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E.C. ISSUES UPDATED LIST OF U.S. TRADE BARRIERS

The European Community has issued a new report on U.S. trade practices that impede E.C. exports.

The report, while not exhaustive, identifies more than 30 measures that the Community considers trade obstacles, including tariffs, import quotas, customs barriers, public procurement policies, countervailing and antidumping duties procedures, export subsidies and tax barriers. "These measures mean a considerable loss for European businesses," said Willy De Clercq, E.C. Commissioner for External Relations.

The report updates a previous list issued by the Community in December 1985. Its presentation is similar to that of the Report on Foreign Trade Barriers issued in November 1986 by the Office of the U.S. Trade Representative.

The purpose of the report is to make it clear that trade practices which impede exports are not a problem faced only by U.S. exporters. Europeans face similar problems in the U.S. Unilateral action outside the international trading rules against "unfair trade practices abroad" could easily be mirrored by equivalent action against U.S. exports.

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The report notes that the United States is the Community's largest trading partner, with U.S.-E.C. trade amounting to almost $133 billion in 1986. Together the Community and the United States account for 36 percent of world trade, and 60 percent of the trade between industrialized countries. "Therefore, both parties have a joint interest and responsibility for monitoring and furthering the world's free trade system," Mr. De Clercq said.

"We are ready to work with the United States in eliminating trade barriers either through bilateral discussions or within the Uruguay Round of trade negotiations."

The E.C. report is attached.

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1987 REPORT ON U.S. TRADE BARRIERS

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INTRODUCTION

The European Community has drawn up a list of US practices which pose obstacles to EC trade. The Report updates a previous list issued by the EC in December 1985. Its presentation is similar to that of the Report on Foreign Trade Barriers issued in November 1986 by the office of the US Trade Representative. Some of the barriers mentioned are not necessarily inconsistent with US international obligations. The list is not exhaustive. It does not include barriers to trade in services (i.e. cargo preferences) nor all unjustified or discriminatory phytosanitary measures. On the other hand it includes barriers which are uniquely American: re-export controls, unilateral retaliation under Section 301 of the Trade and Tariff Act of 1974 and US implementation of the anti-dumping and countervailing statutes of the General Agreement on Tariffs and Trade.

The purpose of the report is to make clear that trade practices which impede exports are not a unique problem only faced by US exporters. Europeans face similar problems in the US. So unilateral action outside the international trading rules against "unfair trade practices abroad" could easily be mirrored by equivalent action against US exports.

Generally, it should be emphasized that negotiations within the framework of the Uruguay Round will aim at solving a substantive part of the barriers mentioned.

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The United States is the Community's largest trading partner. In 1986, EC/12-US trade totalled nearly $ 133 billion which equals nearly 20 % of EC trade world-wide. The US trade balance with the Community deteriorated considerably since 1984: 3 years total 1984-1986 - $ 54 billion, but in the 4-year period between 1980 to 1983 the EC/12 accumulated a trade balance deficit with the US totalling $ 63 billion.

Together the EC and the US combine 36 % of world trade, and 60 % of trade between Western industrialised countries. Both have therefore a major joint interest, and a common responsibility for monitoring and furthering the world free trade system. By the Punta del Este Declaration, both are committed to stand still and roll back in the field of trade barriers.

I. TARIFF AND OTHER IMPORT CHARGES

A. Tariff Barriers

1. Description

Numerous products of EC export interest are assessed with high US tariffs. Textiles, chemicals ceramics, porcelain, knives, cheese and certain shoes are all assessed with tariffs at 20% or more (49% in the case of some textiles). High tariffs reduce EC access possibilities for these products on the US market.

2. Estimated impact

Although it is difficult to measure the impact of these restrictions, tariff reductions on these products would significantly increase EC firms' competitiveness on the US market.

3. Actions Taken or to be Taken

Tariff reductions will be negotiated within the framework of the Uruguay Round.

Customs User Fees

1. Description

As a result of laws enacted in 1985 and 1986, the United States imposes customs user fees with respect to the arrival of merchandise, vessels, trucks, trains, private boats and planes, and passengers. The most significant of these fees is that applied by processing formal entries of all imported merchandise, except products of the least developed countries, eligible countries under the Caribbean Basin Economic Recovery Act, or United States insular provisions or merchandise entered under Schedule 8, Special Classifications, of the Tariff Schedules of the United States. The merchandise processing fee for December 1, 1986, through September 30, 1987 is 0.22 percent ad valorem. The fee for the following two fiscal years will be the lesser of (1) 0.17 percent ad valorem, or (2) an amount determined by the Secretary of the Treasury to be sufficient to provide revenue for covering the cost of Customs commercial operations. The budget proposal for fiscal Year 1988, however, requests extension of the fee beyond the expiry date originally envisaged.

The EC considers that these customs user fees which are calculated on an ad valorem basis are incompatible with the obligations of the United States pursuant to Articles II and VIII of GATT.

2. Estimated Impact

Based on the EC's 1985 exports to the United States, the merchandise processing fee will cost the EC approximately $175.5 million in 1987. The other customs user fees referred to above will cost the EC approximately $22.2 million in 1987.

3. Actions Taken or to be Taken

The Community joined GATT consultations under Article XXII requested by Canada and has held Article XXIII(1) consultations with the US which were unsuccessful. At the request of the EC, the GATT Council instituted a panel in March 1987.

C. Other User Fees

1. Description

In July 1986 customs regulations were amended to impose customs user fees for the arrival of passengers ($5 per arrival), and commercial vessels ($397 per arrival, with a maximum of $5,900 per year for the same vessel).

The United States enacted a law in October 1986 requiring the collection of a $5 immigration user fee for the inspection of passengers arriving in the United States aboard a commercial aircraft or vessel, effective December 1, 1986. The United States proposes to use the fee to fund the United States Immigration and Naturalization Service.

The United States also enacted a harbour maintenance fee in October 1986. The fee, which is to finance the cost of harbour dredging and channel maintenance, amounts to 0.04 percent of the value of commercial cargo travelling through United States ports.

These fees are additional burdens on EC travellers and exports.

2. Estimated Impact

The estimated annual cost of these fees to the EC is $14.2 million for the immigration user fee, $14.2 million for the customs fees and $14.3 million, for the harbour maintenance tax.

3. Actions Taken or to be Taken

The Commission joined other governments in a démarche to the US Authorities on 19 December 1986.

D. Superfund Taxes

1. Description

The United States enacted a law in 1986 to establish a "Superfund" to finance the clean up of toxic waste sites that imposes two discriminatory taxes on imports: (1) an 11.7 cents per barrel tax on imported petroleum products (compared with 8.2 cents per barrel on domestic products), and (2) a tax imposed only on imported chemical derivatives of the feedstocks subject to the Superfund tax equal to the tax that would have applied to the feedstocks if the derivatives had been produced in the United States (or 5 percent ad valorem if the importer does not provide sufficient information to determine the taxable feedstock components in a derivative).

These provisions are in conflict with Article III.2 of the GATT which prohibits parties from applying higher internal taxes to imported products than to like domestic products.

2. Estimated Impact

The estimated annual cost to the EC of the tax on imported petroleum products is $21.2 million. The cost of the tax on imported chemical derivatives may be as high as $18.6 million.

3. Actions Taken or to be Taken

The EC requested consultations under GATT Article XXII(1), which were unsuccessful. The GATT Council has instituted a Panel at the request of the EC and other Contracting Parties.

E. Tariff Reclassifications

1. Description

The United States periodically and unilaterally changes the tariff classification of imported products, often resulting in an increase in the duties payable on such items. For example, reclassification resulted in an increase in the tariff applicable to machine threshed tobacco. Similarly, beginning in April 1984, apparel with simulated features, e.g. false pockets and flaps, has been classified as ornamented apparel which is subject to higher tariffs than non-ornamented apparel. Similarly, the Community has had cause to complain about a whole series of reclassifications resulting in adverse economic consequences for Community exports for instance on caseine.

2. Estimated Impact

Although the total impact of such tariff reclassifications is difficult to quantify, the potential effect is significant.

3. Actions Taken or to be Taken

The EC is entitled to compensation under Article II.5 of the GATT when such unilateral tariff reclassification occurs for bound concessions, but the United States has not offered such compensation in the cases mentioned.

II. QUANTITATIVE RESTRICTIONS AND IMPORT SURVEILLANCE

A. Agricultural Import Quotas

1. Description

The United States maintains import quotas on a variety of agricultural products, including certain dairy products (including cheese), sugar and syrups, certain articles containing sugar, cotton of certain staple lengths, cotton waste and strip and peanuts. While these restrictions are covered by a GATT waiver, they do restrict certain EC exports to the US and have, particularly in the case of sugar, considerable negative effects on the world markets.
Section 22 of the US Agricultural Adjustment Act of 1933 requires import restrictions to be imposed when products are imported in such quantities and under such conditions as to render ineffective, or materially interfere with, any United States agricultural programme. Such restrictions are a breach of GATT Article II or XI. Therefore, the United States sought and was granted a waiver from its GATT obligations under such articles for Section 22 quotas in March 1955, subject to certain conditions. In the Community's view there is no justification for a continuation of the waiver (a waiver is usually of limited and fixed duration in GATT) which has existed for over 30 years.

2. Estimated Impact

EC exports are most heavily affected by United States quotas on dairy products, cheese and sugar-containing articles. Community 1985 exports of dairy products and cheese were ± $220 mill; sugar and sugar containing articles were ± $135 mill.

3. Actions Taken or to be Taken

During the Tokyo Round, United States Section 22 quotas on EC dairy products and cheese were the subject of negotiations. At that time, the EC reserved its GATT rights with respect to these quotas. The United States has said that, in principle, its GATT waiver for Section 22 restrictions can be the subject of negotiation in the framework of the Uruguay Round.

B. Import licensing for quota measures

1. Description

When the United States imposes unilateral quota restrictions on imports, the merchandise to be customs cleared must be accompanied by an invoice. However, such an invoice cannot be obtained until the goods are physically in the US customs territory. Thus importers and exporters are not assured at the time of the shipment that the goods will be allowed to enter the US. If the quota has been filled, the goods must be re-exported or stocked in a warehouse until a quota is available. The fact that one cannot apply for the invoices prior to the shipment creates a barrier to trade and is a violation of the GATT Agreement on Import Licensing Procedures (Art. 2 d of the Code).

2. Estimated Impact

It is difficult to quantify the impact of not licensing imports in cases where the United States imposes quantitative restrictions but it may cause considerable warehouse and transportation costs. The uncertainty created is clearly an obstacle to trade.

3. Actions Taken or to be Taken

The EC raised this issue with the United States as not being in conformity with the GATT Licensing Code with respect to speciality steel quotas. The GATT Licensing Committee agreed to address this issue within its work programme.

C. Machine tools

1. Description

Subsequent to the US machine tools industry's initiatives to obtain import relief under the national security provisions (Sect. 232 of the Trade Expansion Act of 1962) and the mounting pressures by Congress for action, the Administration concluded in December 1986 Voluntary Restraint Arrangements with Japan and Taiwan for their exports to the US between 1987 and 1991. The US request to Germany to equally agree to export restraint levels was rejected by the Federal Republic. As a consequence the US established in December 1986 maximum market share levels for certain types of machine tools imported from Germany. These levels will be monitored by the US and the US had threatened unilateral action in case they are exceeded. Other Member States are equally threatened by "remedial action" if they increase their market share in the US. The publication of specific import levels and the specific threats of restrictive measures are likely to have a negative impact on Community exports. They are neither in conformity with US national legislation nor in conformity with US obligations under Article XI of the GATT.

2. Estimated Impact

Cannot be assessed at this stage.

3. Actions Taken or to be Taken

The Community has, by Note Verbale of 22 December 1986 reserved its GATT rights and indicated that the Commission will propose remedial action to the Council, should restrictive measures be taken by the United States.

D. Beverages and Confectionery

1. Description

In May 1986 the US introduced quotas on imports from the Community of certain wines, beers, apple and pear juice, candy and chocolate in the content of the dispute over the enlargement of the Community.

2. Estimated Impact

The quotes were set at levels which have not proved restrictive, but importers have experienced delays in customs clearance. Uncertainty regarding access has proved to be an obstacle to trade.

3. Actions Taken or to be Taken

In response to these non restrictive quotas the EC introduced retrospective surveillance of certain imports from the US. If the quotes should become restrictive the EC will take equivalent action against imports from the US.

E. Firearms and munitions

1. Description

The United States prohibits imports of firearms and munitions, except when authorized by the Secretary of the Treasury in cases where the importer demonstrates that the imports are for specific uses, e.g. competitions, training, museum collections. Because sales by United States producers are not subject to similar requirements, United States practice discriminates against imports and is inconsistent with GATT Article III.

2. Estimated Impact

The value of the US market in this area is estimated at about $2 - 2.5 billion (1985).

3. Actions Taken or to be Taken

The EC has noted the United States prohibition on imported firearms and munitions as a prima facie breach of Article III in the GATT catalogue of non tariff barriers, which will be examined in the framework of the Uruguay Round.

III. CUSTOMS BARRIERS

A. Origin marking for pipes and tubes

1. Description

Section 304(c) of the Tariff Act of 1930, as amended in 1984, requires that the origin of imported steel pipes and fittings be marked on the article by die stamping, case-in-mold lettering, etching or engraving. Because such marking is impossible or renders the article useless or reduces its commercial utility in many cases, the requirement is contrary to GATT Articles VIII.1(c), IX.2 and 4, and the GATT Agreement on Technical Barriers to Trade. Because there is no similar requirement for domestic pipes and fittings, the requirement is also discriminatory and a breach of Article III.

2. Actions Taken or to be Taken

The EC held consultations with the United States under GATT Article XXII. Although Section 304(c) has not been repealed, administrative procedures have been adopted which render the impact negligible.

B. US origin rules for textiles

1. Description

In September 1984 the US strengthened the rules for the determination of the origin of textile products. Under the new rules, the Community is not treated as "one" for the purpose of the determination of the origin of textiles.

2. Actions Taken or to be Taken

The Commission has taken up the issue repeatedly with the US authorities; the US have so far declined to respond favourably.

IV. STANDARDS, TESTING, LABELLING AND CERTIFICATION

A. Telecommunications

1. Description

EC suppliers of switches and transmission equipment experience difficulties in selling into the United States market because of lengthy and costly approval procedures. A vendor trying to sell equipment to a Bell Operating Company ("BOC") must have its equipment evaluated and certified by Bellcore, the research and testing facility of the BOCs. Obtaining Bellcore evaluation certificate takes a minimum of 18 months but, can easily take up to 2 or 3 years, with costs that, according to the estimation of industry experts, can easily exceed US $ 10 mill. There is no guarantee that a sales contract will materialise at the end of the process.

In addition, due to the fact that the technical environment in the US differs heavily from most other countries, the costs for adapting European-based switching equipment to US specifications are in the average at least 6 times higher than the costs for the necessary adaptation work with regard to practically all other countries.

2. Estimated Impact

It is difficult to quantify the impact of the Bellcore approval process, but clearly few exporters can afford the risky costs for the evaluation process and adaptation work mentioned above.

3. Actions Taken or to be Taken

The Community has officially drawn the attention of US authorities to this aspect of telecommunications equipment approval.

The Community and the United States have instituted fact-finding discussions on telecommunications - these began with EC missions to the US in April and June 1986. A US team visited Brussels in February 1987.

A number of areas of cooperation have been agreed including standards and testing.

B. FAA requirement on spare parts for aircraft

1. Description

The Federal Aviation Administration ("FAA") has announced onerous new inspection requirements for imported spare parts for aircraft. The requirements are being applied without advance notice and retroactively to imports already entered into the United States.

2. Estimated Impact

Such inspection requirements are most likely to discourage potential US buyers from purchasing aircraft manufactured within the EC.

3. Actions Taken or to be Taken

The United States action is inconsistent with the GATT Agreements on Trade in Civil Aircraft and Technical Barriers to Trade. The EC has raised the issue in the Committee in Trade on Civil Aircraft and has joined other governments in a démarche to the US Authorities.

C. Parma Ham

1. Description

Imports into the US of Italian origin ham have been subject to a long standing prohibition. This import prohibition, ostensibly for reasons of health, is no longer justified following a positive outcome to the long and complex scientific testing procedures carried out both by the US Department of Agriculture (Plum Island laboratories) and by Italian authorities which concluded that the ham fully conforms to US health standards.

The research was concluded before the summer of 1985 to the full satisfaction of the competent US authorities. In spite of this, the US authorities have still not lifted the import prohibition. Despite the reviews, the matter has now been submitted for "peer" review by a group of scientists outside the US federal government, thus creating further delay and uncertainty.

2. Estimated impact

If the American market is opened, it is expected that important sales of this high quality product, which is already sold in numerous countries, will take place.

3. Actions taken or to be taken

The import restrictions are unjustified and contrary to GATT Articles XI and XIII and not justified by Art XX. The Commission has repeatedly drawn the attention of the US authorities to the illegal US behaviour in this respect.

V. PUBLIC PROCUREMENT

The United States Government practice of adopting Buy American policies in certain areas of government procurement has created permanent discrimination in favour of United States products. In addition, it has encouraged state and local entities to adopt similar policies.

The Department of Defense, at both its own initiative and Congressional directive, is prohibited from purchasing from foreign sources forging items, machine tools, coal and coke, hand and measuring tools, textile articles, stainless steel flatware and ship propulsion shafts. These measures are contrary to bilateral Memoranda of Understanding between the US and other NATO partners.

Article VIII.1 of the GATT Government Procurement Code allows parties to make exceptions to the general rules of the Code for goods considered indispensable for national security or defence. However, Article IX.5(a) provides that exceptions may be made only in exceptional circumstances and must be negotiated with the other parties.

At state and local levels, Buy American provisions are often used by transport and road construction authorities to limit foreign participation, even where federal funds are used. For example, the construction of mass transit systems with federal funds is subject to a Buy America preference of 10 percent on rolling stock and 25 percent on other supplies. Although the provision of Article I.2 of the Code requires parties to inform regional and local government of the objectives, principles and rules of the Code, this has not prevented discrimination against foreign sources by US state and local governments.

In the context of the renegotiation of the GATT Government Procurement Code the EC is seeking an extension of the Code coverage to the US states. The parties have agreed to negotiate extension of Code coverage to services, telecommunications and heavy electrical equipment.

The following items are examples of Buy American provisions enacted by the United States.

A. Buy American policy on machine tools

1. Description

The United States enacted a law in 1986 that requires machine tools used in any government-owned facility or property under the control of the Department of Defence to have been manufactured in the United States or Canada.

2. Estimated Impact

While the estimated impact is as yet unquantified for all Member States of the EC, one Member State expects to lose $30-40 million of business because of the machine tool procurement rule. Other Member States supplying machine tools are likely to be similarly impacted.

3. Actions Taken or to be Taken

Department of Defense purchases of machine tools are covered by the GATT Government Procurement Code. Exemptions may only be taken after notification and compensation procedures according to the Code. The EC has requested consultations under the Code.

B. Foreign built dredges and other vessels

1. Description

The Merchant Marine Act of 1920 requires that only United States-registered vessels may be used in United States territorial waters for activities other than transporting passengers or merchandise, e.g. dredging, towing and salvaging. Because only vessels constructed in the United States are eligible for United States registry for these purposes, there is a de facto prohibition against using imported work vessels.

United States law also requires that vessels registered in the United States for use in coastwise commerce, i.e. between United States ports, be constructed in the United States. Among other vessels, this requirement applies to air-cushioned vehicles travelling over water, e.g. hovercraft.

2. Estimated Impact

The value of the US market in this area is estimated at about $1.3 billion (1986).

3. Actions Taken or to be Taken

The EC and other contracting parties have noted United States treatment of these vessels as a prima facie breach of Article III in the GATT catalogue of non tariff barriers. The EC expects to raise this issue in the framework of the review of this catalogue in the Uruguay Round.

C. High voltage power equipment

1. Description

The United States enacted a law in 1986 giving US firms a 30 percent preference with respect to the procurement of high voltage power equipment by the Power Marketing Administration, the Tennessee Valley Authority and the Bonneville Power Administration.

2. Estimated Impact

It is difficult at this stage to estimate the impact. The EC continues its examination.

3. Actions Taken or to be Taken

Such procurement is not covered by the GATT Government Procurement Code. Negotiations on the extension of the Code coverage will take place in the Uruguay Round negotiations.

VI. EXPORT SUBSIDIES

A. Export Enhancement Programme (EEP)

1. Description

The Food Security Act, 1985 (the Farm Bill) requires the United States Departament of Agriculture (USDA) to use Commodity Credit Corporation stocks worth $1 billion over a 3 year period to subsidise exports of US farm products. USDA, however has the option to use up to $1.5 billion worth. The programme is now used for several commodities (wheat, wheat flour, barley, feed, poultry, dairy cattle) and for export to a number of countries, especially traditional EC markets in Africa and the Middle East. The United States added China (in 1987) to the list of countries to which EEP can apply. It is clear that use of the EEP will continue in 1987, with a consequent depressing effect on world markets.

2. Estimated Impact

As of mid-March 1987, about 9.7 million tons of wheat, 2 million tons of wheat flour, and 2.8 million tons of barley had been subsidized for export within the programme. In financial terms subsidies already granted are valued at approximately $620 million.

3. Actions Taken or to be Taken

The Community has already reacted where necessary to US EEP subsidies by increasing its export refunds, and will continue to do so. The Uruguay Round of trade negotiations will provide an opportunity to address this and other forms of US agricultural subsidies.

B. Targeted export assistance

1. Description

The Food Security Act of 1985 establishes a new programme, entitled Targeted Export Assistance. Under this programme, the Secretary of Agriculture must provide $110 million annually (or an equal value of Commodity Credit Corporation commodities) specifically to offset the adverse effect of subsidies, import quotas, or other unfair trade practices abroad.

For these purposes, the term "subsidy" includes an export subsidy; tax rebate on exports; financial assistance on preferential terms; financing for operating losses; assumption of costs or expenses of production, processing, or distribution; a differential export tax or duty exemption; a domestic consumption quota, or any other method of furnishing or ensuring the availability of raw materials at artificially low prices. The 1985 Act authorises priority assistance to producers of those agricultural commodities that have been found under Section 301 of the Trade Act of 1974 to suffer from unfair trade practices or that have suffered retaliatory actions related to such a finding.

2. Estimated Impact

This programme has already been used to provide subsidies valued at $50 million for promoting exports of high value products, e.g. wine, fruits, vegetables, dried fruits and citrus, mostly to Europe and the Far East.

3. Actions Taken or to be Taken

The Community has not yet taken any particular policy initiative in relation to this programme.

C. Corn gluten feed and other cereals substitutes

1. Description

Corn gluten feed and other cereal substitutes are by-products from the processing of corn into strach, corn sweeteners and ethanol. In the last two cases particularly they benefit from various subsidies and tax incentives, both directly and indirectly. For example, corn producers benefit from numerous internal agricultural support programmes (not least from the very high internal US sugar price) and from extremely restrictive import quotas - ase II, A 1. Similarly, the production of ethanol, a high grade alcohol used as an additive in gasoline, has greatly increased in recent years, largely as a result of federal and state tax incentives and an extraordinary tariff surcharge on imported ethanol.

2. Estimated Impact

Virtually all United States production of corn gluten feed is exported - nearly all of it to the EC. United States corn gluten feed exports have in the past displaced the use of EC produce as animal feedstuff, leaving a costly surplus.

The EC imported 3,344,823 tons of corn gluten feed worth $511,482 million from the US in 1985. These imports have contributged to livestock product surpluses and have displaced an amount of EC feed grains of roughly 3,000,000 tons.

3. Actions Taken or to be Taken

Canadian authorities recently imposed countervailing duties on the imports of subsidized corn from United States as they consider that these subsidies are countervailable subsidies and cause material injury to Canadian corn producers.

D. Foreign Sales Corporation

1. Description

The Domestic International Sales Corporation (DISC) legislation was a cause of EC/United States contention since its adoption by the United States in 1972. Under this legislation, US firms were allowed to defer payment of corporate taxation on export earnings. This amounted to a de facto export subsidy which the EC challenged as illegal under GATT, obtaining a panel ruling in 1976 which condemned the United States law.

It was not until the end of 1981 that the United States agreed to adopt the panel report and not until 1984 that the United States enacted legislation to replace the DISC system with the Foreign Sales Corporation (FSC). However, in doing so, the United States converted the tax deferment provided under DISC into definitive tax remission.

2. Estimated Impact

US exports have benefitted over the life of the DISC legislation by an overall illegal subsidy of between $10-12 billion during a period when about 20% of all US exports went to the EC. Indirectly this tax remission has also affected EC exports on third country markets. It will continue to bestow economic advantages on US exports for some time to come. An illustrative example is the tax report benefit of $397 million which Boeing realised under the DISC according to its annual report 1985, and the $422 million of additional benefits to General Motors during the second quarter of 1984, according to press reports.

3. Actions Taken or to be Taken

The EC together, with other contracting parties have engaged GATT Article XXII.1 consultations in March 1985 and reserved their rights, in particular concerning the tax remission.

E. Public R&D Funds

1. Description

The United States Government heavily funds research and development ("R&D") activities, particularly for defence activities. Total federal funds for R&D in FY 1986 were estimated to be $60 billion, of which $40 billion were defence-related. The FY 1986 commitment represented a 22 percent increase over FY 1985. The increase was mainly due to R&D activities related to advances in tactical aircraft systems as well as increased emphasis on the Strategic Defence Initiative.

2. Estimated Impact

US federal Government R&D expenditures are about one half of total R&D efforts expenditures in the United States, both public and private. Although it is difficult to quantify the full benefit to the United States economy, it amounts to approximately 1 percent of United States GNP.

One of the main beneficiaries of R&D funds for defence is the US aircraft industry: the Boeing 707 (of which 763 units have been sold) is the civil version of the KC 135 (820 units delivered) developed and constructed under military contracts; Boeing has also received contracts worth $2.9 billion to develop and produce avionics equipment for the B/1B bomber, which could easily be transferred to the B 747/400. Another example is the avionics equipment for the Boeing 757/767 which was developed with funds from NASA - 423 aircraft of these types have been sold so far. The Boeing 747 benefited from the experience gained by Boeing's C-5A design competition team, whose efforts were funded directly by the US Air Force. The result of this team's extensive windtunnel testing and structural analysis of large jet transport design concepts was the development of the 16-wheel high flotation main landing gear used today on the 747.

VII. INTELLECTUAL PROPERTY

A. Section 337 of the Trade Act of 1930

International Trade Commission procedures. The rapid and onerous character of procedures under Section 337 of the Tariff Act of 1930 puts a powerful weapon in the hands of US industry which European firms consider is being abused for protectionist ends. A complete investigation of the patent's validity, including US style discovery procedures, is carried out in a statutory period of one year which may be extended to 18 months. Costs easily exceed a million dollars. European exporters are said to withdraw from the US market rather than incur the heavy costs of a fight, particularly if their exports involved are on a limited scale being a new venture or from a smaller firm. In addition, certain features of the Section 337 procedure constitute discriminatory treatment of imported products, in particular, the limitations on the ability of defendants to counterclaim.

Furthermore, Section 337 applies "in addition to any other provisions of law"; suspension of a Section 337 investigation is not automatic when a parallel case is pending before a United States District Court.

A case has been filed under the EC commercial policy instrument (Regulation 2441/84) alleging that the procedures of Section 337 are inconsistent with the national treatment clause of GATT. The Commission found that the application of these procedures to the import of certain aramid fibers from the Community contains sufficient evidence of an illicit commercial practice on the part of the United States and a resultant threat of injury as defined by Regulation 2441/84 to warrant further action. In March 1987 the Commission decided to initiate the procedures for consultation and dispute settlement provided for in Article XXIII of GATT.

B. Other Intellectual Property Issues

1. Description

a) Patent Cooperation Treaty - US reserve on Article 11(3)

Under the Patent Cooperation Treaty's Article 11(3), a foreign application is treated as defining the state of the art as of the date of an international application. The US has made a reservation to this principle under Article 64(4) which enables a US inventor to rely on his inventive activity after that date to prevent the grant of a US patent to a foreign inventor in accordance with the Treaty's provisions. Only when the international application has been published is it treated as forming part of the state of the art.

b) Discriminatory features of patent interference procedures.

In objecting to the grant of a US patent, prior inventive activity on US territory can be used to defeat an application . But a foreign inventor cannot rely on even earlier inventive activity abroad to reply to someone objecting to his application on the basis of US inventive activity pre-dating that application.

c) Inadequate protection of appellations of origin and indications of source

The US regards these geographical denominations as far less worthy of protection than Community countries. This causes problems for a broad range of European products particularly wines (Burgundy, Champagne, Chablis) and food (cheese such as cheddar, gouda, cooked meats etc.)

d) Trade Marks

While criticizing the progress made by the Community in the intellectual property field and calling upon it to accelerate enactment of Community legislation to benefit US commercial interests in Europe the US has not supported existing international arrangements that would benefit European interests in the US, particularly in the trade mark field.

2. Estimated impact

It is difficult to assess the accuracy of data on the economic impact of these barriers but there is no doubt that it is substantial.

3. Actions taken or to be taken

Trade related aspects of Intellectual Property rights are included in the Uruguay Round negotiations.

VIII. UNITED STATES LEGISLATION AND PRACTICE ON COUNTERVAILING AND ANTI-DUMPING DUTIES

The EC has raised, on a number of occasions, aspects of United States countervailing duty ("CVD") legislation and practice which it considers incompatible with United States obligations under the GATT Code on Subsidies and Countervailing Duties. Thus, the EC has expressed its strong reservations with regard to United States legislation on "upstream subsidies" contained in Section 771A of the Trade Act of 1930, as amended in 1984, which, in effect, preempted discussions in the relevant experts group in the GATT. The EC also opposes United States practice of deviating from the Code's provisions with respect to the definition and calculation of a subsidy. The United States considers that a subsidy exists wherever an economic benefit is conferred on an industry regardless of whether there has been state intervention and a financial contribution by a government.

With regard to United States anti-dumping ("AD") legislation the EC objects, in particular, to the amendments to the AD law made by Section 602 of the Trade and Tariff Act of 1984 which permit the imposition of anti-dumping duties not only against imports, but also against sales or even likely sales i.e. before importation of the goods in question has even taken place. This extension of the scope of anti-dumping action violates Article VI.1 of the GATT which requires introduction "into the commerce of another country" for any determination of dumping. The same is true for the equivalent extension of CVD determinations where Article VI.3 of the GATT clearly states that a countervailing duty can only be imposed if a product is "imported into the territory of another Contracting Party."

Furthermore, the EC objects to the statutory minimum profit of 8 percent to be added in constructed value calculation under Section 773(e) of the Tariff Act of 1930. This requirement runs contrary to Article 2.4 of the GATT Anti-dumping Code which states that "as a general rule, the addition for profit shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin" (emphasis supplied).

The EC has repeatedly criticized the United States for imposing AD and CVD duties corresponding to the full dumping margin or amount of subsidisation established. Article 8.1 of the GATT AD Code and Article 4.1 of the GATT subsidies Code declare it desirable to impose a lesser duty, if such duty would be sufficient to remove injury to the domestic industry. The EC has followed this approach in Article 13(3) of Regulation No. 2176/84. The EC further objects to the low United States standard of verifying the standing of a petitioner for AD and CVD measures. Article 5.1 of the GATT AD Code and Article 2.1 of the GATT Subsidies Code require a written request by or on behalf of an industry affected. The United States authorities, however, do not check whether any application does in fact fulfill this condition but rely instead on petitioners' representations that the complaint has been filed on behalf of the domestic industry.

Finally, the EC is firmly opposed to some aspects of US provisions on the automatic assessment of anti-dumping and countervailing duties. The EC considers that it is contrary to the anti-dumping and countervailing duty codes to definitively collect duties at rates established in preliminary determinations in those cases where rates definitively established are lower than preliminary ones. The rules of the Codes on provisional measures are unequivocal in this respect. Duties can only be definitively collected on the basis of a final determination, taking into account the facts established in the course of a proper investigation and taking into account the submission of all parties concerned. They cannot be levied definitively on the basis of a preliminary finding which can be made on the basis of incomplete information and may not give respondents sufficient opportunity to fully present and defend their case. This is even more serious in the cases where the rate preliminarily established is subsequently found to be too high. The EC insists therefore that any final assessment of duties be based on the facts established at the end of an investigation or an administrative review and not on information used for the adoption of provisional measures.

IX. SECTION 301 OF THE TRADE ACT OF 1974

Section 301 may be invoked if a foreign country or instrumentality applies any act, policy or practice which is unjustifiable, unreasonable or discriminatory and burdens or restricts United States commerce. The notion "unreasonable" refers to an act, policy or practice which is not necessarily illegal but would deny fair and equitable market opportunities, opportunities for the establishment of an enterprise, or adequate and effective protection of intellectual property rights.

The application of Section 301 depends on the discretion of United States authorities and may deviate from GATT rules. The GATT provides for most-favoured-nation treatment concerning external trade and also provides rules for coping in a selective manner with unfair trade practices in the areas of dumping and subsidization. Furthermore, GATT Article XXIII addresses the situation where a Contracting Party considers that benefits are nullified or impaired by a trading partner. Unilateral United States action under Section 301 seeking to redress unfair trade practices of GATT contracting parties does not have to be in conformity with internationally accepted rules, nor does it have to be directed against the goods triggering the Section 301 procedure but may be directed against other products or services originating in the foreign country concerned.

Unilateral action of this kind is in clear violation of the GATT.

With regard to similar commercial practices, the EC adopted a regulation (2641/84) giving it the authority to challenge such practices of other trading partners but in strict conformity with EC international obligations, such as GATT. This implies that any compensatory action taken by the EC would be subject to the approval of the GATT Contracting Parties.

X. EXPORT CONTROLS/RESTRICTIONS ON TECHNOLOGY TRANSFER

1. Description

One of the main areas of extraterritorial application of US law is the area of export controls and restrictions of technology transfer.

The Export Administration Act of 1979 ("EAA"), as amended by the Export Administration Amendments Act of 1985, provides the legal basis for the United States Government to exercise export controls for national security and foreign policy reasons. While the notion of national security is defined in the EAA, foreign policy is not. Export controls based on foreign policy are therefore decided upon in a purely discretionary way by the United States Government.

Under the foreign policy concept of the EAA, the United States has claimed broad jurisdiction to exercise control over foreign subsidiaries and affiliates of United States domestic companies. Furthermore, a foreign consignee of US technology has to comply with United States law to avoid sanctions by the United States Government. Such United States export controls have in the past created major obstacles to EC re-exports of United States goods or to EC exports of goods containing United States components, and may create similar obstacles in the future.

US export controls carried out for national security reasons cover among others things duel-use technology and normally contain re-export restrictions for transfer even between EC Member States. Although the EC recognises the security interests of the US and generally shares them, extraterritorial application of US law within the jurisdiction of the EC is unacceptable and contrary to the principles of international law. It also goes beyond what is foreseen by the provisions of the security exceptions in Article XXI of GATT.

2. Estimated impact

Although it is difficult to give exact figures on trade losses incurred by the Community companies due to US reexport control measures, such losses are substantial notably on high-technology products.

3. Action taken or to be taken

The Community has protested to the US authorities in numerous diplomatic démarches on this extraterritorial application of US export controls.

XI. SEMICONDUCTORS AGREEMENT

Description

1. In July 1986, the US and Japanese Governments announced an agreement on semiconductors in settlement of US dumping cases and a section 301 action. Under this agreement the US appear to have secured Japanese assurances on prices in third country markets, including the European Community, as well as promises in respect of market access.

Estimated impact

2. The United States and Japan together account for the vast majority of world semiconductor production. This agreement could therefore be expected to have a very significant impact on those markets to which it is intended to apply and the United States has even threatened Japan with retaliatory action in order to secure its implementation.

Actions taken or to be taken

3. The agreement blatantly contradicts GATT provisions and the Community has initiated action in the GATT inter alia by requesting establishment of a panel.

XII. REPAIR SERVICING

A. Foreign repair of United States aircraft

1. Description

The Federal Aviation Administration ("FAA") has recently reinterpreted its rules regarding foreign repair stations to drastically reduce the scope of repair and maintenace work that such stations may perform on United States-registered aircraft and parts, without regard to the quality of the work performed. Scheduled maintenance and overhauls can no longer be performed abroad on United States aircraft used on international routes. The FAA action is contrary to the GATT Agreement on Trade in Civil Aircraft and the declared United States policy on trade in services.

2. Estimated Impact

While it is too early to quantify the impact of the FAA action, it is causing severe disruption to the long-established business of foreign repair stations in the EC.

3. Actions Taken or to be Taken

The Commission protested against this interpretation of the rules in the Aircraft Code Committee in October 1986 and has joined other governments in a démarche to the US Authorities on 19 December 1986.

B. Repairs of ships abroad

1. Description

The United States applies a 50 percent tariff on most repairs of US ships abroad, e.g. on equipment purchased and repairs made. The United States justifies this measure on the grounds of protecting an industry essential for defence purposes.

3. Actions Taken or to be Taken

The EC noted the United States practice in the GATT catalogue of non tariff barriers.

XIII. TAX BARRIERS

A. Tax treatment of small passenger aircraft

1. Description

While the Tax Reform Act of 1986 generally eliminated the investment tax credit and accelerated cost recovery system of depreciation, the Act included a transition rule allowing purchasers of small aircraft to use these tax benefits for a limited time if the aircraft are produced in Florida, Georgia, Kansas, or Texas. This provision favours United States manufacturers at the expense of foreign aircraft producers.

2. Estimated Impact

EC aircraft manufacturers loss is estimated at $50 million in outstanding orders for aircraft as a result of this discriminatory treatment.

3. Actions Taken or to be Taken

The EC has asked the US Administration to seek retroactive elimination of this provision and consultations with the United States under GATT Article XXII.1 were held on December 17, 1986. Further action in GATT is being considered by the EC.

B. State unitary income taxation

1. Description

Certain individual states assess state corporate income tax for foreign owned companies operating within these states' borders on the basis of an arbitrarily calculated proportion of the total worldwide turnover of the company. That proportion of total worldwide earnings is assessed in such a way that a company may have to pay tax on income arising outside the state, and giving rise to double taxation. Quite apart from the added fiscal burden, a unitary tax state is reaching beyond the borders of its own jurisdiction and taxing income earned outside that jurisdiction. This is in breach of the internationally accepted principle that foreign owned companies may be taxed only on the income arising in the jurisdiction of the host state -- "the water's edge" principle. A company may also face heavy compliance costs in furnishing details of its worldwide operations.

The State of California adopted a tax bill in September 1986 which provides for the "water's edge" alternative to the unitary taxation. The "water's edge" concept definition includes a foreign corporation only if more than 20% of its property, payroll and sales are in the US. An "election fee" of 0.03% of the foreign corporation's Californian property, payroll and sales has to be paid if the "water's edge" is elected instead of unitary taxation.

2. Estimated Impact

No assessment has been made of the effect of unitary tax on EC investment in the United States.

3. Actions Taken or to be Taken

After the adoption of the California tax bill the US federal government is apparently concentrating efforts to persuade the states (Alaska, Montana, North Dakota) which still apply unitary taxation to abandon it. For the time being, however, EC companies continue to be adversely affected.

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