



# OVERVIEW

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# INTRODUCTION

## HISTORICAL BACKGROUND



Since the foundation of the European Communities, their relationship to the United States of America has always been of major importance. Not only has it played a significant role in the Communities' common commercial policy towards third countries and within multilateral fora, but it also has exercised influence on the progress of European integration.

The relationship has been of varying intensity and has been burdened with conflicts of differing depth but has remained basically positive.

The relationship has been founded on a sympathetic attitude of the US toward the European construction, on the one side, and a common belief in democratic values and the market economy, shared international objectives and thriving and mutual beneficial trade and investment flows, on the other side. Concerns of the US about the Communities' Single Market project which it feared might lead to the construction of a "Fortress Europe" protecting European industries, were eventually dissipated by the Communities in developing a strategy for external economic and commercial policy under the heading "Europe World Partner".

In addition, the transatlantic discussion on the Communities' Internal Market project made clear to the US the importance of the Communities' economic legislation for transatlantic business and the need to work together with it. From 1989 onwards, the effects on the geopolitical situation of the profound political and economic changes in Eastern Europe and the former Soviet Union made it desirable for both sides, as expressed in Secretary Baker's speech in Berlin in December 1989, to reinforce the EC-US relationship. As a consequence, dialogue in EC-US relations was extended beyond traditional trade issues to cooperation across a range of microeconomic policy areas, such as research and development, science and technology, environment, competition, securities trading, standards, and education and vocational training, as well as policy areas falling under European Political Cooperation. This extended dialogue found its public expression in the Transatlantic Declaration on EC-US Relations of 23 November 1990.

## THE TRANSATLANTIC DECLARATION



The EC-US Transatlantic Declaration can be looked upon as a stock-taking of EC-US relations at a given point, but also as a foundation for further structural development of the EC-US relationship. The Declaration delineates the common goals and

principles shared by the Communities and the United States. Besides that, it sets forth the main principles of the EC-US partnership, which can be paraphrased as mutual 'information', 'consultation' and 'cooperation' in all important matters of common interest, both political and economic. Furthermore, the Communities and the US agree to close cooperation in appropriate international bodies, support of the work in GATT and the OECD, the strengthening of scientific, educational and cultural cooperation, the protection of the environment, and, finally, the combatting of terrorism, drug abuse and trafficking and international crime, as well as the prevention of the proliferation of nuclear, chemical and biological weapons and missile technology.

The Declaration also sets out an institutional framework for continued formal consultations in all fields covered by the Declaration. Foreseen are bi-annual consultations between the Presidents of the Commission, the European Council and the US, between the respective foreign ministers, and between the Commission and the US Administration at Ministerial level. In addition, ad-hoc consultations between the Presidency Foreign Minister or the Troika and the US Secretary of State, and briefings by the Presidency to US Representatives on European Political Cooperation meetings at the Ministerial level are provided for. Both sides are resolved to develop and deepen these procedures.

A wide range of issues is addressed in contacts between high-level officials from both sides. These include periodic meetings between the US Under-Secretary of State for Economic Affairs and the Director General for External Relations at the Commission (known as the "Subcabinet" meetings), which provide a political and long-term overview mechanism for the multiple EC/US contacts. In addition, high level meetings take place frequently on trade issues, both bilateral and multilateral.

# THE ECONOMIC ENVIRONMENT

## THE ECONOMIC SITUATION



The global picture for the industrial world is currently rather mixed: the US recovery accelerated in the second half of 1992, while the other major economies are either emerging from recession (UK), slowing down (France, Germany) or stagnating (Japan). Eastern and Central European countries are still in a painful adjustment process (they are estimated to have lost, on average, 17% of GDP in 1991 and a further 15% in 1992). Furthermore, the deteriorating situation in Russia is a major concern both to the EC and the US. Asia (especially China) and, to a lesser extent, Latin America, have managed steady real growth.

Projections for 1993 concerning industrial countries have been continuously trimmed down but they are still pointing to growth as disinflation and balance sheet restructuring (reduction of debts) progress, lower interest rates work their way through the economy and asset values stabilise. However, growth in 1993 is expected to be too slow for a significant reduction of unemployment to take place.

The recovery in the US has been supported by exports and an increase in consumer spending. The real Gross Domestic Product (GDP) finally grew by 2.1% in 1992 and another expansion between 2.5% and 3.5% is expected for 1993. Unemployment should improve and inflation is likely to stay at current levels (3%). The new Administration has announced an economic package to accelerate recovery, reduce the fiscal deficit and improve prospects of long-term growth by promoting investment. Between 1993 and 1997, higher income taxes and a new energy tax, together with spending cuts, mainly in defense and health care, should reduce the deficit from 5.4% of GDP to 2.7%. The short-term stimulus package provides for additional spending in 1993 of \$16.3bn, in the form of investment tax credits, infrastructure spending, supplementary loans and an extension of jobless benefits for long-term unemployed. As for the investment plan, it consists of additional spending and tax incentives in the areas of infrastructures, technology and education.

With the exception of the UK, the main EC economies have expanded in 1992, although at a slow rate. The economic situation in Germany has deteriorated sharply during the second half of 1992, dragging down its main partners. For the Community as a whole, a GDP growth rate of around 1% has been achieved in 1992 but current forecasts for 1993 are bleaker (+0.8%). Unemployment is expected to exceed 10% while inflation should continue its downward trend.

The Community, concerned with the prospects of economic stagnation and rising unemployment, has adopted a growth-promoting initiative. In December

1992, at Edinburgh's Summit. It comprises actions at both national and Community level,

such as a better coordination of recovery measures, the establishment of a temporary lending facility of ECU5bn within the European Investment Bank to accelerate the financing of capital infrastructure projects and the establishment of a European Investment Fund with ECU 2bn of capital to support individual projects. In addition, the Community considers at present the adoption of additional measures for stimulating economic growth.

There is thus a striking parallelism concerning policy priorities on both sides of the Atlantic. There is the same urgency in the short run to bring down unemployment by accelerating economic growth and, in the medium term, to reduce fiscal deficits and public debt (in line with economic convergence criteria as far as the Community is concerned). It is essential that the EC and the US work together in this area, including in the G7. Similarities do not stop there: one can find the same emphasis on infrastructure investment, environment (energy tax), civilian R&D and conversion of the defense sector.

## EC/US TRADE AND INVESTMENT FLOWS



### EC/US Bilateral Trade

The EC and the USA are consistently each other's largest trade partner. Since its creation, the Community has run, every year but 1984-1988 (the only period in which USA's GDP grew faster than the Community's), a modest trade deficit with the US. In 1992, however, the trend of improvement of the US's overall trade balance has gone into reverse and its surplus with the EC has shrunk.

#### US Trade with the World

(\$bn)	1989	1990	1991	1992
Exports	363.8	393.6	421.7	448.2
Imports	473.2	495.3	487.1	532.5
Balance	-109.4	-101.7	-65.4	-84.3

#### US Trade with the EC

(\$bn)	1989	1990	1991	1992	%
Exports	86.4	98.1	103.1	102.8	23
Imports	85.3	91.9	86.2	94.0	18
Balance	+1.1	+6.3	+17.0	+8.8	

Source: US Department of Commerce

### EC Trade with the World (Extra EUR 12)

(\$bn)	1989	1990	1991	1992
Exports	455.0	534.6	524.8	n.a.
Imports	492.2	589.2	612.1	n.a.
Balance	-37.2	-55.6	-88.3	n.a.

### EC Trade with the US (Extra EUR 12)

(\$bn)	1989	1990	1991	1992	%
Exports	86.0	97.5	88.2	n.a.	17
Imports	92.2	108.5	113.9	n.a.	19
Balance	-6.2	-11.0	-25.7	n.a.	

Source: US Department of Commerce

The US enjoys a fast growing surplus in international sales and purchases of private services. Bilateral service transactions with the EC moved from an overall balanced situation in 1986 to a \$10bn surplus in 1991.

### Foreign Direct Investment Flows

After a decade of steady growth, the flow of Foreign Direct Investment (FDI) from industrial countries fell by 21% in 1991, last year for which statistics are available, to an estimated \$177.3bn (BIS, annual report 1991-92). The USA, Japan and the European Community represented 79% of total outflows and 58% of inflows.

Being a net recipient of direct investment during the 80s, the US became a net investor in 1991 while the EC and Japan have always been net investors. In 1991, foreign investors' spending to acquire or establish US businesses fell sharply. Preliminary estimates by the US Commerce Department's Bureau of Economic Analysis show a 66% drop, to \$22.6bn, from \$65.9bn in the previous year. The Community's share remained almost stable (up from 47 to 49%) while Japan's dropped significantly, from 30.2% to 22.4%. Early indications for 1992 point to a further drop of inward FDI flows in the US, resulting in fact in a net outflow, the first such reversal in decades.

Cumulative direct investment (valued at historical cost) by EC firms in the US stood at \$232bn in 1991, representing 57% of total FDI stock in the US (Japan: 21.3%). The Community is thus by far the largest foreign investor in the US economy.

### Foreign Direct Investment in the US (Stock, valued at historical-cost basis)

	Total (\$bn)	EC (\$bn)	EC as % of Total
1987	263.4	165.4	61
1988	314.8	193.9	59
1989	368.9	216.1	58
1990	396.7	224.4	57
1991	407.6	232.0	57

Source: Survey of Current Business, June 1992, US Department of Commerce.

### US Direct Investment Abroad

	Total (\$bn)	EC (\$bn)	EC as % of Total
1987	314.3	124.0	40
1988	335.9	131.1	39
1989	372.4	149.5	40
1990	424.1	177.6	42
1991	450.2	188.7	42

Source: Survey of Current Business, June 1992, US Department of Commerce.

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### ECONOMIC INTERDEPENDENCE

The economic situation in a national market, however large it might be, is influenced by what is happening in other markets.

Foreign Trade and Foreign Direct Investment (FDI) are obvious ways through which economic activity in the rest of the world impacts on a given nation's "real" economy, that is its jobs, incomes, gross fixed capital formation and technological development:

- 7.2 million American jobs were directly or indirectly supported by merchandise exports in 1990, up 42% from 1986. Moreover, these jobs were far better paid (+16.7%) than the national U.S. average (study by the U.S. Department of Commerce issued in April 1992);
- in 1990, 4.7mio Americans were employed by US affiliates of foreign companies, which represented one in twenty jobs in the private sector (one in ten in manufacturing). In addition, workers in foreign-owned establishments earned 22% more than the average for all establishments in the United States (U.S. Bureau of Labor Statistics report, October 1992).

Exports of goods and services as a percentage of GDP

give a snapshot picture of interdependence. As the figures below suggest, it has been steadily increasing in the last years:

	1979	1989
	(%)	
EC (Extra EUR 12)	12.4	13.3
USA	9.0	9.4
Japan	11.6	10.7

Foreign Trade (of goods and services) is a primary cause of interdependence but it does not tell the whole story: financial flows, even for short term purposes, play a determinant role in:

- exchange rates (and thus, relative prices of goods), and
- the valuation of assets (and thus, the financing conditions of firms and activities).

The deregulation of financial markets in the industrialised countries, the development of new tradeable instruments, the search for diversification and the reduction in computation and telecommunication costs has led to an explosion of cross-border transactions: between 1980 and 1990, the volume of cross-border gross purchases and sales in bonds and equities, expressed as a percentage of GDP, grew from 9.3% to 92.5% in the USA, from 7.0 to 118.6% in Japan, 7.5 to 57.5% in Germany ( Bank for International Settlements, annual report 1991-92). Another BIS report revealed that the net daily turnover of foreign exchange markets had reached \$880bn in April 1993.

The above statistics are evidence that national markets are integrating as a result of transnational activities of firms and the subsequent worldwide allocation of resources. This globalisation of economic activity takes many different forms:

- international sourcing of intermediate materials and components;
- cross-country investment and the acquisition and merger of firms;
- rapid growth of intra-industry trading;
- international sub-contracting;
- international pooling and sharing of capital;
- transnational collaboration among firms to develop and produce goods and services (strategic alliances);
- the growth of international networks.

## POLICY IMPLICATIONS

Economic interdependence complicates the task of national governments. It undermines the effectiveness of traditional economic policies by introducing uncertainty as to the consequences of their decisions, new actors in domestic policy making ( foreign governments, subsidiaries of foreign firms) and new constraints. Moreover, in the context of increasing

globalisation, some of the basic notions and instruments of economic policies get blurred or difficult to use.

The 'national interest' itself has become harder to identify as the interests of consumers and of firms which depend on imported inputs are set against the interests of domestic producers. More generally, what is good for a given company, in the context of world-wide competition, is not necessarily beneficial to its home country any more.

Unemployment, as a result of de-localisation of production and of productivity-driven investment, and downwards pressure on the incomes of those exposed to global competition, undermines the social cohesion of industrialised countries and threatens the broad consensus for open and free markets.

Finally, the relevance of interdependence goes beyond the context of major economic policy issues. In fact, many of the international trade conflicts are only the side-effect of measures adopted without any protectionist intention but which, in practice, constitute a barrier to otherwise legitimate trans-border business. On the other hand, domestic market regulations can inflict a competitive disadvantage to national firms, once they are exposed to international competition.

As a conclusion, economic policy making must turn outwards to recuperate - through international cooperation - a part of the control that was lost because of interdependence and globalisation, acknowledging:

- the need for macro-economic coordination: economic policies focused narrowly on domestic short term objectives are bound to provoke international tensions and they risk being neutralised by developments elsewhere; the sheer volume of financial flows (ref. above) represents such a disruptive potential that the need for international consultation and some degree of macro-economic coordination has become paramount;
- the need for more multilateralism: at the same time that economic activities become global, so do some of the issues and concerns related to them. There will be increasing pressure for minimum international standards and rules in the fields of competition policy, taxation, environment and social protection, corporate structures or market regulation;
- the need for regulatory convergence: as tariff and quantitative barriers lose their relevance, a dialogue centred on domestic regulations is increasingly necessary to prevent international trade conflicts, especially in relation with emerging/global markets which represent high growth potential.

The trend for increased transnational activities is linked with economic growth and technological progress. It is thus bound to continue, in one way or another. It is up to the world's leading economies to work together for an institutional framework that keeps pace with these developments.

# THE ELEMENTS OF EC/US COOPERATION

## PRINCIPLES AND STRUCTURE OF COOPERATION

The main principles and the structure of present cooperation between the EC and the US derive from the Transatlantic Declaration already mentioned above.

The relations between the EC and the US are characterized by constructive cooperation and partnership during recent years, which is demonstrated by the existence of a wide range of dialogue between them. The dialogue consists of frequent contacts at different levels. Both parties keep each other informed of developments in fields of common interest, they consult each other on issues which will have effects on both sides of the Atlantic and they coordinate actions in various fields of common interest. Dialogue has become a natural part of the relationship and it is practised at all levels on both political and economic matters.

## ECONOMIC MATTERS

In the economic area, there exists a range of bilateral agreements covering agricultural trade and fisheries, competition policy and the regulation of markets for financial securities.

Regulatory questions concerning food, pharmaceuticals, and environmental standards are discussed in informal groups. There are also informal exchanges of information on a range of subjects from industrial product standards and certification to customs questions. In some of these sectors, efforts are underway to better organize the ongoing dialogue by formalising it through the conclusion of Administrative arrangements. When the need exists to go beyond informal dialogue (e.g. Conformity Assessment, Customs Cooperation), the negotiation of International Agreements becomes necessary. Agreements and less formal arrangements have existed for a number of years in the fields of nuclear energy, science, technology and the environment. As some of them expired, negotiations for their renewal have come to a stop due to the need to clarify intellectual property rights. In June 1992, the Commission and the Council have adopted a set of "guidelines" concerning IPR (Intellectual Property Rights) which, it is hoped, would allow the negotiations to resume.

The exchange of information and the cooperation in the S&T field were further enhanced by the decision taken at the November 1990 Commission - US Ministerial to establish an EC-US joint consultative group on science and technology. This group has since

met regularly. A new biotechnology research group was set up in September 1990 and the two sides are cooperating in a study on the real costs of the fuel cycle.

In the field of higher education and continuing training, a working group was set up, also at the November 1990 Ministerial, to define the possibilities of establishing an academic exchange scheme covering both students and staff. In May 1992 the Commission adopted a Communication to the Council and the European Parliament on US/EC cooperation in the fields of higher education and training, currently under discussion in the Council.

## REGULATORY CONVERGENCE

Many problems faced by EC or US exporters/investors on each other's market are not the deliberate result of protectionist inspired legislation but rather the unintended outcome of measures adopted for valid domestic reasons or of the differences which exist between the regulatory systems in the EC and the US.

The Community and the US often have different philosophical approaches to regulation and their legislative and regulatory systems are essentially independent. Thus, unless determined action is taken, differing regulatory responses to the same issues will occur. This creates conflict and can lead to trade barriers or, at the very least, undue complications for trade and investment flows.

The fact that the EC and the US share a fundamentally similar approach to the question of the market economy and that their citizens and consumers express similar concerns regarding the quality of products and health and environment protection, should however, make it feasible to encourage convergence in regulations and in the legislation on which they are based.

The dialogue set up between the Commission services and the appropriate US regulatory agencies has helped to increase the knowledge of each others' regulatory systems and more slowly to an increasing acceptance of the validity of the motivation behind differing regulations.

In addition, the regulators on both sides have undoubtedly become more conscious of the impact of their decisions on third countries and the increasing interdependence of the economic activities they regulate.

Progress has already been registered in a number of fields (e.g. industrial standards, competition) and the idea of consultation "upstream" of problems is accepted in principle by the Administrations on both



# PROBLEM AREAS

## INTRODUCTION

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The positive overall assessment of EC-US relations must not obscure the fact that the EC-US relationship has never been without problems. Although the problem areas in general only concern a relatively small proportion of the value of the overall economic exchanges across the Atlantic, their effects on the individual economic operator are by no means negligible. The more the two partners are becoming economically interdependent, the more even minor problems may result in growing disturbances of the partnership. It is therefore in the well-understood interest of both sides to seek to resolve the sometimes long-standing issues of divergence.

From the Communities' point of view, concerns have centered around the problem of unilateralism incorporated into major US trade and other legislation, ambiguity towards foreign direct investments, and the extrajurisdictional scope of certain US legislation, e.g. in the field of environmental standards and trade embargos. From an US point of view, agricultural issues are still a major source of difference with the European Communities, as are Community exports in general from sectors which receive some form of government assistance.

## CONCERNS ON EC SIDE

### Unilateralism and Extrajurisdictionality

The EC, as well as many trading partners of the US, have regularly voiced their concerns against US behaviour contrary to the law and practice of relations between states:

- the recourse to unilateral determinations and actions;
- the extension of US jurisdiction to legal subjects of other nations for acts outside US territory.

### Unilateralism

The US and the EC are the largest economies in the world and their relations have, without doubt, a significant influence on the global economy and on growth opportunities and, as indicated above, are increasingly interdependent.

As a result of this interdependence a complex network of multilateral agreements, such as GATT and the OECD codes and bilateral agreements, such as those of Friendship, Commerce and Navigation between EC Member States and the US, have come in to being. They contain rules for the conduct of commerce

between nations, which provide the legal framework within which international business operates.

A recurring problem is the passage of legislation in the United States, which obliges the President to unilaterally interpret international rules and to attempt to impose these interpretations on its partners by unilateral, coercive measures. The outstanding example is Section 301 of the 1979 Trade Act.

Section 301 of the Trade Act as amended in 1988 authorises the US Administration to take action to enforce US rights under international trade agreements and to combat "discriminatory" or "unreasonable" foreign governmental practices which burden or restrict US commerce. In GATT covered areas it permits unilateral action to be taken by the US against its trading partners, without the prior authorisation of the Contracting Partners. The 1988 Trade Act set strict time limits for completing the Section 301 process, and in cases of alleged trade agreement violations, or cases where a foreign nation's policy or practice is "unjustifiable" and burdens or restricts US commerce, retaliation is mandatory rather than discretionary. Section 301 has been used aggressively by the US administration against alleged unfair trading practices of US' partners, with some cases being self-initiated. In the case of the EC, Section 301 has been initiated above all in agricultural disputes (hormones, canned fruit, oilseed subsidies). The US Congress is now considering various bills, such as the Trade Enforcement Act, which would include the renewal of Super 301, and the Trade Agreements Compliance Act and the Civil Aircraft Trade Enforcement Act, which would mandate the USTR to take retaliatory action against foreign countries which are unilaterally considered by the US as non-fulfilling their obligations under bi-lateral trade agreements.

### Extrajurisdictionality

The second example of the US tendency to unilateralism is in the area of extrajurisdictionality.

The extraterritorial reach of many existing or proposed US laws contravenes general principles of international law. By trying to impose US obligations on non-US persons for non-US located activities, it denies the generally accepted principle of cooperation among foreign countries, and affects the rights of other countries over activities on their own territory. By putting business in an uncertain position, it impedes trade flows and investment.

In legal terms, two points have to be distinguished, the application of basic jurisdictional principles and the effects of extra-territorial enforcement of territorial law. Most controversial between the US and the EC is the indiscriminate extension of US corporate nationality to companies incorporated in the EC and effectively



directed from the EC, although partially or wholly owned by US corporations.

The illegitimate nature of US behaviour is illustrated by US law with respect to two objectives, both of which are in fact shared by the Community, but with respect to which the US seeks to impose its own policy measures on the Community: the protection of dolphins, on the one side, and the promotion of democracy in Cuba, on the other side.

**The protection of dolphins** is the objective of the US Marine Mammal Protection Act of 1972, as amended in 1988. This law imposes an import prohibition of tuna:

- originating from countries which do not restrict or prohibit certain fishing techniques leading to dolphin by-catches;
- originating from countries, the so called "intermediary nations", which import tuna from the countries mentioned in a ) but do not apply a similar embargo on them.

In so far as it is applied to intermediary nations, the US legislation has been condemned by a GATT Panel requested by Mexico, which concluded that, although GATT parties can impose their own standards of environmental protection within their own territory (and therefore on imports, subject to certain conditions) they cannot impose their own standards of environmental protection on activities outside their jurisdiction. The report therefore recommended international cooperation and intensification of work in GATT on these issues in order to clarify the interaction between the environment and economic activity and define how best to approach environmental protection. The US has, however, refused to accept to implement these panel conclusions. The EC has since requested its own panel on these issues and the relevant measures are currently underway.

**The promotion of democracy in Cuba** is the objective of the Cuban Democracy Act of 1992. This law reinforced the 30 years-old trade embargo on Cuba, by extending its prohibitions to legal subjects acting or based outside US jurisdiction.

The extraterritorial reach of US jurisdiction will have the effect of prohibiting US-owned or controlled subsidiary companies domiciled in the EC from trading with Cuba.

Furthermore, the strengthening of the embargo is implemented through the imposition of a secondary embargo upon certain products of Cuban origine exported to the US from other trading countries.

In public statements of 8 and 27 October 1992, the EC opposed the further tightening of the US trade embargo, because this is in violation of general principles of international law and the sovereignty of independent nations.

The incompatibility of this law with the UN Charter obligations has been noted by the UN General Assembly, which adopted on 24 November 1992,

Resolution 47/19. This resolution urges all countries, including the US and certain OAS countries to refrain from promulgating or applying a law whose extraterritorial effects affect the sovereignty of other States and the legitimate interests of entities or persons under their jurisdiction and the freedom of trade and navigation.

## ■ Restrictions on Market Access

Access to the US market is determined by various factors such as:

- import duties or quotas;
- non-tariff measures, including those related to the marketing of goods or services as well as to public procurement;
- its fragmentation by subfederal, state or local laws or regulations.

Improvements of access to the US market are currently being sought by the EC through GATT dispute settlement system and the Uruguay round negotiations.

## □ Using GATT to open the US Market

At the core of GATT is the multilateral dispute-settlement mechanism, which has enabled the EC to ensure that the US provides access by removing certain trade measures deemed contrary to GATT. The two following examples illustrate that Market Access can be improved through GATT action, but only on condition that the US complies with GATT rulings.

Under Section 337 of the Tariff Act of 1930, complainants may choose to petition the International Trade Commission (ITC) for the issuance of an order excluding entry into the US of products which allegedly violate US intellectual property rights. These procedures entail a number of elements which accord less favourable treatment to imported products than that accorded to products of US origin.

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. This weapon is, in the view of European firms, abused for protectionist ends. As a result, European exporters may be led to withdraw from the US market rather than incur the heavy costs of a contestation, particularly if the quantity of exports in question is limited or if new ventures and smaller firms are involved.

A GATT Panel established upon the Community's request concluded that Section 337 of the United States Tariff Act of 1930 is inconsistent with Article III: 4, since imported products challenged as infringing United States patents are less favourably treated than products of United States origin which are similarly challenged. This discrimination cannot, according to the Panel's findings, be justified under Article XX(d). The Panel recommended that the Contracting Parties request the United States to bring the procedures

applied to imported products in patent infringement cases into conformity with its obligations under the General Agreement.

Following the adoption of the report by the Contracting Parties at the end of 1989, the US Administration made it clear that it would continue to enforce section 337 without change, pending enactment of amending legislation which, in its view, could most effectively occur through legislation implementing the results of the Uruguay Round negotiations. Given that the timing of the conclusion of the negotiations is still uncertain, this attitude has introduced an unacceptable delay in removing the offending practice.

Access to US public procurement is hampered by a vast array of federal and State legislation which is intended to secure procurement for domestic suppliers and to maintain a US industrial strategic base. These measures constitute the **Buy American legislation**.

US procurement at federal level totals approximately \$210 bn. In its Annual Report on US Barriers to Trade and Investment, the Commission of the EC has noted that almost the totality of non-GATT Code covered US procurement is restricted to US suppliers, either at federal or subfederal level.

In one specific case a Buy American requirement has been found inconsistent with the GATT Procurement Agreement by a Panel on 23 April 1992. In this case, the EC was concerned by the procurement of sonarmapping equipment by a GATT-Code covered US entity. The US has, so far, refused to accept the conclusion of this GATT Panel while all other Contracting Parties have agreed to it.

Opening the US Market through the Uruguay Round

In the context of the Multilateral Trade negotiations of the Uruguay Round the EC is seeking to achieve improved access to the US market for goods and services. As regards **goods**, the EC is negotiating keeping in mind the Montreal objective of a final balance of concessions that will meet the formula-based approach (33% reduction across the board plus elimination of tariff peaks) on tariffs and a coordinated approach for non-tariff measures.

US tariffs in some cases exceed 40% (footwear) and many have duties of more than 20%, such as textile articles, ceramics, tableware, glassware, garlic and dried onions, etc. Such high levels represent a more or less complete barrier to imports.

The extension of the GATT Procurement Code to subfederal procurement of goods and services is going to open to competition a market of \$200 bn. Likewise, the elimination of subfederal non-tariff measures, such as State standards or taxes, will result from the conclusion of the various GATT Agreements.

The US **services** market is estimated for 1991 at about \$3.67 trillion by the US Coalition of Service Industries. The negotiation of the General Agreement on Trade of

Services (GATS) will probably lead to opening a substantial part of the US market to foreign competition. However, the exclusion of certain sectors such as maritime transport or the extended recourse to derogations to the "most favored nation" principle will have the effect of limiting the final value of the US concessions in GATS.

Furthermore, the implementation of the agreement at subfederal level is likely to be difficult to monitor. Subfederal obstacles to services are found for legal services professions, for auditors/accountants or engineering services, etc. It is also true for financial services. Banking is regulated both at federal and state level and this dual control regime and their specific requirements and prohibitions are significant obstacles to foreign access to the US market.

■ **Additional Current Concerns**

There are at present two other areas of particular concern to the Community, that is to say steel and government procurement.

Steel

Beginning in Autumn 1990, the Community and the US have been negotiating, within the GATT framework, a multilateral steel agreement (MSA) with a view to imposing a strict discipline on subsidies and eliminating tariff and non-tariff trade barriers. This agreement was intended to replace the voluntary restraint agreements (VRAs) and the bilateral consensus agreements which expired on 31 March 1992.

However, the negotiating parties did not reach agreement in Geneva in March 1992 and the discussions were suspended as the US Delegation was not in a position to make the necessary concessions requested by most other delegations, including the Community. The US had, at the time, apparently lost interest in such an agreement as it no longer had the support of its industry to conclude an agreement which could equally satisfy the other trade partners.

Ending eight months of suspension, the negotiations were resumed in Geneva in December 1992 and continued in February 1993. The February meeting was devoted to an in-depth review of all outstanding issues, since the US delegation still lacked a political mandate for the negotiations. With the US steel industry's position basically remaining unchanged, however, there is little hope for a speedy conclusion. The US has announced its intention to prepare a revised text for the next meeting.

Immediately after the the expiry of the VRA scheme and the simultaneous breakdown of the MSA negotiations in March 1992, the US industry started to file a series of anti-dumping (AD) and countervailing duty (CVD) petitions relating to imports of steel products originating in 20 countries including 7 Member States of the Community.

The petitions affect roughly 50% of the Community's steel trade with the US representing a volume of 2 million tonnes valued at almost 1 billion US\$.

With regard to the most important product group involved, flat steel products, the Department of Commerce (DOC) announced in January 1993 the imposition of provisional anti-dumping duties. Provisional countervailing duties on the same products had already been imposed in November 1992. The combined effect of these decision results in duties ranging from 6% to more than 150% depending on Member State and product category concerned.

Imports of lead & bismuth steel from France, Germany and the United Kingdom were subject of the final injury determination made by the International Trade Commission (ITC) in March 1993. By this decision definitive anti-dumping and countervailing duties cumulatively amounting to 38 -148% were imposed, effectively closing the US market for the products concerned.

The Community has reacted vigorously to these decisions, denouncing them as unjustified and disproportionate. It is of the opinion that the US steel industry abuses legitimate trade instruments to harrass its foreign competitors. The Community in particular rejects the US steel industry's claims of having suffered injury from the EC imports. These assertions are not convincing given that the trade volume was well below the quotas allocated under the VRA and the total share of imports was shrinking. The problems suffered by the US steel industry have their main cause in fierce domestic competition from non-unionized mini-mills and in the fall in apparent consumption.

In view of this situation, the Commission, firmly supported by the Council, has requested consultations under both the GATT Subsidies and the GATT Anti-dumping Code. Consultations on subsidies were held in Geneva in February and were resumed in Washington at the end of March. Consultations on anti-dumping were simultaneously taken up. While the EC was able to raise numerous concerns relating to the methodology applied by the US administration as well as to the standard of injury, no narrowing of the gap was achieved on these occasions.

At the highest political level, the Commission has repeatedly urged a rapid solution of the problem. It has done so during recent contacts with the new US administration. The Commission is concerned that these procedures may have spill-over effects to other sectors of industry which may equally be tempted to blame imports for what are primarily domestic problems.

Government Procurement

Title VII of the 1988 Trade Act is one of the means for the United States to sanction, on a unilateral basis, countries which are considered to be "not in good standing" with the GATT Code on government

procurement. It is also used against any country where government procurement discriminates in a significant and persistant way against US products and services.

The unilateral sanctions prescribed in Title VII may cover actions in the GATT dispute settlement procedure, prohibitions on foreign companies to take part in US procurement or sanctions determined by the President of the United States on a discretionary basis.

At present, the European Community has been identified by the US President for its discriminatory government procurement policy against US businesses. In particular, article 29 of the EC utilities' directive on excluded sectors was quoted for its discriminatory impact. The President is committed to take action against the European Community if such discriminations were not eliminated. As the EC directive on excluded sectors has entered into force since 1 January 1993, US sanctions against the European Community were announced to be implemented on 22 March 1993. The US Government decided recently to postpone temporarily the implementation of these sanctions.

The European Community and the United States have been negotiating on government procurement to overcome their concerns on the extension of the GATT Code on government procurement. This negotiating process runs in parallel to the EC-US negotiations on telecommunications.

## CONCERNS ON US SIDE



### ■ Subsidies

There exist basic philosophical differences with regard to the role of government in the economy on either side of the Atlantic. Whereas the US approach is basically consumer-oriented, the European Community tends to follow the doctrine of the social market. Thus, in the Community, the government's role is seen as equalizing the benefits of economic activity in the various sectors of the economy. The main instrument of such government intervention has tended to be subsidies and it is not without reason, therefore, that trade disputes between the Community and the US are usually in areas where government assistance plays a significant role.

Within the Uruguay Round negotiations, the Community's position is that, whereas certain types of subsidies, whose objective is clearly to alter trade flows (e.g. export subsidies) should be prohibited, domestic subsidies remain a legitimate policy instrument, to be subjected to remedial action if and when they cause adverse effects on international trade and/or the interests of other countries. In the same logic, certain subsidies, which have little or no effect on international trade could be exempted from these trade-effects oriented disciplines, subject to strict conditions. The Community, therefore, favours the inclusion of such

subsidies on a non-actionable "green-list" while simultaneously supporting strengthened disciplines on other types of subsidies and appropriate remedies for any adverse effects they may have. This approach is consistent with the Community's internal system of state aids. The United States have remained opposed to the principle of the green list, although this concept has been supported by almost all the participants in negotiations.

However, in addition, the Community feels that new and improved rules should apply to federal states who cannot continue to invoke their constitutional structure to escape a good deal of subsidies disciplines. The EC has a great variety of constitutional structures among its Member States but this has not prevented the application of uniform state aid rules throughout the Community. Obviously, concern over subsidies afforded by individual states in the US provides another bone of contention in the EC-US dialogue on this issue. Finally, there are subsidies in certain sectors which are being negotiated elsewhere than in the context of a Subsidies Agreement in the Uruguay Round. In agriculture, bilateral agreement in principle has been reached to reduce the level of internal support by 20% of the Aggregate Measure of Support and to reduce budget outlay on export subsidization by 36% and subsidized export quantities by 21%. Both sides are also agreed on continuing re-negotiating the multilateral rules in the aircraft sector.

### ■ "Fortress Europe"

The Community's decision to achieve an obstacle-free internal market across the Community by the end of 1992 is one of the most significant events of the past decade. It has caused firms and governments both within the Community and outside to rethink production, marketing and investment strategies.

The 1992 project was intended to speed up the removal of the remaining national barriers to the EC's internal market so that European firms could benefit from a home market of truly continental dimensions and take advantage of scale economies thus generated to increase their worldwide competitiveness.

The completion of the single market was given another impulse through the Single European Act (SEA) which came into force in 1987 streamlining the Rome Treaty decision-taking procedures.

The single market has many ramifications for the Community's trading partners. At the technical or institutional level, the completion of the internal market requires the completion of the common commercial policy. In concrete terms, this means that individual import restrictions of Member States will have to disappear by the end of 1992.

At the macroeconomic level, the completion of the internal market will boost growth, create new jobs and sharpen competitiveness. This new dynamism in the Community economy will stimulate the world economy and create new market opportunities for its

suppliers whether they are located within the EC or outside.

Exporters to the Community will find themselves selling into a single market of 340 million consumers with a uniform (or mutually-recognized) set of standards and procedures. They, like local EC firms, will need to manufacture to only one set of standards in order to market their product anywhere in the Community. They will no longer have to face 12 different national requirements. Foreign firms, like Community operators, will enjoy scale economies and greater market flexibility.

Why then were fears expressed that the post-1992 Community will resemble a 'fortress Europe', turned in on itself and protected from outside competitors by a series of external barriers? To some extent the answer lies in the Community's not making clear until 1988 what it intended the impact of the Single Market on its partners to be.

The fears were addressed in the declaration of the Heads of State or Government at the European Council in June 1988:

"...the internal market should not close in on itself. In conformity with the provisions of GATT, the Community should be open to third countries, and must negotiate with those countries where necessary to ensure access to their markets for Community exports".

Similar views were reiterated at the European Council in December 1988 where the Community rejected the implied criticism of 'Fortress Europe' with the slogan of 'Europe World Partner'.

Moreover, the Community is bound by its international obligations, both multilateral (GATT and the OECD) and bilateral (the EFTA and Mediterranean agreements and the Lomé Convention). Thus in areas like norms and standards, or government procurement in sectors covered by the relevant GATT code, the benefits of the single market will, in line with the EC's obligations, be made available on a non-discriminatory basis to the Community's trading partners.

It is also in the EC's own interest to keep the post-1992 market an open one. As the world's largest exporter it is dependent on the existence of open markets around the world. In many ways, the Uruguay Round represents the forum for translating the external aspects of the single market into concrete advantages for its trading partners, particularly as concerns the further expansion of world trade in goods and the extension of liberalization rules to trade in services.

Europe 92 is considered now by many States of the USA as a lucrative export market. In addition, sales of US subsidiaries in Europe totaled \$580 bn in 1990, that is more than 5 times US exports to the EC.

## PROSPECTS IN EC-US RELATIONS

On the basis of the positive development of EC-US relations during the last couple of years, the future prospects for them look rather good. However, the further development of this relationship is highly dependant on other developments in the United States, in Europe and in the world in general.

One problem which has overshadowed the relations especially during the last months, the bilateral agricultural disputes discussed in the framework of the Gatt and the ongoing Uruguay round, seems now to have been resolved. The negotiations to conclude the Uruguay round continue and the outcome of them will have an essential impact on the mutual relations between the EC and the US. When the Uruguay round is successfully concluded, it will create a new and wider basis to further enhance the dialogue and to extend it into new areas. It will also have an important effect on the world economy giving positive impetus to the strenuous efforts on both sides of the Atlantic to revitalize the economy and to get out of the present recession.

The conclusion of the Uruguay round would also strengthen the common belief in the benefits of the multilateral trading system and its implementation would further increase the interrelationship between the EC and the US.

The change of administration in the US, following the election of Governor Bill Clinton as the new President of the United States will result in changes of US domestic policy as well as international policy. Some of these changes may effect the relationship between the EC and the US.

It seems that the Clinton administration will focus its attention on domestic policy, especially on stimulating the US economy and promoting the US competitiveness. Given the interrelationship between domestic economy and international economic policies and the importance of the multilateral system as the foundation of world economic prosperity, the cooperation on economic matters between the EC and US may become even more important during the new administration.

Because of the domestic economic difficulties it may be that the US will be less willing to devote as large amounts of its budget to defence purposes as before. It is therefore likely that in those areas where the Community is a partner to the US on security related issues the US will have a less dominating role as a leader and the partnership will be on a more equal basis. There may be similar effects on joint efforts to assist the former Soviet Union and the countries in Eastern and Central Europe and the Community may have to bear an even bigger responsibility on this.

The experiences with political dialogue during the last years have been positive and the policy positions by the EC and the US on most major policy issues in the

international arena have coincided. It is likely that this tendency will continue.

On the economic side the relations have been affected, despite the constructive dialogue on many fields, by divergences of views and conflicts of differing depth, which for the time being stay unsolved. Therefore it would be important to get those responsible for regulations affecting business on both sides of the Atlantic to a regular dialogue where information is exchanged and efforts are made in order to avoid needless trade barriers. It is likely however, that many of the problems described in other parts of this overview will remain also during the new administration. One reason for this is that they are often a result of Congressional legislation which the US President is unable to influence.

In this connection the question arises as to what kind of general trade policy the Clinton administration and the Congress will pursue, e.g. will they restore the unilateral and extrajurisdictional elements of policy explained above or will they strengthen the traditional US commitment to the multilateral system.

Significant changes will also take place in Europe and have a bearing on its relation with the US. The implementation of the Maastricht Treaty will extend Community competence to new areas. And the development of the Community towards a Political Union with an effective common foreign and security policy will strengthen the position of the Community within the dialogue on political issues and bring about a situation where the EC and the US exercise a partnership on a more equal basis on international questions.

The trend of recent years to shift the emphasis in EC/US relations from the management of conflict to the practice of cooperation can thus be expected to continue.