for branches and subsidiaries of banks from non-EU countries. As of that date, the capital of that parent company may no longer be included in the capital base used to calculate loan and foreign exchange position limits.

France: In 1996, the French government eliminated general screening and prior approval requirements for non-EU foreign investment. 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 retained the ability to 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. New investment incentive legislation is pending ratification in Parliament. Foreign exchange controls have been progressively relaxed since 1985. Medium- and long-term capital movements have been fully liberalized. Most restrictions on short-term capital movements were lifted in 1994. Remaining restrictions on short-term capital movements were lifted on August 1, 1997, although some controls still exist to facilitate enforcement of money laundering laws and tax collection. Greece's foreign exchange marker is now in line with EU rules on free movement 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 receive less advantageous treatment than domestic or other EU investors in the banking, mining, maritime and air transport sectors, and in broadcasting. There are also restrictions for non-EU investors on land purchases in border regions and certain islands (on national security grounds).

The draft 1998 tax bill proposes to increase the corporate tax rate from 35 percent to 40 percent for all corporations which have registered shares but do not trade them on the Athens Stock Exchange (ASE). Though, in principle, this change would not violate MFN or national treatment obligations, the practical effect is to provide a tax subsidy to Greek firms based on their utilization of the ASE.

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. Portugal eliminated the “economic needs test” that applied to the establishment of non-EU banks as part of its commitments to greater financial liberalization in the WTO and MAI negotiations.

Portugal retains the discretion to limit foreign investment in state-owned companies being privatized on a case-by-case basis. To date this prerogative has never been exercised.

OTHER BARRIERS

Canned Fruit

The United States and five other producing countries (Argentina, Australia, Brazil, Chile and South Africa) are continuing to consult with the European Commission regarding the EU's internal support regime for canned fruit. These governments believe that the operation of the EU support regime for fresh peaches and pears has allowed EU fruit processors to unfairly undercut the domestic and export prices for canned fruit for the EU's trading partners. Despite the EU's claims of adherence to the letter of the 1985 U.S.-EC Canned Fruit Agreement, oversupply of the fresh fruit under the support regime may allow processors in certain Member States to ignore the minimum price requirements of the agreement. The industries in all five countries have been hurt by EU exports of cheap canned fruit. Modifications in the overall fruit and vegetable production scheme may improve the situation, but it is too early to tell. This issue has been raised in the WTO Committee on Agriculture, where eleven countries have asked the chairman to convene consultations with the EU to address problems arising from the EU’s regime.

France's Poultry Regulations

The United States continues to oppose the French ban on U.S. poultry, which has been in effect since the early 1960's. The French prohibition on U.S. poultry is based on U.S. poultry feed practices, practices which the United States believes to be entirely safe.

Government Support for Airbus

Since the inception of the European Airbus consortium in 1967, its partner governments (France, Germany, Spain and the United Kingdom) have provided massive support to their national company partners in the consortium to aid the development, production and marketing of large civil aircraft. At the end of 1996, support from these governments to develop new Airbus aircraft stood at over $30 billion, net of repayments to those governments by the consortium members. Since that date, the Airbus partner governments either have committed, or are in an advanced stage of consideration of providing, additional funds for derivative models of current Airbus aircraft. On February 2, 1998, the Government of the United Kingdom announced that it has agreed to a long term loan of up to 123 million pounds (212 million dollars) toward the design and development of the new wing for the Airbus A340-500/600 aircraft. The French parliament has also budgeted for 1998, 505 million francs (87 million dollars) for this same aircraft program, and the German government has indicated that it would also provide some assistance.

Government support for Airbus has facilitated its growth and the introduction of a range of large transport aircraft by allowing its national partner companies to avoid bearing the normal commercial risks that U.S. manufacturers face when investing in new civilian 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. The individual Airbus partner companies are leading aerospace manufacturers in their home markets and, in some cases, have substantial government participation in ownership. The French government, for example, owns 97 percent of Aerospatiale. Airbus claimed to have received approximately 50 percent of the total orders for large civil aircraft made in 1997.

Airbus has announced its intention to pursue a 550-seat aircraft despite serious questions about the market demand for a super-jumbo aircraft. A July 1997 French Senate Finance Committee report called for providing 6.2 billion francs in launch aid for the super-jumbo over the next four years. In October 1997, Airbus publicly requested that EU governments provide financial support in order to fight American "aerospace leadership" and said that the super-jumbo aircraft would require several billions of dollars in government investment.

The Airbus partners have agreed to transform Airbus Industrie into a public company, or "single corporate entity," by 1999. At present, it is an "economic interest group," meaning that all its profits and losses from sales go directly to the four manufacturing partners and work shares are allocated among the partners by capital participation rather than determined by business efficiency criteria. In January 1997, the Airbus partner companies reached a general agreement for the formation of the new single corporate entity; and in December 1997, their governments issued a statement endorsing the Airbus restructuring and requested a detailed plan by March 31, 1998.

The United States is concerned that the launch of new Airbus programs and the restructuring of the Airbus consortium may be used to justify additional government subsidies. The United States also continues to be concerned that the European Commission and its Member States may attempt to influence commercial aircraft competitions in favor of Airbus aircraft in a manner inconsistent with its obligations. The United States in the 1996 National Trade Estimates Report provided examples of such attempts. The United States will continue to monitor EU involvement in future competitions and its compliance with aircraft trade agreements.

To address U.S. concerns about the impact of European government support for its civil aircraft manufacturers, the United States signed a bilateral large aircraft agreement with the EU in 1992. This agreement expanded on the principles contained in the 1979 GATT Agreement on Trade in Civil Aircraft and contains specific disciplines on the provision of future European government support for aircraft development by Airbus and the repayment of past support. In addition, it includes a prohibition on government support for the manufacturing, marketing and sale of aircraft and a clarification of disciplines on government intervention in aircraft marketing or procurement decisions.

The United States held formal consultations with the European Commission in April and July 1997 and January 1998 under the terms of the 1992 bilateral agreement. At those meetings, the U.S. government and the European Commission exchanged information under the Agreement's transparency provisions on direct and indirect government support and discussed government involvement in large civil aircraft manufacture and marketing. Ideas for improving the operation of the agreement were also examined. Of particular concern to the United States are plans announced by European governments to provide financial support to develop new Airbus aircraft, including the A340-500/600. (In the past, some loans for Airbus programs, repayable from royalties on aircraft sold, have been effectively forgiven because projected sales did not materialize.) The U.S.-EU aircraft agreement requires that the European Union provide information to the United States on a "critical project appraisal" demonstrating the commercial viability of new aircraft programs at the time governments commit financial support to them. The EU has not yet provided the requested information.

European officials have frequently defended Airbus subsidies by asserting that the United States also funds its civil aircraft industry indirectly through NASA and Defense Department research. A consultant's report prepared for the European Commission on the level of U.S. government indirect support to U.S. manufacturers of large civil aircraft suggested that U.S. indirect supports are substantial. Careful examination of the report, which was apparently widely circulated and treated as a credible analysis in EU government circles, uncovered serious methodological and factual flaws which negate its conclusions.

In particular, the EU consultant's report applied simplistic assumptions that grossly exaggerated the percentage of the U.S. government aeronautical research and development (R&D) budget that has benefited manufacturers of large civil aircraft. For example, the report counted as U.S. indirect support the funding of internal U.S. government functions (such as program management) unrelated to the development of aeronautical technologies. The report also included R&D activity unrelated to large civil aircraft (such as contracts associated with helicopters) and R&D performed by companies which are not manufacturers of large civil aircraft. The report even counted as "U.S. benefits" R&D the results of which were provided to European manufacturers and for research projects that could improve the safety of European as well as American-made aircraft. The report also failed to utilize data on actual research contracts provided to the European Commission which, if taken into account, might have prevented many of the errors.

Contrary to the assertion that U.S. producers of civil aircraft are indirectly subsidized at an "increasing level" by NASA and U.S. military research programs, U.S. producers of large civil aircraft receive few identifiable benefits from such contracts. In addition to direct subsidies, Airbus partner companies also receive indirect benefits from European Union and Member State-funded civilian and military research and, in addition, are major suppliers to their governments. The United States is concerned that highly inaccurate information on U.S. government indirect support for the manufacture of large civil aircraft may be seen in Europe as justifying a new, wasteful round of additional European government subsidies. Such subsidies are not only unnecessary given the commercial success of Airbus, but would be contrary to the intent of the U.S. government to work with the European Union to eliminate trade-distorting government influences from commercial competition between the manufacturers of large civil aircraft.

Aircraft Certification

The United States continues to be concerned about the possibility of European aircraft certification standards being applied in such a way that they are effectively impediments to the delivery of qualified aircraft into

Europe. Processes and procedures currently employed by the European Joint Aviation Authorities (JAA) appear to be both cumbersome and somewhat ad hoc. The United States desires a transparent and equitable process for aircraft certification that is applied consistently on both sides of the Atlantic according to the relevant bilateral airworthiness agreements.

Government Support For Airbus Suppliers

Belgium: The Government of Belgium and Belgian regional authorities are reported to subsidize Belgian aircraft component manufacturers which supply parts to Airbus Industrie. According to available information, 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 by Airbus aircraft programs as well as by the number of aircraft in each program.

The Belgian program appears similar to a foreign exchange rate guarantee program provided by the German government for its Airbus partner company and its suppliers. Following a GATT Subsidies Code complaint by the United States, the German program was found to be a prohibited export subsidy by a Subsidies Code panel, the report was blocked by the EU, but the program was subsequently dismantled. The United States has undertaken consultations with the European Union in the context of the bilateral aircraft agreement on the Belgian dual exchange rate program. The United States has also posed questions to the EU under provisions of the WTO Agreement on Subsidies and Countervailing Measures which permit member countries to seek and obtain information on the nature of a practice maintained by another member and to clarify why it may not have been notified to the WTO as a subsidy. The EU's reply failed to answer U.S. questions, and further steps to resolve our concerns about this practice are under consideration.

France: In December 1997, the European Commission announced its approval of a French government "reimbursable advance" to fund the development by European avionics companies of a new flight management system (FMS) for Airbus aircraft, the development of which by these companies the Commission said "would not be possible without aid". The Commission justified this subsidy on its estimation that a specific U.S. company had a "Quasi-monopoly" on sales of FMS for Airbus aircraft and that the French government funding would help reduce Airbus's dependence on the U.S. supplier. In fact, the overwhelming proportion of Airbus avionics is already European sourced, and the FMS in question is installed in avionics equipment produced by one of the European companies designated to receive the subsidy. It thus appears that the intended effect of this subsidy is to entirely displace the U.S. company as a supplier of FMS for Airbus aircraft.

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 for shipbuilding and ship conversions (but not ship repair) under its Seventh Directive. Until December 31, 1998, the ceiling will be nine percent of gross investment for new ships and 4.5 percent for conversions and small vessels (under

10 million ECU).

In June 1989, the Shipbuilders Council of America (SCA) filed a Section 301 petition, seeking elimination of subsidies and trade distorting measures for the commercial shipbuilding and repair industry. In response, USTR undertook to negotiate a multilateral agreement in the OECD to eliminate all subsidies for shipbuilding by OECD member countries. An agreement was reached in July 1994 and signed in December to take effect on January 1, 1996. To enter into force, the agreement must be ratified by all its signatories. The EU ratified it and adopted implementing legislation in December 1995. All other signatories, except the United States, completed their ratification processes in 1995-96. The United States Congress has not yet ratified the agreement. In October 1997, the Commission proposed that pending U.S. ratification, the Seventh Directive be extended through 1998. In 1999 and 2000, contract-related aid would continue at current ceilings. From 2001, the only contract-related aid allowed would be home and export credits under OECD rules on export credits for ships; operating aid would no longer be allowed, and permissible aid (e.g., for closures, R&D, the environment) would be subject to new rules. The Commission proposal also allowed increased opportunities for Member States to provide support for restructuring and other aid targeted at improving competitiveness. Discussions on possible ratification continue in the United States Congress.

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. The U.S. government is urging officials in the European Commission and in Member States to accept company-based self-regulation on data privacy issues.