EUROPEAN UNION

TRADE SUMMARY

The European Union (EU) and the United States share the largest two-way trade and investment relationship in the world. In 2000, the U.S. trade deficit with the EU was $55.5 billion, an increase of $11.8 billion from the U.S. trade deficit of $43.7 billion in 1999. U.S. merchandise exports to the 15 Member States of the EU were more than $164.8 billion, an increase of 8.7 percent from the level of U.S. exports to the EU in 1999. U.S. imports from the EU were just under $220.4 billion, an increase of 12.8 percent from the level of imports in 1999.

U.S. exports of private commercial services (i.e., excluding military and government) to the European Union were $84.7 billion in 1999, and U.S. imports were $62.5 billion. Sales of services in the European Union by majority U.S.-owned affiliates were $177.3 billion in 1998, while sales of services in the United States by majority EU-owned firms were $135.7 billion. The stock of U.S. foreign direct investment in the EU amounted to almost USD $512.1 billion in 1999, a greater than 8.8 percent rise from 1998.

IMPORT POLICIES

Import and Distribution of Bananas

Over the course of the 20th Century, U.S. companies developed the business of distributing Latin American bananas in most of Western Europe. Since the late 1980s, Latin American countries and the United States have urged the EU to implement its internal market arrangements for bananas in a non-discriminatory manner. Our goal is for non-EU firms to be able to compete fairly in both the distribution services and goods aspects of the EU banana market. A group of Latin American countries twice brought GATT dispute settlement proceedings against EU banana measures, and both times GATT panels found that the EU's banana rules were GATT-inconsistent (1993, 1994). However, the EU chose not to implement those GATT panel findings, and proceeded to extend and compound unfair and discriminatory trade barriers.

In 1993, the EU adopted a new EU-wide banana regime that took almost half of U.S. companies' business away and gave it to competing French, British, Irish, German and other European firms. In response, the United States and four Latin American countries initiated WTO dispute settlement proceedings to challenge the EU's discriminatory banana regime. A WTO panel and, subsequently, the WTO Appellate Body agreed that the EU's banana regime was inconsistent with the EU's obligations under the GATT and GATS.

The EU agreed to implement the WTO reports recommendations and rulings within the "reasonable period of time" provided in WTO rules, which was determined in arbitration to end on January 1, 1999. In January 1999, however, the EU implemented a modified regime that perpetuated the WTO violations identified by the panel and the Appellate Body. As a result, the United States sought WTO authorization to suspend concessions (i.e., retaliate) with respect to certain products from the EU, the value of which is equivalent to the nullification or impairment (i.e., economic harm) sustained by the United States. The EU exercised its right to request arbitration concerning the amount of the suspension and on April 6, 1999, the arbitrators determined the level of suspension to be $191.4 million per year. On April 19, 1999, the DSB authorized the United States to suspend concessions in that amount, and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EU products with an annual trade value of $191.4 million.

Throughout 1999 and 2000, the United States presented the European Commission numerous proposals to try to resolve this long-standing dispute. These proposals were tailored to respond to the WTO findings and EU goals. Recent U.S. proposals provided for a transitional tariff-rate quota regime that would allow the African, Caribbean and Pacific (ACP) countries, particularly the vulnerable Caribbean producers, to continue to export bananas. These efforts led to a proposal which the Caribbean countries submitted in November 1999 and the United States endorsed, despite the fact that it did not correspond to the U.S. preferred solution in some areas. The Commission rejected the Caribbean proposal in spite of the fact that it was based on essentially the same system the EU has had in place since 1993 and met the Commission's main objectives, including protecting the vulnerable Caribbean exporters and maintaining prices on the EU market to protect domestically produced bananas. Negotiations on a Carribean-type proposal continued during most of 2000 and early 2001, but the EU continued to insist on maintaining import licensing for its companies that would appear to approximate the *status quo*.

In the fall of 2000, the EU began work on an alternative proposal, based on a variation of a "first come, first served" licensing system, as a transition to a tariff-only regime, which is intended to be implemented in 2006. The United States, most Latin American countries and the Caribbean countries made clear that the EU's proposal would not lead to resolution of the dispute.

Restrictions Affecting U.S. Wine Exports

The United States and the EU have an active two-way trade in wine, although EU exports to the United States are roughly ten times the size of U.S. exports to the EU. Since the mid-1980s, U.S. wines have been permitted entry to EU markets by means of a series of annual extensions to temporary exemptions from EU wine making regulations. These regulations require imported wines to be produced with only those oenological practices (i.e., wine making practices) which are authorized for the production of EU wines. Without these "derogations" or the EU's acceptance of U.S. wine making practices, many U.S. wines would be immediately barred from entering the EU.

U.S.-EU wine negotiations were successfully launched in 1999 when, in response to U.S. insistence, the EU in December 1998 approved an extension of the existing derogations for U.S. wine making practices for five years or until an agreement is reached, whichever comes first. European Commission (EC) and U.S. negotiators have met on a regular basis, gaining valuable information about each other's regulatory systems for wine that will help them achieve a bilateral agreement. Negotiations will continue in 2001. The United States continues to be concerned about the EU's requirements for the review and approval of wine making practices, and has questioned the EU's export subsidies and subsidies to its grape growers and wine producers. A major EU concern is the use of semi-generic names on some U.S. wines. Other issues include tariffs, approval procedures for labels, the use of certain terms on labels, and import certification. The United States will continue to press the EU in the negotiations to give U.S. wine makers equitable access to the EU wine market.

In addition, the United States has questioned the EU's proposed Regulation 881/98 on traditional expressions. Traditional expressions are, for the most part, adjectives used with certain other expressions (often geographical indications) to identify descriptive attributes of wine or liqueur. These terms are granted trademark protection in the EU, although: (i) third country industry does not have a means to apply for or protest applications for such protection; and (ii) in many cases the terms are highly generic (e.g., "ruby" and "tawny" are protected "traditional terms"). The United States does not recognize the concept of traditional terms, nor is this subject covered under TRIPS. The United States requested more information from the EU about this proposed Regulation in the WTO TBT Committee in October 1999 and subsequently the EU has postponed implementation. Several bilateral discussions of this issue by IPR experts have taken place in parallel with the official wine negotiations.

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 grain. However, the EU subsequently established a reference price system for grain imports which 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.

Although the CRS system expired in 1998, some refunds on U.S. rice shipments remain outstanding. The United States and EU were not able to resolve this issue. As a result, the U.S. government filed a request for WTO consultations in October 2000 and, in early 2001, requested the establishment of a WTO panel on implementation of the CRS system on rice. EU rice duties are currently determined by an interim solution based on a higher reference price.

Spanish and Portuguese Corn Tariff-Rate Quotas

Historically, annual EU corn imports have been approximately three million metric tons, with over 500,000 metric tons imported by the Northern European corn millers and the rest by Spain and Portugal under reduced duty quotas. The Spanish and Portuguese tariff-rate quotas (TRQs) for corn and sorghum were created as a result of the 1987 U.S.-EU Enlargement Agreement, which provides compensation to the United States for trade losses from the accession of Spain and Portugal to the EU. The TRQs ensure minimum annual Spanish purchases of two million metric tons of corn and 300,000 metric tons of sorghum (minus Spanish imports of certain non-grain feed ingredients - NGFIs). The import requirement, while falling short of Spain's pre-EU accession level of corn and sorghum imports, provides some compensation for the replacement of Spain's 20 percent pre-accession bound tariff with the EU's pre-Uruguay Round variable levy system.

Additionally, as part of the Blair House oilseeds settlement, there is a separate 500,000 metric ton TRQ for corn imported into Portugal. These TRQs are both administered by the EU on an MFN basis, but historically have been supplied mostly by the United States. However, U.S. corn exports to the EU have been effectively stopped due to the breakdown in the EU's regulatory system for approving new varieties of commodities using modern biotechnological techniques (see "Biotechnology" below).

Market Access Restrictions for U.S. Pharmaceuticals

U.S. pharmaceutical companies have difficulty with consistent market access throughout the EU due to price, volume, and access controls placed on medicines by national governments. The pharmaceutical industry sees these controls as undermining the value of patents, distorting competition among medicines and across national markets, limiting access by patients to innovative products, and diminishing the contribution of Europeans to research and development.

While the EU's single market ensures that pharmaceuticals, like other goods, can move freely across borders among EU countries, Member State public health authorities impose their own strict price controls on pharmaceuticals. As a result, since controlled prices vary greatly from one country to another, middlemen engage in parallel trading, profiting at pharmaceutical companies' expense by buying drugs in countries where the price is lower and selling them in Member States where the price is set at a higher level. This undermines pharmaceutical companies' ability to recoup their research and development costs.

*Austri*a: Some U.S. pharmaceutical companies have expressed concern about restricted access to the Austrian market. Austria's social/health insurance system is compulsory; hence, no competition exists among health insurance funds and 99 percent of the population is covered by social insurance for healthcare and accidents. A U.S. firm seeking to market a product in Austria must first obtain the approval by the Social Insurance Holding Organization (Hauptverband der Sozialversicherungsträger). In order to provide consumers immediate access to pharmaceutical products (i.e., without prior approval for each individual prescription from the Physician General of the health insurance funds), the products need to be included in the Hauptverband's list of reimbursable drugs. The approval process is lengthy as negotiations may take up to five years until a product is included in the list of drugs approved for reimbursement. The inclusion in this list is the crucial step for patients' access to the drug and from a company's point of view, market access to the Austrian market.

According to critics, the non-transparent procedures by which the Hauptverband approves drugs for reimbursement under Austrian health insurance regulations has perpetuated a closed market system favoring established suppliers. Pharmaceuticals not approved by the Hauptverband have higher out-of-pocket costs for Austrian patients and therefore suffer a competitive disadvantage vis-a-vis approved products.

Several U.S. and European pharmaceutical companies share these concerns, but one U.S. pharmaceutical firm has raised Austria's practices with the European Commission as a possible violation of EU law. The firm claims that the decision-making process is neither transparent nor based on objective and verifiable criteria as required by the EU's 89/105 Transparency Directive. Additionally, the company complains that no legal remedies are available to challenge a negative decision and that decisions are not being made in a timely manner. The European Commission in turn filed a claim at the European Court of Justice (ECJ) against Austria. A final decision from the ECJ is expected in mid-2001.

Belgium: In Belgium, there are significant delays in providing market authorization and approval of pricing and reimbursement for new pharmaceutical products. However, the Belgian government in 2000 formally pledged to put into place legislation which will conform Belgian practice to relevant EU Directives. (Directives 65/65 and 93/39 for marketing authorization, Directive 89/105 for transparency/pricing and reimbursement.) According to industry sources, the current average duration for these processes is more than 1,075 days, in contrast with EU requirements of a maximum of 390 days for the entire process. Industry officials estimate that the mean delay for pricing and reimbursement exceeds 400 days, well in excess of the 180 days allowed by the EU. The lengthy process to obtain marketing approval in Belgium considerably shortens the period of patent protection. Under the centralized EU procedures which are mandatory for new products, the supplementary protection certificate period depends on the date of first approval. U.S. companies are disproportionately affected by procedural delays as they are among the most active in developing and bringing to market innovative new products. Pharmaceuticals in Belgium are also under strict price controls. There is a price freeze on reimbursable products and a required price reduction for drugs on the market for fifteen years. A six percent turnover tax is charged on all sales of pharmaceutical products. The Belgian government intends to decrease this turnover tax to three percent in 2002 and to abolish it by the beginning of 2003. Control of prices for reimbursed and non-reimbursed products affect not only in-country sales, but also export sales to third markets for which the Belgian price is the reference price.

France: The December 1997 law governing the financing of France's social security system was designed in part to impose strict limits on health expenditures, particularly in the area of pharmaceuticals, where the increase was capped at two percent in 2000. The French government exacts rebates from companies for sales exceeding an established limit and also imposes a levy on pharmaceutical companies designed to finance social security budget overruns. U.S. pharmaceutical companies estimate that their foreign sales would rise by over $500 million if the French government measures were removed.

Italy: U.S. pharmaceutical companies have expressed concern that unnecessary delays in clinical trials slow down regulatory approvals and the introduction of pharmaceuticals to the market. This situation has, however, improved significantly during the last two years. National Health Service-funded pharmaceutical specialties, which have received centralized approval from the European Medicinal Evaluation Agency or obtained marketing authorizations through mutual recognition procedures, are subject to prices negotiated between the Ministry of Health, the Ministry of Finance and the distributor or manufacturer. Pharmaceutical companies state, however, that these price negotiations are overly lengthy and often non-transparent. Therefore, the companies lose the competitive advantages gained through fast-track regulatory approvals.

The Netherlands: U.S. companies have indicated that the criteria used by the Dutch health insurance board often results in their new-to-market products being incorrectly classified with drugs determined by the board as "therapeutically equivalent"(and therefore reimbursable at a lower rate) rather than the "unique, innovative drugs," which are reimbursed at a higher international reference price. They have also voiced concerns that the Dutch health insurance board procedures have resulted in considerable and unnecessary delays in classifying products for reimbursement.

The Dutch health insurance board evaluates new pharmaceuticals and decides whether these should be classified in annex 1a of the reimbursement system or whether these are eligible for placement in Annex 1b. Reimbursement listing in Annex 1a allows reimbursement of a product to an amount maximized by the mean price of a cluster of therapeutically equivalent medicines. Reimbursement listing 1b allows full reimbursement at prices maximized by the pharmaceutical price act, an international price reference system enforced by law. Placement in Annex 1b is only granted to unique, innovative products, which cannot be clustered with therapeutically equivalent compounds.

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 EU's "new approach," which streamlines technical harmonization and the development of standards for certain product groups, based on "essential" health and safety requirements, generally points toward the harmonization of laws, regulations, standards, testing, quality and certification procedures within the EU. While the United States supports legitimate health and safety measures, we have concerns that the European standardization process lacks transparency and remains generally closed to U.S. stakeholders' direct participation. As demonstrated by the extensive list of standards-related issues below, differences in this area represent a significant portion of U.S.-EU trade concerns.

Standardization

Standardization continues to play an increasingly significant role in U.S.-EU trade relations. The U.S. Department of Commerce anticipates that EU legislation covering regulated products will eventually be applicable to half of all U.S. exports to Europe. Given the large volume of U.S.-EU trade, EU legislation and standardization work in regulated areas is of considerable importance. Although there has been some progress with respect to the EU's implementation of various legislation, 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 EU 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; unclear marking and labeling requirements for regulated products before they can be placed on the market; and a frequent tendency to rely on design-based, rather than performance-based, standards. Such problems 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 United States which can test regulated products under subcontract to a notified body, the limited number of such labs means that these 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 United States and the EU have negotiated a Mutual Recognition Agreement (MRA) covering several important sectors (telecommunications equipment, electromagnetic compatibility (EMC), medical devices, pharmaceuticals, electrical safety, and recreational craft) as a means of facilitating trade, while maintaining our current high levels of health, safety and environmental protection. MRAs permit U.S. exporters to test and certify their products to the requirements of the EU in the United States, and vice versa. The U.S.-EU MRA entered into force on December 1, 1998 and is now being implemented. The recreational craft annex entered the operational phase in June 2000, and the telecommunications and EMC annexes became operational in January 2001. During 2000, the U.S. and EU made substantial progress on a separate MRA covering marine safety equipment under the Transatlantic Economic Partnership (TEP). In the area of services, the United States and EU also began negotiations in 2000 on Mutual Recognition Agreements for insurance, architects and engineers.

PECAs

The European Commission has concluded Protocols to the Europe Agreement on Conformity Assessment and Acceptance of Industrial Products (PECAs) with Hungary, the Czech Republic and Latvia, and is currently negotiating agreements with a number of other countries in line for EU membership. Under a PECA, the EU and the accession candidate agree to recognize the results of each other's designated conformity assessment bodies/notified bodies, thereby eliminating the need for further product testing of EU products upon importation into that country. Only those products exported to the third country which are:

(i) of EU country origin, and (ii) certified by an EU notified body with the CE mark illustrating compliance with EU standards, will benefit from the provisions of the PECA, The U.S. government is concerned because it appears that products originating in the United States and certified by authorized U.S. labs to carry the CE mark, would not benefit from the PECA. The United States is currently discussing these agreement provisions with the EC and will continue to monitor implementation of the PECAs.

Biotechnology

The breakdown in the EU's approval process for products made from modern biotechnology has shut down U.S. exports of corn. Mandatory labeling requirements have resulted in food processors and exporters of processed products either reformulating or seeking higher-priced non-GM sources, and caused enormous anxiety in the feed and seed sectors. Biotechnology continues to be a political rather than scientific issue in Europe and prospects for improvement appear dim at this time, with a blocking minority of EU Member States adhering to an effective moratorium on approving product applications, despite revisions to Directive 90/220 governing approval of biotech products, including seeds and grains, for environmental release and commercialization. These revisions were adopted in February 2001 (after three years of debate). Implementation of the Directive, which must be transposed into national law by every EU Member State, is expected in August 2002. However, additional policy legislation on traceability and labeling, required to implement the new Directive, is not expected to be in place for perhaps another two years.

The revised Directive 90/220 is expected to be the "basis" for revision of "Novel Food" (processed food) legislation and new legislation covering feeds and seeds. Although the revised Directive provides some needed clarity and sets time limits for various steps in the approval process, it remains extremely vague regarding definitions such as monitoring "traceability," labeling requirements, and what information industry is expected to provide. The lack of clarity also fosters concern that EU Member States will not implement the new legislation uniformly.

With the exception of several carnation varieties, no product has been approved since April 1998. Several Member States have defied final EU approvals, banning biotechnology products or suspending approvals without presenting any scientific justification. Austria, Luxembourg and Italy have imposed marketing bans on some biotechnology products despite EU approvals, but the European Commission has not taken adequate steps to overturn the bans even though the EU's Scientific Committee has ruled there is no justification. Portugal and Germany have suspended approvals for planting certain biotechnology products. Several products have been under review for over three years, as compared to an average six to nine month process in Canada, Japan and the United States. U.S. exports of corn to Spain and Portugal, the most significant EU importers, have stopped. Recently, Greece has not been responsive to applications for introducing bio-engineered (genetically modified) seeds for field tests, despite support for such tests by Greek farmers.

In August 2000, an Italian presidential decree suspended the importation of four GMO corn varieties already authorized for sale in processed foods. In October 2000, the EU Scientific Review Committee found that Italy had no justification for the ban. However, there were not enough votes in the EU Standing Committee for Foods to call for Italy to rescind the ban. The Italian Parliament also recently passed a regulation banning the use of GM products in animal feeds. This law will not have any immediate impact, because it is not expected to be implemented for at least a year, and because the feed industry has already questioned the legality of the action.

Labeling

In May 1997, the EU adopted the "Novel Foods" Regulation, which governs food safety assessments and labeling for processed foods containing biotechnology products. The Regulation requires labeling of all novel processed foods and food ingredients, including those made from modern biotechnology. No implementation details were included in the Novel Foods Regulation, such as testing thresholds or enforcement.

In September 1998, an EU Regulation providing for the labeling of foods processed from certain Bt-corn and herbicide-tolerant soybeans became effective. Initially proposed a year earlier, the Regulation called for subsequent development of a threshold for incidental commingling, a testing method and a list of exempted products. In January 2000, the Commission published a Regulation providing a one percent labeling threshold for "adventitious" or accidental commingling for approved varieties of corn and soy made by modern biotechnology. It is expected that this threshold will eventually be adopted as the basis for labeling of other foods containing ingredients made with modern biotechnology. Some European food processors have switched to non-biotech soybeans to avoid confusing labeling regulations for biotechnology products. Most European officials, including those that are pro-biotechnology, have come to believe that labeling of all biotechnology products, regardless of the health risk, is necessary to ensure consumer acceptance.

Ban on Beef from Cattle Treated with Growth Promoting Hormones

For over ten years, the EU has banned imports of beef from cattle raised with hormonal growth promoters. The United States launched a formal WTO dispute settlement procedure in May 1996 challenging the EU ban. The WTO Appellate Body upheld the original WTO panel finding that this ban is inconsistent with WTO Agreement on Sanitary and Phytosanitary (SPS) measures, and called for the EU to comply with its WTO/SPS obligations. The Appellate Body confirmed the earlier panel finding that the EU ban was imposed and maintained without evidence of health risks posed by eating beef from cattle treated with growth promoters.

The EU announced in March 1998 that it would implement the Appellate Body finding. Because the EU did not comply with the rulings and recommendations of the DSB by May 13, 1999, the final date of its compliance period as set by arbitration, the United States sought WTO authorization to suspend concessions (i.e., retaliate) with respect to certain products of the EU. The value of the retaliation represents an estimate of the annual harm to U.S. exports resulting from the EU's failure to lift its ban on imports of U.S. beef. The EU exercised its right to request arbitration concerning the amount of the suspension. On July 12, 1999, the arbitrators determined the level of suspension to be $116.8 million per year. On July 26, 1999, the DSB authorized the United States to suspend such concessions, and the United States proceeded to impose 100 percent *ad valorem* duties on a list of EU products with an annual trade value of $116.8 million.

Retaliatory measures remain in place. During 1999 and 2000, the EU worked to complete the scientific studies it believes are necessary to support its ban on hormone treated beef. In this period, the U.S. and EU periodically held discussions on possible short term compensation arrangements that would provide some additional access for U.S. beef producers in the form of non-hormone treated beef and permit the phase out of U.S. retaliatory tariffs. However, these discussions did not lead to a resolution.

Non-hormone Treated Cattle Program

In April and June 1999, the EU audited the U.S. Hormone Free Cattle Program and found trace amounts of U.S.-approved synthetic hormones in about 12 percent of a "hormone-free" product shipment. In response, the EU threatened to cut off U.S. "hormone-free" beef. To address EU concerns, the U.S. Department of Agriculture's Food Safety Inspection Service (FSIS) in September 1999 announced an improved program, the Non-Hormone Treated Cattle Program (NHTC), which requires that each phase of production be approved and listed by the USDA Agricultural Marketing Service before FSIS will certify NHTC beef and veal for export to the EU. FSIS began issuing export certificates on "non-hormone treated cattle" on September 24, 1999. The EU audited the NHTC program in November 1999 and in January 2000 - and threatened to suspend trade unless the program was again strengthened. Discussions with the EU to resolve this matter are continuing, with EU indications that the new FSIS program appears acceptable.

Poultry Regulations

The EU continues to prohibit the use of anti-microbial treatments in poultry production. 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. In October 1998, the EU published an opinion on anti-microbial treatments, which recommends that anti-microbial treatment should only be used as part of an overall strategy for pathogen control throughout the whole production chain. Although some forms of treatment such as tri-sodium phosphate (TSP) and lactic acid were deemed more acceptable, the use of chlorinated water, the primary means employed in the United States to assure safety of poultry products from microbial contamination, was rejected by the study.

Specified Risk Materials Ban

On July 30, 1997, the European Commission adopted Commission Decision 97/534/EC, commonly known as the Specified Risk Materials (SRM) ban. The goal of the ban was to avoid health risks related to transmissible spongiform encephalopathies (TSEs), such as BSE (mad cow disease) which is linked to new variant Creutzfeldt-Jakob disease in humans. The ban prohibited the use of SRMs (defined as the skull, tonsils, ileum and spinal cord of cattle, sheep and goats aged over one year, and spleens of sheep and goats) in any products sold in the EU.

The original date of implementation was July 1, 1998, but this was delayed several times due to controversy over product sector coverage. In addition to food and feed, the ban would have significantly affected production of pharmaceuticals, cosmetics, medical devices and fertilizers. In September 1999, the EU implemented specific regulations for SRMs on medical products for human use (Directive 99/820/EC). It also provided guidelines on how companies would comply with this Directive. Thus far, it appears U.S. companies have successfully complied with it.

In June 2000, Commission Decision 2000/418/EC was adopted, which repealed Commission Decision 97/534/EC, but set new requirements for handling SRMs. This new measure limits the scope of the ban to food, feed and fertilizer and requires slaughterhouses and authorized meat cutting and processing plants in all EU Member States, regardless of their BSE status, to remove the SRMs mentioned above. The United Kingdom and Portugal, which have a higher incidence of BSE, must also remove the entire head, thymus, spleen and spinal cord of cattle over six months old. All Member States must remove the intestines of cattle, and all Member States except the United Kingdom, Portugal, Sweden, Austria and Finland must remove vertebral columns of cattle over twelve months old. Certain slaughtering techniques which entail risk of contamination into the bloodstream are also prohibited. The measure became effective October 1, 2000 for all EU Member States. Based on an EU evaluation of their BSE status, third countries exporting food, feed or fertilizer products to the EU may be required to remove some or all of the material mentioned above, effective April 1, 2001. The EU currently recognizes New Zealand, Australia, Norway, Chile, Argentina, Paraguay, Nicaragua, Botswana, Namibia and Swaziland as provisionally BSE-free. The United States' BSE status is provisionally recognized as "unlikely, but cannot be excluded."

Commission Decision 2000/418/EC will apply until the introduction of broader EU legislation on protection against TSEs, which is currently under review by the Council of the EU and European Parliament.

On December 6, 2000, the EU introduced a number of additional measures in response to increased BSE outbreaks in France and the discovery of the first-ever cases of BSE in Spain and Germany. The measures include: (i) banning the use and export of meat and bone meal (MBM) in animal feed for six months, beginning January 1, 2001; and (ii) compulsory testing of all bovine animals over 30 months. These measures do not have an immediate impact on imports from third countries, but by March 31, 2001, the Commission will determine, based on the geographical risk assessment, which countries must comply with internal EU requirements.

Gelatin Regulation

In October 1999, the Council adopted a Directive laying down requirements for manufacturing facilities producing gelatin for human consumption, which took effect on June 1, 2000 and which Member States were subsequently required to adopt. The Directive sets requirements for manufacturing facilities regarding authorization and registration, inspection and hygiene, as well as control measures. Also covered are the raw materials permitted and the treatments they must undergo before being used in the manufacture of gelatin. The United States has raised concerns with the European Commission that some provisions of the Directive are overly restrictive. The U.S. and the EU are in the concluding stages of finalizing an agreed upon health certificate which will allow U.S. exports of gelatin to resume. Exports have been at a standstill since June 1, 2000.

Veterinary Equivalency

The United States and the European Commission signed the Veterinary Equivalency Agreement in July 1999 after over five years of often contentious discussions. The agreement establishes a framework for the exporting country to make an objective demonstration to the importing country that its sanitary measures achieve the importing country's appropriate level of protection when such measures differ. By establishing clear criteria for reaching a determination of equivalence, the agreement will facilitate trade in live animals and animal products. On July 28, 2000, the United States and the EU concluded the first meeting of the Joint Management Committee established under the agreement to discuss ways of implementing the agreement's provisions. The second Joint Management Committee is scheduled to take place in the spring of 2001. When fully implemented, the agreement will establish the terms of trade for nearly all animal products, including dairy products, pet food, fishery and egg products, between the United States and the EU, representing over $3 billion annually.

Solid Wood Packing Material

On January 29, 2001, the EU Standing Committee on Plant Health voted to modify the EU's solid wood packing material (SWPM) Regulation proposed by the Commission and to delay implementation of the regulation until October 1, 2001. This regulation will now require SWPM made with wood from coniferous species (softwood) entering Member States from Canada, China, Japan and the United States to be heat treated in an approved facility to 56 degrees Celsius (at the core) for at least 30 minutes or be pressure treated. Like the EU, the United States is concerned that SWPM provides a pathway for the introduction of quarantine pests, and has been working towards the development of international standards on SWPM. The revised EU regulations are similar in most respects to the draft international standard, which is slated for implementation by the EU in April 2002.

Waste Management

In June 2000, the European Commission completed proposals for a Directive focusing on the “take back” and recycling of discarded equipment (known as Waste from Electrical and Electronic Equipment or “WEEE”); and a second Directive addressing the restriction of the use of certain substances in electrical and electronic equipment, such as lead, mercury, cadmium, and certain flame retardants (known as Restrictions on the Use of Hazardous Substances or “RoHS”). Both proposals are now with European Parliament and the European Council for consideration in 2001.

The United States supports the drafts’ objectives to reduce waste and the environmental impact of discarded products. The United States has expressed concerns, however, that the proposals lacked transparency in their development and would adversely affect trade in products where viable substitutes may not exist. The proposals would, in part, ban certain materials by 2008 and impose comprehensive collection and recycling requirements for end-of-life equipment on a retroactive basis. Responding to concerns about the basis for the substance bans, the EC has pledged to conduct risk assessments before 2004.

On a related issue, the Commission continues to work on a proposal for a Directive on Batteries which would, in part, ban the sale of nickel-cadmium batteries and products powered by such batteries. The U.S. government has urged the Commission to seriously consider the industry’s draft voluntary agreement for comprehensive collection and recycling of batteries. We will continue to closely monitor these proposals as they proceed through the legislative process to ensure that they will not unreasonably restrict trade.

Belgium: In June 1999, the Belgian government submitted to the European Commission a proposal to ban most cadmium-containing batteries, effective 2008. The plan was reviewed by several statutory committees (Federal Council for Sustainable Development, Central Council for Economic Policy, High Council for Public Health, Council for Consumer Affairs) during the second half of 1999. Work on the drafting of the implementing regulations has been suspended pending the completion of a risk assessment study on the production, uses and recycling of nickel-cadmium batteries.

Denmark: The Danish Environment and Energy Minister on November 14, 2000 signed an Executive Order which as of December 1, 2000 bans the imports and marketing (but not exports) of certain products containing lead over the next four years. The ban is at odds with the EU Scientific Committee on Toxicity, Ecotoxicity and the Environment’s (CSTEE) report on lead which concluded there are no scientific grounds for the Danish ban. Products for which viable alternatives are not found, for example car batteries, are not affected by the ban.

Electrical and Electronic Equipment (EEE)

The European Commission (DG Enterprise) is developing a draft Directive that would comprehensively regulate the product design of electrical and electronic equipment. It would be issued as a “new approach” Directive, outlining so-called essential requirements that could be met through harmonized European standards. Unofficial versions of the DG Enterprise draft text have been shared selectively in Brussels and a formal proposal is expected in early 2001. While still assessing this proposal, U.S. industry is concerned that the draft has the potential to interfere with design flexibility, delay new product development and introduction, and impose extensive administrative burdens.

Packaging Labeling Requirements

In 1996, the Commission proposed a Directive establishing marking requirements, indicating recyclability and/or reusability, for packaging. Due to the differences that exist between EU marking requirements and those used by the United States and the International Organization for Standardization (ISO), the United States is concerned with the additional costs and complications both U.S. and EU firms will face. The United States is also concerned with Article 4 of the proposed Directive, which would prohibit the application of additional marks to indicate recyclable or reusable packaging. This may require some companies to create new molds solely for use in the European market. Discussions underway in the ISO may resolve potential technical problems, especially since the Commission has indicated a willingness to review the proposed Directive in light of an eventual ISO agreement.

Acceleration of the Phase-outs of HCFCs

The European Commission put forward a proposal in July 1998 to amend EU Regulation 3093/94 on substances that deplete the ozone layer. The United States government expressed strong concerns with early drafts, which included phase-outs of some hydrochlorofluorocarbons (HCFCs) by 2000 or 2001, and would have disadvantaged U.S. producers without yielding appreciable environmental benefits. The final Commission draft included a January 1, 2003 phase-out date for HCFCs used in refrigerator foam - similar to U.S. law - thereby protecting U.S. refrigeration equipment exports to the EU while maintaining environmental commitments established by the Montreal Protocol. The Council agreed to the 2003 date in adopting its Common Position in late December 1998, and the Parliament failed to muster enough support behind an attempt to accelerate the date. Therefore, the 2003 date will be adopted once the text is finalized, after the Council and Parliament reconcile differences over other parts of the Regulation in what is termed the "conciliation procedure."

The proposal, however, continues to disadvantage the air conditioning industry, without yielding environmental benefits. The industry must phase out its use of HCFCs by 2001, while similarly manufactured heat pump systems enjoy a 2004 deadline. The United States will monitor this proposal as it proceeds through the final stages of the legislative process.

As of December 2000, the European Commission is also considering whether or not to start an infringement proceeding in response to a recently proposed ban and tax on hydrofluorocarbons (HFCs) in Denmark (see below).

Denmark: At the end of October, 2000, the Danish government submitted a Statutory Order taxing HFCs (among other types of industrial gases) in products imported and marketed in Denmark. The tax does not include products for export. The order has been submitted to the European Commission for comment and will take effect after comments received from other EU Member States have been reviewed and addressed. This process will likely not be completed before April 2001. The order will phase out three chemicals, with six product areas exempted until further notice. All non-exempted products will be phased out no later than 2006, with earlier dates possible depending on the product. Exempted items include HFCs in serum coolers, mobile refrigeration units (including cooling and freezing units in containers, trucks, trains and agricultural machinery), laboratory equipment, medicinal dose inhalers, insulating gas in electrical equipment and thermostats. In response, the United States registered concern with the Danish government and the European Commission arguing that the ban would have few environmental benefits and that there are potentially significant consumer and industrial safety concerns with using alternative flammable hydrocarbons. The United States hopes that domestic actions taken by national governments to reduce emissions will be trade neutral.

Sweden/Finland: Effective May 1999, Sweden imposed a unilateral ban on the use of HCFCs used in refrigerator foam insulation, which effectively prevents U.S. manufacturers from shipping U.S.-made refrigerators and freezers to Sweden in the near term. Finland established a similar HCFC ban effective January 1, 2000. As these bans on HCFCs used in foam insulation are in advance of the EU-wide phase-out date of January 2003, the United States has raised concerns with the Swedish and Finnish governments regarding the possible inconsistency of the unilateral ban with EU internal market provisions.

Triple Superphosphate Fertilizer

EU legislation (EC Directive 76/116) requires Triple Superphosphate (TSP) - a phosphate-based fertilizer used to enhance soil fertility and to increase crop yields - to meet a standard of 93 percent water solubility in order to be marketed as "EC-Type fertilizer." Scientific studies done to date on typical crops cultivated in Europe show that water solubility rates of 90 percent or higher are not necessary to gain the agronomic benefits associated with adding TSP to the soil. While in theory, TSP of any origin can be imported and sold in the EU, the inability to market the TSP as "EC-Type" restricts its marketability, depresses its price, and has the effect of unfairly discriminating against countries that cannot meet the 93 percent water solubility requirement. EU imports of "non-EC-Type" TSP have been virtually eliminated. The U.S. fertilizer industry, which accounts for 20 percent of total world TSP exports, has been working with the European Commission and European industry in an effort to amend the water solubility requirements to reflect current scientific and agronomic studies. The United States has requested a justification for this standard in light of scientific evidence and trade rules.

Hushkitted or New Engine Modified and Recertificated Aircraft

In 1997, pressure on EU airport authorities to reduce noise levels resulted in a Commission effort to develop an EU-wide noise standard. When it became clear that it would be politically impossible to agree on such a standard due to the high costs it would impose on EU manufacturers and airlines, the Commission and EU Member States developed alternative legislation. The Regulation, which entered into effect on May 4, 2000, effectively passes these costs to U.S. and other non-EU air carriers and to U.S. manufacturers of noise reduction technology (hushkits) and new engines for older U.S. aircraft. The Commission has provided no scientific analysis demonstrating that the Regulation would actually reduce noise at European airports. Furthermore, the Regulation establishes a design standard that restricts the operation of aircraft which otherwise fully comply with the performance-based standard adopted by the International Civil Aviation Organization (ICAO), to which the EU Member States agreed. Rather than address noise, the Regulation restricts the operation of aircraft that have been modified with hushkits or refitted with new engines if they do not have a 3.0:1 or greater "bypass ratio." This distinction permits the operation of EU-produced engines that have a "bypass ratio" of 3.1:1 which compete with those restricted by the Regulation.

The United States has repeatedly urged the European Commission to revoke the hushkits Regulation, as both ineffective and inconsistent with the EU's international obligations, and to work within ICAO on a new multilaterally agreed standard. On March 14, 2000, the United States asked ICAO to resolve this dispute pursuant to Article 84 of the 1944 Convention on International Civil Aviation (Chicago Convention). On November 16, the ICAO Council rejected the EU Member States' preliminary objection to the U.S. complaint. As a result, the EU Member States (the European Commission is not a member of ICAO) on December 4, 2000 filed a response on the substance of the U.S. complaint. The United States has stated its willingness to resume negotiations with the EU Member States to find a solution to this dispute, as specified in the Article 84 procedures, under the auspices of the President of the ICAO Council. The United States has sought to improve the environment by achieving genuine relief from aircraft noise. ICAO's Committee on Aviation Environmental Protection (CAEP) recently agreed on a new noise certification standard, and the United States supports its adoption by the ICAO Council.

New Aircraft Certification

The United States continues to be concerned by the possibility that European aircraft certification standards are being applied so as to impede delivery of qualified aircraft into Europe. Processes and procedures currently employed by the European Joint Aviation Authorities (JAA) appear cumbersome and arbitrary, and in any event cannot be uniformly enforced. For example, France continues to insist on an exception to the JAA's decision on certification of Boeing's new model 737 aircraft that limits the seat density of aircraft sold to carriers located in France. The JAA decision itself took an inordinately long time, during which additional conditions were imposed progressively on the U.S. firm. The United States desires a transparent, equitable process for aircraft certification that is applied consistently on both sides of the Atlantic according to the relevant bilateral airworthiness agreements.

Low Frequency Emissions

On January 1, 2001, the EU adopted a requirement under its Electromagnetic Compatibility (EMC) Directive that, among other elements, imposes restrictive limits on low frequency emissions (LFE) from electrical and electronic equipment that are not scientifically justified. LFE, also known as power harmonics, are signals from electrical or electronic equipment that feed back into the electrical network, with the potential to cause a disturbance in the power network.

Meeting the new European emissions limits requires U.S. companies to redesign products for the EU market at a cost of billions of dollars. Neither the Commission nor CENELEC has provided any statistical field data as scientific justification for these LFE limits, nor have they considered alternative, voluntary approaches for mitigating the effects of LFE on power networks which would impose lower overall costs to manufacturers and consumers alike. The U.S. government has urged the EC to suspend implementation of this LFE requirement referenced in the EU's EMC Directive until January 2004. This delay would permit the conduct of appropriate scientific studies, based on actual field data, and the completion of the International Electrotechnical Commission's (IEC) ongoing revision of the international standard. The EU has expressed no willingness to suspend the implementation of this standard.

The LFE situation has highlighted problems with the procedures, respective responsibilities, and transparency in both the Commission and the European standards bodies that require more careful monitoring and more effective advocacy efforts.

Electromagnetic Fields

The EU Council of Ministers has issued a Recommendation establishing limits to exposure by the general public to electromagnetic fields. The limits in the Recommendation are based on guidelines issued in 1998 by the International Commission on Non-Iodizing Radiation Protection (ICNIRP), a recognized expert body of the World Health Organization (WHO). Although Recommendations are neither mandatory nor legally binding, the Commission is issuing a mandate to the European standards organizations to develop harmonized standards describing the test methods, test equipment, and calculation methods needed to assess exposure to electromagnetic fields (EMF). The standards work is expected to use the ICNIRP guidelines as a basis. Because these guidelines are significantly more restrictive than the EMF exposure limit standards developed by the Institute of Electrical and Electronic Engineers (IEEE), there is concern among industries in the United States and Europe that they will be required to meet different EMF regulations and product standards. Industry is seeking a commitment from the EU that implementation of the Recommendation by Member States be deferred pending efforts to increase collaboration between CENELEC, the IEEE and the IEC.

Member State Practices

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

Finland: Finland has national standards for navigation lights that are not covered by the EU recreational craft Directive. As a result, U.S. recreational craft exporters risk being found not in compliance with the Finnish navigation lights Regulation, despite the fact that boats bear a CE mark and are a sector subject to the U.S.-EU MRA. However, a new international standard on navigation lights is under development in the International Organization for Standardization. Finland has agreed to suspend enforcement of its national standards for navigation lights until a long-term solution based on an international harmonized standard has been reached.

Greece: Greek testing methods for Karnal Bunt disease in U.S. wheat have served as a *de facto* ban on imports and transshipment of wheat for the last three years due to a high incidence of false positive results. The Ministry of Agriculture has recently agreed to procedures that will allow a resumption of transshipments through Greek ports to neighboring countries. The U.S. industry's estimated value of U.S. wheat exports is $10-25 million.

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 products, game meat, ingredients for animal feed and seafood. In most cases, problems are limited to clarifying and satisfying import certification requirements that differ slightly from other EU countries. In addition, Italian imports of bull semen are restricted because of qualitative import standards for bull semen which favor domestic animals as well as high testing and registration fees.

GOVERNMENT PROCUREMENT

Discrimination in the Utilities Sector

In an effort to open government procurement markets within the EU, the EU in 1990 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 bids with less than 50 percent EU content where there is no 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 (though the restrictions remained in effect in the telecommunications sector).

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 a wide range of sub-central governments. 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.

The Utilities Directive specifies that when there is effective competition in the EU telecommunications services market, purchasing entities will no longer be bound by its detailed provisions. The European Commission's view, elaborated in a Communication issued in May 1999, is that sufficient competition does now exist in all EU Member States. As a result, the Commission published "for information only" a list of telecommunications services to be excluded from the scope of the Utilities Directive. However, the impact of the Communication is unclear, as it has no legal effect. Nevertheless preliminary research suggests that the affected telecom operators are altering their procurement behavior and may no longer be following the Utilities Directive to the letter. In a further development the Commission has proposed a package of reforms to procurement legislation which includes a formal exemption of the entire telecommunications sector from the Utilities Directive. Although this would clear up the uncertainty, the approval and implementation process is likely to take at least two years.

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: Although Austria is party to the WTO Government Procurement Agreement and amended its Federal Procurement Law (FPL) in 1997 to bring it in line with EU regulations, its procurement practices lack transparency, and offset agreements are common in the defense sector. There are, in addition, nine different provincial procurement laws of which at least three have not been yet harmonized with the WTO-compatible EU guidelines. The European Court ruled in 1999 that the FPL has to be adjusted again, which will not occur before 2002. U.S. firms have reported experiencing a strong pro-EU bias, and even a tendency for "Austrian solutions," particularly in defense contracts. In a recent procurement case, however, the U.S. firm Sikorsky was able to secure a major contract for "Blackhawk" helicopters over European competitors, in a hard-fought competition.

France: France is reforming its government procurement policy through a French government decree to be published early in 2001 as well as through a more thorough reform of the Public Procurement Code to be examined by Parliament in March 2001. This reform focuses on greater competition, transparency and choice in public procurement contracts as well as on the implementation of EU Directives on public procurement of works, supplies and services and on public procurement in the water, energy, transport and telecommunications sectors.

Germany: In 1996 the United States 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 take steps to ensure open competition in the German heavy electrical equipment market, including reform of the government procurement remedies system as well as outreach, monitoring, and consultation measures. The United States did not, however, terminate the Title VII action at that time because legislation implementing reform of the procurement remedies system needed to be enacted. On January 1, 1999, new legislation came into force incorporating revised procurement regulations which combine administrative and judicial review into existing German law.

On December 13, 2000 a new Ordinance on Public Procurement Procedures passed the German cabinet and is due to go into force in early 2001. The Ordinance represents the final stage of the reform of public tender processes and brings German public tender law into line with EU tender law as well as with recent court rulings on the national and EU level. An important provision in the Ordinance is the establishment of clear legal requirements on the information process for unsuccessful bidders - remedying previously unclear legislation - and which now conforms to EU law. A significant innovation is the future permissibility of electronic tenders subject to encryption conditions and German electronic signature legislation. Further provisions provide for a certification process for contractors affirming the conformity of their procurement procedures with legal requirements and the introduction of the EU mediation process as an alternative in some cases to the existing procedure of administrative and judicial review. The Ordinance also gives a clear definition of individuals who may be seen as having a potential conflict of interest and should thus be excluded from the decision process for tenders.

A landmark court ruling which halted a major airport project in August 1999 brought the reform of public procurement complaints procedures into the public eye in a dramatic way. The new Ordinance's definition of a potential conflict of interest can also be regarded as a direct reaction to this ruling. It is currently not clear how the newly introduced EU mediation process will work. However, some procurement experts believe that the current process with recourse to a court will provide better legal protection. With its clarification of the information process the new Ordinance also closes the last significant area of uncertainty in the process. Accordingly, the USTR decided to terminate the outstanding Title VII determination against Germany for discrimination in the heavy electrical sector in the 2000 Title VII report. The Administration will continue to monitor the implementation of Germany's procurement reform legislation.

Firms applying for certain government contracts in Germany relating to the provision of educational or consulting services may also be required to provide written assurances regarding their methodology and/or the relationship of the firm or its employees to Scientology, raising concerns about potential discrimination against U.S. suppliers. The wording of such a clause is currently being reviewed within the federal and regional governments.

Greece: U.S. suppliers express concern that firms from other EU Member States are "informally" favored over non-EU contenders in winning Greek government tenders and that U.S. companies submitting joint proposals with European companies appear 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 that 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 billions of dollars were signed by Greek public utilities with Greek suppliers. Some of these term agreements are of three to five-year duration, with an option of extending for another three years.

*Ital*y: Italy's fragmented, often non-transparent government procurement practices and problems with corruption (now however, reduced after the early 1990s scandals) have, at times, created obstacles to U.S. firms' participation in Italian government procurement. Italy has made progress in making its procurement laws and regulations more transparent and has updated its Government Procurement Code to implement EU Directives and comply with GPA requirements. The pressure to reduce government expenditures while increasing efficiency has resulted in increased use of competitive procurement procedures and somewhat greater emphasis on best value.

EXPORT SUBSIDIES

Government Support for Airbus

Airbus Industrie was created as a consortium of four European companies that collectively produce Airbus aircraft. The members of the Airbus consortium were Aérospatiale Matra SA of France, BAE Systems Plc of the United Kingdom, DaimlerChrysler Aerospace AG of Germany, and Construcciones Aeronauticas SA of Spain. The French, German and Spanish partners have merged their operations to form the European Aeronautic, Defense and Space Company (EADS), which is the third-largest aerospace company in the world. EADS accounts for 80 percent of Airbus, and BAE Systems accounts for the remaining 20 percent. The EADS partners and BAE Systems agreed to pool their Airbus interests and finalized creation of the Airbus Integrated Company in February 2001.

Since the inception of Airbus in 1967, the Airbus member governments have provided massive direct subsidies to their respective member companies to aid in the development, production and marketing of the Airbus family of large civil aircraft. These subsidies have enabled Airbus to garner approximately 50 percent of new orders over the last three years. According to Airbus' Chief Executive, Airbus "is now established on a par with its competitor." The Airbus partner governments have borne a large portion of the development costs for all major lines of Airbus aircraft and provided other forms of support, including equity infusions, debt forgiveness, debt rollovers and marketing assistance, including political pressure on purchasing governments. They have also provided funds to support the development of derivative versions of earlier Airbus aircraft models, such as the A330-200 and the A340-500/600. Some loans for Airbus programs, repayable from royalties on aircraft sold, have been effectively forgiven because projected sales did not materialize.

The Airbus governments continue to subsidize their member companies. On March 10, 2000, the British government announced a commitment of 530 million pounds sterling to underwrite BAE System's participation in the development of the wings for a new Airbus project, the A380 "superjumbo' aircraft. The German government has made a political commitment to provide 200 million DM in support for A380 development. The French and Spanish governments have indicated that they are likely to extend A380 funding to their producers as well. European officials have claimed that Member States' support will be in compliance with the 1992 bilateral Agreement on Large Civil Aircraft; however, the United States believes that government support of Airbus raises serious concerns about Member State adherence to their bilateral and multilateral obligations in this sector, including the 1995 WTO Agreement on Subsidies and Countervailing Measures (SCM). It has urged the Airbus governments to ensure the terms and conditions of their support for the A380's development are consistent with commercial terms, reflecting the fact that Airbus is now a highly competitive global producer of aircraft. Discussions on this issue are expected to continue in early 2001.

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. In November 2000, the Belgian federal government reached an agreement with the three regional governments responsible for aviation research and development on a BF 7.9 billion (USD 170 million) package for the development and pre-financing of the new Airbus A380. The Belgian government states that it has discontinued an earlier Belgian exchange rate subsidy program which appeared to be similar to a German foreign exchange rate guarantee program that a GATT panel found to be a prohibited export subsidy. The United States has raised this matter in the WTO Agreement on Trade in Civil Aircraft and has also posed questions to the EU under provisions of the SCM 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 did not provide substantive answers to the U.S. questions, but stated that Belgium had decided to introduce a new industrial policy, the precise mechanisms of which have yet to be finalized.

United Kingdom: On February 13, the British government announced it would provide up to BPS 250 million in “investment” for Rolls Royce to develop the Trent 600 and 900 engines. The former is to be used in the Boeing 747X and longer range 767-400 ER. The latter engine is to be used on the Airbus A380. This development aid is subject to European Commission review, and while the Commission’s review is ongoing, the United States will be analyzing the effects of this support.

Government Shipbuilding Industry Support

EU Member States provide subsidies and other forms of aid to their shipbuilding and ship repair industries. Forms of aid 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 shipyards.

In June 1989, the Shipbuilders Council of America (SCA) filed a Section 301 petition, seeking the elimination of subsidies and trade distorting measures for the commercial shipbuilding and ship 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 signed in 1994 by South Korea, Japan, Norway, the United States and the EU and could enter into force only after ratification by all signatories. The initial ratification deadline of January 1, 1996 was later extended to June 15, 1996 in order to accommodate the ratification procedures and time lines for certain signatories. The EU ratified the agreement and adopted implementing legislation in December 1995. All other signatories, except the United States, were able to ratify the agreement by the extended deadline.

Until June 1998, EU aid to shipbuilding was governed by the Seventh Council Directive, which was adopted in 1990. Under the Seventh Directive, the Commission set annual ceilings for subsidies for shipbuilding and ship conversions (but not ship repair). Although the EU would have liked to see the OECD agreement implemented, on June 29, 1998 it adopted a Council Regulation establishing new rules on aid to shipbuilding because the Seventh Directive was due to expire at the end of 1998.

According to the Regulation, operating aid, whose ceiling is dictated by the Seventh Directive (nine percent for shipbuilding contracts with a contract value before aid of more than ECU 10 million and 4.5 percent in all other cases), was to be phased out by December 31, 2000. The shift away from operating aid to other forms of support (such as aid for restructuring, research and development and environmental protection, types of aid already covered by existing Community guidelines), reflects the Commission’s desire to subject shipbuilding to the same state aid rules applicable for other sectors. The Regulation aims to uphold the integrity of the common market by establishing fair and equitable competition on shipbuilding within the EU.

Although there was a push by some EU Member States to continue operating aid, Member State ministers on December 5, 2000 decided to abide by the earlier decision to phase it out at the end of 2000. Nevertheless, the ministers agreed that in the event of failure of talks with Korea for putting an end to unfair practices in its shipbuilding sector, the Commission in May 2001 will propose a temporary aid mechanism to support European yards. It will also study the possibility of aid to research and development, which could take the form of "incentives." The EU's Competition Commissioner and those Member States opposed to state aid made it clear that temporary aid should not result in any distortion of competition within the EU.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The EU and its Member States support strong protection for intellectual property rights. The Member States are members of all the relevant World Intellectual Property Organization (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 such IPR standards as those in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). However, there are a few Member States with whom the United States has raised concerns, either through Special 301 or WTO Dispute Settlement procedures, about failure to fully implement the TRIPS Agreement.

The U.S.-EU Transatlantic Economic Partnership (TEP) initiative, initiated at the May 1998 U.S.-EU Summit, identifies intellectual property as an area where multilateral and bilateral cooperation can be intensified and extended. The TEP action plan for multilateral cooperation addresses cooperation on TRIPS implementation and WIPO treaty ratification, accession to the Trademark Law Treaty, resolution of domain name trademark conflicts, and measures to fight optical media piracy. On the bilateral side, a number of issues of interest to both the United States and the EU, including patent and software protection, are to be addressed in the short- and long-term. Both the United States and the EU have undertaken steps to reduce costs of processing patents. The U.S. is discouraged, however, that this process has not yet resulted in progress toward resolution of these issues.

Trademarks

Registration of trademarks with the European Community trademark office (Office for Harmonization in the Internal Market, or OHIM) began in 1996. OHIM, located in Alicante, Spain issues a single Community trademark which is valid in all 15 EU Member States.

Madrid Protocol: The WIPO Madrid Protocol, negotiated in 1989, provides for an international trademark registration system permitting trademark owners to register in member countries by filing a standardized application. EU accession to the Protocol is hampered by Spanish objections, but Member States in favor of accession hope to persuade Spain to drop its opposition.

Geographical Indications: U.S. industry has expressed concern about the 1992 EU Regulation on "Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs" as amended by a 1997 Regulation. Some believe it does not achieve a balance between protection for legitimate trademarks and geographical indicators. In practice, the Regulation could bring registered trademarks into conflict with registered geographical indicators. In addition, third country applicants for geographical indications do not appear to have the same access as EU parties to the provisions of the Regulation covering registration and other elements. For these reasons, the United States requested formal WTO consultations with the EU in 1999 and held subsequent discussions bilaterally in 2000. Additional follow-up is underway.

Patents

Patent filing and maintenance fees in the EU and its Member States are significantly more expensive than in other countries. Fees associated with the filing, issuance and maintenance of a patent over its life far exceed those in the United States. In an effort to introduce more reasonable costs, the European Patent Office (EPO) reduced fees for filing by 20 percent in 1997.

European Community Patent: U.S. business and industry are largely in favor of the proposed European Community (EC) patent the EU aims to establish in the next two to three years. Once issued, an EC patent would be valid in all EU Member States without additional costly translations. In addition, a special EU court will be established with jurisdiction to decide patent infringement cases, extending legal consistency on patent rulings throughout the EU. Most U.S. businesses also support European Commission efforts to launch a proposal for an EU software patent. However, internal Commission disagreement has blocked progress on this project.

Patenting of Biotechnological Inventions

On June 16, 1998, after years of debate, the EU adopted a Directive on legal protection of biotechnological inventions. The Directive harmonizes EU Member State rules on patent protection for biotechnological inventions. Member States were required to bring their national laws into compliance with the Directive by July 30, 2000. The Directive excludes plant and animal varieties from patentability and will not provide the same level of patent protection that is provided in the United States to biotechnological inventions. In addition, the Directive is not binding on the European Patent Office.

Austria: In Austria, there is considerable resistance to the Directive on legal protection of biotechnological inventions. On June 21, 2000, the Austrian Parliament put off a decision on the implementation of the Directive for an indefinite period.

Copyrights

In April 1998, the European Commission proposed a Directive on the "Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society." The Directive would require Member States to implement harmonized Regulations on the protection of copyrights and is seen as a first step in granting copyright protection for works in digital form. The Directive, which has provoked lively debate, will enter its final legislative phase in 2001 in the European Parliament. Most observers expect Member States to adopt the Directive by the end of 2001.

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.

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 appears to be denied to some U.S. right holders, however, and the United States motion picture and recording industries have not been able to collect their share of these proceeds.

Denmark: In response to concerns regarding Denmark's record of IPR enforcement, the Danish government on October 4, 2000, submitted new IPR legislation for parliamentary approval. Once adopted, this new law is expected to resolve Denmark's problem of not making available provisional relief on an *ex parte* basis to prevent ongoing infringement or to preserve evidence in the context of civil litigation. The legislative bill as submitted calls for an April 1, 2001, entry into force of certain amendments to Denmark's IPR regime. The Danish government expects passage of the new legislation in early 2001 to allow entry into force as scheduled.

Greece: The U.S. government initiated a WTO TRIPS enforcement challenge under WTO auspices in April 1998 as a result of Greece's long-standing problem with television piracy. Following this international intervention, estimated levels of television piracy in Greece have fallen significantly, and since 1998 several criminal convictions for television piracy have been made. Furthermore, in its most recent report on Greece, the International Intellectual Property Alliance pointed out that piracy has reached an all-time low level. On March 22, 2001, Greece and the United States formally resolved this WTO dispute. The Greek Government has committed to provide effective deterrence against any increase in the level of television piracy, to continue its efforts in enforcing its intellectual property laws, and to prevent any recurrence of the television piracy problem. The United States looks to Greece to fulfill these commitments and strengthen its efforts to ensure that cases involving infringement of intellectual property rights proceed through the court system without unwarranted delays and that violators are punished by deterrent-level penalties as required under the TRIPS Agreement.

However, other significant intellectual property protection problems remain, chiefly, the lack of effective protection of copyrighted software. The piracy rate for entertainment software is very high in Greece. Pirated copies of console games enter Greece from Eastern and Central Europe and are also produced locally. Imported pirated CD-based games represent 90 percent of the illegal market with the rest being locally produced on CD copiers. The Business Software Alliance reports the problems of counterfeit products being loaded on hard disks and sales of counterfeit products throughout Greece. Like the other copyright industries, the computer software industry reports that it experiences long delays and non-deterrent fines in enforcement efforts, which kept its piracy rate in 1999 at 73 percent of total sales, the highest in the European Union. Although Greek trademark legislation is fully harmonized with that of the EU, claims by U.S. companies of counterfeiting appear to be on the rise. U.S. companies report that counterfeit apparel is routinely brought into Greek ports from other non-EU countries. According to U.S. industry, lack of effective protection of copyrighted software affects an estimated USD 20-50 million in U.S. trade.

Ireland: Ireland is a member of the World Intellectual Property Organization and a party to the International Convention for the Protection of Intellectual Property. In July 2000, Irish President McAleese signed new legislation that brought Irish intellectual property law, including patent and copyright law, into compliance with Ireland's obligations under TRIPS. As a result of this new legislation, the United States agreed to terminate the WTO dispute settlement proceeding brought against Ireland in 1997 due to its failure to adopt TRIPS implementing legislation. Following required administrative preparations, the new law came into effect on January 1, 2001, giving Ireland one of the most comprehensive systems of IPR protection in Europe.

The new Irish legislation is a wholesale reform of Ireland’s previous IPR law. It addresses several TRIPS inconsistencies in the previous law which had concerned U.S. businesses and investors, including the absence of a rental right for sound recordings, the lack of an "anti-bootlegging" provision and low criminal penalties which failed to deter piracy. The new legislation should, by improving civil and criminal enforcement and penalties, help reduce the high levels of software and video piracy in Ireland (industry sources estimate that up to 60 percent of PC software used in Ireland is pirated). Furthermore, by revising the non-TRIPS conforming sections of Irish patent law, the law addresses two concerns of many foreign investors in the previous legislation: (i) the compulsory licensing provisions of the previous 1992 Patent Law, which were inconsistent with the “working” requirement prohibition of TRIPS Article 27.1 and the general compulsory licensing provisions of Article 31; and (ii) applications processed after December 20, 1991 did not conform to the non-discrimination requirement of TRIPS Article 27.1.

Italy: In July 2000, Italy passed the long-awaited anti-piracy law, which had been introduced in Parliament in 1996. The U.S. government has moved Italy from the “Priority Watch List” to the “Watch List” in its Special 301 process as a result.

The new law provides for significant administrative penalties and increased criminal sanctions for violations of music, film and software copyright. The new law also provides for the creation of an anti-piracy steering committee to develop national anti-piracy strategies within the Prime Minister's office. The U.S. software industry remains concerned, however, about implementation of an exemption to one provision in the law which requires software to carry a label from the Italian royalty collection society, SIAE. According to the U.S. software industry, this requirement will cause unnecessary difficulties and additional costs, and appears to act as a mere formality required for copyright protection, while providing no additional protection against piracy, especially for on-line purchases. The U.S. is currently reviewing the "stickering" provision as to its consistency with the TRIPS Agreement, and continues to monitor the implementation of the anti-piracy law.

Spain: Spain has been on the 301 "Watch List" since 1999 due to the continuing high level of business software piracy. The U.S. Trade Representative found that "illegal copying of business application software for internal use remains pervasive, and continues to account for the majority of losses in industry in Spain stemming from piracy." In addition, the Special 301 review found that despite earnest efforts by Spanish government officials to educate the judiciary about the importance of intellectual property protection, both civil and criminal court proceedings continued to move so slow as to dilute the impact of improved police enforcement. However, in other areas (videos and audiocassettes) Spain maintains a sound record of low incidence of piracy.

Sweden: U.S. copyright industries voice concern over a provision in Swedish copyright law which denies to authors and produces of U.S. audiovisual works, and to the performers that appear in those works, the right to be compensated for private reproductions. This practice has caused industry to question its consistency with Sweden's national treatment obligations under the Berne Convention and its MFN obligations under the TRIPS Agreement.

SERVICES BARRIERS

Television Broadcast Directive

In 1989, the EU issued the Broadcast Directive which includes a provision requiring that a majority of television 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 Directive. The United States continues to monitor developments with respect to the Broadcast Directive, which is scheduled for revision in 20002. We are particularly concerned about EU accession negotiations, where acceding countries appear to be required to meet a higher standard in this sector than current EU Member States.

Several countries have specific legislation that hinders the free flow of some 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 Supérieur 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 songs on almost all French private and public radio stations must be Francophone) which entered into force on January 1, 1996. The measure has the effect of limiting the broadcast share of American music.

Italy: In 1998, the Italian Parliament passed Italian government-sponsored legislation including a provision to make Italy's national TV broadcast quota stricter than the EU Broadcast Directive. The Italian law exceeds the EU Directive by making 51 percent European content mandatory during prime time, and by excluding talk shows from the programming that may be counted towards fulfilling the quota. Also in 1998, the Italian government issued a regulation requiring all multiplex movie theaters of more than 1300 seats to reserve 15-20 percent of their seats, distributed over no fewer than three screens, to showing EU films on a "stable" basis. In 1999, the government introduced antitrust legislation to limit concentration in ownership of movie theaters and in film distribution, including more lenient treatment for distributors that provide a majority of "made in EU" films to theaters.

Spain: In May 1999, the Spanish Parliament adopted new legislation that incorporates the revised EU Broadcast Directive and revises the 1994 Spanish law on television broadcasting. The new law explicitly requires television operators to reserve 51 percent of their annual broadcast time to European audiovisual works. The three-tiered system established for dubbing licenses for feature length films under the 1994 law ended in June 1999. In January 2000, the Administration sent new draft film legislation to the Parliament, which calls for a gradual elimination of screen quotas over a period of five years. Approval is pending. At present Spanish movie theaters must show at a minimum one day of European films for every three days of films from third countries. The growing strength of the Spanish film industry in the past two years, as measured by numbers of films produced and their success at the box office, has prompted the current Administration to liberalize the film law further.

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). To some extent, these potential barriers are offset by more liberal provisions in the bilateral air services agreements which the United States concluded with individual EU Member States.

Ireland: The bilateral U.S.-Ireland Aviation Agreement places some restrictions on the provision of aviation service, both passenger and cargo, between the United States and Ireland. Under the Agreement, for every North Atlantic flight to or from Dublin airport, a corresponding flight or stop must be made at Shannon airport on Ireland's West Coast. Several U.S. carriers complain that the "Shannon stopover requirement" affects the profitability of their operations in Ireland, as well as any plans for increased service in the Irish market, although it did not stop one U.S. carrier from introducing new service between Ireland and the United States in 1999.

Postal Services

U.S. express and package service providers remain concerned that the prevalence of postal monopolies in many EU countries restricts their market access and subjects them to unequal conditions of competition. The Commission's May 2000 proposal to further limit the scope of services that can be reserved for monopoly provision has faced stiff opposition in the

European Parliament and some Member States.

Belgium: American firms are focusing attention on cross-subsidization occurring under the umbrella of the Belgian railroad monopoly. Their concern is that the Belgian state railroad is using its monopoly in rail passenger transportation to cross-subsidize the mail transport business it maintains, and that such cross-subsidization may have anti-competitive effects in the market for express delivery services. The Belgian post group is also developing express mail units to compete with private sector services. Cross-subsidization could become a concern here as well.

*German*y: The European Commission in 1999 agreed to investigate a complaint by a U.S. firm against Deutsche Post (DP) for illegal usage of state aid funds and abuse of dominant market position. The U.S. firm believes DP to have engaged in predatory pricing, unfair cross-subsidization of services, and using profits from excessive prices in the letter market to finance acquisitions and investments to strengthen even further its market position vis-à-vis private sector express delivery services. The Commission has exercised particular care in its investigation of this case, pending since 1994, because of its political ramifications and the DP initial public offering (IPO) which took place November 2000. The U.S. firm maintains that continued delay in reaching a decision in this case will further exacerbate the anti-competitive market situation. Many observers believe that the German government has attempted to delay the Commission's decision.

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 the Common Cabotage Regime is to be implemented during a transition period from 1993 to 2004. While cabotage within peninsular Spain was previously liberalized, the EU 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.

Telecommunications Market Access

Since the late eighties, there has been a general trend toward increased competition and openness in European telecommunications. Liberalization has been driven primarily by the desire to create a single European market in telecommunications and to gain the benefits from the globalization of the communications sector. The negotiation of the 1997 WTO Basic Telecommunications Agreement (BTA) provided additional impetus for liberalization and ensured the extension of benefits to third countries, including the United States. Under the WTO Agreement, all EU Member States made commitments to provide market access and national treatment for voice telephony and data services. The EU and its Member States also adopted the pro-competitive regulatory principles set forth in the Reference Paper associated with the WTO Basic Telecommunications Agreement.

The European Commission proposed in July 2000 a package of new legislation (six new Directives and one Regulation) for the regulation of electronic communications networks and associated services. This legislation is meant to replace the twenty-plus Directives that currently cover the sector, update and adapt European legislation to developments such as convergence of technologies, and establish a system that will be responsive to future technological and market developments. The new regulatory framework will apply to all forms of electronic communications networks and associated services, not just traditional fixed telephony networks. The long term goal is to phase out sector-specific, ex-ante regulation (for all but public interest reasons) in favor of reliance on general competition rules. The U.S. submitted comments noting that ex-ante regulations should not be phased out until it is clear that the telecommunications incumbent no longer is dominant in the marketplace. The full package will not come into effect until early 2002, at the earliest, but the Unbundling Regulation, which requires incumbent operators to offer the full range of unbundled access to the metallic local loop to competitors was approved on a fast track and went into effect on January 1, 2001. The legislative proposals can be found on-line at: www.ispo.cec.be/infosoc/telecompolicy/review99/welcome.htp.

Both the BTA and newly proposed EU legislation have spurred deregulation. However, liberalization and harmonization have been uneven across the EU. In most markets significant problems remain with the speed of provisioning and pricing of unbundling the local loop, line sharing, collocation and the provisioning of lines. In several Member States, national and local authorities are discriminating in favor of the incumbent in granting access to rights of way. This hinders the ability of competitive providers to construct their networks and compete effectively with incumbent carriers.

The European Commission monitors and reports regularly on implementation of the current regulatory framework by the Member States. The most recent report (the Sixth Implementation Report) highlights continuing progress in opening the European market to competition and consequent growth of the sector. The Report can be found on-line at: www.europa.eu.int/infosoc/telecompolicy/6threport.html. Retail tariffs continue to move downward for both local and long distance services, and rates for wholesale leased lines and interconnection are also falling substantially. Despite the positive developments, the report notes that incumbents still have a strong hold on the market and it is crucial for national regulatory authorities (NRAs) to have the independence, resources, authority, and will to apply the sector specific regulations at their disposal in order to maintain the momentum of transition to full competition. Independence remains an issue in Belgium, France and Portugal and lack of authority and/or resources is a problem in about half of the Member States, but the situation has improved over the last year.

Among the other issues that are flagged in the Report as requiring continued attention in a number of Member States are:

- cumbersome licensing procedures;
- delays in delivery of leased lines;
- call termination tariffs in mobile networks;
- lack of availability of the full range of carrier pre-selection services;
- incomplete tariff rebalancing that can lead to price squeezes for new entrants as incumbents cross-subsidize retail prices;
- and difficulty in obtaining rapid and equitable interconnection.

As of December 2000, the Commission had 67 infringement proceedings underway to enforce Member State compliance with EU telecommunications legislation.

The proposed legislation, if enacted, could help alleviate some of these problems. For example, the proposed Directive on licensing and authorization would limit the use of individual licenses to cases where a scarce resource such as spectrum or numbering were involved. Similarly, the proposed Directive on access and interconnection should provide NRAs with more tools to ensure rapid and equitable interconnection. Competition rules are another tool the Commission uses to enforce compliance and promote competition. The Competition Directorate-General is nearing completion of investigations into leased lines and mobile termination rates, and is also investigating conditions of access to the local loop. Both investigations are designed to determine if there are anti-competitive practices in play and could possibly lead to formal actions against some actors at either national or Community levels.

Another positive trend in the EU is toward privatization of state-owned telecom operators. Telecommunications firms in Denmark, Ireland and the United Kingdom have completely privatized their former monopolies (Tele Danmark, Eireann and British Telecom respectively). The Government of Italy has sold all but five percent of the incumbent (Telecom Italia), the Government of Spain has sold all but one percent of Telefonica, and the Government of Portugal retains approximately ten percent interest in its incumbent (Portugal Telecom). In the Netherlands, the government likewise owns a minority share of the incumbent (KPN), and, in 2000, Austria sold enough shares of the incumbent (Post & Telekom) to ensure majority private participation. Last year, the German, Dutch and Finnish governments announced their intention to fully privatize their respective telecommunications incumbents (Deutsche Telekom, KPN and Sonera). However, certain governments – such as Spain and Italy – retain a "golden share" which permits the governments to veto mergers in the telecom sector against the national interest. The European Commission has filed cases with the European Court of Justice (ECJ) against these governments for use of their golden share. The ECJ ruled that the government of Italy's use of its golden share was inconsistent with the Treaty of Rome. The case against the government of Spain is still pending. The United States has encouraged further privatization in Europe, through measures that could be taken both at the level of the European Commission and in individual Member States.

Specific Member State Practices

Belgium: The Belgian Ministry of Telecommunications both supervises the Belgian telecommunications regulator (BIPT) and is responsible for the Belgian government's 51 percent shareholding in Belgacom. This relationship appears to have the potential to give rise to a conflict of interest between the government as regulator and the government as owner. The Belgian government has announced its intention to further privatize Belgacom, which could help mitigate this potential problem. Further privatization of the Belgian telecommunications sector would strengthen BIPT's ability to provide more pro-competitive regulation. Belgium has recently created a new chamber to resolve disputes raised by new entrants with the incumbent, especially regarding interconnection rates and cross-subsidization of services by the incumbent.

France: France has liberalized its telecom market cautiously but steadily. Dozens of foreign firms have obtained telephone licenses in France, on an equal footing with French firms. In fact, a majority of the wireless local loop licenses that were awarded on July 11, 2000 went to foreign firms, including six with majority U.S. participation. However, the process for awarding third generation wireless licenses raised concerns that it favored the three French wireless incumbents given that the process was based on a comparative tender process rather than spectrum auctions.

The telecommunication regulatory authority, ART, has successfully advocated liberalization by the French government, despite political constraints stemming from the government's 54 percent ownership of the dominant service provider, France Telecom (FT). For example, on September 12, 2000, after intense negotiations, the government decreed the entry into force of the EU Regulation on unbundling of the local loop, but implementation has been problematic, as noted by several submissions to the U.S. government under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988. For instance, FT refuses to sign any interconnection/operations agreement with a new entrant that does not already hold a license. However, new entrants need the information contained in this agreement to formulate a business plan required to apply for a license. FT has also delayed in providing information regarding the location of circuits available for unbundling and sometimes refuses to provision circuits for new entrants using existing spare copper pairs. In addition, FT offers only caged collocation in which a new entrant needs to absorb the unnecessary cost of a separate, specially constructed space. Furthermore, FT does not allow new entrants to collocate certain specialized equipment such as ATM equipment and Internet protocol routers, essential for line sharing. Another major problem is that FT obtains access to rights of way (necessary for installing lines and other infrastructure in roads and buildings) on more favorable terms and conditions than its competitors.

Germany: Germany has evolved into one of the most competitive markets in Europe. Nevertheless, given the scale of interest in the market, remaining barriers to entry and competition continue to be a focus of attention. In Germany, the cost of obtaining a license is several times higher than in any other European country. U.S. firms have cited this fee structure as a barrier to entry, and mentioned them in complaints submitted in February 2000 by two U.S. telecommunications trade associations against Germany pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988. Aware of this disparity, the German government in March and again in October pledged unilaterally to lower the license fees by the end of 2000. However, the matter remains before the German Administrative Court, with a decision expected in 2001. EU law requires license fees to be cost oriented and reflect administrative costs.

The competitors to Deutsche Telekom (DT) operated in somewhat greater contractual certainty throughout 2000, after the German Telecommunications Regulatory Agency (RegTP) on December 23, 1999 approved new interconnection tariffs that remain valid until February 28, 2001. During 2000, RegTP also rendered a number of pro-competitive decisions, which the new entrants welcomed.

Throughout 2000, however, competitors charged that DT continued to engage in a wide variety of anti-competitive practices. In January 2001, several telecommunications trade associations and private firms submitted complaints with the U.S. government under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988. The submissions asserted that unbundling of the local loop is still problematic, and that DT still has not produced a reference offer for unbundling. Complaints also focused on DT's failure to permit line sharing and the lack of time limits for the provisioning by DT of lines, unbundled local loops, and collocation. Submissions also referred to continuing problems (raised in past submissions under Section 1377) related to high licensing fees and DT's interconnection backlog. In this regard, during the past year, RegTP took important steps to alleviate delays by DT in providing interconnection and ordered DT to continue to perform billing services.

The chief trade association of DT's competitors charged DT with a long list of anti-competitive practices in testimony related to DT's takeover of a U.S. wireless operator which the trade association submitted to the U.S. Congress in September 2000. According to the testimony, DT obstructed the implementation of regulatory decisions, ignored court orders and fines, and frequently delayed the transfer of customers to competitors. Competitors also charged that DT was chronically late (in some cases by up to three months or more) in fulfilling interconnection contracts and granting co-location facilities. The competitors maintained that DT, through increasing use of "bundled offerings," was using its market dominance to re-monopolize markets that in 1998-99 were believed to be safely on the road to competition.

Italy: The Italian telecommunications market has made progress towards liberalization, but new entrants still complain about numerous regulatory obstacles. Fixed telephony is fully open to competition, with about 70-80 operators licensed to provide commercial services including Internet access, local calls, long distance, and international service. Four mobile (GSM) operators are fully operational. Five third generation cellular UMTS licenses were recently awarded after a very brief and controversial bid procedure resulting in an early closure of the tender and leaving the Italian government with substantially lower revenues from the sale than had been anticipated.

Local loop unbundling is the largest remaining issue. The Communications Authority, Italy's regulatory body, expects to have the issue resolved by March 1, 2001, at which time users will be able to choose directly their telecommunications carrier. Line sharing is another issue that requires attention. Additionally, certain Italian government agencies are imposing high and non-cost based fees and stringent conditions before granting competitive telecommunications carriers access to rights of way for installing telecommunications infrastructure. Another issue of concern is the continued and increasing state role in the telecommunications sector. The Italian government still holds about five percent in the former state telecom monopoly, Telecom Italia, including a golden share that enables it to influence company strategies. The Italian government holds approximately 51 percent of ENEL (the national electricity conglomerate which in turn owns controlling interest in cellular operator WIND and fixed line operator INFOSTRADA). In addition, the Government of Italy owns interests in other participants in telecommunications consortia operating at the national level.

Spain: Spain appears to be a laggard in bringing full competition to its market, but there is significant interest from potential new entrants. The government of Spain awarded a total of six LMDS (local multi-point distribution service) licenses. A number of U.S. companies successfully participated in the auctioning of spectrum licenses held by the Spanish government in March of 2000 and hold interests in all six LMDS licenses. LMDS is a digital wireless transmission system, also known as wireless local loop, designed to provide the "last mile" from a carrier of data services to a large building or complex that is not wired for high-bandwidth communications. Within a little more than six months after the signing of the licenses, the regulator announced its decision to increase its spectrum fee by more than 13 times the original amount. This increased fee was enacted into the Annual Budget Law for 2001, effective as of January 1, 2001. The net effect of this dramatic increase in the charge for the use of the spectrum places at risk not only the guarantees posted in the form of performance bonds to secure the licenses, but also the significant investment made to date by U.S. investors, both totaling in the tens of millions of U.S. dollars. U.S. investment is now at risk based on the effect that the new charge will have on the LMDS operators' business plans.

The Spanish government unbundled the local loop with the expectation that it would result in increased competition, thus benefitting consumers through lower prices and more value added services. However, implementation has been problematic. The Reference Interconnection Offer regarding local loop unbundling from the incumbent, Telefonica, has significant problems. Telefonica currently requires new entrants to locate their equipment in separate caged collocation spaces, delaying entry and raising costs. Telefonica also intends to restrict the type of equipment that can be collocated, and the government of Spain has sanctioned a phased-in approach to opening Central Offices to collocation for Digital Subscriber Line service (DSL), a high-speed data service. This will allow Telefonica to unroll DSL services in profitable markets without competition. Telefonica also has not provided information on the condition or availability of local loops on its incomplete list of Central Offices provided to competitors. In addition, Telefonica also has no binding deadline for the availability of an Operational Support System to new entrants, necessary for order entry, provisioning, repair, maintenance and billing functions.

United Kingdom: While the UK has made some progress on competitors gaining access to the telephone infrastructure of British Telecom (BT) to provide advanced data services, such as DSL, certain problems remain. On August 8, 2000 the telecommunications regulator OFTEL announced new license conditions for BT, requiring it to provide unbundled local loops to other telecom operators, for whom this was necessary to provide their own DSL services, and to make offices ready for co-locating competitors' equipment by the end of the year. While these conditions addressed many U.S. concerns, significant issues still need to be addressed. Nondiscriminatory "cageless" collocation, for example, is still not available in the UK. Additionally, BT has delayed in providing collocation in the most desirable exchanges, which has caused some telecommunication competitors to withdraw from the market. This withdrawal has had the perverse effect of raising costs, since new firms seeking to collocate in each Central Office split BT's cost for constructing and providing for collocation in this separate room. BT has yet to allow line-sharing.

Legal Services

Austria: To provide legal advice on foreign and international law, a lawyer must establish a commercial presence and join the Austrian Provincial Bar Association. Only an Austrian national can join the bar association.

Denmark: Foreign lawyers in Denmark cannot offer advice to international clients on international issues without being a member of the local bar. Foreign lawyers and law firms face other restrictions on whom they can advise and on the use of the original law firm name from the firm's home country.

Foreign legal consultants are restricted in their ability to advertise, including restrictions on the use of letterhead or signs on office doors. These restrictions are not applied to attorneys licensed to practice Danish law. There are restrictions on the ability of foreign lawyers to associate with Danish lawyers. Foreign attorneys may hire Danish attorneys in private firms but foreign attorneys who are not members of the Danish bar cannot own a Danish firm. Also foreign attorneys who do not also have appointment as Danish attorneys cannot be partners in a Danish legal firm. To be an attorney in Denmark, a person must be a Danish law school graduate and clerk in a law firm for three years.

Finland: Foreigners from non-EU countries cannot become members of the Finnish Bar Association and receive the higher law profession title of "Asianajaja." This does not, however, prevent persons from practicing domestic or international law (including EU law) using the lower level title of "Lakimies" or "Jurisiti." A Finn must pass a test and have five years of legal experience before becoming an "Asianajaja." The title gives added prestige and helps solicit clients, but is not essential to practice law.

France: There is a nationality requirement to qualify as an "avocat." Non-EU firms are not permitted to establish branch offices in France under their own names. Also, non-EU lawyers and firms are not permitted to form partnerships with or hire French lawyers.

Germany: Foreign lawyers cannot automatically practice German law in Germany, though they can be accredited to practice in Germany the law of their country if the country is a WTO member. In order to be admitted to the German bar to practice German law, it is estimated that a minimum of four years of study and another two years of internship after law school would be necessary prior to taking the German bar examination. Under certain circumstances the duration of these studies can be reduced for appropriately qualified foreign lawyers. EU lawyers benefit from EU rights of establishment.

Italy: Only members of the Italian Bar Association (essentially Italian nationals) and, in certain limited circumstances, EU Member State lawyers may practice in court. Until recently, non-EU law firms were permitted to become partners in Italian law firms and hire Italian lawyers. Early in 2001, however, the Council of Ministers acted on a decree that may make it impossible for non-EU citizens to be partners in law firms operating in Italy.

United Kingdom: To become a barrister, a litigator must pass a one year course in law offered by certain polytechnics or universities in the United Kingdom, complete a one year practical course at one of the eight places offering the bar vocational course, and complete a one year "pupilage" at a set of chambers. To become a solicitor, an American lawyer must take the qualified lawyers transfer test.

Accounting and Auditing Services

Austria: Citizenship is required to obtain a professional certification. Foreign accountants are not permitted to form a partnership with local firms. There are also problems with using the international firm's name.

Denmark: Foreign accountants cannot form partnerships with Danish accountants and hold majority shares in accounting firms without special authorization of Danish authorities. There is a scope of practice limitation. A public accountant is not permitted to act as a liquidator or to arrange for a composition with creditors for a client.

France: There is a nationality requirement for establishment, which can be waived at the discretion of the French authorities. However, an applicant for such a permit must have lived in France for at least five years.

Greece: The transition period for de-monopolization 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 auditing firms from doing multiple tasks for a client, thus raising the cost of audit work. The Greek 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.

INVESTMENT BARRIERS

The EU's competency in investment issues is evolving and it has a growing role in defining the way in which U.S. investments in EU Member States are treated. Still in many instances Member State practices are of more direct relevance to U.S. firms. Under the 1993 Maastricht Treaty, free movement of capital became an EU responsibility and capital controls between both EU Member States and Member States and third countries were lifted. However, a few Member State barriers existing on December 31, 1993 remain in effect, but EU law can now supersede these. Right of establishment issues, particularly with regard to third countries, are a shared competence between the EU and the Member States. The division of this shared competence varies from sector to sector, based on whether the EU has legislated regulations in that sector. Direct branches of non-EU financial service institutions remain subject to individual member country authorization and regulation. EU Member States negotiate their own bilateral investment protection and taxation treaties, and generally retain responsibility for their investment regimes, until and unless they are superseded by EU law. The EU supports national treatment for foreign investors in most sectors. Once established, EU law, with a few exceptions, requires that any company established under the laws of one Member State must, as a "Community undertaking," 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 (see below). The U.S. has also conveyed to the EU its concern that U.S. bilateral investment treaties with countries now negotiating to join the EU, not be adversely affected by the enlargement process. Furthermore, the U.S. is concerned that the EU requires accession candidates to adopt EU audio-visual standards, which are restrictive to U.S trade.

Ownership Restrictions and Reciprocity Provisions

Under EU law the right to provide aviation transport services within the EU is reserved to firms majority-owned and controlled by EU nationals. The right to provide maritime transport services within certain EU Member States is also restricted. 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. U.S. firms' right to national treatment in this area was reinforced by the EU's GATS commitments. In the EU Hydrocarbons Directive, the notion of reciprocity 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 EU. It should be noted, however, that so far no U.S.-owned firms have been affected by these reciprocity provisions

Member State Practices

Austria: Austria's 1993 Banking Act (as amended) presents a number of market entry obstacles to U.S. banks. While European Economic Area Member States' banks may operate branches on the basis of their home country license, banks from outside the EEA must obtain an Austrian license to operate in Austria. However, if such a non-EEA bank has already obtained a license in another EEA country for the operation of a subsidiary, it does not need a license to establish branch offices in Austria. In addition, as of December 31, 1998, permitted maximums for single large loan exposures and open foreign exchange positions decreased considerably for branches and subsidiaries of banks from non-EU countries. As of that date, the capital of such a bank's parent company may no longer be included in the capital base used to calculate loan and foreign exchange position limits.

France: There are no general screening or prior approval requirements for non-EU foreign investment. Notification requirements apply to foreign investments, EU and non-EU, that affect national defense, public safety, or public health. The government is able to exert influence over privatized firms through "golden share" provisions. 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 mandatory prerequisites for approving investments. Greece, which currently restricts foreign and domestic private investment in public utilities (with the exception of cellular telephony and energy from renewable sources, e.g. wind and solar), has deregulation plans for telecommunications and energy. With regard to telecommunications, Greece has been granted a derogation until January 1, 2001 to open its voice telephony and respective networks to other EU competitors. In the energy field, the Greek energy market will be gradually deregulated, starting in February 2001. 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.

Ireland: In December 2000, the Irish government made permanent "caps" on the size of retail outlets. Under these caps, the retail stores in Dublin cannot exceed 3,500 square meters; the cap for all other areas of the country is 3,000 square meters. A cap of 6,000 square meters was placed on retail warehouses. The size limitations were imposed, despite the internal opposition of the Irish Competition Authority, which argued the caps would raise retailing costs and consumer prices and reduce competition into the Irish retail market. According to Irish media reports, the caps were aimed at "superstore" operators, both in the EU and the United States, considered as possible market entrants into Ireland.

Portugal: Most foreign investments in Portugal are only subject to *post facto* registration. However, 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 not been exercised.

United Kingdom: The Financial Services Authority (FSA) has issued a consultation paper that sets out proposed rules for the first time requiring that key staff at regulated firms must be approved by the Authority. Although the rules would apply to all banks, globally managed banks have noted the rules would pose a large administrative burden on them, and could require that hundreds of bankers already working in the UK seek FSA approval.

THE INTERNET AND ELECTRONIC COMMERCE

The EU is in the middle of an effort to accelerate the uptake of digital technologies by business, consumers and governments. Heads of government endorsed an eEurope Action Plan in June 2000 which is a multifaceted plan geared to the achievement of three broad objectives: a cheaper, faster and more secure Internet; increasing people's skills and access; and stimulating use of the Internet. Neither Internet penetration nor electronic commerce (e-commerce) at the business and consumer level is as widely used in Europe as in the United States but considerable growth is expected in the next few years and is being seen already. For example, households with Internet access increased from 18 percent to 28 percent between March and October 2000. Follow-up to the eEurope Action plan includes benchmarking exercises and ongoing attention at European Summits.

The eEurope Action Plan called for completion of the legislative framework by the end of 2000, a goal that has largely been met, with the exception of some taxation and financial services matters and copyright issues.

In November 1999, EU institutions finalized a Directive on electronic signatures. The Directive sets out a framework for legal recognition of electronic signatures and includes mechanisms for cooperation with non-EU countries, including on the basis of mutual recognition. Although the Directive does not mandate any particular technology for electronic signatures, there is scope for a more restrictive approach to emerge through the implementation process in the Member States.

A Directive addressing the legal aspects related to electronic commerce was adopted in July 2000 and will come into force in January 2002. The Directive is designed to ensure that electronic commerce benefits from the internal market principles of free movement of services and freedom of establishment. It covers only providers established in the EU. The Directive establishes harmonized rules in a number of areas such as liability of intermediaries (e.g., Internet service providers), transparency provisions for commercial communications, and electronic contracts. The Directive does not supersede the Brussels or Rome Conventions (see below) or data privacy Directives and leaves scope, on a case-by-case basis, for national authorities to impose restrictions on provision of electronic commerce from another member for certain specified purposes, including protection of public health and consumer protection.

The plan to update the Brussels (1968) and Rome (1980) Conventions covering jurisdiction and applicable law respectively have attracted considerable attention and controversy. Each Convention will be "communitized" into an EU Regulation as a result of changes in authorities resulting from the Amsterdam Treaty. The Conventions cover a myriad of issues but the most controversial aspect of the updating exercise has been the treatment of e-commerce consumer contracts. Each Convention contains a special regime for consumer contracts, which give the consumer recourse to his/her own courts and laws under certain conditions. Work on revision of the Rome Convention is still in progress. In December 2000, EU Member States reached political agreement on revisions to the Brussels Convention, which makes it clear that electronic commerce contracts also fall under the special regime for consumers (the key condition being that an activity has been directed "by any means" at the consumer). The business community has argued that this will have a chilling effect on the development of e-commerce as service providers will be hesitant to expose themselves to litigation in all 15 Member States. Consumer advocates are pleased with the outcome and have consistently argued that the consumer, as the weaker party, must, as a last resort, have access to his/her own courts. In an attempt to address some of the concerns about impeding development of e-commerce, the Member States will issue a political declaration that seeks to interpret what it means to direct an activity, encouraging the development of alternative dispute mechanisms and committing to review the effect of the Regulation on e-commerce, especially by small and medium sized enterprises. The Regulation updating the Brussels Convention was formally adopted on December 22, 2000 and is expected to enter into force in March 2002.

During 2000, the EU also adopted two Directives dealing with e-money that bring e-money under the general rubric of establishment and solvency rules for banking. While e-money entities will not be required to meet all provisions related to banking institutions, they will be required to meet minimum capital requirements, sound and prudent operating standards, ongoing owner control, and other prudential measures commonly applicable to financial institutions.

Austria: Although Austria was among the first EU countries to introduce a comprehensive law on electronic signatures in 1999, private businesses complain about a few shortcomings in this law. Only government and quasi-government agencies will be allowed to conduct accreditation to firms to ensure they are certification providers for “qualified” signature certificates. Moreover, private business will not play a significant role in the process of conformity assessment regarding the compliance of secure signature-creation-devices with the requirements laid down in an annex of the EU Directive.

Data Privacy

Data privacy is an issue that continues to sustain a high profile in transatlantic relations. There are two relevant EU Directives: a horizontal Directive on Data Protection that was adopted in 1995 and took effect in October, 1998 (although most Member States missed the deadline and the Commission filed infringement proceedings against five Member States in the ECJ in early 2000 for failure to transpose the Directive into national law), and a telecommunications-specific Data Privacy Directive that was adopted in 1997 and took effect in October 2000 (although only ten Member States have met that deadline).

The horizontal Directive seeks to protect individual privacy with regard to the storage, processing and transmission of personal data, while still permitting the free flow of data within the EU. It allows transmission of data to third countries if those countries are deemed by the EU to provide an adequate level of protection, if the recipient can provide other forms of guarantee (e.g., a contract) that ensures adequate protection, or if the data transfer falls within the limited exceptions in the Directive. The United States and the European Commission concluded in July 2000 a “safe harbor” arrangement that bridges the differences between the EU and U.S. approaches to privacy protection and will help ensure that data flows are not interrupted. Under the safe harbor arrangement, U.S. companies can voluntarily participate in the safe harbor by self-certifying to the Department of Commerce. Currently, only entities whose activities fall under the regulatory authority of the Federal Trade Commission or the Department of Transportation are eligible to participate in the safe harbor. Whether or how other sectors, in particular the financial and telecommunications sectors, will be considered in relation to safe harbor will be determined in the future.

The U.S. Treasury Department and the EU Commission agreed at the time the safe harbor arrangement was concluded that separate talks should continue on bringing the benefits an adequacy finding to the financial services industry. Both sides agreed that it was essential to take into account the additional privacy protections applicable to U.S. financial institutions that would be implemented in 2001 under the Gramm-Leach-Bliley Act of 1999.

The telecommunications Data Protection Directive addresses issues such as the storage of customer data and gives consumers rights related to unsolicited calls or faxes as well as inclusion in directories. The package of Directives proposed in July 2000 includes a proposed update of this Directive that would expand coverage to all kinds of electronic communications networks and associated services (e.g., Internet services would be covered). It also introduces some more stringent restrictions on unsolicited commercial mail and directory services. The proposal has raised a number of questions and practical concerns regarding transnational implications of its implementation on both sides of the Atlantic; its ultimate impact on US service providers remains to be seen.

Taxation of Electronic Commerce

In June 2000 the European Commission issued a proposed Directive on the taxation of electronic commerce. A main element of this proposal is that no new taxes or additional taxes should be imposed on electronic commerce, but rather that existing taxes should be adapted and applied. In each EU Member State, a domestic value added tax (VAT), which is a consumption tax, is payable on deliveries of goods and the provision of services. The Commission has said it considers electronic commerce transactions that do not involve the delivery of physical goods to be a provision of a service subject to VAT. In this regard, the VAT would apply to services which are consumed within the EU, regardless of whether the services are supplied from inside or outside the EU. Where services are provided from within the EU to be consumed outside the EU, the services would not be subject to VAT. U.S.-based businesses have expressed concern over the implications of applying VAT to electronic commerce, particularly with regard to the levying and collection of VAT on any services supplied to the EU.

OTHER BARRIERS

Canned Fruit

Damage to the interests of the U.S. canned peach industry caused by EU domestic support programs is a long-standing issue. Since Greece joined the EU in 1981 and began receiving EU subsidies for canned peaches, the U.S. canned peach industry has lost significant market share to Greece in third countries, most recently in Japan and Mexico. In response, the California Canning Peach

Association filed a Section 301 petition. As a result, the U.S. government took the case to a GATT panel and won a favorable decision in 1984. This decision facilitated the negotiation of the U.S.-EU Canned Fruit Agreement (CFA) in 1985. Although the CFA brought some discipline to processing subsidies, significant fraud and abuse undermined the discipline imposed by the Agreement.

To better understand the extent and nature of the program affecting peach processing in the EU and to coordinate action to encourage reform of the EU regime, the United States organized a coalition with five other canned peach producing countries (Argentina, Australia, Brazil, Chile and South Africa) and held informal consultations with the European Commission in February 1997. As a result of these consultations, the EU subsequently provided the United States with additional data concerning their support programs for peach growers and processors. The United States then joined with 13 other countries in challenging the EU on its canned peach regime at the March 1998 meeting of the WTO Committee on Agriculture (COA). Informal consultations were held again in June 1998, at which the EU was pressed for information about the 1996 reform of its subsidy regime. In January 1999, the Economic Research Service of the U.S. Department of Agriculture released a report which analyzed the factors underlying the competitive positions of the U.S. and EU canned peach industries, and showed that EU subsidies gave the EU industry a competitive advantage.

Based on this information, the canned fruit industries from the coalition countries suggested reforms to the EU canned fruit regime which would make it less trade-distorting. Drawing from these suggestions, the United States and representatives from the governments of Argentina, Australia, and Chile presented a reform proposal to the EU Member States in May 1999. At that time, Member States were unwilling to support the suggested reforms.

However, in July 2000, the Commission proposed a radical but very different reform of the processed fruit and vegetable sector, including canned peaches, which was passed by the Council in November and published in December 2000. Under the old regime, processors received aid as compensation for paying growers a minimum price. Under the new regime, the processor aid and the minimum grower price are eliminated, and a per-ton aid instead is paid directly to producer organizations such as cooperatives. There are both national and EU-wide quotas which, in theory if exceeded, would result in an aid reduction the following year, but the current quotas appear too high to be exceeded except in extraordinary circumstances.

Because the new aid regime changed the procedures for establishing the aid levels for canned fruit, the United States requested consultations with the EU under the Canned Fruit Agreement. These consultations were held in December 2000, and the United States is examining the impact of the new regime on the EU's multilateral and bilateral commitments. The United States also continues to negotiate on agricultural trade reform to address the trade-distorting domestic support in the EU fruit and vegetable regimes. In November 2000 USTR asked the U.S. International Trade Commission to report on EU policies in the horticultural sector, including processed peaches, that effect the competitive position of U.S. producers.