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**E.C. HANDS TRADE-BARRIERS LIST TO U.S.**

Willy De Clercq, E.C. Commissioner for External Relations, said yesterday that he has given U.S. Trade Representative Clayton Yeutter a list of American trade practices that impede European Community exports.

Mr. De Clercq gave the list to Mr. Yeutter on Dec. 14 in Brussels, following the fifth annual E.C.-U.S. high-level talks. It covers tariffs, import restrictions, export subsidies, customs barriers and other measures described by Mr. De Clercq as trade obstacles. It includes "Buy America" laws, the Export Enhancement Program for agriculture, Defense Department expenditures on research and development, and export controls related to national security.

Mr. De Clercq said he asked that the list be compiled because he was concerned that the U.S. presentation of the trade-barrier situation fostered the notion that "the United States was the only country to respect the rules of the game of world trade."

The Reagan Administration released a report in October on trade barriers of U.S. trading partners, including the E.C. and its member states.

"Our list is certainly not exhaustive, but it allows the Community to assert to the United States that the notion of fair trade must be applied in the same way by both sides of the Atlantic," Mr. De Clercq said in Brussels. "I hope that we and the United States can work together to eliminate these trade barriers."

The Commission's list is attached.

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## EXAMPLES OF BARRIERS AND OTHER MEASURES AFFECTING THE COMMUNITY

**Tariffs:**

- Vitamin B 12: non-implementation of a GATT panel invitation to accelerate Tokyo Round tariff cuts (trade value in 1981 ± 1 million dollars).

- Tariff reclassifications which led to tariff increases without compensation (i.e. machine threshed tobacco, certain garments with simulated features.) (Possible violation of Art. II.5 of GATT).

**Import restrictions:**

- Quantitative import restrictions on agricultural products; covered by US GATT "waiver" since 1955.

  cotton of specified staple lengths, cotton waste, cotton products, peanuts, dairy products, sugar and syrups and certain sugar-containing articles

- foreign built dredges and other work vessels, vessels used in coast-wise traffic, including hovercraft.

  Notified by EC and other contracting parties (CN, JP, NOR) in the GATT catalogue of NTB's (prima facie breach of Art. III).

- denial of national treatment for import and sale of firearms and munitions

  Notified by EC in the GATT catalogue of NTB's (prima facie breach of Art. III).

**Customs barriers:**

- Origin marking pipes and tubes

  Breach of GATT Art. III, VIII, IX and GATT standards code. Consultation under GATT Art. XXII took place without satisfactory results.

- Confectionery containing alcohol

  Import prohibition, possible breach of Art. III GATT.

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Import licensing:

- goods under quota restrictions must be landed in US ports before one can apply for an import authorisation. EC raised issue in GATT licensing Code on specific case of specialty steel quotas. Possible breach of GATT licensing Code.

Government Procurement:

- Buy America Federal and State law and practice

  Some practices are contrary to Government Procurement Code. Others are not covered by the Code.

Direct or indirect export subsidies

- Among the many programmes providing direct and indirect subsidisation the Export Enhancement Programme is at present the most noteworthy. The programme has the stated objective of expanding sales of US agricultural products in foreign markets. It has been operated in a way which undercuts prevailing market prices.

- corn gluten feed, distillers dried grains etc

  Corn gluten feed and other cereal substitutes are by-products of the processing of maize into ethanol or iso-glucose. Since ethanol production attracts significant tax advantages and iso-glucose production benefits from the price support accorded by the US sugar programme, corn gluten feed etc is produced in a highly protected economic environment. This protection amounts to indirect subsidisation of exports.

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DISC/FSC

Replacement of DISC by FSC is in our view not an adequate response to take account of the GATT discussions on this dispute: i.e. "forgiveness clause" and some other fiscal aspects of FSC.

- Dept of Defence expenditure on R&D spin-off benefits to private industry (i.e. civil aircraft, computer industry)

The US quote as barriers Airbus programme, politicized marketing and development subsidies for commercial aircraft. The EC could in the same way question the spin-off benefits to private industry of the massive Dept. of Defence expenditures on R & D.

OTHER BARRIERS

- Manufacturing Clause

Continuing non-implementation of a GATT panel recommendation, serious danger of legislation by Congress to prolong and reinforce these provisions.

- Section 337, 301 procedures

Section 337: abuse of intellectual property legislation for protectionist purposes. Community has notified Art. 337 in the GATT catalogue on non-tariff measures.

Section 301: Possibility of discretionary recourse to retaliatory measures based on claims of "unreasonable" trade practices, deviating from GATT (e.g. citrus, canned fruit cases).

- Refusal of visas for service personnel

New non-tariff trade barrier.

- Export controls/restrictions of technology transfer

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Export controls for foreign policy reasons are not covered by Art. XXI of GATT (security exceptions). Difficulty for Community to discuss high tech with US without resolving problem of restrictions on technology transfer.

- Repairs to ships abroad

50% duty on repairs of US ships abroad. EC notified in the GATT catalogue of NTB's.

Taxes:

- Unitary taxation

Violation of internationally agreed tax principles leading to possible double taxation.

- aircraft fuel tax

Foreign air carriers must pay additional fuel taxes in several states. Non respect of international agreements on reciprocity concerning exemption for aircraft fuel tax.

GATT illegal legislation: - Wine: illegal definition of domestic industry

Definition of "industry" is not in conformity with Anti-dumping and Subsidies Code provisions. Panel proceedings under way.

US anti-dumping and countervailing duty legislation

EC considers a number of aspects of the US legislation and practice to be not in conformity with the GATT Codes e.g. for CVD definition and calculation of a subsidy, upstream subsidy provisions, for AD, definition of "sale". Technical discussions are being pursued in the relevant experts groups.

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VITAMIN B 12

The Community argued that the US practice of applying to imports of vitamin B 12 (animal feedstuff grade) a higher rate of duty than that on B 12 (pharmaceutical quality) was incompatible with US obligations under the General Agreement on Tariffs and Trade and nullified or impaired the rights accruing to the EEC under the Agreement. The Community therefore requested establishment of a GATT panel.

The panel found that the method used by the US to calculate the basic rate applicable to vitamin B 12 was in principle fair and equitable. However, it did consider that it had had adverse effects on EC export interests and as a result the panel suggested that the US should be invited to accelerate implementation of the agreed Tokyo Round tariff cuts on this product.

The United States rejected this invitation (unless the Community could agree to negotiate reciprocal concessions).

The case is an example of US refusal to respond to GATT panel findings.

It is difficult to quantify the benefit to the Community of US follow-up action now - in any case most of the annual tariff reductions agreed in the Tokyo Round have now been implemented according to the normal timetable. Only two more tariff cuts are outstanding (1 January 1986 and 1 January 1987). Economically it would not be very costly for the Americans to follow the panel's recommendation: the average trade involved in 1979-1981 was about $1 mio.

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## TARIFF RECLASSIFICATIONS

The United States has periodically changed the classification of imported products in the Tariff Schedule of the United States, thereby increasing the duty payable.

Examples of such reclassification have included:

Machine threshed tobacco, where various duty changes took place. The last time from 17.5 cts. per lb. to 32 cts. per lb, declining to 20 cts (1 January 1987).

Ornamented garments - from April 1984 US customs have classified garments with simulated features (false pockets, flaps etc.) under tariff headings attracting much higher rates of duty.

Compensation has not been offered to the Community in either case, in possible breach of Article II:5 of GATT.

The effect of the strong US dollar and the gradual reduction of tariff rates agreed in the Tokyo Round have reduced the impact of the reclassification on European exports of machine threshed tobacco. The problem has not however been wholly resolved.

On ornamented garments no formal compleint has been brought to the attention of the Commission, though this situation could clearly change.

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## US AGRICULTURAL IMPORT QUOTAS

The United States maintains import quotas on a variety of agricultural products and although they are covered by a GATT waiver, they do restrict certain Community exports.

Section 22 of the Agricultural Adjustment Act (AAA) of 1933 requires that restrictions in the form either of fees or of quantitative limitations must be imposed when products are imported in such quantities and under such conditions as to render ineffective or materially interfere with any US agricultural programme. Where such fees or quotas are applied they involve a breach of GATT Articles II or XI respectively. It was therefore necessary for the US to seek a waiver from its obligations under those Articles; and this was granted by GATT Contracting Parties in their decision of 5 March 1955.

Granting of the waiver was made subject to certain conditions including consultation, review and investigation of measures imposed under the AAA. The United States must also make an annual report showing any modification or removal of restrictions since the previous report. And on the basis of that report the GATT Contracting Parties make an annual review of any action taken by the US under the waiver.

The United States has said that its GATT agriculture waiver can in principle be the subject of negotiation in the framework of the GATT Committee on Trade in Agriculture.

Import restrictions pursuant to Section 22 currently in effect include:

- cotton of specified staple lengths
- cotton waste
- cotton products
- peanuts
- certain dairy products
- sugar and syrups
- certain sugar-containing articles.

Among the items covered by quotas dairy products and cheese in particular are of interest. But quotas were negotiated in the Tokyo Round. However, EEC reserved its GATT rights. There have also been problems of access to the US market with regard to sugar-containing articles.

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**FOREIGN BUILT DREDGES AND OTHER WORK VESSELS, VESSELS USED IN COAST-WISE TRAFFIC INCLUDING HOVERCRAFT**

Title 46, United States Code, which contains the Merchant Marine Act of 1920 (the so-called Jones Act), provides that in United States territorial waters only vessels of United States registry may be used for purposes such as dredging, towing and salvage, defined as activities other than the transport of passengers or merchandise. Further, for these purposes only vessels constructed in the United States are eligible for United States registry, so that de facto there is no possibility of selling work vessels constructed abroad to customers in the United States.

United States legislation also provides that in coast-wise commerce including transport of persons (i.e. between two ports within the United States) only vessels constructed in the United States are eligible for United States registry, and current Bureau of Customs interpretation holds that air-cushioned vehicles travelling over water (e.g. hovercraft) are "vessels" within the meaning of existing legislation and may therefore be registered for coast-wise traffic only if of United States manufacture.

US legislation and its current interpretation constitute de facto total embargoes for imports of the products concerned.

**FIRE-ARMS AND MUNITIONS**

Imports of fire-arms and munitions are prohibited except when authorized by the Secretary of the Treasury in cases where the importer shows proof that the aims or munitions concerned are intended for specific uses (in particular competitions, training, museum collections, etc.). Such control is not required in the case of sales by American producers of these same categories of arms and munitions.

The US practice discriminates against imports. In the case of these products, measures to ensure domestic safety would be understandable but to do so in conformity with Article III would require that the same restriction apply both to domestic production and imports.

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## ORIGIN MARKING FOR PIPES AND TUBES

Section 207 of the Trade and Tariff Act of 1984 requires the origin marking by die-stamping, cast-in-mold lettering, etching or engraving of imported steel pipes and fittings.

The requirements amounts to a non-tariff barrier to trade. For certain products it would even result in a total prohibition of imports. For other products it would render them useless or severely reduce their commercial utility. Section 207 is contrary to GATT Article VIII, paragraph 1(c) and Article IX, paragraph 2 and 4, and, as it applies only to imports, it is discriminatory and a breach of GATT Article III, and also of the GATT Agreement on Technical Barriers to Trade.

Customs have received guidelines to be followed, which are less severe than the requirements of Section 207. However, Section 207 has not yet been modified by law.

## ALCOHOL IN CANDY

The Federal Food, Drug and Cosmetic Act prohibits the inter-state sale of confectionery containing any amount of alcohol that is not derived from flavouring extracts. Alcoholic beverages such as rum, bourbon, and liqueurs, even if diluted, concentrated or denatured, are not considered to be flavouring extracts. The prohibition on inter-state sale is reinforced by a prohibition on imports of such confectionery from outside the United States.

However, the prohibition on domestic US manufacture of 'alcohol in candy' is not total, and three states, Oregon, Kentucky and Nevada already permit its manufacture provided sales are restricted to inter-state trade. (The State of Washington may become the fourth.) There is, thus, in those three states discrimination against imported products which, prima facie, is in breach of US national treatment obligations in GATT. Community exports have in consequence been adversely affected.

There are no reliable official or industry figures for this very specialised product. The overall US confectionery industry is said to be worth $6 bn and estimates of the potential market share for alcohol in candy vary widely.

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## IMPORT LICENSING

When the US imposes unilateral quota restrictions on imports pursuant to safeguard measures such restrictions are not accompanied by a requirement for import licenses. Imports are admitted on a first come first served basis but the import formalities cannot be completed unless the goods are physically in the customs territory. This creates a potential barrier to trade and is in violation of the GATT Agreement on Import Licensing Procedures.

The importer/exporter is not assured that the entire quantity of goods landed in US ports will be admitted entrance. If this is not the case the goods will either have to be shipped back or stored in warehouses until the following distribution of quotas. Even then the importer/exporter is not assured that all goods will be admitted entrance into the US.

## GOVERNMENT PROCUREMENT

Buy American

By adopting provisions on Buy American the US Government creates permanent discrimination in certain areas of government procurement to favour US products. This has the knock-on effect of legitimising the same behaviour over a much wider range of procurement at State and local government level.

In 1984 DOD, on its own initiative or at the direction of Congress prohibited the Department of Defense from purchasing forging items, machine tools, Soviet nickel, coal and coke, hand and measuring tools from foreign sources. DOD is also prohibited through earlier legislation, to procure abroad inter alia textile articles, stainless steel flatware and hand tools.

In fact Article VIII paragraph 1 of the Govarment Procurement Code provides an exception to the Code concerning goods which a Contracting Party considers indispensable for national security or national defence purposes. However, Article IX(5)(6) provides that exceptions may only be made in exceptional circumstances and must be negotiated with the other Contracting Parties.

At State and local government level Buy American provisions are often used by transport and road construction authorities to keep foreign companies from participating, even in cases where federal funds are used. The provisions of Article I, paragraph 2 of the Code stipulating that the parties shall inform regional and local governments of the objectives, principles and rules of the Code, in particular the rules on national treatment and non-discrimination, have had no noticeable effect in reducing the overt discrimination of State and local government procurement in the US.

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## EXPORT ENHANCEMENT PROGRAMME

On 15 May 1985 the United States Department of Agriculture announced the introduction of an agricultural export subsidy programme. The programme provided that over a three-year period $2 billion worth of Community Credit Corporation (CCC) stocks would be made available to US exporters in an effort to expand sales of US farm products overseas.

The programme is claimed by the US Administration to be targeted against countries using unfair trading practices and Agriculture Secretary, John Block has said it is "nothing more than what the EC is doing".

The programme has not been a success; it has proved unpopular with the Administration and with sections of the US business community. It only began to be implemented in September with sales of wheat and wheat flour to Egypt of 500,000 tons and 175,000 tons respectively. Wheat sales to Algeria were agreed (in October) for a total of 500,000 tons.

Total EEP sales to early November of wheat (or wheat equivalent) amount to about 1,240,000 tons, involving 415,000 tons in subsidies from CCC stocks, worth $61 million.

The programme has operated in such a way as to undercut prevailing market prices.

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CORN GLUTEN FEED AND OTHER CEREALS SUBSTITUTES

The high, protected, price of sugar in the US market has provided an economic stimulus to production of the maize product, isoglucose (artificial sweetener) which in turn also produces corn gluten feed or distillers dried grains, as well as other cereal substitutes as by-products.

Corn gluten feed etc is also a by-product of the processing of maize into ethanol. The production of ethanol - a high grade alcohol used as an additive in petrol - has rocketed in recent years, largely as a result of federal and state incentives which include investment tax credits, income tax credits, federal loan guarantees, federal petrol excise tax exemption, state excise and sales tax exemptions.

Just as the production of ethanol has increased so has the subsidised production of corn gluten feed.

Virtually the whole of the US production of corn gluten feed is exported; thus the various tax incentives for ethanol act as indirect export subsidies applicable to corn gluten. Although it is difficult to quantify the extent of the subsidy element.

Exports of corn gluten feed and other by-products to the Community were 4.4 million metric tons in 1984.

The exports have in the past displaced the use of Community produce as animal feedstuff, leaving a costly surplus. US export increases have slowed down in the last two years partly as a result of the high dollar and reduced Community demand.

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DISC/FSC

DISC legislation has been the cause of EC/US contention since its adoption 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 Community challenged as illegal in GATT, obtaining a panel ruling in 1976 which condemned the US law.

It was not until the end of 1981 that the United States agreed to adoption of the panel report. In 1984 the US finally adopted legislation (FSC - "Foreign Sales Corporation") to replace the DISC system; but in doing so the US converted the tax deferment provided for under DISC into definitive tax remission.

It is estimated that by this means US industry has benefited over the life of the DISC legislation of an overall subsidy of between $10-12 billion. This will continue to bestow economic advantages on US industry for some time to come.

DEPARTMENT OF DEFENCE
R + D

Total federal obligations for research and development are estimated at $ 60 billion for fiscal 1986. Of that total, some $ 40 billion will be for defence R + D projects. This is about 22 per cent more than the figure for fiscal 1985. The increased funds proposed for R + D relate to advances tactical aircraft systems; in addition, Dept. of Defence will increase its funding of basic research by about 16 per cent, and also provide for an increased emphasis on the strategic Defence initiative.

Federal (including Defence-related) R + D expenditure is about one half of the total US R + D effort, both public and private.

Although it is difficult to quantify the full benefit to the US economy of the Defence Department's R + D commitment, in global terms it amounts to approximately 1% for US GNP. This is an enormous subsidised impulse to the economy.

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## MANUFACTURING CLAUSE

The manufacturing clause (Section 601) of the United States Copyright Act prohibits the importation of non-dramatic, English-language literary works of US authors unless the works are manufactured in the United States or Canada. This prohibition has been condemned by a GATT panel as inconsistent with the United States obligations under Article XI of GATT, thus constituting a case of nullification or impairment of benefits accruing to the Community. The United States Administration has long accepted the GATT illegality of the clause, and in 1982 President Reagan vetoed legislation extending its life until July 1986. Congress overrode the veto.

Recently, draft legislation has been introduced into Congress extending the clause (and expanding its scope) beyond 1986, despite its violation of GATT.

The commercial impact of the Manufacturing Clause on EEC book printers has not yet been calculated in precise terms, but an industry estimate was made in 1982 suggesting that Western European printers, with a possible 10% penetration of the US market by imports, could expect to sell some 34 million copies with a value of some 110 million US dollars.

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## SECTION 337 OF THE TRADE ACT OF 1930

Section 337 provides that unfair methods of competition or unfair acts in the importation of articles into the United States, or in their sale, the effect of which is to destroy, substantially injure, or prevent the establishment of industry in the United States, are unlawful. Section 337 has mainly been invoked in cases of alleged patent infringements.

The procedural rules governing investigations under Section 337 constitute a non-tariff barrier to trade:

- the rules followed by ITC administration law judges are parallel to but not always identical with, the federal rules of civil procedure and the federal rules of evidence. ITC evidentiary rules particular are less stringent.

- ITC can impose an exclusion order "in rem", which may affect foreign firms that were not even party to the case

- ITC finding, notably on the validity of a patent, are not binding in federal courts. Therefore, an ITC finding of validity does not lead to the nullification of the patent and does not prevent a plaintiff from litigating the same issue to US courts.

- respondents cannot raise counterclaims before the ITC and must go to US court, whose rules and timetables are different.

For these reasons, Section 337 procedures constitute discrimination against a foreign respondent.

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 US District Court.

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SECTION 301 OF THE TRADE AND TARIFF ACT OF 1984

Section 301 of the Trade and Tariff Act of 1984

Section 301 may be invoked if a foreign country or instrumentality applies any act, policy or practice which is injustifiable, unreasonable or discriminatory and burdens or restricts US 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 entreprise or adequate and effective protection of intellectual property rights.

The application of Section 301 may therefore be based on a discretion by the US authorities which may deviate from GATT rules. The GATT provides for most-favored-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 subsidisation. Furthermore, Article XXIII regulates the situation where a contracting party considers that benefits are nullified or impaired by a trading partner. Thus, unilateral US 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 originating in the foreign country concerned.

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

With regard to illicit commercial practices, the Community adopted a regulation (2641/84) giving it the authority to challenge such practices of other trading partners in strict conformity with EC international obligations.

## US VISA PRACTICES

In September 1985 the US State Department instructed US Embassies and Consulates to discontinue the issuance of visitors (B1) visas to foreigners wishing to travel to the US in order to install, service or repair machinery or equipment imported by US companies. The instruction is based on the judgement of 28 August 1985 of the District Court of Northern California in case no 85-1253 filed by the bricklayers' union according to which the issuance of B 1 visas to fitting or servicing staff is contrary to US immigration legislation.

Subsequently the judge modified his order so that it no longer affects the granting of visas to service personnel in connection with contracts concluded before 28 August 1985.

On 15 October State Department appealed to the Circuit Court to stay or suspend the judgement of the District Court pending the outcome of an appeal on the substance of the ruling.

Meanwhile State Department is negotiating with the brickleyers' union in order to make a joint proposal to the Court that would limit the application of the ruling to contracts concluded after 28 August and involving the type of workers represented by the Union.

The US visa practice seriously jeopardises Community perspectives of exports of machinery and equipment to the US (US imports of machinery and equipment excluding passenger cars from the Community in 1984: 16,5 bio $).

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## EXPORT CONTROLS/RESTRICTIONS ON TECHNOLOGY TRANSFER

The Export Administration Act of 1979 (EAA) as amended by the Export Administration Amendements Act of 1985 provides the legal basis for the US 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 discritionary way by the US Government.

In implementing the foreign policy concept of the EAA the US Administration has claimed broad jurisdiction to exercise control over foreign subsidiaries and affiliates of any concern which is controlled in fact by a US domestic company. The most eminent case has been the sanctions imposed by the US in 1982 against suppliers to the Soviet gas pipeline. Extraterritorial application of export control also takes place in the area of distribution licenses. A foreign consignee has to comply with US law if he does not went to be imposed import sanctions by the US government. Thus US export controls can be an obstacle to EC re-exports of US goods or to EC exports of goods containing US components

Such extraterritorial application of US law based on foreign policy within the jurisdiction of the EC is unexceptable and contrary to the principles of international law. It also goes beyond what is foreseen by the provisions of the security exceptions of Article XXI of GATT. Furthermore, there are currently no foreign policy export controls applying to the EC.

Independant imposition of export controls by one country on another can clearly have serious implications for all countries in an interdependant system. Restrictions imposed by the US on technology transfer and on access to scientific information are not compatible with the US desire to negotiate trade liberalisation in high technology in GATT.

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## REPAIRS TO SHIPS ABROAD

The United States applies a 50 per cent duty on repairs of US ships abroad (on equipement purchased and repairs made). This duty is not provided for in the US tariff but charged pursuant to special provisions appended to the tariff. The US justifies this measure by the need to protect an industry essentially for defence purposes.

Two exceptions apply:

- emergency repairs to maintain sea worthiness;
- repairs on certain special vessels (such as vessels servicing drilling rigs) if these vessels spend at least two years overseas and if the repairs have been made after the first six months (Section 208 of the Trade and Tariff Act).

## UNITARY TAXATION

A Description

Certain individual states of the United States assess the corporate income tax of foreign owned companies operating within those states' borders on the basis of a proportion of the total worldwide turn over of the group. That proportion of worldwide earnings is assessed in such a way that a company operating in say, California, may have to pay tax on income arising outside the state, possibly giving rise to double taxation. For example if 10 per cent of a company's sales, payroll and property are in California, 10 per cent of all its global earnings are subject to the state's corporation tax. Quite apart from the added fiscal burden, a unitary tax state is, in law, reaching beyond the borders of its own jurisdiction and taxing profits earned outside it. This is in breach of the internationally accepted principle that tax authorities charge tax on foreign owned companies only on the profits arising in the country or state for which they are responsible - "the water's edge" principle. A company may also face heavy compliance costs in furnishing details of its worldwide operations.

On 8 July 1985 the US Treasury issued for public comment draft legislation, referred to as "spread sheet reporting legislation", designed to resolve conflicts among state taxing authorities, multinational companies and foreign governments. It is not certain that the legislation, as proposed, will be adequate to resolve all outstanding problems encountered by Community firms.

No quantitative assessment exists of the effect of unitary tax on Community investment in the United States.

The Administration has reconfirmed its intention of adopting federal legislation if the problem of unitary taxation cannot be resolved at the state level. For the time being however Community companies continue to be adversely affected.

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## US STATE TAXES ON AVIATION FUELS

Several US States, among others Florida and Illinois, apply a tax on all aviation fuel sold within their jurisdiction, including that to international air carriers. The legality of the Florida tax is presently being tested before the Supreme Court.

This kind of taxation runs counter to an international consensus which has developed over the years that aviation fuel should be exempted from taxation on a basis of reciprocity. This consensus is demonstrated by the provisions of Article 24 of the Chicago Convention which calls for uniform exemptions from tax for fuel on board civil aircraft arriving in foreign countries and the resolutions adopted by the ICAO Council in 1966, extending this principle of reciprocal exemption to fuel purchased by airlines in foreign countries. In the US exemption has been extended only to taxes imposed at the Federal level.

Provisions calling for reciprocal exemptions from aviation fuel taxes have also been included in most civil air transport services agreements which the United States have entered into with other nations. Even in the absence of a formal agreement, the United States has extended tax exemptions to foreign carriers where reciprocity has been demonstrated.

## WINE: DEFINITION OF DOMESTIC INDUSTRY

Section 612 of the Trade and Tariff Act of 1984 modified the definition of industry in the general rules pertaining to countervailing duty and anti-dumping laws concerning the wine sector. It now includes the domestic producers of the principal raw agricultural product (the grape growers) in the like domestic product for a period ending 30.09.1986.

This change was made to allow the Californian grape growers to file AD and CVD petitions against imports of Community wine.

The new definition of "domestic industry" is contrary to Article IV.1 of the GATT Anti-dumping Code and Article VI.5 of the Subsidies Code.

At the request of the Community a GATT panel was established.

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## US LEGISLATION AND PRACTICE ON COUNTERVAILING AND ANTI DUMPING DUTIES

The EC has raised, on a number of occasions, aspects of US countervailing duty legislation and practice which it considers incompatible with US obligations under the GATT Code on Subsidies and Countervailing Duties. Thus, the EC has expressed its strong reservations with regard to US legislation on "upstream subsidies" contained in Section 613 of the Trade and Tariff Act of 1984 which, in effect, preempted discussions in the relevant experts group in the GATT. The EC also opposes US practice of deviating from the Code's provisions with respect to the definition and calculation of a subsidy. For the EC a subsidy presupposes state intervention and a financial contribution by a government; the US considers, however, that a subsidy exists wherever an economic benefit is conferred on the recipient.

With regard to US anti-dumping legislation the EC objects, in particular, to Section 602 of the Trade and Tariff Act 1984 which permits 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% to be added in any construction of normal value under US law Section 773 (e) of the Tariff Act 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 realised on sales of products of the same general category in the domestic market of the country of origin."

The EC also has repeatedly critisised the US for imposing AD duties corresponding to the full dumping margin established. Article 8 (1) of the GATT AD Code declares 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 US standard of verifying the standing of an applicant for AD measures. Article 5 (1) of the GATT AD Code requires a written request by or on behalf of an industry (as defined in Article 4 of the GATT AD Code). The US authorities, however, do not check whether any application does in fact fulfil this condition.