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 1999, the U.S. trade deficit with the EU was $43.7 billion, an increase of $16.8 billion from the U.S. trade deficit of $26.9 billion in 1998. U.S. merchandise exports to the 15 Member States of the EU were more than $151.6 billion, an increase of 1.5 percent from the level of U.S. exports to the EU in 1998. U.S. imports from the EU were just under $195.4 billion, an increase of almost 10.8 percent from the level of imports in 1998. The stock of U.S. foreign direct investment in the EU amounted to almost $433.7 billion in 1998, a greater than 16 percent rise from 1997.

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. 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 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 $191.4 million. Discussions with the EU to resolve this matter are continuing.

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 remain outstanding. The United States and EU are working to resolve this issue. If it is not resolved, the United States is prepared to take WTO action. A replacement system went into effect in 1999 and was agreed to as an interim solution based on a higher reference price. Discussions of further reform of the rice regime are currently underway in the EU.

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 – NGFI's). 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 recently due to the breakdown in the EU's regulatory system for approving new varieties of commodities using modern biotechnological techniques (see below).

The European Commission has been under intense pressure from maize millers in northern member states to make the Spanish and Portuguese corn and sorghum TRQ available on an EU-wide basis. They believe it contradicts the principles of a free EU internal market laid out in the Treaty of Rome, and therefore have requested that the Commission either "communitize" the quota or make flint corn ineligible for the TRQ. If the EU were to "communitize" the quotas, imports of corn by northern EU Members States which had previously taken place outside of the Spain/Portugal TRQs would then be counted against the TRQs. As a result, overall EU corn imports would drop by an amount roughly equal to historical imports of corn by northern EU Member States. This amount has recently ranged from 500,000 metric tons to one million metric tons. However, removing flint corn from the TRQ while raising the abatement for flint corn would preserve the original intent of the quota. The United States is currently discussing this issue with the EC Commission.

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 10 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. winemaking practices, the majority of 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 EC Council 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. EC Commission and United States' negotiators met three times in 1999, gaining valuable information about each other's regulatory systems for wine that will help them achieve a bilateral agreement. Negotiations will continue in 2000 with the next meeting planned for mid-April. 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 in the negotiations to press the EU to give U.S. wine makers equitable access to the EU wine market.

In addition, the United States has questioned the EU's Regulation 881/98 on traditional expressions, which the EU proposes to implement in August 2000 after delaying the implementation of the rule several times. 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 (1) third country industry does not have a means to apply directly for such protection and (2) 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.

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.

Austria: Some U.S. pharmaceutical companies have complained about restricted access to the Austrian market. A U.S. firm seeking to market a product in Austria must first obtain the approval by the Austrian Social Insurance Holding Organization (Hauptverband der Sozialversicherungsträger). 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. One U.S. pharmaceutical firm has raised Austria's practices with the European Commission as a possible violation of the EU Transparency Directive.

Allegedly to fulfill its obligations under the Transparency Directive, the Hauptverband designed a contract that sets out its approval procedures in general terms. By signing the contract, a firm agrees to be bound by the decisions of the Hauptverband, effectively waiving its rights of appeal under the provisions

of the Transparency Directive. Most pharmaceutical suppliers in Austria have signed the contract, though a number of major U.S. firms have not. Non-signatories are concerned that they might experience discrimination by the Hauptverband.

Belgium: In Belgium, there are significant delays in providing market authorization and approval of pricing and reimbursement for new pharmaceutical products. According to industry sources, the current average duration for these processes is more than 1075 days, in contrast with EU requirements of a maximum of 390 days for the entire process. (Directives 65/65, 93/39 for marketing authorization, Directive 89/105 for transparency/pricing and reimbursement). An industry survey shows that the mean delay for price and reimbursement exceeds 476 days, well in excess of the 180 days required by the EU. The lengthy process to obtain marketing approval in Belgium shortens considerably the period of patent protection. Under the centralized European procedure, 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. In July 1999, a new government coalition came to power in Belgium, which acknowledged the problems in the market authorization and approval of pricing and reimbursement of new pharmaceutical products. It has appointed a special commissioner whose task it is to speed up the Belgian implementation of EU Directives.

Pharmaceuticals in Belgium are also under strict price controls. There is a price freeze on reimbursable products and a required price reduction on drugs on the market for fifteen years. A six-percent turnover tax is charged on all sales of pharmaceutical products. Control of prices for reimbursed and non-reimbursed products affect not only in-country sales, but export sales to third markets for which the Belgian price is the reference price.

Italy: U.S. pharmaceutical companies have complained that unnecessary delays in clinical trials slow down regulatory approvals and the introduction of medicinal specialties to the market. National Health Service-funded pharmaceutical specialties which have received centralized approval from European Medicinal Evaluation Agency or obtained marketing authorizations through mutual recognition are subject to prices negotiated between the Ministry of Health and the distributor or manufacturer. Companies assert that since these price negotiations are lengthy, they lose the competitive advantage gained through fast-track regulatory approvals.

Spain: An amendment to the Spanish Law on Medications adopted as part of the appropriations legislation on December 29, 1999, is expected to have a significant impact on the parallel import market for pharmaceutical products in the EU. It changes the language on government pricing policy to refer explicitly to prices set on products destined for sale in "national territory," whereas before the law referred to pricing of products produced in Spain. U.S. pharmaceutical manufacturers in Spain hope the Government will implement this major change quickly because it means that companies which for years had complained about their products being sold as parallel imports in other Member States at higher prices than the selling price in Spain, could themselves set higher prices for that portion of their production sold outside the country.

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. The European standardization process, however, remains generally closed to U.S. stakeholders' direct participation.

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 this trade, EU legislation and standardization work in the 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 such subcontracting procedures are unlikely to provide sufficient access for U.S. exporters. Moreover, these labs cannot issue the final product approval but must send test reports to their European affiliate for final review and approval, which delays the process and adds costs for U.S. exporters.

The United States and the EU have negotiated a Mutual Recognition Agreement (MRA) for several important sectors 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. The MRA provides for transition phases ranging from 18 months to three years, depending on the specific sector.

Under the Transatlantic Economic Partnership (TEP), the United States and EU aim in 2000 to negotiate additional annexes to the U.S.-EU MRA for marine safety equipment and possibly other sectors. U.S. and EU officials also plan enhanced regulatory cooperation in the fields of calibration services, telecommunications equipment, and cosmetics. In the area of services, the United States and EU will begin negotiations in 2000 on Mutual Recognition Agreements for insurance, architects and engineers.

Agri-Biotechnology Approval Process

The EU's lengthy and highly unpredictable approval process for products made from modern biotechnology has adversely affected U.S. exports of corn and threatens to affect an even broader range of products in 2000. Biotechnology continues to be a political rather than scientific issue in several Member States which retain an active role in the EU approval process. Prospects for improvement appear dim at this time, with a majority of EU Member

States adhering to an effective moratorium on approving product applications, with indications that this might last at least until Directive 90/220 has been revised and implemented. Approval of biotechnology products, including seeds and grains, for environmental release and commercialization is governed by Directive 90/220, which is the subject of internal EU executive and parliamentary debate as it undergoes revision, with implementation not expected before mid-2002. This revised legislation is expected to be the "template" for revision of "Novel Food" (processed food) legislation and new legislation covering feeds and seeds. While the current draft amended 90/220 does provide some needed clarity, it remains extremely vague regarding the definitions such as monitoring "traceability," labeling requirements, what information industry is expected to provide, *et cetera*. Lack of clarity also fosters concerns 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 and Luxembourg have imposed marketing bans on some biotechnology products, which run counter to EU Regulations. France, 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 have stopped.

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, including testing thresholds or enforcement.

In September 1998, an EU regulation provided for labeling of foods processed from certain Bt-corn and herbicide-tolerant soybeans became effective. First proposed a year earlier, the regulation called for subsequent development of a threshold for incidental commingling, testing method and list of exempted products. On January 11, 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 be eventually adopted as the basis for labeling of other foods containing ingredients made with modern biotechnology. Some European food processors have switched to non-U.S. 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 10 years, the EU has banned imports of beef from cattle produced 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, and despite scientific evidence showing such meat to be safe.

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. meat. 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. Discussions with the EC to resolve this matter are continuing.

Non-hormone Treated Cattle (NHTC) 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 "non-treated" product shipment. Consequently, the EU threatened to cut off U.S. "non-treated" beef. In September, the U.S. Department of Agriculture's Food Safety Inspection Service (FSIS) announced an improved program – the NHTC, which requires that each phase of production receives an independent third party audit 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 EC to resolve this matter are continuing, with EU indications that the new FSIS program appears acceptable.

Poultry Regulations

The EU continues to refuse considering 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 accepted, 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. Legislation permitting the use of TSP and lactic acid has not been drafted so far. Any legislation will require EU Parliament co-decision and will likely take 18 months or more to be adopted.

Specified Risk Materials Ban

On July 30, 1997, the European Union adopted a ban on the use of Specified Risk Materials (SRMs) for use in food and feed and medical, pharmaceutical, cosmetics and other industrial products. Specified risk material is defined as (a) the skull, including the brains, eyes, tonsils and spinal cord of cattle, sheep, and goats aged over 12 months, and (b) the spleens of sheep and goats. This measure results from EU concerns over the transmission of BSE, or bovine spongiform encephalopathy, commonly known as "mad cow" disease. The ban, originally scheduled to go into effect on January 1, 1998, was subsequently deferred several times, most recently to June 30, 2000. The most recent delay was so that the Commission could take into account the outcome of the International Epizootics Office (OIE) meeting in May 2000 – the conclusions from which will be the scientific and legal basis for permanent EU rules on SRMs. The OIE will be classifying countries into different categories of BSE risk.

The legislation, as it stands now, would prohibit the use of the vertebral column of cattle, sheep, and goats for the production of mechanically recovered/separated meat, and allows for a derogation for the feeding of fur animals.

Industry sources estimate that the potential trade effect of the ban could exceed $20 billion if all products currently covered are ultimately covered by the ban. Beyond the direct trade impact of the ban which is potentially significant, the SRM ban fails to account for available scientific information and advice relating to the control of bovine spongiform encephalopathy (BSE) and other transmissible spongiform encephalopathies (TSE) in products of animal origin. For example, products of the United States and other trading partners, which have no evidence of BSE, are currently affected.

Gelatin Regulation

In October 1999, the EU passed a Directive laying down requirements for manufacturing establishments producing gelatin for human consumption, which is due to be implemented on June 1, 2000. The Directive sets requirements for manufacturing establishments in regard to 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. In order to guarantee traceability of raw materials registration is required for tanneries and collection centers, which would imply listing for imports from third countries. The United States believes some provisions of the Directive are overly restrictive, and will unnecessarily hinder trade without improving public health protection. In addition, the Directive does not adequately distinguish among raw materials which present different risk potential.

EU Approval of Third Country Establishments Exporting Animal Products

The implementation of a 1992 EU Directive, requiring that practically all animal products imported in the EU have to be sourced from third country establishments approved by the European Commission, has effectively resulted in trade losses for U.S. companies. The approval process entails that competent third country authorities compile for each product category a list of establishments and guarantee that these establishments meet EU animal and public health requirements. This list is submitted to the Commission services for approval. All amendments to the existing list, including additions, deletions, and name changes also have to be submitted to the Commission. The Commission, however, has not devoted the necessary resources to process submitted lists in a timely manner. As a result, companies with export opportunities have had to wait for months before being added to an approved list and have thus been cut off from the European market. This problem has been especially acute in the dairy sector, but additional problems are now arising as the Directive has been further implemented to cover important U.S. export products such as animal casings and pet food. A commitment to expedite changes to the list was made by the EU under the Veterinary Equivalency Agreement.

Veterinary Equivalency

The United States and the European Commission signed the Veterinary Equivalency Agreement in July 1999 after over four 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. The first meeting of the Joint Management Committee established under the agreement will be held in Summer 2000 to discuss ways of implementing the agreement's provisions. 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.

Waste Management

European Commission officials are working on draft proposals for a Directive on waste from electrical and electronic equipment (WEEE) and a Directive on batteries. The United States supports the drafts' objectives to reduce waste and the environmental impact of discarded products. The Administration has expressed concerns, however, about the adverse impact on trade from the current proposals' ban on certain materials used in products for which viable substitutes may not exist; and with the provisions regarding producers' retroactive responsibility for collection and recycling of end-of-life products. For batteries, the U.S. Government has urged the Commission to seriously consider the industry's draft voluntary agreement for increased collection and recycling of nickel-cadmium batteries, which the Commission's draft proposes to ban due to the cadmium content. The draft Directives could be voted on by the Commission in early 2000. If adopted, the proposals would then move to the Council and European Parliament for comment and approval. U.S. and Commission waste experts have begun an informal dialogue to discuss these and other waste issues. The U.S. Government will continue to monitor closely these proposals.

Belgium: In June 1999, the Belgian Government submitted to the European Commission a plan to implement the EU's 1991 Battery Directive. The Belgian plan includes a ban on 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 in September 2000 of a risk assessment study on the production, uses and recycling of nickel-cadmium batteries.

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 other 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.

Metric Labeling

The 1980 Directive adopted to harmonize systems of measurement throughout the European Union according to the international metric system will mandate metric-only labeling on most products entering the EU. An exception is made in a few specific areas such as air and sea transport in all Member States, distances and draught beer in the United Kingdom and Ireland. Exporters, both European and American, have publicly voiced their objections, citing the costs of complying with conflicting EU metric-only and U.S. mandatory dual labeling requirements. In February 1999, the European Commission proposed to amend the Directive by postponing its implementation date by 10 years, thus extending until 2009 the transitional period during which labeling of measurement in Europe can be indicated in both metric and American units. This amendment was approved by both the EU Council of Ministers and the European Parliament at the end of December 1999.

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.

Hushkit 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 Member States developed an alternative proposal. The current proposal 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. The proposed 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. The Regulation would restrict the operation of aircraft that have been modified with hushkits, no matter how quiet, or refitted with new engines that do not have a 3:0 or greater "bypass ratio". Bypass ratio is not a reliable indicator of aircraft noise, but this distinction would still permit the operation of EU-produced engines, which compete with those restricted by the Regulation, that have a "bypass ratio" of 3.1:1.

The United States has repeatedly urged the European Commission to revoke or indefinitely suspend the hushkits regulation 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).

Acceleration of the Phase-outs of HCFCs

The European Commission adopted 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 the export to the EU of U.S. refrigeration equipment 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 later in 2000, after the Council and Parliament reconcile differences over other parts of the Regulation in what is termed a "conciliation procedure."

The proposal, however, continues to unfairly disadvantage the air conditioning industry, which must phase out its use of HCFCs by 2001, while similarly manufactured heat pump systems enjoy a 2004 deadline. The 2001 date was in the

original Commission draft and was accepted by the Council in its Common Position. Parliamentarians could not be convinced to adjust the date to 2004, and confirmed the 2001 date in late 1999. Since both the Council and Parliament agree on the 2001 date, it will not be an issue within the conciliation procedure. The U.S. Government will monitor this proposal as it proceeds through the final stages of the legislative process.

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 unilateral bans' possible inconsistency with EU internal market provisions.

Low Frequency Emissions

The EU is developing a revised Electromagnetic Compatibility (EMC) Directive which, among other elements, would impose unnecessarily restrictive limits on low frequency emissions (LFE) from electrical and electronic equipment effective January 1, 2001. LFE, also known as power harmonics, are signals that are fed back into electric lines from electronically controlled equipment, and which degrade or distort the capability of electricity lines. Implementation of the EU's proposed limits could require U.S. companies to redesign products for the EU market at a cost of billions of dollars. U.S. industry asserts that there is no scientific justification for the European standards limiting LFE, and that alternative approaches for mitigating the effects of LFE on power networks with a lower overall cost to society should be examined first. The United States has requested that the EU suspend the LFE requirements in the EMC directive until appropriate scientific studies are conducted and work on an acceptable international standard is completed.

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.

Member State Practices

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

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 (ISO). The U.S. Government has requested that Finland suspend enforcement of its national standards for navigation lights until a long-term solution based on an international harmonized standard has been reached. In February 2000, Finland announced it would suspend its navigational lights regulation for U.S. recreational craft bearing the CE-mark.

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.

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 1990, in an effort to open government procurement markets within the EU, the EU adopted a Utilities Directive covering purchases in the water, transportation, energy, and telecommunications sectors. The Directive, which went into effect in January 1993, requires open, objective bidding procedures (a benefit for U.S. firms) but discriminates against non-EU bids absent an international or bilateral agreement. The Directive's discriminatory provisions were waived for the heavy electrical sector in a Memorandum of Understanding (MOU) between the United States and the EU, signed in May 1993 (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 all goods procurement by all EU subcentral governments, as well as to selected procurement by 37 U.S. states and seven U.S. cities. Much of the 1994 agreement is implemented through the WTO Government Procurement Agreement, which took effect on January 1, 1996.

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: While the Austrian Government adheres to the WTO Government Procurement Agreement and does not have "buy national" laws, some major contracts are negotiated by invitation, and limited tenders and offset agreements are common in defense contracts. However, some U.S. firms have experienced a strong pro-EU bias in awarding government tenders.

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

broader U.S. concerns with the EU eco-labeling scheme.

Germany: In April 1996, the United States Trade Representative identified Germany under Title VII of the Omnibus Trade and Competitiveness Act of 1988 for discrimination in the heavy electrical sector. USTR suspended the imposition of the sanctions available under Title VII on October 1, 1996, following a decision by the German cabinet to address U.S. concerns and reform German procurement regulations by providing for court-based review of bid challenges, in line with EU requirements. In May 1998, the German Government passed a law incorporating the new procurement Regulations, which combine administrative and judicial review, into existing German competition law. The law was approved by parliament and became effective on January 1, 1999. The first substantive test of the reformed law in a German court in August 1999 involved a challenge to the bidding process for a major airport project. In a landmark decision, the court not only rescinded the bidding process, but also questioned practices that could lead to a conflict of interest. The court ruling unleashed a wave of resignations by politicians from public enterprises involved in tender processes and has dramatically increased public awareness of the issue.

Greece: Greek laws and Regulations concerning government procurement nominally guarantee non-discriminatory treatment of foreign suppliers. Officially, Greece also adheres to EU procurement policy, and Greece is a member of WTO Government Procurement Agreement. Nevertheless, many of the following problems still exist: occasional sole-sourcing (justified as extensions of previous contracts), loosely written specifications which are subject to varying interpretations, and preferences for technologies offered by longtime, traditional suppliers. It is also a widely held belief that firms from other EU Member States have an automatic advantage over non-EU contenders in winning Greek Government tenders. It has been noted that U.S. companies submitting joint proposals with European companies are more likely to succeed in winning a contract. Greece continues to insist on offset agreements as a condition for purchase of defense items.

In December 1996, the Greek parliament passed legislation 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 durations, with an option of extending for another three years, thus excluding U.S. suppliers from vital sectors of government procurement for several years. The European Commission has been examining the expedited procedures by which these contracts were approved.

Italy: Italy's fragmented, often non-transparent government procurement practices and previous problems with corruption have created obstacles to U.S. firms' participation in Italian government procurement. Italy has made some progress in making its procurement laws and regulations more transparent, and has updated its government procurement code to implement EU Directives. The pressure to reduce government expenditures while increasing efficiency is resulting in increased use of competitive procurement procedures and somewhat greater emphasis on best value rather than automatic reliance on traditional suppliers.

EXPORT SUBSIDIES

Government Support for Airbus

Airbus Industrie is a consortium of four European companies that collectively produce Airbus aircraft. The members of the Airbus

consortium are 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 are merging their operations to form the European Aeronautic, Defense and Space Company (EADS), which will be the third-largest aerospace company in the world. After the merger, EADS will account for 80 percent of Airbus, and BAe Systems will account for the remaining 20 percent.

Since the inception of Airbus in 1967, the Airbus member governments have provided massive 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, according to Airbus' CEO, "a 55 percent market share in 1999, after almost 50 percent in 1998." He also stated that Airbus "is now established on a par with its competitor." The Airbus partner governments have borne 75 to 100 percent 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. 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. The British government recently announced a commitment of £530 million to underwrite BAe System's participation in the development of a new Airbus project, the A3XX "superjumbo" aircraft. The French, German and Spanish governments are considering whether to extend A3XX funding to their producers as well. 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.

Finally, the EADS partners and BAe Systems are negotiating to pool their Airbus interests to create a unified Airbus company. The United States would be extremely concerned if the transaction were structured to forgive a portion of the indebtedness already incurred by the consortium members, and will monitor this process closely.

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 Industry. According to available information, the subsidy is provided in a foreign exchange rate guarantee program under which payments are made to a consortium of Belgian companies, Belairbus, which is an "associate member" of Airbus. The Government of Belgium and Belgian regional authorities provide payments to the Belairbus companies to cover the difference between actual (i.e., marketplace) foreign exchange rates and a guaranteed rate. The specific level at which the guaranteed exchange rate was established has varied by Airbus aircraft programs as well as by the number of aircraft in each program.

The Belgian program appears similar to a foreign exchange rate guarantee program provided by the German Government for its Airbus partner company and its suppliers. Following a GATT subsidies code complaint by the United States, the German program was found to be a prohibited exports subsidy by a subsidies code panel. The EU blocked the report, but the program was subsequently dismantled. Although the Belgians claim that their program is being phased out, the United States has not obtained any evidence that this is effectively the case.

The United States has undertaken consultations with the EU in the context of the bilateral aircraft agreement on the Belgian dual exchange rate program. The United States has also posed questions to the EU under provisions of the WTO Agreement on Subsidies and

Countervailing Measures which permit member countries to seek and obtain information on the nature of a practice maintained by another member and to clarify why it may not have been notified to the WTO as a subsidy. The United States has also raised questions about this program in the context of the Agreement on Trade in Civil Aircraft. The EU failed to answer adequately the U.S. questions, and further steps to resolve our concerns about this practice are under consideration.

Government Shipbuilding Industry Support

Member States of the EU 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 yards.

In June 1989, the Shipbuilders Council of America (SCA) filed a Section 301 petition, seeking elimination of subsidies and trade distorting measures for the commercial shipbuilding and 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. Although the United States has not yet ratified the agreement, the Administration supports and continues to push for ratification.

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), will 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), is an attempt by the Commission to subject shipbuilding to the same state aid rules faced by other sectors. The Regulation aims to uphold the integrity of the common market by establishing a level shipbuilding playing field within the EU.

Member State Tax Practices

In November 1997, the EU initiated WTO dispute settlement proceedings against the "Foreign Sales Corporation" (FSC) provisions of the U.S. Internal Revenue Code, alleging that these provisions constitute a prohibited subsidy inconsistent with U.S. obligations under the WTO Subsidies and Agriculture Agreements. In October 1999, a WTO panel found the FSC to be a prohibited export subsidy, a ruling which was upheld by the WTO Appellate Body in February of this year. The FSC was enacted in 1984 to conform U.S. tax law to an Understanding which had been agreed by the GATT Council in 1981. That Understanding set forth certain principles to reconcile both U.S. and European tax systems with international trade rules that had characterized each system as having features giving rise to illegal export subsidies. The EU's complaint against the FSC, and the subsequent dispute settlement ruling that effectively nullifies the 1981 Understanding,

suggest that European tax practices merit fresh examination in order to reassess their consistency with multilateral obligations.

In May 1998, the United States instituted its own WTO dispute settlement consultations against six separate tax measures maintained by five EU member states which we believed were inconsistent with WTO subsidy rules. The tax practices included in the U.S. dispute settlement consultation requests are as follows:

France:

Deduction for start-up expenses: As an exception to the general territoriality principle of French income tax law, a French company may deduct, temporarily, certain start-up expenses of its foreign operations through a tax-deductible reserve account. One of the conditions for obtaining this special deduction is that the foreign branch or subsidiary derive more than 50 percent of its turnover from the sale of products manufactured by the French parent or a corporate group of which the parent is a member.

Reserve for medium-term credit risk: A French company may establish a special reserve equal to 10 percent of its receivable position at year end for medium-term export credit risks.

Netherlands:

A provision of Dutch tax law establishes a special "export reserve," apparently designed for small- and medium-sized businesses. An eligible firm may obtain a reserve of five percent of export turnover up to fl 100,000 and two percent of export turnover between fl 100,000 and 200,000. The reserve can be formed irrespective of the country to which merchandise is exported, and may be formed as soon as goods are delivered on account to foreign customers.

Greece:

Greek exporters of any product are entitled to an annual tax deduction at the following rates: two percent on export sales up to Drs 750 million; one percent on export sales between Drs 750 million and 3 billion; and 0.5 percent on export sales above Drs 3 billion.

Ireland:

Section 39 of the Finance Act 1980, which was specifically approved by the EC, provides special tax relief for "special trading houses," which are companies that act as an access mechanism for Irish-manufactured products in foreign markets. The trading house assumes all international marketing responsibility for product manufacturers, and qualifies for a 10 percent corporate tax rate in respect of its trading income from the export sale of goods. The standard rate of corporation tax is 36 percent.

Belgium:

Belgian corporate taxpayers receive a special tax exemption for recruiting personnel with export-related functions.

Spain:

In 1996, certain U.S. specialty steel companies requested that the United States seek WTO dispute settlement consultations with the EU with respect to a provision of Spanish tax law which permits deductions from corporate income tax for 25 percent of the value of foreign investments that are "directly related to exporting goods and services." The companies alleged that the Spanish specialty steel producer, Acerinox, has benefitted from these tax concessions in exporting semi-finished stainless steel feedstock to its subsidiaries in the United States and elsewhere.

The United States had previously posed questions about this program, and expressed concerns to EU officials about its compatibility with WTO subsidy rules, including the prohibition of export subsidies for non-agricultural goods. In July 1997, the competition authorities of the European Commission announced the initiation of a formal investigation to determine the

compatibility of the tax provision with the EU's state aids rules in force for coal and steel products. In a communication published on October 31, 1997 in the Official Journal of the European Communities, the competition authorities issued a preliminary finding that the tax scheme appears to qualify as state aid that is inconsistent with the applicable state aids rules. In response to subsequent U.S. inquiries, the Commission has explained that the internal state aid investigation "has been a particularly complicated case because of the number of interested parties involved, and because of the need to analyze the [Spanish] . . . tax exemption in the context of similar aid schemes linked to foreign investment granted by other Member States of the Community."

Although we recognize that the use of this Spanish tax provision may have contributed to the expansion of Acerinox's facility in Kentucky, and brought about economic development benefits for that region, the Administration remains interested in the ultimate disposition of these practices in the EU. We recently have renewed our inquiries about the status of the European Commission's investigation, and will continue to closely monitor developments.

No conclusions have been reached as to whether to seek the establishment of dispute settlement panels to review each of the above measures. In some cases, the Member State in question has expressed an intention to eliminate or modify the practices, or the measure may only be of temporary duration. For example, following the U.S. action, the Irish government announced in June 1998 its intention to seek parliamentary approval for the termination of the special trading house scheme "at the earliest opportunity." As of January 2000, however, the Irish Government has still not introduced legislation to remove the provision, citing other priorities and a lack of administrative resources. While the scheme is due to expire in any case on December 31, 2000, Irish Government officials have told the United States they still intend to "actively" withdraw the provision, probably during the first half of 2000. We intend to renew our consideration of these practices to determine whether further action is warranted.

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 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, 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 design 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.

Industrial Designs

In June 1999, the European Commission put forward an amended proposal for a Council Regulation on the European Community Design. Under the proposed Regulation, once a design had been registered with the Office for Harmonization (which already handles applications for the registration of the Community Trademarks), it would qualify for

protection in all fifteen EU Member States. National registration of designs, under rules harmonized by Directive 98/71/EC (Directive on Design Protection), will co-exist with the Community Design.

The proposed Regulation on the European Community Design would:

- define what constitutes a design;
- establish criteria for protection (a design would have to be new and have an individual character);
- fix the duration of protection (5 to 25 years);
- fix the scope of protection (the designer would have the exclusive right to use the design and prevent any third party from using it);
- establish the limits to the design right (e.g., it would not normally cover interconnection between components); and
- establish rules on the nullity of the registration of a design.

A provision in Directive 98/71/EC known as the "repair clause" has been hotly debated since the Directive's appearance due to diverging Member State and industry views over design protection of spare auto parts. U.S. firms also have expressed different opinions on the issue, with U.S. auto manufacturers favoring strong protection for spare car body parts, and insurance companies and spare parts manufacturers preferring more flexibility in the Directive. In the end, the EU decided to remove protection for spare parts from the Directive pending further study, but to leave open the possibility of replacing it in a future amendment. The proposed Regulation on the European Community Design also excludes the registration and protection of designs of spare components of complex products, such as visible car spare parts.

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.

Trademark Exhaustion: The Trademark exhaustion principle limits a trademark owner's ability to resort to remedies against importers/distributors of trademarked goods outside channels authorized by the trademark owner. The current EU regime supports the principle of "Community exhaustion," which allows resale of trademarked goods within the fifteen Member States once the trademark owner licenses their sale in any EU country.

In 1998 a European Court of Justice ruling (in *Silhouette v. Hartlauer*) upheld the legality of Community trademark exhaustion within the EU. The European Commission has defended the principle by maintaining that Community exhaustion heightens competition within the internal market. However, Member State opinion remains divided and at the insistence of the U.K. and Sweden, the Commission began a study into the economic impact of Community exhaustion in the Member States. European discount chains prefer, and have actively lobbied for, a system of "international exhaustion," which limits the trademark owner's right to control distribution of goods once he/she licenses them for sale anywhere in the world. The Commission's study indicated mixed results of changing to international exhaustion, with minimal impact for certain sectors (alcoholic drinks, confectionary), whereas impact may be significant for others (consumer electronics, footwear and domestic appliances). The Commission held hearings on the study in April 1999 with Member States and interested parties airing mixed views. The Commission plans to continue to consult with Member States and other parties before deciding how to proceed.

Madrid Protocol: The World Intellectual Property Organization's (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. The European Community has not joined the Madrid Protocol although Member States have. The United States has not acceded because it objects to voting provisions in the protocol that would allow the EU a vote upon accession in addition to the votes of its Member States. Given the use of consensus decision-making procedures in WIPO and in the precursor Madrid Agreement, the United States has proposed an informal "gentlemen's agreement" that would establish voting procedures to address U.S. concerns about the EU vote in the Madrid Protocol. The United States and EU have found a workable compromise which should pave the way for U.S. accession to the Madrid Protocol.

Utility Models: In 1997 the European Commission proposed a Directive on utility models to harmonize a level of protection in the Member States for industrial applications lower than that granted for patents. Under the Directive, protection would apply to "any inventions susceptible to industrial application, which are new and involve an inventive step" for a maximum of 10 years. Utility model protection may also provide temporary protection pending granting of a patent. Business groups have criticized the Directive as being unclear and ambiguous, noting that implementation may do more harm than good by introducing additional business costs. It is unlikely the Directive will reach adoption in the near term. However, both European and U.S. industries are united in disagreeing with the Commission that harmonization of this type is needed in Europe. The European Commission presented an amended proposal in June 1999, incorporating many of the European Parliament's March 1999 proposed amendments including a clearer definition of inventive activity distinguishing the utility model from the patent.

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 legitimate geographical indicators. In practice, the Regulation could bring registered trademarks in conflict with registered geographical indicators. In addition, third country applicants 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.

Spain: After a protracted battle in the courts, a major U.S. manufacturer of sporting goods lost the right to use its trademark name in the Spanish market as a result of a Supreme Court decision handed down in September 1999, which reversed Lower Court decisions that had upheld that right against infringement by a competitor. The company has filed an appeal with the Constitutional Court, but the Court has not yet decided whether to hear the case. However, if it does, it would have to find constitutional grounds for doing so, since it is barred from reviewing the merits of the case.

Patents

Patent filing and maintenance fees in the EU and its Member States are extraordinarily expensive relative to other countries. Fees associated with the filing, issuance and maintenance of a patent over its life far exceed those in the United States. 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: The European Commission consultation process on a European Community Patent (one that would harmonize patent issuance in EU Member States) has yielded a number of conclusions in a June 1997 Commission Green Paper. The paper acknowledges a consensus on the need for a harmonized patent system among EU Member States, and proposes that such a system supplement – not replace – patents issued by the European Patent Office (EPO) in Munich (with a wider membership than the fifteen Member States) and national patent offices. In addition,

the Commission believes the cost of an EC patent shouldn't be more than a U.S. or Japanese patent and that EU law on patentability of computer programs and software related inventions must be brought into line with the United States and Japan.

A series of concrete measures to improve the framework for obtaining patent protection in the EU are outlined in a policy Communication adopted by the European Commission in February 1999. These measures include a proposal for a Regulation to establish a unitary EU patent valid throughout the EU, a proposal for a Directive on patent protection of inventions related to computer programs, an interpretative Communication on freedom of establishment and freedom to provide services for patent agents, and a pilot action to support efforts by national patent offices to promote innovation. The Communication reflects the results of consultations with the European Parliament and a range of interested parties on the basis of the 1997 Green Paper on patents.

Ireland: As part of promised comprehensive copyright legislation, the Irish Government is committed to addressing non-TRIPS conforming provisions of Irish patent law. Ireland's patent law, as it currently stands, fails to meet TRIPS obligations in at least two respects: (1) the compulsory licensing provisions of the 1992 patent law are inconsistent with the "working" requirement prohibition of TRIPS article 27.1 and the general compulsory licensing provisions of article 31; and (2) compulsory licensing conditions provided for in the 1964 patent law, which continues to apply in some applications processed after December 20, 1991, do not conform to the non-discrimination requirement of TRIPS article 27.1.

Patenting of Biotechnological Inventions

On June 16, 1998, after years of debate, the European Council adopted a Directive on legal protection of biotechnological inventions. The Directive harmonizes EU Member State rules on patent protection for biotechnological inventions. Member States must bring their national laws into compliance with the Directive by July 30, 2000. The Directive excludes plant and animal varieties from patentability and, although a positive development for U.S. firms, 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.

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. Although the Directive was proposed following a lengthy consultation process, its provisions are controversial, especially a mandatory exception for private copying and for temporary reproductions that are "integral" to a technological process and have no separate economic significance.

An amended proposal put forward by the Commission in May 1999 includes a majority but not all of the changes sought by the European Parliament. It would continue to require Member States to provide network operators with an exception from the reproduction right for certain technical acts of reproduction and recognize that Member States may provide rightholders with fair compensation for private copying by analog as well as digital means, in accordance with their legal traditions and practices. The Council is debating these issues and expects to deliver the directive to the European Parliament for second reading by mid-2000.

Copyright Protection for Databases: By January 1, 1998, Member States were required to transpose into national law the 1996 EU Directive on the legal protection of databases. A new "sui generis" right extends copyright protection for fifteen years to the contents of a

database, whether or not the material is otherwise eligible for copyright protection. However, this right is available to non-EU creators of databases only on the basis of reciprocity. The U.S. business community, while supportive of protection for databases as essential to a sound legal framework for Europe's information society, remains concerned about the impact the reciprocity provisions of the Directive will have on U.S. publishers of databases. Scientists worry that the Directive will make access to databases prohibitively expensive although the Directive permits Member States to allow exemptions for groups accessing data for research or education.

In July 1999, the European Commission decided to refer Greece, Ireland, Luxembourg and Portugal to the European Court of Justice for failure to implement the 1996 Directive on the legal protection of databases. It also decided to refer Ireland and Portugal to the Court for failure to adhere to international conventions concerning copyrights and related rights.

Member State Practices

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

Austria: Under Austrian copyright law, "tourist establishments" (hotels, inns, bed and breakfast establishments, etc.) may show cinematographic works or other audiovisual works, including videos, to their guests. While the license fee to the copyright owners is mandatory, Austrian law does not require prior authorization by the copyright holder. The United States questions the consistency of this provision with Austria's obligations under the Berne Convention and the TRIPS Agreement. Following bilateral U.S.-Austrian talks in 1997, the Austrian Arbitration Commission determined the rates to be paid for such public showings. Austria considers this step sufficient compensation for the interests of the copyright holders and in compliance with both the Berne Convention and the TRIPS Agreement. The United States expressed reservations to this position.

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

Belgium/France: Belgium and France collect levies on blank tapes and recording equipment to compensate right holders for the private, home copying of their works and to provide a source of funding for local productions. These levies are distributed by national collecting societies to the various categories of right holders according to statutory provisions. National treatment is apparently denied to some U.S. right holders, however, and the United States motion picture and recording industries have not been able to collect their rightful share of these proceeds.

Denmark: Denmark's intellectual property laws are generally adequate. However, certain problems exist. Denmark was named on the 1998 Special 301 "Watch List" because enforcement is made difficult by the fact that the Danish Government does not make available provisional relief on an *ex parte* basis to prevent ongoing infringement or preserve evidence in the context of civil litigation, in apparent violation of the TRIPS Agreement. The availability of such relief is particularly important to the United States software industry because of the ease with which the evidence of infringing use can be eliminated if the infringers are forewarned of the right holder's interest. In response, the Danish Government has set up a committee to find out which legislative changes are needed in Danish copyright laws and other related legislation to meet its TRIPS obligations.

U.S. authors do not receive royalties from Denmark for photocopying of their works used

in Danish schools and universities, because the Danish collecting agency, Copydan, will not accept the validity of "en bloc" powers of attorney issued by U.S. publisher and author organizations. Copydan maintains that it will pay only to a U.S. collecting agency built on a model similar to its own. This issue is being pursued at present on an informal basis with the Danish Government.

Finland: The United States has expressed concerns regarding Finland's ability to provide provisional relief in civil enforcement proceedings brought to redress IPR violations. Under TRIPS, each country's courts must have the authority to order a search of suspected copyright infringers' premises in order to determine whether infringement of IPR is taking place and to preserve evidence. Courts must be able to order such searches without notice to the suspected infringers (i.e., on an *ex parte* basis) whenever there is a risk of evidence being destroyed. Furthermore, searchers must be able to seize software licenses at the time of a raid. Finland is working to achieve compliance with its TRIPS obligations related to *ex parte* searches. Draft legislation to that effect is slated to be forwarded to the Finnish Parliament in March 2000.

Greece: Greece has been on the Special 301 "Priority Watch List" since 1994. Just prior to an out-of-cycle review in December 1996, the Greek government submitted an "action plan" laying out the steps it would take by April 1997 to reduce audio-visual piracy. While some of these steps were taken, the Greek Government lagged behind severely in licensing television stations in accordance with the provisions of the 1995 media law; the process, which only got underway after extremely long delays, is still ongoing. As a result of slow movement in many areas of concern to U.S. companies, the U.S. Government launched a WTO dispute settlement challenge under TRIPS in April 1998. Estimated levels of television piracy in Greece have fallen significantly since the initiation of these consultations, and the first criminal convictions for television piracy have also been issued in Greece during this time. Consultations under WTO auspices are continuing.

Two other significant IPR problems are the lack of effective protection of copyrighted software and the absence of protection of trademarked products in the apparel sector. Although Greek trademark legislation is fully harmonized with that of the EU, claims by U.S. companies of counterfeiting appear to be on the increase.

Ireland: Ireland is a member of the World Intellectual Property Organization and a party to the TRIPS Agreement. Following intensive negotiations with the U.S. Government in 1997, the Irish Government committed to enacting new copyright legislation by December 31, 1998, to bring Ireland's laws into line with its obligations under the TRIPS Agreement. Dublin also agreed to enact a new smaller "break-out" copyright bill in advance of comprehensive legislation, which would address the U.S. Government's most pressing concerns with regard to Irish copyright protection. This break-out bill was enacted in June 1998 and, among other provisions, strengthened the presumption of copyright ownership and increased penalties for copyright violation.

In late 1998, the Irish Government informed the United States that because of longer than anticipated delays in drafting the comprehensive legislation, as well as the time needed to consult with interested "stakeholders" such as the U.S.-based software and entertainment industries, it would not be able to introduce the legislation in the Irish parliament until spring 1999. The legislation was passed by the upper house of the Irish parliament in October 1999, but approval in the lower house, the Dail, is still pending as of January 2000. The Irish Government has informed the United States that it is confident the bill will be enacted in the Dail by March 2000. In light of the Irish commitment to introduce new copyright legislation, USTR has suspended WTO dispute settlement proceedings brought against Ireland in 1997. However, an Irish failure to introduce the legislation in accordance with its commitments may affect the U.S. Government's 2000 Special 301 review of

Ireland's intellectual property right protection regime.

Examples of TRIPS inconsistencies in current Irish law which the Government is committed to addressing in comprehensive reform legislation include absence of a rental right for sound recordings, absence of "anti-bootlegging" provisions, and low criminal penalties which fail to deter piracy, all of which have contributed to high levels of piracy in Ireland. (Industry sources estimate that up to 60-65 percent of PC software used in Ireland is pirated.)

Italy: In 1998, the U.S. Trade Representative placed Italy on the "Priority Watch List" under the Special 301 provision of the United States Trade Act of 1988, due to national TV broadcast quotas in excess of the EU norm, and to a lengthy delay in passage of national legislation to address ongoing serious deficiencies in protection of copyright for sound recordings, computer software and film videos. In October 1996, the Italian Government introduced anti-piracy legislation in Parliament that would impose administrative penalties and increase criminal sanctions. The bill is still awaiting final Parliamentary approval. The United States will continue to monitor developments in this area closely.

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

Spain: In 1999, Spain was placed on the Special 301 "Watch List" because of the continuing high level of business software piracy. The U.S. Trade Representative found that "illegal copying of business application software for the 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 slowly 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: A conflict continues to exist between the Swedish Constitution's guarantee of freedom of information and the rights of copyright holders of unpublished works. In December 1999 the Government presented a proposal designed to correct this situation to Sweden's parliament and the legislative process is now underway.

SERVICES BARRIERS

Data Privacy

The EU Data Protection Directive went into effect in October, 1998. However, nine EU Member States missed the deadline and by January 2000, five – France, Luxembourg, the Netherlands, Germany, and Ireland – had still not transposed the Directive into national law. The Commission has taken these Member States to the European Court of Justice. The 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 they are deemed by the EU to provide an adequate level of protection, or if the recipient can provide other forms of guarantee (e.g., a contract) that ensures adequate protection. U.S. firms are concerned about lack of clarity in the definition of adequate protection and the potential for cumbersome requirements to execute a data transfer.

The United States and the European Commission have been developing a "safe harbor" arrangement that would allow U.S.

organizations to comply with the European Directive and ensure that data flows are not interrupted. On March 14, 2000, the Department of Commerce and the EC announced that they had reached a tentative conclusion to the dialogue. The arrangement bridges the differences between the EU and U.S. approaches to privacy protection and ensures adequate privacy protection for EU citizens' personal information. Under the safe harbor arrangement, U.S. companies would be able to decide voluntarily to participate in the safe harbor and do so by self-certifying to the Department of Commerce. The United States will be consulting with other government agencies and the public, while the EC will seek approval from the EU member states and the EU Parliament.

Broadcast Directive and Motion Picture Quotas

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

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

Several countries have specific legislation that hinders the free flow of some 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.

Portugal: In July 1998, Portugal passed new television legislation containing language from the EU Broadcast Directive. The new legislation modifies and strengthens the existing quotas for Portuguese language, European, and independent productions. The new law, however, in accordance with the EU Broadcast Directive, also includes provisions for flexible application of the quotas. In practice, available Portuguese and European programming is insufficient for broadcasters' needs and, consequently, the quotas have not been strictly enforced by private broadcasters – even though a substantial increase can be progressively detected through the successive reports provided every two years by Portugal to the European Commission.

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. 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.

In January 1998, the regional government of Catalunya adopted a Law on Linguistic Policy, which calls for both dubbing and screen quotas in order to increase the number of films being shown in the Catalan language. Due to strong industry opposition and the start of negotiations with film distributors and exhibitors to resolve their differences, the Catalan government decided to suspend implementation of this law until July 2000. U.S. companies remain concerned about the precedent that would be set for linguistic minorities in other regions of Spain if the Catalan law goes into effect.

Computer Reservation Services

U.S. computer reservation systems (CRS) companies have faced problems in the EU market, since several Member State markets are dominated by a CRS owned by that State's flag air carrier. Past cases have eventually been resolved after U.S. Government intervention or recourse to national administrative and court systems.

Acting on a complaint filed in 1996, the U.S. Department of Justice asked the EU competition authority to investigate a range of anti-competitive practices by a European firm. This was the first case under the positive comity provision of the 1991 U.S.-EU Antitrust Cooperation Agreement. The EU investigation absolved two of the EU partner firms in 1999, but issued a statement of objections to a third. The U.S. firm and the EU firm are seeking a solution. In a separate proceeding, the European Commission imposed a fine against the European company for violations of the EU CRS Code of Conduct following a complaint from a U.S. firm. This was the only instance of an EU firm receiving a negative decision since the inception of the Code of Conduct.

Sweden: There is concern about how Swedish data protection regulations apply to American CRS operations in that country. One U.S.-owned CRS firm complains that Sweden is the only EU Member State in which it has not either already received or will soon receive data protection-related permits for its operations. The Swedish argument is based on the concern about levels of data privacy protection in the United States and on passenger notification issues. Resolution of the matter is being sought in the Swedish court system and under the U.S.-Swedish bilateral aviation agreement. A decision is not expected before mid-2000.

Airport Ground Handling

In October 1996, the EU issued a Directive to liberalize the market to provide ground-handling services at EU airports above a certain size by January 1, 1998. While generally welcoming this move, U.S. airline companies and ground-handling service providers remain concerned that airports can apply for exemptions to continue to have a monopoly service provider through January 1, 2002, and can also limit the number of firms which can provide certain services on the airport tarmac (ramp, fuel, baggage and mail/freight handling) either for themselves or for other carriers. To some extent, these potential barriers are offset by more liberal provisions in the bilateral air services agreements which the United States concluded with individual EU Member States.

Ireland: U.S. airlines serving Ireland may provide their own ground handling services, but are prohibited from providing similar services to other airlines, unless they have a legal presence within the EU. The bilateral U.S.-Ireland aviation agreement places some restrictions on aviation services 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, making service to Ireland unprofitable for some U.S. airlines. U.S. carriers complain that the "Shannon requirement" affects the profitability of their operations in Ireland, although this has not stopped U.S. carriers from introducing new service between Ireland and the United States in 1999. Recent statements from Irish Government ministers suggest that Government opposition to further liberalization of air services between Ireland and the United States may soften over the coming years.

Postal Services

U.S. express package service providers remain concerned that the prevalence of postal monopolies in many EU countries restricts their market access and subjects them to unequal competitive conditions. Proposals to liberalize postal services have made little headway in the face of entrenched Member State opposition.

Germany: 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 had to exercise particular care in its formal investigation of this case, pending since 1994, because of its political ramifications and the DP initial public offering planned for the second half of 2000. The U.S. firm fears that further delay in ruling on this case will only exacerbate the unfair competitive situation it alleges.

Exemptions from Most-Favored-Nation Treatment

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

Auditing Services

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.

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 the European telecommunications sector. Liberalization has been driven primarily by the desire to create a single European market in telecommunications and the globalization of the telecommunications sector. The negotiation of the WTO Basic Telecommunications Agreement provided additional impetus for liberalization and ensured the extension of benefits to third countries, including the United States. Under the WTO Agreement, eleven EU Member States made commitments to provide market access and national treatment for voice telephony services as of February 5, 1998, the date the agreement entered into force. Four Member States had later phase-in dates: Spain (December 1, 1998); Ireland and Portugal (January 1, 2000); and Greece (January 1, 2003). France, Italy and Spain retain some limits on foreign investment in the sector. 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 is currently engaged in an extensive review of EU legislation related to communications infrastructure and associated services and has invited public comment until mid-February 2000. In general, the review proposes streamlining and consolidating legislation while adapting it to changed circumstances such as convergence of technologies and growing competitiveness in the sector. Legislative proposals are expected in Spring 2000 but adoption and implementation will not likely occur for several years. In the interim, the Commission has proposed greater use of non-binding mechanisms to try to promote pro-competitive policies in Member States (e.g., leased line tariff recommendation, see below).

The European Commission monitors and reports regularly on implementation of the current regulatory framework by the Member States. Key areas include independence and effectiveness of National Regulatory Authorities (NRAs), interconnection and access for new entrants, and licensing.

The most recent report, the Fifth Implementation Report of November 1999, shows that with the exception of the Data Protection Directive (see discussion in separate section), the vast majority of Member States have substantially transposed most of the framework's provisions into national

law. However, effectiveness of application continues to vary considerably. As of November 1999, the Commission had 87 infringement proceedings underway to enforce Member State compliance with EU telecommunications legislation.

National Regulators

Per the Commission report, telecommunications regulatory bodies have been established in all Member States but in some cases – Belgium, Portugal, Sweden, and Luxembourg – independence of the regulator is potentially compromised by linkages between the oversight of the incumbent carrier and the regulator. While independence is important, other factors such as authority to reach binding decisions, speed of decision making, and human resources have a strong impact on effectiveness. For example, new entrants have suggested that the NRAs in Germany, U.K., Spain and Sweden have been unwilling to exert their full authority; in Belgium and Luxembourg they may simply lack the authority. The length of time required to reach decisions and cumbersome procedures are often pointed to as giving an advantage to the incumbent who can get a head start while the process plays out.

Interconnection

The Fifth Implementation Report states that the "reluctance, or lack of empowerment, of regulators to intervene in a forceful, timely and effective manner" is the most pressing problem facing new entrants seeking to conclude interconnection agreements with incumbent operators. EU legislation requires that operators with significant market power in a relevant market meet all reasonable requests for interconnection based on principles of cost-orientation, transparency, and non-discrimination. Sweden and the U.K. are the only two Member States where the process functions fully as envisioned. The situation in Denmark, Italy and Portugal, where assurance of fair terms by the NRA has been a problem, has improved during 1999; it remains problematic in Belgium and, to some extent, in Finland. Information about costs as well as technical information about the infrastructure is often difficult to obtain for new entrants. For example, the Commission notes that obtaining information about the availability of points of interconnection and infrastructure capacity has been difficult in Belgium, Germany, Greece, Ireland, the Netherlands, Austria and Finland. In addition, in several Member States (Germany, Spain, Belgium), requirements related to encouraging investment in infrastructure to avoid overloading may be disproportionate. Lack of transparency related to cost has been highlighted by U.S. businesses as a particular problem in Germany.

In an effort to address some of these issues in a timely manner, the Commission in November 1999 released a Recommendation (non-binding) on leased line tariffs. The document recommends price ceilings for short distance leased lines of 64 kilobit, 2 megabit and 34 megabit capacity circuits based on the prices in the three lowest cost Member States. The Recommendation also calls on Member States to implement complementary measures such as unbundling the local loop, encouraging rapid deployment of new broadband technologies, and allocating spectrum for wireless local loops.

Licensing

According to the Fifth Implementation Report, national licensing regimes vary considerably but the majority are transparent and non-discriminatory. Exceptions to this general judgement include Italy and France. In Italy, the process tends to be lengthy and confusing. In France, authority for licensing is split between the NRA and another ministry, also leading to delay and non-transparency. The 1999 Review recommends further streamlining and harmonization, including making greater use of general licenses (specific authorization reserved for assignment of radio spectrum and numbers) and restricting and harmonizing the range of conditions that can be attached to a license (in France, for example, a research and development condition is levied and cited by some as a barrier to entry).

In Germany, the cost of obtaining a license is several times higher than in any other European country and is cited by U.S. businesses as a barrier to entry. The issue is being litigated in the German courts but a recent ruling overturned a preliminary injunction against the charges. The case could take years to resolve definitively or might simply be dropped if the plaintiff decides the costs outweigh the chances of a favorable outcome. Both scenarios prolong the incumbent's advantage.

A more general licensing issue of considerable concern for the United States is market access for third generation wireless communications (3G). The Commission has mandated that Member States license 3G "pursuant to European standards for UMTS approved or developed by ETSI." European Commission officials have responded to U.S. Government expressions of concern with reassurances of openness to all 3G standards endorsed by the International Telecommunications Union (ITU) and an interpretation that the mandate means only that each Member State must grant one license to a Universal Mobile Telecommunications Services (UMTS) carrier so as to assure European roaming. However, no formal change has been made to the mandate and it is not assured that the European Telecommunications Standards Institute (ETSI) will indeed embrace all ITU-endorsed standards. Member States have, for the most part, not yet made 3G licensing decisions and the United States is concerned that there will be a strong bias in the rules toward a single European (UMTS) standard.

Specific Member State Practices

Belgium: The Belgian regulator, the Belgian Institute for Postal Services and Telecommunications (BIPT), is supervised by the Minister of Telecommunications, who is also responsible for the Belgian government's 51 percent shareholding in Belgacom, the former monopoly telecommunications supplier. The new Belgian government has announced its intention to further privatize Belgacom, which would remove the current conflict of interest over the fact that it is judge and party in national telecommunications disputes. Further privatization of the Belgian telecommunications sector would strengthen BIPT's ability to provide more pro-competitive regulation. Furthermore, since Belgium currently lacks a properly functioning competition council, newly established telecommunications companies find it difficult to prove before Belgian courts any "abuse of dominant market position" (which has to be determined by the competition council), for example in areas such as interconnection and cross subsidization of services by the incumbent. It remains to be seen how a newly legislated interconnect chamber will resolve disputes raised by new entrants with the incumbent.

Germany: The competitors to Deutsche Telekom (DT) operated in considerable contractual uncertainty throughout 1999, after DT canceled existing interconnection agreements in December 1998. On December 23, 1999, the German telecommunications regulatory agency (RegTP) finally approved new interconnection tariffs. These tariffs will remain valid until February 28, 2001. Competitors largely welcomed these rates, but noted that RegTP had still not ruled on a number of other important rate-related issues. In particular, DT has sought to impose numerous additional – and, in the new entrants' view, arbitrary and unsubstantiated – charges for carrying competitors' traffic.

Meanwhile, USTR continued its investigation, begun in early 1999, against the German Government under Section 1377 of the Omnibus Trade and Competitiveness Act, despite resolution of the specific case in question. Several new entrants reported that DT was not providing interconnection in a timely fashion, on terms, conditions and cost-oriented rates that are transparent and reasonable. U.S. carriers also charged that Germany's proposed fee structure for national licenses is exorbitant and far exceeds those in the United States and in similar EU markets. Two telecommunications associations filed formal complaints concerning these fees as part of USTR's annual review of telecommunications trade agreements under Section 1377. In one industry report on Foreign

Trade Barriers submitted to USTR, Germany was listed as a country that lacks full or satisfactory implementation of commitments under the WTO Basic Telecommunications Agreement.

Italy: In recent years, the Italian Government has undertaken a liberalization of the telecommunications sector, including privatization of the former parastatal monopoly Telecom Italia (formerly STET); creation of an independent communications authority; and allowing both fixed-line and mobile competitors to challenge the former monopoly (which Olivetti acquired in a hostile takeover in 1999). Since the EU's January 1, 1998 deadline for full liberalization of its telecommunications sector, Italy has issued more than 40 fixed-line licenses, including to new entrants with U.S. participation. Concerns remain regarding upcoming licensing and frequency allocation for "third generation" mobile carriers, and regulatory due process, transparency and even-handedness in general. However, the Italian market is much more open to services exports in this sector than it was prior to implementation of EU telecommunications legislation.

United Kingdom: The telecommunications regulator, OFTEL, in November 1999 granted British Telecom an exclusive right to supply DSL (digital subscriber line) services from March 1, 2000 to no later than July 1, 2001. BT agreed to begin technical work and industry consultations to prepare its network to accommodate competing DSL suppliers. DSL is a technology designed to provide access to the Internet and other broadband networks over local telephone networks, at much higher capacity and faster speed than currently available through modem, ISDN and other technologies suitable for residential and small business use. Covad, a competing supplier of DSL services in the United States and elsewhere, in January 2000 filed a formal complaint under Section 1377 of the 1988 Trade Act regarding the period of exclusivity granted to BT. Covad alleged the grant of exclusivity to be in violation of the U.K.'s commitments under the WTO Agreement on Basic Telecommunications.

Legal Services

Austria: To provide legal advice on foreign and international law, the establishment of a commercial presence is required as well as joining the Austrian Provincial Bar Association. Only an Austrian national can join the bar association.

Belgium: In order to be licensed to practice Belgian law, one must be a graduate of a Belgian university five year course of study. There is some provision for recognition of U.S. education which usually results in two or three years of part time study at a Belgian university to get the Belgian degree.

Denmark: Foreign lawyers in Denmark cannot offer advice to international clients on international issues without being a member of the local bar, face restrictions on whom the foreign lawyer or law firm may advise and also face restrictions on the use of the original business name from its 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 appointed as attorneys by Denmark 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 legal school graduate and a clerk in a law firm for three years.

Finland: Foreigners from non-EU countries cannot become members of the Finnish Bar Association and get 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, foreign lawyers and firms are not permitted to form partnerships with or hire French lawyers.

Germany: Foreign lawyers cannot automatically come to Germany to practice German law in Germany, though they can be accredited to practice the law of their country in Germany. In order to be admitted to the German Bar to practice German law, it is estimated that a minimum of three years of study and another three or four years of internship after law school would be necessary prior to taking the German Federal Bar examination.

Italy: There is a citizenship requirement for admission to the Italian bar. In addition, U.S. lawyers cannot offer advice on foreign and international law without being licensed in the practice of Italian law.

United Kingdom: To become a barrister, a litigator may be required to pass a one year diploma in law offered by certain polytechnics in London, complete a one year practical course at the Inns of Court School of Law in London after joining one of the four Inns of Court, and complete a one-year "pupilage" with a barrister in chambers. To become a solicitor, a New York lawyer, for example, may be required to pass a one-year diploma in law offered by certain polytechnics in London, complete a one-year course for the solicitors' final examination and pass the examination, and complete a two year "articled clerkship" with a solicitor or firm of solicitors.

Accounting Service

Austria: Citizenship is required to obtain a professional certification. Foreign accountants are not permitted to form a partnership with local firms. There are 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.

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. 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. In general, the EU supports the notion of national treatment for foreign investors, and 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.

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 thus 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, limits 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 their 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. As regards 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.

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.

ELECTRONIC COMMERCE

Electronic commerce (e-commerce) is not yet as widely used in Europe as in the United States but considerable growth is expected in the next few years as more Europeans are connected to the Internet (currently just 12 percent have Internet at their homes) and confidence in electronic commerce increases. European legislative and programmatic work intensified in this field in 1999.

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 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. This process will need to be monitored carefully to ensure that new barriers are not created.

The EU is also nearing agreement on a Directive addressing the legal aspects related to electronic commerce. This 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 proposed Directive would establish 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. It would not, however, supersede the Brussels or Rome Conventions (see below) and would leave scope, on a case by case basis, for national authorities to impose restriction on provision of electronic commerce from another member for certain specified purposes, including protection of public health and consumer protection.

The ongoing work on revisions of the Brussels (1968) and Rome (1980) Conventions covering jurisdiction and applicable law respectively has attracted considerable attention and controversy. Each contains a special regime for consumer contracts, which give the consumer recourse to his/her own courts and laws under certain conditions, one of which is that the seller has directed activities at the consumer. The proposed revision of the Brussels Convention makes clear that an electronic commerce website accessible to the consumer in his/her state would constitute a directed activity. This has attracted heavy criticism from the business community which claims such an approach unreasonably exposes all electronic commerce providers to litigation in all 15 Member States and will impede the development of electronic commerce growth in Europe. Consumer advocates argue in favor of the interpretation on the basis that the consumer is the weaker party and must, as a last resort, have access to his/her own courts.

Taxation of Electronic Commerce

In a June 1998 discussion paper and a June 1999 working paper, the European Commission outlined an approach to the taxation of electronic commerce. Its main principles include that no new taxes or additional taxes should be imposed on electronic commerce; rather existing taxes should be adapted and applied. In each European country, a domestic value added tax (VAT), which is a consumption tax and is distinct from an import duty, 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 provision of a services 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. Although the European Commission has not yet

released a formal proposal in this area, 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.

U.S. service suppliers have been concerned about changes to the EU 6th VAT Directive which provide for the levying of VAT on telecommunications and online services provided by offshore suppliers (i.e., companies not established or with their principal place of business elsewhere than in the EU). Suppliers of these services in the EU now are presumed to be established in at least one EU member state and are required to apply and collect the rate of VAT of that state on all services they supply to the EU. In its schedule of commitments in the General Agreement on Trade in Services (GATS), the EU has undertaken obligations to provide national treatment to value-added telecommunications services. This model could be adopted elsewhere.

OTHER BARRIERS

Canned Fruit

The U.S. cling peach industry alleges that EU programs give a competitive advantage to the EU canned fruit industry and have permitted EU canned peaches (primarily from Greece) to displace U.S. canned peaches in the United States and in third country markets. Damage to the interests of the U.S. canned peach industry caused by EU 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, USTR 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, there is significant fraud and abuse which undermines the discipline imposed by the Agreement.

In order 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 EC 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, USDA's Economic Research Service 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. The United States will continue to work closely with representatives from the canned fruit industry to develop a strategy for addressing the issue of trade-distorting domestic support in the EU fruit and vegetable regimes in the WTO agriculture negotiations.