

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

C/RM/S/10A
18 March 1991

Limited Distribution

COUNCIL

TRADE POLICY REVIEW MECHANISM

EUROPEAN COMMUNITIES

Report by the Secretariat

In pursuance of the CONTRACTING PARTIES' Decision of 12 April 1989 concerning the Trade Policy Review Mechanism (L/6490), the Secretariat submits herewith Volume A (Text) of its report on the European Communities. Volume B (Tables and Appendices) is presented in document C/RM/S/10B.

The report is drawn up by the Secretariat on its own responsibility. It is based on the information available to the Secretariat and that provided by the European Communities. As requested by the Decision, in preparing its report the Secretariat has sought clarification from the European Communities on their trade policies and practices.

Document C/RM/G/10 contains the report submitted by the European Communities.

NOTE TO DELEGATIONS

Until further notice, this document is subject to a press embargo.

CONTENTS

	<u>Page</u>
SUMMARY OBSERVATIONS	vii
(1) The European Communities in World Trade	vii
(2) Institutional Framework	x
(3) Trade Policy Features and Trends	xii
(i) Recent evolution	xii
(ii) Type and incidence of trade policy instruments	xiv
(iii) Temporary measures	xxiii
(iv) New initiatives	xxv
(4) Trade Policies and Foreign Trading Partners	xxvi
I. THE ECONOMIC ENVIRONMENT	1
(1) Major Features of the EC Economy	1
(2) Recent Economic Performance	2
(3) Trade Performance	5
(i) Commodity pattern of trade	5
(ii) Regional pattern of trade	6
(4) Outlook	8
II. TRADE POLICY REGIME: OBJECTIVES AND FRAMEWORK	9
(1) Introduction	9
(2) Trade Policy Objectives of the European Communities	10
(3) Institutional and Legal Structures of the EC	12
(i) The framework of the EC Treaties	12
(ii) Member States of the EC	13
(iii) Institutions and policy formulation	14
(iv) Legislation and enforcement of Community Law	19

	<u>Page</u>
(4) Major Features of the EC Trade Legislation	21
(5) Barriers to Intra-EC Trade	26
(6) The Single Market Process	28
(i) Historical background	28
(ii) The White Paper on completing the Internal Market	29
(iii) The Single European Act	32
(7) Future Amendments to the EEC Treaty	34
(8) Trade Agreements and Preferential Trade Schemes	34
(i) Free Trade Agreements with EFTA countries	35
(ii) Generalized System of Preferences	36
(iii) The Lomé Conventions	41
(iv) Agreements with Mediterranean countries	44
(v) Recent agreements with central and eastern European countries	46
(vi) Further agreements and arrangements	48
(vii) Agreements on the part of member States	49
(viii) Trade relations with the German Democratic Republic	49
Annex: National trade régimes affecting bananas	51
III. TRADE-RELATED ASPECTS OF DEVELOPMENTS IN THE MONETARY AND FINANCIAL AREA	53
(1) Exchange Rate Movements and Trade	53
(i) The European Monetary System (EMS)	53
(ii) The agrimonetary system	56
(2) Foreign Exchange Allocation	58
(i) Liberalization of capital movements	58
(ii) Import payments and export proceeds	60
(3) Foreign Direct Investment	60
Annex: Protective measures on the basis of Article 73 (capital movements) and Articles 108 and 109 (balance-of-payments difficulties) of the EEC Treaty	63
(i) Invocation of Article 73	63
(ii) Invocation of Articles 108 and 109	63

	<u>Page</u>
IV. TRADE POLICIES AND PRACTICES BY MEASURES	65
(1) Measures Directly Affecting Imports	65
(i) Tariffs	65
(ii) Variable import levies	71
(iii) Quantitative restrictions	71
(iv) Import controls and prohibitions	73
(v) Safeguard action under GATT Article XIX	76
(vi) Voluntary restraints and similar arrangements	76
(vii) Import licensing	78
(viii) Anti-dumping and anti-subsidy actions	80
(ix) Rules of origin	86
(x) Product standards, testing and certification	89
(xi) Sanitary and phytosanitary measures	94
(xii) Public procurement	97
(xiii) Countertrade	102
(xiv) State trading	104
(xv) Consumption taxes	106
(2) Measures Directly Affecting Exports	107
(i) Export promotion	107
(ii) Export finance and insurance	108
(iii) Export subsidies	109
(iv) Export cartels	110
(v) Bilateral arrangements and understandings	111
(vi) Export controls and restrictions	111
(3) Measures Affecting Production and Trade	114
(i) State aid (financial support)	114
(ii) Promotion of new technologies	121
V. TRADE POLICIES BY SECTOR	125
(1) Agriculture	125
(i) Main elements of EC agricultural policies	125
(ii) Dairy products	134
(iii) Meat	135
(iv) Fruit and vegetables	137
(v) Cereals	139
(vi) Oilseeds	141
(vii) Sugar	142

	<u>Page</u>
(viii) Fishery products	142
(ix) Tobacco	143
(x) Beverages and spirits	144
(xi) Other food products	146
(2) Leather, Footwear and Travel Goods	147
(3) Wood and Paper Products	148
(4) Textiles and Clothing	149
(5) Ores and Metals	156
(6) Coal, Natural Gas and Petroleum	161
(i) Coal	161
(ii) Natural gas and petroleum	166
(7) Minerals and Fertilizers	167
(8) Chemicals	168
(9) Machinery, Optical Goods, Watches and Sound Recorders	169
(10) Road Motor Vehicles	174
(11) Civil Aircraft (Commercial Jets)	181
(12) Shipbuilding	185
(13) Other Products	187
VI. TRADE DISPUTES AND CONSULTATIONS	188
(1) GATT Dispute Settlement	188
(i) Complaints under Article XXIII of the General Agreement	188
(ii) Tokyo Round Agreements	189
(iii) Other cases	190
(2) Dispute Settlement in the Context of Preferential Trade Agreements and Sectoral Arrangements (Steel)	190
(3) Other Issues	192

VI

SUMMARY OBSERVATIONS

(1) The European Communities in World Trade

1. The European Communities (EC) form the world's largest importer and exporter of merchandise. Including trade among member States (internal trade), the EC accounted for 38 per cent of merchandise traded internationally in 1989, up from 23 per cent in 1958 when the Treaty of Rome became effective. This expansion in market share reflects both rapid growth of internal trade as barriers to trade among member States were lifted and the progressive enlargement of the EC from six to twelve member States (see Chart).

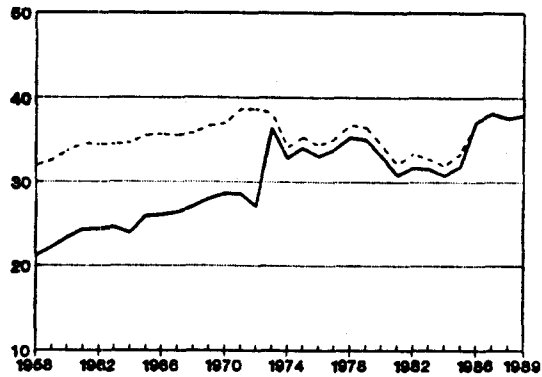
2. Excluding trade among member States, one fifth of world trade originated from or was destined for the EC in 1989, slightly less than the twelve EC members as a group had accounted for three decades ago. External exports and imports of the twelve EC members, as a group, thus expanded less than world merchandise trade and, in particular, the Communities' internal trade. The share of external in total merchandise trade of the twelve countries declined sharply from 63 to 40 per cent between 1958 and 1989.

3. While less dynamic than internal trade, external trade has been of major economic importance for the EC. In 1989, external exports of merchandise worth ECU 413 billion corresponded to 9½ per cent of the EC's GDP and external imports worth ECU 447 billion to 10 per cent. The external trade to GDP ratio of 19½ per cent in 1989 exceeded that of the United States and Japan, even though the Communities' internal market is larger.

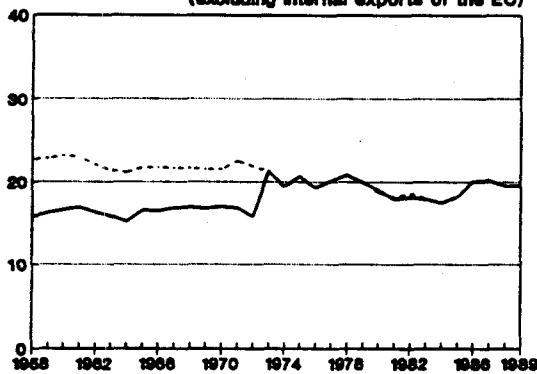
4. Trade in services and foreign direct investment at home and abroad add to the external economic dimension of the EC. In the 1980s, the

Merchandise exports of the European Communities, 1958-89 (Per cent)

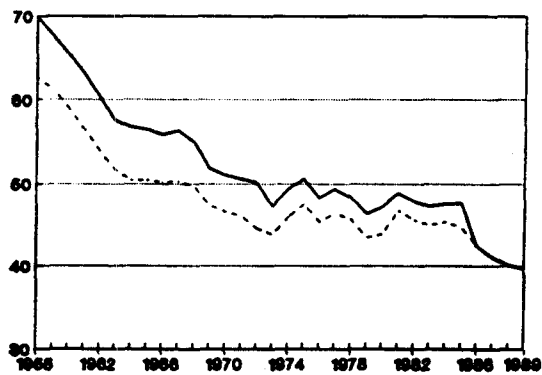
External and internal exports of the EC in world trade



External exports of the EC in world trade
(excluding internal exports of the EC)



Share of external exports in total exports of the EC



— EC as at the time - - - EC12

Note: EC as at the time: EC6 from 1958 to 1972; EC9 from 1973 to 1980; EC10 from 1981 to 1985; EC12 from 1986 to the present time

Source: Eurostat.

Communities' external trade in commercial services expanded more rapidly than external merchandise trade, to reach an estimated ECU 118 billion for exports and ECU 108 billion for imports in 1988. Available information also suggests expansion of foreign direct investment links between the EC and its trading partners in recent years. This expansion was attracted by economic prospects in Europe and fostered by financial deregulation, but possibly also induced by uncertainty about conditions of future access to EC markets. Investment links with the United States have been particularly strong.

5. The United States has also been the Communities' single most important trading partner, with a share of about 19 per cent in external exports and imports of merchandise in 1989. While in the 1980s merchandise trade between the EC and the United States lagged behind the Communities' trade expansion with other trading partners, trade relations with Japan developed dynamically. Within a decade, Japan's share doubled to reach 10½ per cent of total external imports of merchandise and 5 per cent of total external exports. Despite the rapid growth of exports to Japan, Austria, Sweden and Switzerland each remained larger outlets for merchandise made in the EC. As a group, EFTA countries were the market for close to one third of external exports of the EC and the source of more than one quarter of external imports of merchandise in 1989.

6. The developing countries are even more important trading partners. However, their shares in external merchandise trade declined from 44½ (exports) and 45½ (imports) per cent in 1981 to 32 and 31 per cent in 1989. This development reflects the decline in the ECU value of EC trade with petroleum exporting developing countries, in particular in the Middle East, and with heavily indebted developing countries in Latin America and Africa. EC imports and exports in merchandise trade with Asian developing countries doubled during the same time, boosting their share in external exports to 11½ per cent and in external imports to 12 per cent in 1989. These countries, as a group, have become more important trading partners for the EC than central and eastern Europe.

7. The average figures for the EC as a whole mask a wide variation of trade levels and intensities among member States. In 1990, trade to GDP ratios ranged from 12½ per cent (Spain) to 62½ per cent (Belgium-Luxembourg) for merchandise exports and from 18 per cent (Italy) to 64½ per cent (Belgium-Luxembourg) for imports. As regards the importance of extra-Community trade in five smaller countries (Belgium, Luxembourg, Ireland, the Netherlands, Portugal), external exports represent less than 30 per cent of total exports of merchandise. France has the weakest extra-Community trade links among the larger member States, with external exports accounting for close to two-fifths of total exports of merchandise. The share of external in total trade is particularly high for Denmark and the United Kingdom, reflecting in part their historical EFTA relations and, in case of the United Kingdom, the ties to the Commonwealth.

8. Specialization in overall international trade also differs substantially among member States. For example, according to the breakdown of trade into eighteen major product groups routinely used by the GATT Secretariat, automotive products ranked top in the export baskets of Belgium, Germany and Spain in 1988, with exports having expanded at above average rates in the 1980s. In Denmark, France, Greece, Ireland and the Netherlands, food products were the leading export item, even though export performance had been below average in the 1980s. For Greece and Portugal, clothing alone accounted for about one fifth of total merchandise exports in 1988. Import patterns show a similar spread. This variety in trade interests among member States is an important factor behind the design and conduct of the external trade policies of the EC and, ultimately, the Communities' positions in the GATT system.

(2) Institutional Framework

9. Economic integration among EC member States since 1958 has been accompanied, and promoted, by a gradual shift of sovereignty from the national to the Community level. This process has neither been steady, nor progressed at equal speed in individual trade policy areas.

10. Due to leads and lags in the integration process and to remaining genuine national sovereignty, there is no single mechanism of formulating, co-ordinating and implementing the broad range of trade-related policies in the EC. Depending on the subject, policy competences are conferred on the EC or shared, to varying degrees, between the EC and the national authorities.

11. Under the EEC Treaty, only the Commission can initiate common policies. Article 113 provides that the Commission shall submit proposals to the Council of Ministers for the putting into effect of the common commercial policy. The decisions are taken by the Council by qualified majority voting. The Council frequently convenes on an issue-related basis, involving the 12 Ministers in charge. For instance, decisions concerning agriculture are mostly taken by the "Agricultural Council", comprising the Ministers of Agriculture. Sector-specific views may thus carry considerable weight in the formulation of trade-related policies, as opposed to overall economic or trade policy considerations.

12. For the day-to-day conduct of policies, issue-specific Committees are established in which the Commission consults or cooperates with member States. The Committee system covers a wide range of questions such as the management of agricultural markets, the initiation of anti-dumping investigations or the interpretation of rules of origin. At times, the sophisticated committee procedures ("comitology") have led to frictions in the decision-making process.

13. Currently, the influence of the European Parliament on trade-related policies is mainly limited to an advisory rôle. The Parliament has certain supervisory functions with respect to the Commission; the Council is not accountable to it. In contrast, judicial review by the European Court of Justice has had a major impact on certain EC trade policies.

14. At the Communities' level, there is no statutory independent body regularly reviewing trade-related policies, and the Commission has indicated no intention to consider the establishment of such a body.

15. Policies which could distort intra-EC trade and competition, including support to industry by member States or anti-competitive agreements between enterprises, are generally prohibited. Under Community law, the Commission is authorized to vet such practices and, as necessary, to intervene. However, there are no such independent institutions as the anti-monopoly offices of individual member States.

16. The present institutional setting is likely to undergo considerable changes as the economic and political integration in the Communities proceeds.

(3) Trade Policy Features and Trends

(i) Recent evolution

17. The evolution of the EC trade régime and of trade-related policies over recent years was marked by the Internal Market programme, by the extension of preferential trade relations, and by efforts to develop new multilateral approaches in the Uruguay Round.

18. The Internal Market programme aims to achieve, by the end of 1992, "an area without internal frontiers in which the free movements of goods, services and capital is ensured in accordance of the provisions of the EEC Treaty". The EC and member States have made considerable progress towards this objective by formulating, passing and, to a lesser extent, implementing legislation. The prospects of a unified EC market are likely to have been a major factor behind the surge in business investment and economic activity in almost all member States in recent years.

19. However, a hard core of controversial issues in the Internal Market context remains to be settled. For example, basic decisions on the future common régime for certain "sensitive products", such as passenger cars, are pending. Consensus has to be ensured that intra-EC border measures under Article 115 of the EEC Treaty, and any substitutes such as type registration procedures, will no longer be applied as from 1 January 1993.

Some proposals relating to the harmonization and mutual recognition of standards have raised concerns. For example, it has been argued that requirements for the interworking of telecommunications terminal equipment with the network could be implemented in a manner that would limit trade opportunities, particularly in new and innovative equipment.

20. While the Internal Market programme aims at unifying conditions of competition within the EC area, the long-term trend in the Communities' external trade relations has been towards diversifying conditions of access to its market. For example, a complex hierarchy of preferential arrangements has evolved, based on free-trade agreements (with the six EFTA countries and with Israel), association agreements (with Turkey, Malta, Cyprus and with the ACP countries), cooperation agreements (with eight Mediterranean countries) and the (unilateral) generalized system of preferences of the EC. In total, some 60 per cent of external EC imports originate from countries participating in some form of preferential trade scheme. Negotiations on new trade agreements with several eastern and central European countries and with the Gulf Co-operation Council are underway.

21. Details differ substantially among individual arrangements. However, as a common feature, imports from preferential sources only benefit partly from preferential treatment. Sensitive imports such as most agricultural products are either completely excluded from the schemes or preferences are limited by seasonal calendars or quantitative ceilings. Preferences for industrial products are subject to safeguard provisions. In addition, some beneficiaries have agreed to restrain their exports of sensitive product categories, for example textiles. Also, origin requirements, including restrictions on the regional cumulation of processing stages among preferential trading partners, have operated as a factor limiting benefits from preferences. Less advanced developing countries have found it particularly difficult to meet minimum processing provisions under the EC GSP scheme.

22. An important result of the Uruguay Round would thus be to achieve both a reduction in the overall level of the Communities' external

protection and a lessening of the disparities in the treatment of third country suppliers. This point gains in significance in view of a possible further geographical extension of the EC and the current negotiations to create an European Economic Space.

23. Of course, the Round has many more implications for the EC, covering virtually every aspect of its foreign trade régime. Reflecting its wide trade interests, the EC has played a very active rôle and contributed a large number of negotiating proposals. For many EC initiatives in the Round, the removal of internal barriers has facilitated the negotiations in a multilateral context just as the need to negotiate multilaterally has served as a catalyst for internal trade liberalization. However, the Round has also shown the difficulties in coming to a common negotiating position within the EC, and the inflexibility inherent in the decision-making system once a common position has been agreed upon.

(ii) Type and incidence of trade policy instruments

24. The EC and individual member States operate a complex foreign trade régime. The common customs tariff is only one among many trade-related instruments, and in a number of product areas it is not the decisive measure in regulating trade flows.

25. It is difficult to quantify the overall importance, in terms of restrictiveness and frequency, of measures such as import prohibitions, non-automatic licensing, import quotas, variable levies, minimum price regulations or export restraint arrangements. However, there is evidence that such measures are implemented in a wide range of product areas. For example, rough estimates for mid-1990, based on a breakdown of some 9,500 tariff items into 108 product categories, suggest that in about two-thirds of all categories imports of at least one item in at least one member State were affected by such measures.

26. EC trade policies have shown a propensity for sector-specific solutions, resulting in large differences in the levels of protection

across industries. Coal and steel are regulated in a separate legal framework, established prior to the EEC (ECSC Treaty), while agriculture has a special status under the Treaty of Rome. Other sector-specific régimes have evolved over time in response to structural adjustment pressures.

27. The bulk of agricultural commodities produced and consumed in the EC are decoupled from the world market through a system of variable levies. Reflecting the restrictiveness of the system, the product categories subject to variable levies accounted for no more than 12 per cent of extra-Community food imports in 1988 (EC 10). The leading import items were coffee, soybeans, oilcakes, bananas, crustaceans and molluscs, to which the system does not apply. Oils and fats enter under low levels of border protection, but internal production is highly supported through compensatory payments to processors (ECU 6 billion budgeted for 1991). A range of other agricultural commodities outside the variable levy system face substantial tariffs, including specific tariffs (wine and spirits), seasonal tariffs (certain fruits and vegetables, cut flowers) and alternate tariffs (tobacco, apples and some other fruits and vegetables). For wine, some fruit and vegetables, and certain fishery products, countervailing charges or taxes are imposed if exporters do not comply with established reference prices.

28. Farm incomes have been supported mainly through price policies. High internal prices in the EC have stimulated agricultural output, and production has exceeded EC consumption for a growing number of commodities over the years. In 1988, self-sufficiency ratios ranged between 100 and 129 per cent for products such as beef and veal, pigmeat, poultry, milk, cereals, olive oil, wine, sugar and vegetables, accounting for a combined share of about three-quarters of EC agricultural output. Stockholding, denaturalization and subsidization of exports have been among the main measures to dispose of excess supply. In 1989, export restitutions for agricultural products amounted to ECU 8.2 billion, more than twice their 1982 level. EC export subsidies for cereals, milk, milk products and beef alone exceeded ECU 6 billion.

29. To contain further production growth, the EC has experimented, on a sector by sector basis, with a wide range of price- and quantity-related measures. In the late 1980s, the so-called production stabilizers contributed to drastic reductions in EC stock levels of butter, wheat and beef, while other factors such as the drought-related shortfall of production in North America and elsewhere were also at work. More recent data point to the re-emergence of substantial surpluses, a development also related to expanding world output, changing consumer preferences and the Gulf crisis. For example, by the end of January 1991 public stocks of beef stood at 704,000 tonnes, up from 130,000 tonnes a year ago.

30. Recent estimates (OECD) suggest that in 1989 the Common Agricultural Policy cost EC consumers ECU 49 billion and EC taxpayers 40 billion, adding up to an ECU 89 billion transfer to farmers. The transfers from consumers are a disproportionate burden for lower income groups because of the relatively large share of food in their consumption expenditures. A minority of EC farmers receives the bulk of the assistance, due to the large differences in farm size, production and productivity in the Communities (some 20 per cent of EC farms account for 80 per cent of agriculture output.) The majority of disputes with trading partners in which the EC has been involved under Article XXIII of the GATT concerned agricultural and food products. Against this background, in January 1991, the Commission presented proposals for a major overhaul of the Common Agricultural Policy.

31. While variable levies, complemented by export subsidies, are major trade measures in agriculture, tariffs play a more prominent rôle for other primary commodities and industrial products. On average of all non-agricultural products, tariff protection in the EC is moderate, with a simple average tariff of 7.3 per cent (1988). Items such as crude petroleum, copper, nickel, tin, wood, hides, skins and several other industrial raw materials enter duty-free into the EC; border measures for many semi-manufactures and finished industrial products are mainly limited to low or moderate ad valorem tariffs.

32. Overall, the dispersion of tariffs across the product range is limited, but a number of tariff peaks exist. For example, tariffs on certain motor vehicles and footwear are around 20 per cent; duties on manufactured tobacco range from 26 to 117 per cent. In several product areas, in particular resource-based manufactures, EC tariffs increase by stage of processing (tariff escalation).

33. Almost all industrial tariffs are bound, thus providing for a degree of stability and predictability. However, the economic value of tariff bindings has been eroded by measures such as sector-specific bilateral arrangements, frequently targeted against the most competitive foreign suppliers.

34. The EC textiles and clothing industries, for example, are mainly shielded by 19 bilateral restraint agreements under the Multifibre Arrangement (MFA IV), covering 46 per cent of external EC textile imports in 1988. Imports from Mediterranean countries, partly under self-restraints, accounted for an additional 22½ per cent. Moreover, there are several autonomous restrictions of member States against State-trading countries. The Textiles Surveillance Body of the GATT observed, on balance, some relaxation and increase in flexibility of EC restraint arrangements under MFA IV, but characterized the product coverage as comprehensive and the total sum of restraints as high. Through its technical regulations, the MFA system of the EC has become highly complex, its technical complexity becoming a factor which may make it difficult for exporters to utilize fully the product- and country-specific annual quotas by the EC.

35. As in the case of agriculture, protection of the EC textiles and clothing industries has come at a substantial cost for foreign suppliers and EC consumers, particularly lower-income groups. According to one study, clothing prices in the United Kingdom would have been about 5 per cent lower in 1988 if there had been no MFA. The annual cost to consumers of protecting one job in the industry was estimated to exceed three times the average annual earnings of a clothing worker.

36. From the early example of textiles and clothing, the selective approach to import-related adjustment problems has extended to a wide range of sectors, including traditional as well as technologically-advanced manufactures. Some 50 bilateral restraint arrangements are known to be currently in place, involving the EC, individual member States or their industries. The measures take many different forms, but are mostly administered on the export side. Japan has been most frequently involved, restraining, moderating or monitoring exports of certain textile and clothing products, machinery, motor vehicles, electrical and electronic household equipment, and metal flatware. Korean producers appear to rank next with measures, for example, on frozen squid, footwear and video-tape recorders. The EC Commission has indicated that it is not aware of some of these measures.

37. It is difficult to assess the recent trend in this area, because of the inherent lack of transparency and, in some cases, the difficulties of distinguishing between such arrangements and other measures taken, for example, in an anti-dumping context. The number and coverage of steel arrangements appears to have been curbed in recent years, leaving some 10 arrangements on steel imports into the Communities in place (involving Brazil, three EFTA countries and several central and eastern European countries). Consultations are underway with the objective of replacing national approaches to car imports from Japan by an EC wide restraint arrangement, also covering Japanese-brand cars produced inside the EC. The arrangement is expected to provide protection over a number of years, on a degressive scale, with particular regard to certain highly protected national markets.

38. The EC network of bilateral restraint arrangements has reduced transparency in the multilateral trading system and introduced strong elements of discrimination. In many cases, information on parties involved, trade coverage, degree of restrictiveness, duration or regional application within the EC is limited. The arrangements have tended to promote cartelistic behaviour at home and abroad. Their impact on third countries, and on EC member States not directly involved is often difficult

to assess, as are their costs to EC user industries, consumers and taxpayers (for example, in the form of tariff revenue forgone).

39. The arrangements do not require, as is envisaged for safeguard measures under GATT rules, that an increase in import restrictions in a particular sector be compensated with liberalization elsewhere in the economy. Checks on domestic requests for protection are thus eliminated. Originally intended to serve as a temporary device, bilateral restraint arrangements, in one form or another, have shown a tendency to become entrenched, suggesting that protection delayed rather than promoted structural adjustment in the industries concerned.

40. While certain trade policy instruments, in particular the customs tariff, are generally applied on an EC-wide basis, levels of openness have continued to vary across individual member States. One reason is the uneven distribution among member States of sectors highly protected through the measures mentioned above. For example, in 1989 textiles and clothing contributed 1 per cent to manufacturing output in the Netherlands, but 15 per cent in Portugal. However, there are additional factors. In agriculture, the common market has been segmented through specific multiple exchange rate arrangements. In several sectors, individual member States have continued to apply measures which can insulate the domestic market or otherwise distort competition.

41. For example, in mid-1990, France maintained 71 quantitative import restrictions (at four-digit item level), covering goods such as food products, control instruments, clocks and watches, consumer electronics, transistors and integrated circuits. Italy maintained 48 such measures. Estimates by the International Energy Agency suggest that total public support per tonne of coal produced is about four times higher in Germany than in the United Kingdom. Banana imports from non-ACP sources are subject to a zero-tariff quota in Germany, a 20 per cent ad valorem duty in five EC member countries (Belgium, Denmark, Ireland, Luxembourg, the Netherlands), and individual quantitative restrictions in the six remaining countries. Large differences in conditions of competition also exist in

automobiles. While certain national markets are protected by way of bilateral arrangements, Italy and Spain have limited direct imports of Japanese cars under bilateral quotas to 2,500 and 1,000 units per year. Registration procedures in France prevent Japanese car imports from exceeding a market share of 3 per cent.

42. There are thus instances where measures of questionable nature under EEC law have been taken at the national level to keep out indirect imports. Where the external restrictions are covered by EC law, individual member States may resort, upon approval by the Commission, to national interventions in intra-EC trade under Article 115 of the EEC Treaty. Authorization is usually granted for a maximum period of one year, but can be renewed. For example, France and Italy have operated restrictions on TV sets and radios under Article 115 since 1974. In 1990, individual member States were authorized to restrict intra-EC trade in 79 cases, down from 176 cases in 1985. In the run-up to 1992, the trend has been clearly towards a reduction in the number of Article 115 authorizations.

43. Agriculture aside, subsidies are predominantly granted by member States. A recent study by the EC Commission shows that over the past decade, subsidies for the steel and shipbuilding sectors were cut in the EC, but for other industries expanded roughly in line with value added. For the period 1986-88, the Commission's estimates put subsidies to the EC manufacturing sector at 4 per cent of gross value added, ranging from 2 per cent in Denmark to an estimated 15½ per cent in Greece. Support intensities appear to differ substantially among industries.

44. The Commission has increased efforts in recent years to prevent unco-ordinated subsidization by member States. Between 1986 and 1989, member States notified a total of 1,121 aid proposals. In more than three-quarters of the cases, the Commission raised no objection. However, some member States have been reluctant to notify the Commission, in conformity with established requirements, their intention to grant support. For example, France had failed to notify more than one-third of the aids examined by the Commission between 1985 and 1987. (In preparing this

report, a questionnaire from the GATT Secretariat submitted, through the Commission, to all member States remained without response from Greece, Ireland, Italy and Luxembourg).

45. While support in the form of quota arrangements and subsidies has been extended to a number of traditional sectors such as agriculture, textiles, clothing, steel and automobiles, the EC and member States have also supported the development of new technologies and technology-intensive sectors. For example, several support programmes at the EC level are geared to advance information technologies and the automation of production. However, EC funds for R&D do not exceed 4½ per cent of total public expenditure for civil research and development in the Communities.

46. From a sectoral perspective, the EC Commission has ranked aerospace among the sectors of crucial importance for Europe's industrial and technological independence. The Airbus programme accounts for about 50 per cent of civil aerospace turnover in the EC. Germany, one of the four Airbus countries, has spent close to DM 11 billion from the mid-1960s to 1989 on the project (a German and a French company, each, hold a share of 38 per cent stake in the project). The programme has been a major bone of contention in EC trade relations with the United States, and, in February 1991, led to a request by the United States to set up a Panel by the Subsidies Committee of the GATT.

47. Another way of promoting national industries is public procurement. In 1987, total public procurement in the EC was estimated at about ECU 590 billion, or 16 per cent of GDP. Available evidence suggests that import penetration in the public sector of the EC is substantially lower than in the private sector.

48. Only about one-fifth of the public contracts awarded are believed to have complied with the EC provisions on competitive tendering and EC-wide advertising. In part, this reflects the current exclusion of four sectors from the regulations (transport, energy, water supply, telecommunication services) and the fact that a large number of contracts

has remained below the threshold levels (ECU 134,000 for items covered by the GATT Code and ECU 200,000 otherwise).

49. From January 1993, most member States will apply common procurement rules to the four excluded sectors (Greece, Portugal and Spain will follow later). A certain European preference is envisaged, restraining bids from firms located in countries with which the EC has no agreement ensuring effective market opening in public procurement. This provision may be reviewed in the light of the results of the Uruguay Round.

50. EC trade is affected by a large variety of other arrangements and policies, pertaining, for example, to taxation, State trading, and countertrade measures. Thus, certain member States maintain excise taxes on products such as coffee, tea or cocoa which are predominantly or exclusively imported. In 1988, the ad valorem equivalent of the German tax on raw coffee was estimated at 70 per cent of the average import price. As from 1 January 1991, Italy has increased its taxes on coffee and cocoa by factors between four and seven.

51. Some member States maintain State monopolies in areas such as petroleum, alcohol, tobacco and fertilizers. In a number of cases, the Commission has acted against discriminatory practices in intra-EC trade on the part of these monopolies.

52. As for countertrade, most member States stress that the few deals known are usually private sector arrangements. However, as part of defence-related purchases involving imports, active offset policies appear to be widespread.

53. Trade in many agricultural and industrial products are subject to health and sanitary regulations or standards. The recent dispute with the United States concerning the EC Hormone Directive, as well as the recent discussions among EC member States on intra-EC exports of cattle from countries affected by "mad cow" disease highlight the difficulties in the

area of sanitary (or phytosanitary) regulations in distinguishing between legitimate and protectionist use of such measures.

54. Other trade controls and restrictions are in place to protect life, health and the environment. Affected products include certain chemicals and drugs, contaminated foodstuffs, environmentally dangerous substances and arms and ammunitions. All member States, except for Ireland, control exports of defence-related items in the framework of COCOM. There are also export restrictions to preserve national treasures.

55. A voluntary restraint arrangement between the EC and the United States limits EC steel exports to 7 per cent of domestic steel consumption in the United States. This arrangement is to lapse in March 1992.

56. Member States are engaged in a wide range of export promotion measures, such as providing trade intelligence and assistance in marketing and participation in fairs abroad. All member States participate in the OECD "Consensus" on officially supported export credits.

(iii) Temporary measures

57. In contrast to its use of selective arrangements, the EC has rarely resorted to safeguard actions under Article XIX of the GATT. The three Article XIX measures maintained by the EC were introduced in 1982, 1985 and 1989, respectively, setting minimum prices for fruit imports. In addition, there is one Article XIX action by one member State (Germany) relating to coal imports. Dating back to 1958, this is by far the longest-standing Article XIX action in GATT history.

58. The EC ranks among the most intense users of anti-dumping measures worldwide. In the period 1980 to 1989, a total of 256 measures were implemented, mostly in the form of price undertakings. Nearly one half of the measures related to chemicals and allied products, followed by mechanical machinery (34), textiles (22), steel, office equipment and

consumer electronics. In 1989, 120 measures were in place; 27 new cases were initiated, with 14 concerning suppliers located in Asia. In January 1990, eleven Japanese semi-conductor producers agreed on a price undertaking for DRAMs. In this context, the Commission has emphasized the importance of a strong electronics industry in the EC and the strategic rôle of these semi-conductors. In February 1991, the Commission submitted for approval by the EC Council, a similar arrangement for another type of semi-conductors (EPROM), involving price undertakings by seven Japanese producers and a 94 per cent anti-dumping duty on EPROM imports from unspecified firms, in particular any newcomer who would not be prepared to engage in a price undertaking.

59. EC law requires that anti-dumping duties be limited to the amount necessary to remove the injury. In about two-fifths of all cases (companies) between 1987 and 1989, definitive duties were less than the full margin of dumping. A public interest clause has apparently had no major impact on EC anti-dumping practices.

60. Related to the complexity of cases and a mounting workload, an increasing number of anti-dumping investigations was not concluded within the normal investigation period of 12 months. For example, only two of the 40 investigations launched between mid-1987 and mid-1988 were terminated within one year.

61. In recent years, the Commission has rejected public criticism that certain provisions of EC anti-dumping law and practices, in particular related to the establishment of constructed normal values and constructed export prices, are biased in favour of positive dumping findings. In this context, it has been pointed out that not more than 0.9 per cent of total EC imports of merchandise had been subject to anti-dumping duties (excluding price undertakings) in 1987. However, the uncertainty generated, and signals sent, by frequent resort to anti-dumping procedures are likely to affect larger volumes of trade. For example, there is evidence that, in view of possible anti-dumping action, trading partners have preferred to restrain voluntarily their exports to the Communities.

62. EC anti-dumping legislation has been extended to cover, under certain conditions, including a local content of less than 40 per cent, products assembled within the EC from imported inputs ("screwdriver-plant legislation"). In 1990, a GATT Panel found this legislation inconsistent with GATT provisions.

63. Between 1980 and 1984, the EC took five anti-subsidy actions, concerning shoe imports from Brazil and steel imports from Spain and Brazil.

64. EC anti-dumping and countervailing duty actions are subject to a sunset clause, introduced in 1984. As a general rule, measures lapse after five years. There are review procedures.

(iv) New initiatives

65. Trade-related policies of the EC, including their institutional framework, are in a process of rapid change. The Internal Market programme is to be completed by the end of 1992, involving both agreement among member States on a range of unsettled issues and some arrangements with third countries. In December 1990, conferences on Economic and Monetary Union and on Political Union were established.

66. At the multilateral level, the EC has reiterated its commitment to work towards a successful conclusion of the Uruguay Round.

67. The EC has also been active in promoting trade liberalization in a European context, including the negotiations aiming at creating a European Economic Area. A leading rôle has been taken by the Communities in assisting the restructuring process in central and eastern European countries, including new trade agreements between the EC and these countries.

68. Four countries have applied for EC membership (Turkey, Austria, Cyprus, Malta). The Swedish Parliament has voted to apply for membership. The EC has postponed consideration of applications until after 1992.

(4) Trade Policies and Foreign Trading Partners

69. The Internal Market programme has injected new dynamism into many EC markets, stimulated investment and spurred economic growth in the Communities. Through the spillover into import demand, the Communities' foreign trading partners have shared in the benefits.

70. In the process, new opportunities for trade have been opened. The removal of barriers to intra-EC trade has reduced the economic distance to EC markets for both insiders and outsiders. For example, all competitors are gaining from the reduced market segmentation through the principle of mutual recognition of tests and certificates within the EC.

71. Initial concerns that, in the course of the Internal Market programme, the EC would turn inward-looking have not been confirmed to date. There is little evidence of any recent major intensification of protective measures on the part of the EC. Indeed, in some areas such as steel some improvement in market access has been achieved. For a wide range of industrial raw materials, fuels and manufactures, moderate bound tariffs are the main factor affecting access to the EC market.

72. At the same time, the EC continues to accord high levels of protection to producers in a notable number of product areas. In several cases, EC trade restrictions are primarily directed against competing supply from developing countries, including heavily-indebted ones, and affect sectors in which the emerging market economies in central and eastern Europe can be expected to have a comparative advantage.

73. The network of preferential arrangements maintained by the EC, either on a contractual basis or unilaterally, may offset some of the effects of

its protective régime in individual cases. However, it also creates numerous problems of discrimination between different suppliers.

74. *Import restrictions of the EC, in the case of agricultural products coupled with subsidized exports, have distorted competition in a number of world markets. The EC, it needs to be stressed, is not alone in this respect. Also, many EC firms face considerable barriers in exporting to major industrial and many developing countries. Better access opportunities abroad could help marshal support for rationalizing the Communities' trade régime.*

75. *In its own approach to import-related industrial adjustment problems, the EC has preferred pragmatic solutions, frequently in the form of bilateral restraint arrangements. In one case, it has also complied with the request by a major trading partner to restrain EC exports. Continuing with this approach would be a major threat for a multilateral trading system which is founded on the principles of non-discrimination, transparency and undistorted competition. It is therefore encouraging to note that, in a recent communication to the Council and the European Parliament, the Commission has strongly argued against a defensive sector-specific approach to problems of structural adjustment.*

76. *The EC is one of the pacemakers in trade policy. It exerts a critical influence on global trends in the trading system, for example towards bilateralism or multilateralism, towards sector-specific arrangements or across-the-board trade liberalization, towards a rule-based or a power-based trading system. The Communities' rôle in international trade could become even more important through new accessions. The Communities' international responsibilities would require that the movement towards closer integration among member States be matched by a parallel lifting of external barriers and closer adherence to the fundamental principles underlying the multilateral trading system.*

I. THE ECONOMIC ENVIRONMENT

(1) Major Features of the EC Economy

1. The EC is the largest participant in the GATT system, in terms of trade. Its 326 million people represent 7 per cent of world population. The EC is the source of, and the market for, one-fifth of world merchandise trade (excluding internal trade of the EC).

2. In all member States, trade is an important part of overall economic activity and, over the past decade, has expanded more rapidly than domestic output. For the EC as a whole, external merchandise exports and imports each exceed 9 per cent of GDP. Substantial external trade in services, with credits and debits reaching ECU 118 and 108 billion in 1988, adds to the Communities' links with the world economy.

3. Merchandise trade thus has played a greater rôle in overall economic activity of the EC than of the United States or Japan, the two other leading exporters and importers in world trade, even though the domestic market of the EC is larger and its per capita income lower. Estimates for 1988 put the EC GDP per capita at ECU 15,800, about one-third below the level in the United States and 12 per cent below that in Japan (at current prices and purchasing power parities).

4. The EC is an area of great cultural, political, social and economic diversity. Living standards, employment patterns, and production and trade structures differ widely among the member States. For example, valued at current prices and purchasing power parities, GDP per capita in 1988 was twice as high in Denmark as in Portugal; valued at current prices and exchange rates, the difference was even larger (Table I.2). While on EC average the share of agriculture, forestry and fisheries in total employment was 7 per cent in 1988, it varied between 27 per cent in Greece and barely more than 2 per cent in the United Kingdom. Germany, with about one-fifth of the EC population, accounts for about one third of the Communities' mechanical engineering industries.¹ In proportion to GDP, internal and external merchandise exports plus imports ranged from 29 per cent in Spain to 119 per cent in Belgium-Luxembourg (1988).

5. External trade of EC member States continues to reflect traditional trade links with third countries, including links dating back to colonial days. Trade is also intense with other highly-developed industrial regions in Western Europe. Viewed from economic centres of the EC such as Lombardia, the Paris basin or the Rhine-Ruhr region, some EFTA countries are geographically closer than, for example, Spain, Portugal, or Greece.

¹In the following, the term "Germany" and all related figures refer to the Federal Republic of Germany prior to German unification on 3 October 1990. Accordingly, statistical information on the EC does not include the territory of the former German Democratic Republic.

Moreover, similarities of economic structure, production techniques and productivity levels between the advanced EC regions and neighbouring EFTA countries, the United States, Japan and other highly-developed overseas countries, have allowed for intense intra-industry specialization as a basis for trade expansion.

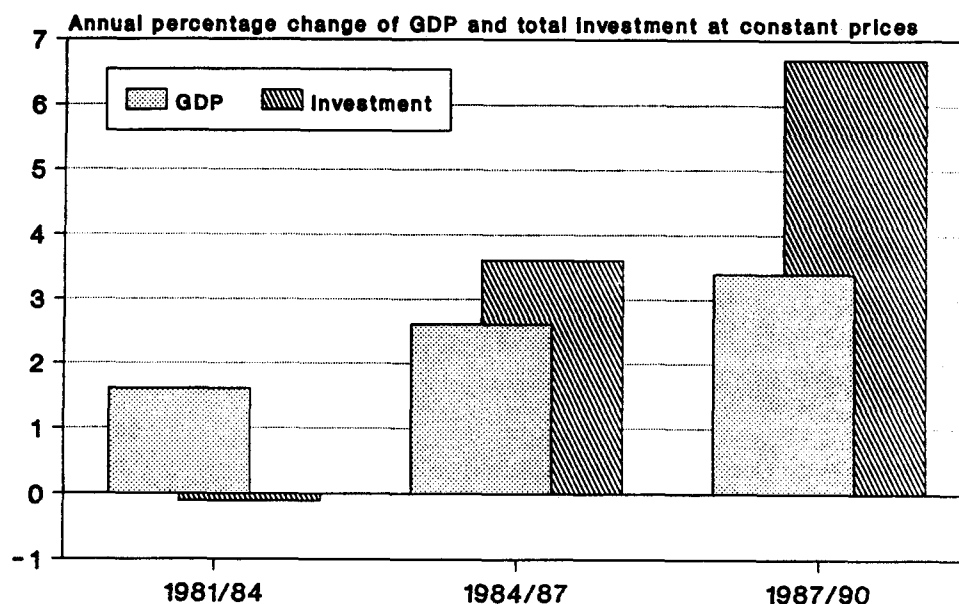
6. Nevertheless, trade among EC member States has developed more dynamically than external trade of the EC. In consequence, the share of external trade in total trade of the EC(12) declined from well above three-fifths in 1958 to two-fifths in 1989 (Chart VII.1).

7. Relatively strong internal trade expansion was also a hallmark of the 1980s. For example, available estimates of import penetration show that the shares of third-country imports in apparent consumption declined from 18 to close to 15 per cent in the case of agricultural products and remained in the vicinity of 11 per cent in the case of manufactures between 1982-83 and 1986-87 (apparent consumption is defined as EC gross domestic production plus imports minus exports of merchandise). In contrast, the share of intra-EC imports in apparent consumption rose by about 2 percentage points, to an estimated 13 per cent for agricultural products and 19 per cent for manufactures (Table I.3).

(2) Recent Economic Performance

8. The EC economy is in the ninth year of ongoing economic expansion. After 1987-88 and until recently, economic growth in the EC has even accelerated, largely driven by an investment boom. Between 1987 and 1990, real gross fixed capital formation increased at a 6½ per cent annual rate, fuelled by the replacement and expansion of machinery and equipment in the business sector.

Chart I.1
Growth of GDP and investment in the
European Communities, 1981-90



Source: EC Commission (1989), European Economy, No. 42

9. Job creation was also strong in recent years. However, its impact on unemployment, one of the most protracted problems of the EC economy for more than a decade, remained limited because of the large number of new entrants into the labour market. In 1990, the average unemployment rate in the EC was more than two percentage points below its peak of 11 per cent in 1985.

10. The surge in investment was accompanied by a reduction of Government budget deficits in most EC-member States and an increase in national saving ratios. According to estimates by the EC Commission, aggregate budget deficits of member States were reduced from a peak of more than 5 per cent of EC gross domestic product in the early 1980s to about 3 per cent in 1989 (Table I.4). The EC, as a whole, could accommodate the sustained growth of investment without additional net foreign resources; between the mid-1980s and 1990, the consolidated current account of the EC-member States remained in small surplus, except for 1990 (Table I.5).

11. Many structural economic parameters continued to differ widely among EC member States. For example, in 1990 current account surpluses of 27.3 per cent of GDP in Luxembourg and 3.3 per cent in the Netherlands coincided with deficits of 5.1 per cent of GDP in Greece and 3.8 per cent in Spain. In 1990, public sector deficits in Greece and Italy were in the order of 18 and 10 per cent of GDP. In the same year, inflation rates ranged from 2½ per cent in the Netherlands to 20½ per cent in Greece.

12. However, in several areas economic performance of EC member States tended to converge over time. For example, among participants in the narrow band of the European Monetary System (Chapter III), the gap between the highest and lowest inflation rates narrowed from 12½ percentage points in 1980 to less than 4 points in 1990. There is also evidence of a recent catching up of less-advanced EC economies. In 1989, real GDP of Ireland, Portugal and Spain expanded at rates of close to 5 per cent and above, as against 3½ per cent for the EC as a whole. Above-average growth of these countries, albeit at lower rates, continued in 1990.

13. Economic developments in the EC benefited from an external environment which was, on balance, favourable in recent years. Economic growth in North America, major parts of Asia and the EFTA countries more than offset the adverse impact on the EC of the poor economic performance in heavily-indebted Latin America and Africa, and in the Middle East. While the political and economic changes in Central and Eastern Europe have been accompanied by economic setbacks in the short-term, the EC business sector prepared for the promise of new medium-term opportunities for trade and investment in this area.

14. Fundamentally, however, the economic expansion in the Communities resulted from internal factors. They include progress in stability-oriented monetary and fiscal policies in most member States which paved the way for sustainable non-inflationary expansion. Economic activity was promoted by improved supply side conditions in most member States, including measures to trim government budgets, deregulation and privatization; moderate wage increases which, coupled with productivity-enhancing policies, resulted in declining unit labour costs and improved profitability;² and the investment stimuli resulting from trade liberalization through the enlargement of the EC and the Internal Market process.

15. Between mid-1990 and January 1991, the EC's economic performance weakened. Inflation has been picking up. Several factors combined to dampen the expansion of EC output, including monetary restraint in the EC designed to check inflation, a slackening of economic activity in major

²Unit labour costs during the period 1987-90 were some 5 per cent below their 1981-84 levels and more than 8 per cent below their 1973-81 levels.

trading partners, in particular the United States, and the adverse direct impact on consumer and business confidence in the EC of the Gulf crisis.

(3) Trade Performance

(i) Commodity pattern of trade

16. Reflecting the relative scarcity of natural resources in the EC, resource-based products, particularly in less-processed forms, are more important in merchandise imports than in exports of the EC. Nevertheless, external merchandise exports and imports are spread across the full product range and there is substantial trade within individual product categories (intra-industry specialization). In 1988, the EC's five leading export categories (three-digit SITC items) accounted for about 14 per cent of its total external exports of merchandise.³ Motor vehicles took the lead; they ranked fourth among merchandise imports (Table AI.1).

17. Motor vehicles was also one of the most dynamic among the ten leading products (three-digit SITC items) in external exports of the EC during the 1980s, along with precious stones, products of polymerizing and medicinal products. Among the leading imports in external trade, parts of office machinery, data-processing machines, transistors, and telecommunication equipment displayed the highest growth rates during 1981-88.

18. In 1988, motor vehicles and parts of motor vehicles were the top-ranking products in intra-EC trade, with a combined share of more than 10 per cent of the total (Table AI.3). Reflecting the impact of the Common Agricultural Policy on trade patterns, meat ranks sixth in internal trade while it does not appear among the top forty products in external trade.

19. Trade patterns among individual member States reflect the large differences in factors such as natural resource endowments, climatic conditions, skill availabilities and stages of technological development. Tables I.6, I.7 and AI.5-17 set out the commodity pattern of trade for the EC as a whole and by member States for a break-down into eighteen major product groups. The figures for the EC as a whole are separated for external trade (Table I.6) and intra-EC trade (Table I.7) whereas the figures for the individual member States refer to their total merchandise exports and imports.

20. Accordingly, in 1988, food products were the top-ranking export category of Denmark, France, Greece, Ireland and the Netherlands, even though their share in total merchandise exports of these countries had

³The corresponding figures for Japan and the United States are considerably higher (21 per cent and 25 per cent, respectively).

declined in the 1980s (in Ireland from one-third to one-fourth).⁴ In Belgium, Germany and Spain, automotive products ranked at the top of merchandise exports, with growth in these items above average. In Spain, the share of automotive products in total merchandise exports almost doubled, from 9½ to 18 per cent, between 1981 and 1988. In Portugal, clothing has become the leading export item, accounting for about 20 per cent of total merchandise exports in 1988, up from 13½ per cent in the early 1980s. In Greece, the share of clothing in total merchandise exports increased even more strongly, from about 9 per cent in 1981 to about 23 per cent in 1988. Food and clothing combined represented almost one-half of Greece's total merchandise exports.

21. Substantial differences among EC member States also characterize the import side. Overall, in 1988, in the majority of EC member States food, chemicals and the two groups of miscellaneous semi-manufactures and consumer goods were among the five leading product groups in both merchandise imports and exports.⁵

(ii) Regional pattern of trade

22. In 1989, external EC trade accounted for about 40 per cent of total merchandise exports of the EC member States (EC 10), down from 44 per cent in 1981.⁶ Of course, this development reflects both increased market penetration of EC-internal imports relative to imports from third countries (Table I.3) and differences in product structure between internal and external trade. This is evident in the case of fuels whose prices drastically declined over the 1980s, with a greater impact on imports from third countries (at current prices and exchange rates) than on internal trade.

23. The importance of external versus internal merchandise trade varies considerably among individual member States. For most of the smaller

⁴The above observations, as any such information, are subject to a degree of arbitrariness reflecting the level of aggregation chosen for individual product categories. The product-breakdown underlying Tables I.6, I.7 and AI.5-17 corresponds to the disaggregation of trade into eighteen major product groups routinely used in GATT Secretariat publications. For a description of the product groups see GATT, International Trade 1989-90, pp.46-7.

⁵Miscellaneous or "other" semi-manufactures include leather and leather manufactures, rubber products, paper and paper products and certain non-metallic mineral manufactures and metal products. "Other" consumer goods comprise a wide range of (usually) non-durable consumer goods excluding items such as clothing or consumer electronics. For details see GATT, International Trade 1989-90, pp.46-7.

⁶The corresponding figures for EC 12 are 45 and 49 per cent.

countries, in particular the Netherlands, Belgium/Luxembourg, Ireland and Portugal, exports to third countries accounted for less than 30 per cent of total merchandise exports (Tables AI.7-17).⁷ Among the larger member States, the French economy has the weakest third-country trade links, with internal exports accounting for 62 per cent of its total merchandise exports in 1988.

24. In external trade of the EC, the EFTA area (Austria, Finland, Iceland, Norway, Sweden, Switzerland) constitutes both the largest export market and the most important source of supply. In recent years, the EFTA countries accounted for over 27 per cent of EC exports and 23 per cent of EC imports of merchandise, each up by more than 5 percentage points from a decade before.

25. Among individual countries, the United States is the Communities' single most important trading partner. In 1989, it accounted for close to one-fifth of both external merchandise exports and imports of the EC (Table I.8). On the export side, Switzerland, Austria and Sweden rank next. On the import side, Japan ranked second, ahead of these three EFTA members. Japan's share in EC external trade roughly doubled in the course of the 1980s, to reach 10½ per cent for imports and 5 per cent for merchandise exports of the EC in 1989.

26. In 1989, developing economies accounted for 30½ per cent of EC imports, down from 45½ per cent in 1981. This development mainly reflects the weakness of commodity markets in the period 1982-87, particularly the development of petroleum prices. Since 1981, the share of the Middle East in total merchandise imports of the EC dropped by 14 percentage points to 6 per cent in 1989. African and Latin American suppliers also lost market shares, from 12 to 8 per cent and 6½ to 6 per cent, respectively. The share of the Mediterranean countries in EC imports was 8½ per cent in 1989, a slight decline from 1981. In contrast, imports into the EC from Asian developing countries expanded at an above average rate so that their share in total external imports increased from 7 to 12 per cent between 1981 and 1989, with manufactures being the most dynamic element.

27. EC exports to developing countries declined between 1981 and 1989, both absolutely and as a share in the Communities' total external exports of merchandise. The main element in this development has been a sharp reduction in exports to the Middle East and Africa. Their combined share in total external exports of the EC dropped from 30 to 11 per cent. Among developing regions, Asia has become the most important outlet for EC exports of merchandise, with a share of 11½ per cent of total external exports in 1989.

⁷Denmark deviates from this pattern. Its share of intra-EC deliveries is close to 50 per cent. Denmark continues to have strong trade ties to EFTA countries, in particular in Scandinavia.

(4) Outlook

28. Recent forecasts by the EC Commission predict a slow-down in EC economic growth, from 3 per cent in 1990 to about 2½ per cent in 1991. For some time to come, dynamic effects emanating from ongoing efforts to improve supply conditions, including the Internal Market process, and from the process of German unification are expected to be offset by the effects on output of such factors as monetary restraint in the EC and by the impact of unfavorable external developments, such as the Gulf crisis and the deteriorating growth prospects in major export markets. The high level of business uncertainty, related to the external factors, appears to be the main factor dampening economic activity in the EC in the year ahead. At the same time, this uncertainty makes for a large margin of potential error in any prediction of output developments over the next 12 months.

II. TRADE POLICY REGIME: OBJECTIVES AND FRAMEWORK

(1) Introduction

29. The evolution of the European Communities has been characterized by "widening" and "deepening". Widening refers to the successive stages of geographical extension via the accession of new member States. Deepening denotes the ongoing process of economic and political integration; it includes (i) the completion of Community rules and regulations in the areas of competence defined in the founding treaties and (ii) the extension of Community competence to new policy areas.

30. "Widening" and "deepening" have not always been carried out in parallel.⁸ For example, the EC has refused to consider new applications for accession during the so-called Internal Market process, that is until the end of 1992.

31. While institutional structures within the EC are currently changing at considerable speed, so is the external environment. For example, the Uruguay Round aims at strengthening the multilateral trading system and extending multilateral rules and disciplines to new areas. Moreover, fundamental institutional, political and economic changes are occurring in Central and Eastern Europe, with which the member States of the EC are linked through close historical ties.

32. It is difficult to assess how these changes in the environment relate to the political and economic integration of the EC itself. Essentially, the processes are independent of each other. However, as all moves are devoted to similar objectives, including the dismantling of barriers and the opening of markets, they have at least the potential to be mutually reinforcing.

33. At the time of writing, none of the processes noted above had been completed. The report will therefore reflect only a certain stage in a rapidly changing trade policy picture. However, as for the Internal Market, the general direction of the ongoing changes seems to be clear: towards more "commonality" in overall policy making.

⁸This holds only for the definitions as given above. However, "widening" is not always understood in a geographical context. Occasionally, the term is also used to characterize the adoption of new objectives and policies. In this case, of course, "widening" might well prove complementary to parallel actions on already established grounds (as intended in the Single Market context).

(2) Trade Policy Objectives of the European Communities

34. When the European Economic Community (EEC) was established in 1958, the objective was to create a common market in order to promote economic expansion and to deepen political relations between member States. The EEC Treaty specifies a range of common policy areas and instruments (commercial policy, agriculture, transport, etc.) with a view to furthering a harmonious development of economic activities throughout the Community. The concepts of internal liberalization and harmonization and the establishment of common policies, including trade, were the major pillars on which the emerging political and institutional framework of the Communities was based.

35. From its very beginning, the EC has had its own decision-making and negotiating powers. Hence it has had not only the economic size but also the requisite instruments to play a key rôle in the international trading system. In this respect, the founders of the EEC opted for an outward-looking approach by writing into the Treaty of Rome the objective of contributing to "the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers" (EEC Treaty, Article 110).

36. In line with this objective, the EC very actively contributed to the Uruguay Round, presenting and elaborating negotiating proposals. Before being tabled, EC contributions have to undergo complex co-ordination procedures, involving co-ordination both within and among the member States.

37. The EC Commission and the Council of Ministers have emphasized on many occasions their strong commitment to an open multilateral trading system and, with similar impetus, to an open Internal Market. It is explicitly acknowledged that the EC commercial policy should "reflect the fact that it is the world's largest trading partner and that external trade plays a much larger proportional rôle in its economy than in those of other major trading partners".¹⁰

38. In January 1990, President Delors defined the Commission's approach in the Uruguay Round in terms of effectiveness, interdependence, and

⁹ It may be argued that the Internal Market process has facilitated external initiatives. Parallel moves in the Uruguay Round and in the process of EC integration might be easier to achieve than uncoordinated solutions in one or the other arena. However, in the run-up to the Brussels meeting, EC internal coordination on core issues proved difficult and time-consuming, requiring, for example, a series of Council meetings on agriculture.

¹⁰ EC Commission, Europe - World Partner, Questions and Answers, 19 October 1988.

fairness.¹¹ Accordingly, an effective trading environment is regarded as the key to promoting growth of the world economy; progress has to be achieved on all negotiating issues in view of their interdependences; and fair account has to be taken of developing countries' interests and of the responsibilities of newly industrialized countries. Currency, trade and finance are viewed as the triple base of the world economy; their existing links have to be maintained.

39. As regards the conduct of the negotiations, the Commission has emphasized on many occasions the principle of overall reciprocity. Accordingly, all participants should exchange concessions in such a way that "a mutually advantageous balance of benefits for all parties" emerges at the end.¹² This concept did not imply, however, that the negotiations finally result in identical legislation or in sectoral reciprocity in the sense of balanced trade.

40. In accordance with the concept of reciprocity, the EC holds the view that it should not undertake unilateral liberalization measures in areas which are not yet covered by existing GATT rules (i.e. services). The Commission stresses the need to retain negotiating leverage and hence, regards it "as foolish to extend unilaterally to third countries from whom it would be reasonable to expect comparable liberalization measure, the benefit of its own liberalization process".¹³

41. In a recent communication to the Council and to the European Parliament, the Commission argues for more appropriate international rules to deter unfair practices.¹⁴ In its view, the Uruguay Round provides an excellent opportunity to agree on disciplines for trade to be conducted on the basis of "fair and loyal competition". Accordingly, anti-dumping rules must be both "transparent and tough". However, stronger partners should not be allowed to impose unilaterally their own interpretation.

¹¹ Commission's Programme for 1990; Address to the European Parliament, 17 January 1990. Bulletin of the European Communities, Supplement 1/90.

¹² EC Commission, Europe-World Partner, op. cit.

¹³ EC Commission, op. cit.

Referring to the opening of important public procurement sectors, the Commission argues in favour of a "balanced and progressive" approach. As regards its phasing, the EC "could hope to be in a position to achieve some of the benefits of internal reorganization before facing the challenge of a more open relationship with third countries" (EC Commission (1988), "Public Procurement in the Excluded Sectors", Bulletin of the European Communities, Supplement 6/88).

¹⁴ EC Commission (1990), Industrial Policy in an Open and Competitive Environment, Brussels.

42. In parallel with its activities on the multilateral stage, the EC maintains a range of preferential agreements. In many cases, they emerged from the traditional trade links of individual member States prior to their accession to the EC. The agreements are intended to continue and develop these links and to cultivate political and historical ties.¹⁵

43. Certain sectors of the Communities are subject to specific rules (see below). The relevant provisions for coal and steel (ECSC Treaty) reflect the crucial rôle for economic restructuring and development which was attached to these sectors, particularly after World War II. A common market organization for agriculture was established in view of, "the particular nature" of agricultural activities (EEC Treaty, Article 39:2(a)). Other sectors are not subject to a separate legal framework. However, in certain sectors a variety of measures, including border protection, voluntary export restraint arrangements and State aids may add up to a specific policy mix, providing for considerable protection. This applies both to traditional industries, such as textiles and clothing or footwear,¹⁶ and to technically advanced sectors like electronics or aerospace.

44. Recently, the Commission has emphasized the need for an industrial policy approach that relies on open markets - and, eventually, on public support for adjustment - as the best guarantee for a strong and competitive economy. Defensive protective strategies and subsidies for unprofitable capacities are deemed inappropriate. The Commission notes that sectoral approaches can only work temporarily, entailing inevitably the risk of delaying adjustment and thereby creating job losses in the future. Accordingly, "openness to international trade and respect of the rules governing such trade deliver the right signals to the economy and preclude the recourse by the Community to the various types of defensive measures commonly used to protect domestic producers in the furtherance of such policies".¹⁷

(3) Institutional and Legal Structures of the EC

(i) The framework of the EC Treaties

45. The legal basis of the European Communities is provided by three treaties, establishing the European Coal and Steel Community (ECSC), the European Economic Community (EEC) and the European Atomic Energy Community (Euratom). The ECSC was created by the Treaty of Paris which entered into force in 1952. The EEC and Euratom became effective in 1958, based on the

¹⁵ See Commission's Programme for 1990, op. cit.

¹⁶ For a more detailed presentation of the trade policy objectives of the EC see the TPRM report by the EC Commission.

¹⁷ EC Commission (1990), Industrial Policy ..., op. cit.

Treaty of Rome. In 1967, a single Commission and a single Council of Ministers were established for all three institutions.¹⁸ However, the legal substance of the treaties remained unchanged.

46. According to the Commission, the ECSC Treaty was "conceived in a much more interventionist spirit" than the EEC Treaty.¹⁹ On a sectoral basis, the Treaty of Paris already established a common market and supranational decision-making. Unlike the EEC Treaty, it started from the principle that the powers of member States in commercial policy matters shall not be affected.²⁰

47. The Euratom Treaty sets up a common framework for the development of a nuclear industry. The treaty contains provisions on joint research, information, health and safety, etc.

48. In its overall economic policy impact, the EEC has been the most important among the three Treaties. It aimed at creating a common market designed to ensure the free flow of goods, services, persons and capital among member States and at implementing a common commercial policy towards third countries (laid down in Articles 110 to 116 of the EEC Treaty). If not indicated otherwise, the following exposition is confined to objectives, institutions and procedures as contained in the EEC Treaty.

(ii) Member States of the EC

49. The EEC was founded by Belgium, France, Germany, Italy, Luxembourg and the Netherlands. Subsequently, there have been two rounds of enlargement. In January 1973, Denmark, Ireland and the United Kingdom

¹⁸ The so-called Merger Treaty entered into force on 1 July 1967. The European Parliament and the Court of Justice had already been common to all institutions since 1958.

¹⁹ EC Commission (1990), General Objectives Steel - 1995, Brussels (COM(90)201 final).

²⁰ However, there are constraints. For example, member States are required to inform the Commission if they intend to conclude commercial agreements or arrangements. The Commission is authorized to order changes if the proposed agreement or arrangement would hinder the implementation of the Treaty (Articles 71:1 and 75).

According to Article 72, the Council of Ministers may establish by unanimous vote minimum and/or maximum external tariffs which are binding on member States.

While the administration of import and export licences is under the responsibility of the Governments concerned, the Commission has supervisory powers. Moreover, the Commission may order a member State to ensure that "the arrangements in this connection are not more restrictive than the circumstances ... require" (Article 73).

joined the six founding member States.²¹ In the 1980s, Greece (January 1981), Spain and Portugal (January 1986) acceded, leading to the so-called southward extension of the EC.

50. In the case of Spain and Portugal, current exemptions from common policy régimes pertain, for example, to agriculture, public procurement, the granting of tariff preferences under the EC GSP scheme, and the continuation of certain quantitative restrictions. The integration process will largely have been completed by the end of 1992.²²

51. Following the successive enlargements of the EC in 1973, 1981 and 1986, the enlargement issue was discussed in GATT working parties focusing on the interpretation of Article XXIV of the GATT. Because of the divergence of views, in no case has it been possible to reach agreed conclusions as to the consistency of the Accession Treaties with the General Agreement.

52. Further applications for EC membership are on the table, presented by Turkey in April 1987, Austria in June 1989, Cyprus and Malta in July 1990. On the part of the EC, consideration of accepting new members has been suspended until after 1992, the target date for completing the Internal Market.

(iii) Institutions and policy formulation

53. The EC Treaties provide for four legal bodies (institutions): The Commission, the Council, the European Court of Justice and the European Parliament. The EEC Treaty has also instituted an Economic and Social Committee which has advisory status.

(a) The Commission

54. The EEC Treaty confers on the Commission a wide range of powers and responsibilities.²³ Accordingly, only the Commission can initiate common

²¹Greenland acceded as a part of the Kingdom of Denmark. Following a referendum in 1982, Greenland withdrew from the EC as from 1 February 1985.

²²The agricultural sectors are to be fully integrated by 1 January 1996. The same target date is set for the full application of the EC preferential tariff rates.

²³According to Article 155 of the EEC Treaty, the Commission has to ensure "the proper functioning and development of the common market". To these ends it shall "ensure that the provisions of the Treaty ... are applied"; "formulate recommendations or deliver opinions on matters dealt with in this Treaty ..."; "have its own power of decision and participate in the shaping of measures taken by the Council and the European

(Footnote Continued)

policies. In virtually all policy areas covered by the Treaty, it has an exclusive right to propose Council decisions and thus exert influence on the pace and direction of the legislative process (contingent upon the readiness of the Council to follow).²⁴ The Commission has certain legislative powers in pursuing specific provisions of the Treaties or Council acts. This applies, for example, to established common policies in fields such as agriculture or in the completion of the Internal Market.

55. Because of its supervisory tasks, the Commission is also referred to as the "guardian of the Treaty". It has to ensure that Community law is actually applied by member States and EC institutions. To this end, it may initiate infringement procedures. Finally, the Commission can be considered²⁵ to some extent, to be an executive body which carries out common policies.

56. The Commission comprises 17 members, including at least one national from each member State. Commissioners are appointed by common accord of the Governments of member States for a period of four years; in performing their duties they are independent of the Governments and the Council (Articles 157 and 158).

(b) The Council

57. Any act of general legal importance must be issued by the Council, usually on the basis of a Commission's proposal. As regards commercial policy issues and the establishment of the Internal Market, a qualified majority is required for Council decisions (Articles 113 and 100a).²⁶

(Footnote Continued)

Parliament ..."; "exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter".

²⁴The Council can only amend a Commission's proposal if all member States so agree (Article 149).

However, before being officially submitted to the Council, most proposals have already passed a negotiating process between the Commission and the member States in various committees.

²⁵As a general rule, however, the application of Community law to individual cases lies with the member States.

²⁶During the first development stages of the EEC (up to December 1965), Council decisions on commercial policy matters and most other common policy issues had to be taken unanimously. The partial shift to majority voting caused a decision making crisis in 1965-66. It centred on the question of whether and to what extent member States could continue to demand unanimity for reasons of "very important national interests".

Qualified majority voting for Internal Market issues was introduced by the Single European Act in 1987 (see below).

(Footnote Continued)

Directives which aim at the harmonization of national laws can be passed only by unanimous Council vote (Article 100). The same is true for the adoption²⁷ of new policies which are not explicitly provided for by the Treaty.

58. Member States are usually represented in the Council by their Ministers of Foreign Affairs. In addition, there is a wide range of specialized Council meetings, attended by the Ministers of Agriculture, Transport, Economics, Finance, etc. Particularly important (or controversial) policy issues are dealt with in the "European Council" which meets at least twice a year. The European Council comprises the Heads of State (France) or Government, accompanied by their Foreign Ministers, and the President of the Commission. All Council meetings are prepared by the Committee of Permanent Representatives.

59. On the basis of Article 113, a special committee is set up by the Council to assist the Commission in negotiating commercial policy matters with third countries. This so-called 113-Committee is composed of Government experts from member States. It convenes at the level of trade policy directors or, more often, at the level of their deputies.

(c) The European Court of Justice

60. The European Court of Justice decides on the legality of Council or Commission acts (i.e. regulations, directives or decisions) in the light of the EC Treaties. It also reviews cases of possible infringement of the Treaties brought by the Commission against member States. As regards status and procedures, the Court is comparable with the highest courts of appeal of member States. Cases may be brought to the Court by member States, one of the EC institutions, or by natural or legal persons affected by a decision or regulation.²⁸ In an increasing number of cases, the European Court is referred to by national courts in order to obtain preliminary judgements on the interpretation of EC law.

(Footnote Continued)

Qualified majority requires that a proposal in question musters at least 54 votes in its favour. In this context, member States are being weighted, with ten votes, each, for France, Germany, Italy and United Kingdom; eight votes for Spain; five votes, each, for Belgium, Greece, Netherlands and Portugal; three votes, each, for Denmark and Ireland; and two votes for Luxembourg.

²⁷The Council can exercise these constitutional powers on the basis of Article 235, in order to achieve "one of the objectives of the Community" (on the basis of a Commission proposal and after consulting the European Parliament).

²⁸Complaints by natural or legal persons against a regulation may only be lodged under special restrictive conditions.

61. The Court's rulings have established a body of case-law which contributes to the interpretation and clarification of the Treaties. Under Article 177 of the EEC Treaty, the Court has the competence to give preliminary rulings on the validity and interpretation of legal acts of the EEC institutions. This includes the interpretation of international commitments, provided they are binding on the Community. The Court has confirmed this binding effect with respect to GATT provisions to the extent that the EC, under the EEC Treaty, "has assumed the powers previously exercised by member States in the area governed by the General Agreement".²⁹

(d) The European Parliament

62. Since 1979, members of the European Parliament are elected by popular vote. The Parliament exercises advisory and supervisory powers and certain powers of decision (e.g. in the budgetary process). Its supervisory powers are confined to the Commission and do not include the Council.³⁰ By passing a motion of censure, the Parliament can compel the Commission to resign as a body.

63. The Parliament holds a strong position in the budgetary process. It has to be consulted on important policy decisions and on proposals of the Commission to the Council. Moreover, the Single European Act has instituted a "cooperation procedure" between the Parliament and the Council. This procedure is confined to specific provisions of the EEC Treaty, including Internal Market issues,³¹ and provides for two-stage consultations between both institutions. Finally, the Parliament, acting by absolute majority, approves the accession of new member States and the conclusion of association agreements.

(e) The Economic and Social Committee

64. As noted earlier, the Economic and Social Committee is established under the EEC Treaty as an advisory body. It has to be consulted by the Council and the Commission on the basis of specific provisions of the

²⁹The ruling relates to Case 21-24/72, International Fruit Company (1972).

³⁰Members of the Council are insofar subject to parliamentary control as, being members of national Governments, they are responsible to the parliaments of member States.

³¹In a nutshell, the procedure allows for a stronger influence of the Parliament in cases in which the Council and the Commission are holding different views and the Council is not deciding unanimously. The cooperation procedure does not extend to commercial policy issues. In practice, however, the Parliament is being consulted on the most important commercial treaties.

Treaty or when otherwise considered appropriate. Membership is confined to a certain number of nationals from every member State who are representing the private sector and the general public.³² They are appointed by the Council in their personal capacity.³³

(f) Cooperation between the Commission and the member States

65. Basic legal acts often confer on the Commission certain powers for the implementation of the relevant measures. A complex system of voting procedures ("comitology") is established in this context.

66. While there are variants,³⁴ three basic approaches can be distinguished:

- In advisory committees, representatives of member States are stating opinions which the Commission shall take into account without being legally bound (for example, before initiating anti-dumping proceedings).
- Management committees are set up for assisting the Commission in carrying out specific policies, for example in the various

³² According to Article 193 of the EEC Treaty, the Committee is composed of representatives of the "various categories of economic and social activity".

³³ Views from the private sector influence trade policy decisions in the EC through a multitude of channels, both formal and informal. At the formal level, for example, there are issue-specific hearings such as in the anti-dumping context. In January 1990, an EC Consumers' Consultative Council was set up; it may be consulted by the Commission in all matters affecting consumer interests (Commission Decision No. 90/55). Moreover, consultation procedures (advisory bodies, etc.) are established within each of the member States.

³⁴ The committees and their procedures are not mentioned in the founding Treaties. They were stipulated by the acts (Council Regulations) which have been issued since then to establish basic policy parameters and procedures in various areas (e.g. management of agricultural markets, anti-dumping, rules of origin, standardization). In 1987, a Council Decision laid down a common framework "for the exercise of implementing powers conferred on the Commission" (No. 87/373). The above presentation of the committee procedures is in accordance with this Decision. In addition, however, the Decision establishes a procedure for safeguard measures which "may be applied where the Council confers on the Commission the powers to decide on safeguard measures". Yet Decision No. 87/373 does not affect different mechanisms which had been established before. As regards safeguards, this applies for example to Council Regulation No. 288/82 on common rules for imports (see below).

agricultural sectors. While the Commission is entitled to immediately implement its own proposals, the Council must be involved if the committee rejects, by qualified majority, the proposal of the Commission.³⁵ The Council can change the measure by qualified majority; otherwise the Commission's proposal is final.

- Regulatory committees are established in the area of standardization, in the sanitary and phytosanitary field, for the interpretation of rules of origin, and for similar purposes. Member States have retained a relatively strong position vis-à-vis the Commission. The Commission is required to refrain from any action as long as the committee has not agreed by a qualified majority. If the committee disapproves of the proposal or if it fails to state an opinion, the matter is referred to the Council which then has three months to act in accordance with the voting rules of the Treaty (qualified majority for adoption; unanimity for amendments). If the Council does not meet the deadline, the proposed measures shall be adopted by the Commission (variant a). Alternatively, the Council can decide by simple majority to reject the Commission proposal (variant b).

67. In a recent report, the Commission notes a tendency of the Council to be reluctant in applying the advisory committee procedure.³⁶ By contrast, the Council had continued to use procedures which allow the blocking of Commission proposals by a simple majority (variant b, noted above), with the risk that no decisions are taken on certain issues.³⁷ Moreover, concerns have been expressed that, in some areas, the Council had not conferred any implementing powers on the Commission. According to the Commission, this unwarranted state of affairs runs counter to the objective of quick and effective decision-making.

(iv) Legislation and enforcement of Community Law

68. The EEC Treaty provides for different instruments to establish law or to conduct policies: Regulations, directives, decisions, recommendations and opinions. According to Article 189 of the EEC Treaty, regulations are directly applicable and legally binding in their entirety in all member States. Directives are addressed to member States where they have to be

³⁵ Voting weights of member States are in accordance with the respective Council procedures.

³⁶ EC Commission (1990), 23rd General Report on the Activities of the European Communities 1989, Brussels.

³⁷ This applies as long as the Council fails to adopt - by qualified majority - an alternative position.

implemented within the national legal framework; they are binding as regards the results to be achieved.³⁸ Decisions are only binding for member States or for private or legal persons to whom they are expressly addressed. Recommendations and opinions have no binding effect.

69. If the Commission is of the view that a member State has breached Community law it issues "letters of formal notice" to indicate the case. In the second stage, a "reasoned opinion" may be delivered which more clearly defines the legal issues at stake. Finally,³⁹ the case may be brought before the European Court of Justice.

70. The Commission publishes detailed annual reports on the application and enforcement of Community law. In its latest report (1989), mention is made of 664 "letters of formal notice" (as compared with 569 in 1988), 180 "reasoned opinions"⁴⁰ (227 in 1988) and 96 references to the Court of Justice (73).

71. Since 1981, the Commission has brought a total of 605 cases before the Court; these cases involved most frequently Italy (184), followed by France (87), Greece (62) and Germany (51). The number of cases before the Court has increased over time. Most of the current cases relate to the broad subject area of "Internal Market and Industrial Affairs", followed by agricultural and environmental issues. The rise in the number of infringement procedures is related to the mounting number of EC regulations and an increasing scrutiny by the Commission, individual citizens and companies of member States activities. In 1989, the Commission received 1,195 complaints as compared with 352 in 1982.

72. If a member State fails to comply with judgements of the Court of Justice, no stringent legal means are available to enforce the ruling. However, on the basis of Article 171 of the EEC Treaty, the Court of Justice can declare that the necessary measures have not yet been taken.

³⁸ According to a ruling by the European Court of Justice in the public procurement area, national administrations are required to comply with a directive, independent of its transposition into national law.

³⁹ Prior to challenging another member State before the Court on the grounds of Treaty infringements, member States are obliged to refer the complaint to the Commission. The latter then has to deliver a "reasoned opinion", in accordance with the procedure as described above, within three months.

⁴⁰ EC Commission (1990), Seventh Annual Reports to the European Parliament on Commission Monitoring of the Application of Community Law, Brussels.

As of 31 December 1989, the Commission reports of 53 cases where fresh infringement procedures have been initiated since 1981.⁴¹

73. As to the status of the General Agreement in Community Law, the European Court of Justice has determined that the GATT is binding on the EC.⁴² However, because of the prevailing flexibility of interpretation and enforcement of GATT rules, the relevant provisions, such as Articles II, V and XI, could not confer rights on citizens to be directly invoked before the courts. On the other hand, the Court recently ruled that it could take into account and interpret GATT rules in cases where it⁴³ was called upon to interpret Community acts which referred to such rules.

(4) Major Features of EC Trade Legislation

74. The EEC Treaty enumerates the elements considered necessary for establishing the common commercial policy. According to Article 113, this policy shall be based on uniform principles throughout the Community, notably a common tariff régime, common trade agreements with third countries, and the uniform application of trade policy instruments on both the import and the export sides. Moreover, as noted above, the Treaty contains the procedural framework for the design of common policies. It thus defines the playing field and sets the general rules of the game. However, the Treaty provides no rules for the conduct of policies, including implementation procedures, in individual trade policy areas. This has been left to subsequent Council legislation.

75. The main EC import regulations of a general nature include the Common Customs Tariff (Council Regulation No. 2886/89), the Common Rules for Imports (No. 288/82), several import arrangements for products from State-trading countries (e.g. No. 1765/82 and No. 3420/83), the Common Procedures for the Administration of Quantitative Restrictions (No. 1023/70), and the so-called New Commercial Policy Instrument (Regulation No. 2641/84). Common rules for exports are established by Regulation No. 2603/69.

⁴¹The cases cover a wide range of issues, from environment-related legislation, to ingredient requirements for beverages (in Greece only malt-based beer was allowed to be sold), to an Italian consumption tax on bananas (Chapter IV).

⁴²It seems to be generally held that rules of international law which are binding on the Community are subordinate to the founding Treaties and take precedence over independently-enacted secondary legislation. See, for example, Claus-Dieter Ehlermann, "Application of GATT Rules in the European Community", in M. Hilf et.al. (eds.) The European Community and GATT, Kluwer, Deventer.

⁴³The ruling concerns Case 70/87; Fediol II (judgement of 22 June 1989; not yet published).

76. Council Regulation No. 288/82 on common rules for imports applies to all products, except agricultural products under a common market organization (including processed products), textiles (MFA products) and ECSC products. Within the product range of its application, it regulates imports from all sources, except imports from State-trading countries. The Regulation starts from the general premise of unrestricted market access. Specific exceptions are enumerated in an annex, allowing for the maintenance of surveillance measures or of quantitative restrictions - the so-called residual restrictions - on the part of member States. In 1989, the list of products subject to residual restrictions has been reduced in scope by three amendments.

77. The regulation also provides the legal basis for introducing surveillance measures or imposing quantitative restraints (safeguards) in specified circumstances. In this context, an advisory committee is set up for consultations between member States and the Commission on possible actions.

78. The Commission is the competent body for initiating investigations on safeguard measures, when considered justified on the basis of available information. Thus far, it has generally been the Commission's practice to open investigations only at the request of member States. The decision to engage in an investigation is published in the Official Journal. Affected parties are then entitled to present their views.⁴⁴

79. The investigation may lead to the introduction of surveillance measures if imports threaten to cause injury to EC producers and if the Community's interests so require.⁴⁵ Surveillance can be retrospective. The measures must be of limited duration; Regulation No. 288/82 stipulates that they lapse at the end of the second half calendar year after their introduction, unless provided otherwise.⁴⁶ Any surveillance action is based on the issuance of an import document. In specific cases, member States

⁴⁴In many cases, the Commission organizes hearings to which EC and third country producers, importers and exporters are invited.

⁴⁵Article 9 of Regulation No. 288/82 specifies the information which has to be gathered and examined in this context.

In practice, the Community interest is interpreted in terms of the effects of increased imports on production and employment in the affected industries.

⁴⁶Surveillance measures under Regulation No. 288/82 which are currently in force include video tape recorders (Republic of Korea), textiles and clothing products (Mediterranean countries), shoes (all third countries; imports from the Republic of Korea and Taiwan are under prior surveillance), and a range of engineering machinery and consumer electronics from Japan (Chapter IV). Some of the measures on Japanese

(Footnote Continued)

may implement, after having informed the Commission, surveillance measures at the national level.

80. In cases of urgency, the Commission can immediately impose quantitative restrictions in order to prevent substantial injury or the threat thereof. The provisions of Regulation No. 288/82 (Articles 15 and 16) closely follow the wording of Article 19:1(a) of the GATT.⁴⁷ The EC may then either issue import documents of limited periods of validity or change the import rules by instituting prior import authorization.⁴⁸ The measure may be confined to imports for certain regions of the EC.⁴⁹ Regional safeguard measures, exclusively in the form of quantitative restrictions, have been the rule to date.

81. Alternatively, following Article 16 of Regulation No. 288/82, the Commission can propose that the Council introduce, on the basis of a qualified majority, safeguard measures. In this case, possible action may take the form of any "appropriate measures". This includes the negotiation of restraint arrangements with the exporting country.

(Footnote Continued)

imports date back to the early 1980s; they have been prolonged on an annual basis.

⁴⁷ There are, however, some differences. Under Article XIX:1 of the GATT, a contracting party is only entitled to suspend obligations if a product is being imported "in such increased quantities and under such conditions as to cause or threaten to cause injury". Article 15:1 of Regulation No. 288/82 refers to imports "in such greatly increased quantities and/or on such terms or conditions as to cause or threaten substantial injury to Community producers...".

⁴⁸ Any member State is entitled to refer the matter to the Council which can confirm, amend or revoke the Commission's decision by qualified majority. In the absence of a Council decision within three months, the measures in question are deemed to be revoked.

⁴⁹ Commission Regulation No. 561/88 may serve as an example of protective measures in favour of certain regions (member States) and, in this case, against certain trading partners. The Regulations established an import authorization system to protect the Italian and the French markets from footwear originating in the Republic of Korea and Taiwan. The matter was referred to the Council which confirmed these actions. They lapsed on 30 June 1990 and were replaced with an EC-wide export restraint arrangement by both suppliers (Commission Regulation No. 1735/90, as amended by Council Regulation No. 3050/90).

In the case of regional application of protective measures, the Commission, under Article 115 of the EEC Treaty, may authorize the respective member States to limit transiting imports via other member States (Section II:5).

82. On average, the EC has taken one or two protective measures per year under Regulation No. 288/82 since its inception in 1982.⁵⁰ The Regulation stipulates no time limits for the duration of such measures.

83. Furthermore, interim safeguard actions could be taken at the national level if so provided in bilateral agreements between member States and third countries. Since 1982, this has occurred once.

84. Imports from most State-trading countries are governed by Regulations No. 1765/82 and No. 3420/83.⁵¹ The former refers to products which, being enumerated in a "common liberalization list", are not subject to quantitative restrictions. The Regulation specifies, largely in parallel with Regulation No. 288/82, surveillance procedures and protective measures to be applied in the event of a surge in imports. Regulation No. 3420/83 deals with products which are not liberalized at Community level. It establishes the procedures for administering the import arrangements and for the eventual amendment of these arrangements. A list⁵² of import quotas, by originating country and member State, is annexed.

85. Council Regulation No. 1023/70 lays down procedures for the establishment and the administration of import and export quotas.⁵³ In principle, quota volumes and criteria for their distribution among member States are decided by the Council, acting by qualified majority.⁵⁴ However, in 1988, the Court of Justice found that the national allocation of quotas is not compatible with the principle of free competition in the common market. At present, Regulation No. 1023/70 is not applied.

⁵⁰ Products involved include stoneware (1982), quartz watches (1983), urea (1986), beach slippers (1984 and 1987) and footwear (see above).

⁵¹ Imports from the People's Republic of China and from Romania are totally or partially (Romania) subject to separate regulations.

⁵² Before 1 December of each year, the Council has to decide on the quotas for the following year in accordance with Article 113 of the EEC Treaty (by member State and exporting country). In the absence of a decision, existing quotas will continue to apply.

⁵³ Agricultural products under a common market organization are not covered by this Regulation.

⁵⁴ In this context, a committee-procedure is established as described in Section II:3(iii) above ("regulatory committee").

⁵⁵ The ruling dates as of 27 September 1988 (case 51/87). While it specifically refers to the regional allocation of GSP-imports, the ruling has general implications. Accordingly, a complete overhaul of Regulation No.1023/70 is currently being considered.

86. In 1984, the EC launched its New Commercial Policy Instrument (Regulation No. 2641/84). The objectives are to "defend vigorously the legitimate interests of the Community in the appropriate bodies, in particular GATT, and to make sure that the Community, in managing trade policies, acts with as much speed and efficiency as its trading partners". The Regulation establishes a procedural mechanism which may be applied (i) to respond to any illicit commercial practices and to remove the injury or (ii) to exercise the Community's rights with regard to third countries' commercial practices. Proceedings may be initiated either by an industry which considers itself injured as a result of illicit commercial practices abroad, or upon request from a member State. After consulting an advisory committee, the Commission decides on the opening of an examination. This decision is published in the Official Journal.

87. Regulation No. 2641/84 allows for the imposition of any commercial policy measure which is compatible with the EC's international obligations and procedures if, as a result of the examination, such action is considered to be in the interest of the EC. Where international obligations provide for consultations or for dispute settlement procedures, these must have been terminated and their results taken into account before measures are decided upon (Article 10 (2)). To date, the instrument has been used twice, in the so-called Akzo-Dupont case concerning Section 337 of the United States Tariff Act of 1930 and in a case concerning sound recordings in Indonesia.⁵⁶

88. Regulation No. 2603/69 establishes common rules for exports. It can be seen as the counterpart to the common rules for imports (Regulation No. 288/82). Once again, the starting point is the principle of unrestricted trade.⁵⁷ In the event of shortages of essential products, the

⁵⁶Section 337 of the United States Tariff Act has been subject to a GATT Panel. The report of the Panel was adopted by the GATT Council on 7 November 1989. As for sound recordings (Indonesia), the Commission decided to terminate the investigation after a solution was found between the authorities involved.

There have been two other cases involving Regulation No. 2641/84, where the complaints of EC companies were rejected by the Commission. The issues were soybean oilcake (Argentina) and new polymorph (deprivation of patent protection; Jordan).

Recently, Italian tomato canners who have been affected by the United States countermeasures against the EC hormone ban (Chapter V) submitted a formal complaint. The EC is currently examining whether action under the New Commercial Policy Instrument, in particular a request for a GATT Panel, is called for.

⁵⁷By a later amendment (Regulation No. 1934/82), a list of product-specific exceptions from the common rules at the EC-level was replaced by individual lists of exceptions on the part of some member

(Footnote Continued)

Commission could introduce an export authorization scheme. Such action may be taken on the Commission's own initiative or at the request of a member State. Any action is subject to consultation in an advisory committee and has to be approved by the Council, acting by qualified majority. As compared with the common rules for imports, Regulation No. 2603/69 is less stringent in defining procedures and information requirements.

89. Without enumerating specific criteria, the regulation stipulates that measures can be limited to exports to certain destinations and from certain regions of the EC. Other provisions provide for export restrictions designed to comply with international obligations, particularly with respect to trade in primary commodities. A general exception clause allows for the application of export restrictions for reasons of public morals and national security, the protection of life and health, the preservation of national treasures and the protection of industrial and commercial property.⁵⁸

90. Apart from the above regulations of a more general character, there exists a wide range of Council Regulations providing, for example, for remedial action in specific trade situations (dumping, subsidization, etc.) or laying the basis for trade-related policies in areas such as public procurement and standardization. These regulations are often related to EC obligations under the Tokyo Round Agreements (Chapter V).⁵⁹

(5) Barriers to Intra-EC Trade

91. The common commercial policy is one of the centrepieces of the EEC Treaty. Basically, it refers to policies which are decided upon and implemented at the EC level (e.g. tariffs, anti-dumping and countervailing measures, most quantitative restrictions). In addition there is a gamut of trade-related policies which lie, more or less, within the competence of member States. In many cases, this competence is limited by the EEC Treaty and the Commission exerts supervisory powers. Examples include State aid and public procurement activities.

(Footnote Continued)

States. The only EC-wide exceptions from the basic freedom to export principle which are still in force apply to petroleum oils and gases. The Council, by qualified majority on a Commission's proposal, can include any of these products under the common rules.

According to the EC Commission, most of the exceptions provided for by Regulation No. 1934/82 are actually not being applied. Their partial or complete elimination is currently under consideration.

⁵⁸ For specific measures see Chapter IV.

⁵⁹ The EC has signed all Tokyo Round Agreements. Three member States have not yet assumed obligations under the GATT Code on Government Procurement.

92. Individual member States continue to apply certain quantitative restrictions against imports from third countries. Most of these measures - the so-called residual restrictions - predate EC membership; they are largely confined to certain "sensitive" sectors. Prominent examples are motor vehicles and bananas (see below).

93. In principle, any national restriction (including quotas under the MFA) is liable to circumvention by intra-EC transits. To fend off such indirect imports, member States can request the Commission's authorization to temporarily intervene at internal frontiers and to suspend certain products from Community treatment (Article 115 of the EEC Treaty). The record of individual member States and sectors under Article 115 is suggestive of gaps in the common trade policy régime and indicates some of the problem areas in the integration process.

94. The Commission determines the conditions and details of measures under Article 115. In 1979 and 1987, it issued decisions with a view to tightening the general criteria for authorizations. Referring to the establishment of a common commercial policy and to the Single Market objectives, the Commission stressed that these measures should be applied "only for a limited period and where the gravity of the situation so warrants" (Commission Decision 87/433).⁶⁰

95. The duration of individual applications is decided on a case-by-case basis, ranging from two months up to one year.⁶¹ For textiles,

⁶⁰ Decision No. 87/433 establishes a two-tier approach:

(i) On the basis of Article 2 the Commission can authorize the issuance of an import document for surveillance purposes "where there is a danger that imports into a member State ... will give rise to economic difficulties". As a general rule, such action should be limited to cases where "significant imports" via other member States have been made in the preceding year and/or the Communities' imports of the product in question from the originating country exceeded 1 per cent of its total third country imports.

(ii) In case of actual difficulties, member States may apply for protective measures (Article 3). They are then required to provide, inter alia, the following information: Direct imports and detouring imports from the third country concerned; imports from other third countries with which similar arrangements are being maintained; total third country imports; imports originating in the EC. Other member States are informed of the request.

According to the Commission, no changes of these criteria are being envisaged at present.

⁶¹ However, by way of subsequent authorizations these measures may be prolonged over several years. For example, Article 115 measures have been in place for TV sets and radios since 1974 (France, Italy), for cars since
(Footnote Continued)

authorizations are only granted if national quotas of member States are exceeded by at least 50 per cent and, in general, the amount in free circulation exceeds the quota by more than 100 per cent. Reflecting the focus of the external trade measures which it is intended to support, Article 115 has never been applied on an erga omnes basis.

96. For 1990, the Commission authorized 184 surveillance measures under Article 115. This is substantially less than in previous years (1,500 in 1987 and 335 in 1989). The number of intra-EC trade restrictions in force dropped from 187 in 1987 to 112 in 1990.⁶² Of these, 109 measures - or 97 per cent - were taken by four member States. France accounted for 46 restrictions (41 per cent), followed by Spain (29 per cent), Italy (17 per cent), and Ireland (10 per cent). By contrast, Germany has not taken any action under Article 115 since 1984. From a sectoral perspective, the huge majority of restrictions has been imposed on imports of textiles.

97. In the event of balance-of-payments difficulties, Article 108:2 of the EEC Treaty (and Article 109 as regards precautionary action of member States) can be invoked to restrict intra-EC trade. The Council, acting by qualified majority, may decide upon such measures to avoid trade deflection if the member State concerned maintains or reintroduces restrictions against third countries (Annex to Chapter III). According to the Commission, these provisions are likely to be changed in the context of the forthcoming Economic and Monetary Union.

(6) The Single Market Process

(i) Historical background

98. The 1960s and early 1970s witnessed strong moves towards EC integration. The customs union became fully operative on 1 July 1968, 18 months ahead of the schedule laid down in the EEC Treaty. In an increasing number of areas, common "rules of the game" were established.⁶³ In 1973, three new members, Denmark, Ireland and the United Kingdom, acceded to the EC. During the 1970s, however, global economic setbacks,

(Footnote Continued)

1981 (Italy) or 1986 (Spain) and for motorcycles since 1986 (Italy and Portugal). According to the Commission, in the case of requests for the prolongation of measures under Article 115, the same procedures and criteria are applied as with any original authorization.

⁶²Table II.1 shows the number of authorizations by the Commission under Article 115. They declined from 119 in 1989 to 79 in 1990.

⁶³In 1969, intra-EC border controls were significantly reduced by the introduction of a Community transit procedure. A general programme, adopted in 1969, brought about a substantial removal of technical barriers by the development of common rules.

rising inflation, surging oil prices, and problems of structural adjustment worked against a further deepening of the economic and political integration among the EC members.

99. On several occasions, the Commission pointed to impasses in the integration process and submitted proposals with the aim of "relaunching the internal market" (the title of a Commission's communication to the European Council in 1982). These efforts resulted in certain institutional innovations, including the creation of an "Internal Market Council".⁶⁴

100. Other major initiatives in the 1970s and early 1980s aimed at creating more transparency and adopting a more coherent policy stance in the area of technical barriers to trade. A case in point is the so-called Mutual Information Directive (Council Directive No. 83/189) of 1983. Accordingly, member States have to notify all new technical regulations which they intend to establish on their territory. The Commission and other member States are then afforded the opportunity of vetting the potential effects on trade during a "standstill" period of three months.⁶⁵ This period shall be prolonged to six months if the Commission or other member States deliver a detailed opinion to the effect that the measure must be amended in order to avoid trade barriers. Moreover, the Commission is entitled to freeze any new national standardization project up to one year if it deems it necessary to have an EC directive instead.

101. Table II.2 provides an overview of member States' notifications under Directive No. 83/189 and the following responses of other member States or the Commission. The figures - 1,075 notifications prompting a total of 1,138 comments or detailed opinions - are suggestive of intense EC-internal notification and co-ordination activities in the field of technical regulations.

(ii) The White Paper on completing the Internal Market

102. Overall, integration activities in the early 1980s were predominantly confined to gradual improvements in individual policy areas. In 1985, a comprehensive and more ambitious approach was launched to revitalise the integration process. Following a Commission initiative, the European Council of 29 and 30 March 1985 identified as a first priority "action to achieve a single large market by 1992" and asked the Commission to submit a

⁶⁴The Council is specifically concerned with internal market issues and has to coordinate and supervise progress in different areas against the wider background of overriding integration objectives. Its working should counter the impact of issue-related decision-making in other fora.

⁶⁵The member State concerned is required to take, as far as possible, any comments into account in the subsequent preparation of the technical regulation.

detailed programme. In response, the Commission presented, on 15 July 1985, its "White Paper on Completing the Internal Market".

103. The Paper serves as a signpost on the way to 1992. It defines the direction and pace of the future development of the Internal Market. A wide range of physical, technical and fiscal barriers are addressed which are impinging on the free flow of goods, services, persons and capital.

104. The White Paper consolidates, to a certain extent, previous declarations of the Council and the Commission, and it incorporates already established principles of internal harmonization. For example, the so-called "New Approach to Technical Harmonization and Standards" had already been promulgated by a Council Resolution on 7 May 1985. However, in many areas the White Paper went beyond the range of established policies and, by developing a comprehensive strategy for all areas which were supposed to affect the integration process, it set a new tone.

105. As regards harmonization of technical standards, the Paper stipulates, in accordance with the Council Resolution of 7 May 1985, that future EC legislation shall be restricted to laying down essential health and safety requirements. Products which conform to this basic criteria should be entitled to free movement throughout the Communities (para. 65).⁶⁶ This approach deviates from previous efforts which aimed at developing more comprehensive and detailed regulations. The White Paper notes that a strategy of total harmonization would be "over-regulatory, would take a long time to implement, would be inflexible and could stifle innovation" (para.64).⁶⁷

106. Whenever common legislation does not exist, the principle of mutual recognition of national regulations comes into play. In this respect, several rulings of the European Court of Justice have paved the way since the late 1970s. The Court outlawed a series of long-standing national

⁶⁶ Essentially the "new approach to technical harmonization" refers to products which are capable of being produced in standardized processes. Accordingly, the Commission holds the view that only the industrial sector should be covered by this approach (though agricultural products are not explicitly excluded by the above-mentioned resolution). See EC Commission (1990), Completing the Internal Market: The Removal of Technical Barriers to Trade within the European Community, Brussels (Working Paper).

⁶⁷ The White Paper underlines that "the objectives of national legislation, such as the protection of human health and life and of the environment, are more often than not identical. It follows that the rules and controls developed to achieve those objectives, although they may take different forms, essentially come down to the same thing, and so should normally be accorded recognition in all member States, not forgetting the possibilities of cooperation between national authorities".

restrictions⁶⁸ which were based on the alleged grounds of health or consumer protection.

107. Referring to national protection measures and regional quotas, the Commission took the view that their abolition by 1992 was "not an unreasonable aim". If Article 115 were no longer applicable, any import restrictions would then have to be applied on a EC-wide basis. The White Paper points to a need of finding substitutes for internal frontier controls (para. 35 et seq.)⁶⁹ where the elimination of national quotas proved impossible by 1992.

108. The White Paper contains an annex with a timetable for future action to complete the Internal Market by 1992. In this context, some 280 proposals by the Commission are enumerated which had to be worked out or which were awaiting adoption by the Council (for individual aspects, e.g. on technical harmonization and public procurement, see Chapter IV below).

109. Since 1986, the Commission publishes progress reports on the implementation of the White Paper. According to the latest report, all proposals⁷⁰ which were announced in the Paper have been submitted to the Council. By the end of 1989, the Council had adopted about 60 per cent of these proposals. At the same time, however, the Commission expresses concern about some backlogs in the integration process. Specific mention is made of (i) problems in attaining the Council's approval when unanimity

⁶⁸The first case in point was the "Cassis-de-Dijon"-ruling in 1978 (Case 120/78). Accordingly, trade barriers resulting from differences in national legislation are only permissible for "a purpose which is in the general interest and such as to take precedence over the requirements of the free movement of goods". More recent examples are rulings on the German purity law on beer (March 1987), German regulations concerning meat-based products (February 1989), Italian regulations on pasta, and a French ban on milk substitutes. These measures have been outlawed on the basis of Article 30 of the EEC-Treaty which prohibits quantitative restrictions on imports from other member States or measures having equivalent effect.

It is noteworthy, that German breweries are still required to respect the purity law for their domestic sales.

⁶⁹In a recent communication, the Commission reiterates that "after the completion of the Internal Market it will no longer be possible to use boarder controls at internal frontiers" to protect national markets (EC Commission (1890), Industrial Policy ..., op. cit.).

⁷⁰EC Commission (1990), Fifth Report of the Commission to the Council and the European Parliament Concerning the Implementation of the White Paper on the Completion of the Internal Market, Brussels.

is required⁷¹ or when specific implementing powers should be delegated to the Commission (for example in the sanitary and phytosanitary context); (ii) delays on the part of some member States, specifically Italy, in transposing EC law into national law or in complying with Court of Justice rulings; and (iii) slow progress in the abolition of border controls. Among the 88 Directives which should have been implemented by the end of 1989, only 14 had achieved this status in all member States.

110. The services of the Commission have prepared empirical studies which aim to assess the gains from internal liberalization.⁷² Accordingly, these gains would mainly result from the removal of technical barriers to trade, the abolition of frontier controls, more competition in public procurement, and the opening of major services markets. As a result, production and employment patterns in the EC would change substantially and economic efficiency would increase. Within some five years, the EC's GDP could be expected to be roughly 4 to 6½ per cent higher than in the absence of the internal liberalization process.

(iii) The Single European Act

111. While the White Paper did not establish concrete institutional reforms, these were brought about by the Single European Act (SEA) which came into effect on 1 July 1987. The Act lays down the legal basis for the Internal Market programme. Its creation is evidence of a new momentum in the integration process which has made itself felt since the presentation of the White Paper. The Act introduced in the EEC-Treaty the "aim of progressively establishing the internal market" by the end of 1992 (Article 13 of the SEA) and provided for new procedures and practices in the pursuit of issues outlined in the White Paper.⁷³

112. The range of common EC policies and objectives was extended, and institutional changes were made so as "to ensure smoother functioning of the Communities" (preamble). For example, Article 10 of the SEA strengthened the Commission's power in the implementation of Community

⁷¹This applies to 19 per cent of the White Paper's proposals.

⁷²Michael Emerson et.al (1988), The Economics of 1992 - The EC Commission's Assessment of the Economic Effects of Completing the Internal Market, Oxford University Press, Oxford. In parallel, a similar publication was submitted (the so-called Cecchini-Report) which is addressed more to the general public. Paolo Cecchini (1988), The European Challenge 1992 - The Benefits of a Single Market, Gower, Aldershot.

⁷³By means of Article 13 of the SEA, a new Article 8a was inserted in the EEC-Treaty. In this context, the Internal Market is defined as "an area without internal frontiers in which the free movements of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty".

law.⁷⁴ Moreover, through Article 18 of the SEA, a new Article 100a was inserted in the EEC Treaty which establishes qualified majority voting for Council decisions on the Internal Market. The deviation from the traditional requirement of unanimity in this area involved a transfer of national sovereignty to the EC.⁷⁵

113. Further provisions of Article 100a are relevant for the establishment and functioning of the Internal Market. Referring to health, safety, environmental protection and consumer protection, Article 100a:3 stipulates that legislation shall be based on "a high level of protection". However, after adoption of harmonization measures by the Council, member States are still entitled to apply national restrictions on grounds of major needs. Such cases are subject to the Commission's verification that the measures are not a means of arbitrary discrimination or a disguised restriction on trade (Article 100a:4).⁷⁶ Some observers argue that, by allowing permanent national derogations from Community legislation, the SEA contains new elements as compared with the case-law previously developed by the European Court of Justice.

⁷⁴However, the delegation of implementing powers to the Commission and the exercise of these powers in cooperation with member States has continued to generate some frictions (see above).

⁷⁵According to Article 100, the Council must act unanimously on a Commission's proposal affecting "the establishment and functioning of the common market". It was supplemented by Article 100a which refers to decisions relating to "the establishment and functioning of the internal market".

Qualified majority voting also applies to a range of other areas - e.g. freedom of movement for workers (Article 49), provision of services by nationals of third countries (Article 59), and liberalization of capital movements (Article 70) - where the SEA replaced the relevant provisions of the original EEC Treaty. Fiscal issues, the free movement of persons or the rights of employees are excluded herefrom (Article 100a:2). For Article 70, see Chapter III.

⁷⁶Article 100a refers to Article 36 of the EEC Treaty which allows for national restrictions "on grounds of public morality, public policy and public security; the protections of health and life of humans, animals or plants" provided that such prohibitions do not discriminate or restrict trade between member States.

A separate Declaration of Denmark on Article 100a is attached to the Single European Act. It states that the provisions do not prevent a member State from applying national law in order to safeguard higher requirements with respect to the working environment, the protection of the environment, and the needs referred to in Article 36.

114. Based on Article 100a:4, Denmark enacted stricter car emission standards than those⁷⁷ currently applicable in the other member States as from 1 October 1990.

(7) Future Amendments to the EEC Treaty

115. In June 1990, the European Council agreed to stage a conference on Political Union under Article 236 of the EEC Treaty. According to the Council, the conference is to conclude its work rapidly with the objective of ratification by member States before the end of 1992. Meanwhile, the conference has begun to work, in parallel with the conference on Economic and Monetary Union (Chapter III).

(8) Trade Agreements and Preferential Trade Schemes

116. The EC maintains a multi-layer system of trade preferences vis-à-vis third countries on a reciprocal or unilateral basis. Preferences are granted in the context of free trade agreements (EFTA countries, Israel), through a wide range of association and cooperation agreements (including the Lomé Convention), and the Communities' GSP scheme. A major distinction between these arrangements is that the free-trade and association agreements result from negotiations and, therefore, have a contractual character whereas the GSP scheme is a unilateral trade preference in favour of developing countries.

117. In principle, the free trade agreements and the association and cooperation agreements provide for unrestricted and duty free access for industrial products. In many cases, trade in ECSC products (coal, steel) and textiles is treated in a separate context. Agricultural products are either completely excluded or subject to specific constraints as regards product coverage, quantitative ceilings, minimum price requirements, seasonal calendars etc. This applies especially to those products which are under common market organizations.

118. Among developing countries, Mediterranean and ACP countries are granted special benefits. More generous treatment is provided in terms of access opportunities - including rules of origin and regional cumulation possibilities - and policy régimes (for example, for sugar and bananas). In addition, the legal status and the respective time-frames differ. While GSP preferences are not legally binding and are subject to an annual review, the recent Lomé Convention with the ACP countries has been enacted

⁷⁷European Report, No. 1624, 24 October 1990. In December 1990, the EC Ministers for Environment agreed on a common position on future EC emission standards close to the Danish standards.

for a ten-year period.⁷⁸ The agreements with the Mediterranean countries are for an indeterminate time period.

119. There are differences in the dispute settlement procedures, ranging from consultation mechanisms (for example, in the EFTA agreements) to binding arbitration (Lomé Convention). However, the latter provision has not been invoked thus far.

(i) Free Trade Agreements with EFTA countries

120. The development of institutional links between the EC and the EFTA countries is intertwined with major institutional changes by the Communities themselves. In parallel to the accession of the then EFTA members Denmark and the United Kingdom to the EC, the EC/EFTA Free Trade Agreements were concluded in the early 1970s. Thus the imposition of tariffs by Denmark and the United Kingdom vis-à-vis the remaining EFTA members was averted.⁷⁹ About ten years later, the emerging internal market process within the EC coincided with new efforts to intensify the cooperation between the EC and EFTA. The concept of a "European Economic Space" (EES) was developed; negotiations are currently under way.⁸⁰

121. The Free Trade Agreements of 1973 were concluded between the EC and the individual EFTA countries. The agreements are similar in structure and content. They provide for the progressive elimination of tariffs and quantitative restrictions on trade in industrial goods, and include certain rules on state aids and on industrial competition. Agricultural products are formally exempted. Bilateral Joint Committees are set up to administer the application. If the respective Committees fail to agree, for example, on the abolition of public aid or market distortions which allegedly affect trade, the importing country is entitled to adopt safeguard measures, in particular by withdrawing tariff concessions (Chapter VI).

122. GATT Working Parties were set up to examine the agreements. They "could not reach any unanimous conclusions as to the compatibility of the Agreement with the provisions of the General Agreement".

123. In 1984, a joint ministerial meeting of EC and EFTA member States decided to extend cooperation on the basis of the existing agreements and to embark on new areas. The objective of a "Dynamic European Economic Space" was firstly promulgated in April 1984, in the so-called Luxembourg Declaration.

⁷⁸ However, Lomé IV provides for a review procedure and contains a revocation clause.

⁷⁹ Austria, Finland, Iceland, Norway, Portugal (up to 1986), Sweden, Switzerland and Liechtenstein.

⁸⁰ The EES is also referred to as European Economic Area.

124. A wide range of common interests was listed and some 25 working groups were set up. In the context of the "Luxembourg approach" which is characterized by issue-related cooperation, the Commission was anxious to safeguard three principles: (i) priority to EC internal integration; (ii) preservation of decision-making autonomy; and (iii) satisfactory balance of advantages and obligations in each case.

125. Agreements concluded hitherto aim at streamlining administrative procedures (for example, by introducing a single administrative document and simplifying rules of origin) and at increasing transparency in the fields of public procurement and technical standards.⁸¹ Moreover, a number of bilateral agreements between the EC and individual EFTA countries are in force (for example, on transit procedures).

126. Further fora of cooperation include the European standardization and certification bodies: CEN, CENELEC, ETSI and EOTC (Chapter IV). There are also joint committees on the national level which are established to address common problems of neighbouring EC and EFTA countries.

127. In December 1989, an EC/EFTA ministerial meeting decided to develop further the "European Economic Space" and to create a more structured framework of cooperation. Negotiations on a comprehensive agreement were to commence in the first half of 1990. The stated objectives are (i) "to achieve the free movement of goods, services, capital and persons on the basis of the *acquis communautaire*, to be identified jointly";⁸² (ii) "to strengthen and broaden cooperation in the context of the Community's actions in other areas" (for example, research and development, the environment, consumer protection); and (iii) to reduce economic and social disparities between the regions.

128. Negotiations started on 20 June 1990 in Brussels. The European Economic Space is intended to enter into force on 1 January 1993, in parallel with the completion of the EC Internal Market.

(ii) Generalized System of Preferences

129. At present, some 130 independent countries and more than 20 dependent territories are entitled to preferential treatment under the Generalized

⁸¹It was agreed to publish tender notices of EFTA countries in the Official Journal of the European Communities and to exchange the notifications of draft technical regulations.

⁸²In the Commission's opinion - stated in a communication to the EC Council on 22 November 1989 - this could include the mutual recognition of technical regulations, harmonization (either full or limited to essential requirements) and mutual recognition of tests and certificates. Higher standards should be permitted provided that products which are legally marketed elsewhere are not barred.

Scheme of Preferences of the EC (GSP).⁸³ Over a broad range of manufactured and semi-manufactured products, their exports may enter the EC duty-free subject to quantitative limits or a safeguard provision. Preferential tariff treatment is also granted for a limited range of agricultural products.

130. Benefits under the GSP scheme are temporary and non-binding. The GSP scheme is renewed annually as published in the Official Journal. The EC points out that its offer could be withdrawn later, "thus maintaining the possibility of remedying any unfavourable situations which might arise following the implementation of the system, including such situations in the African, Caribbean and Pacific States".⁸⁴

131. The Republic of Korea is suspended from GSP treatment. According to the relevant Council Regulations, this applies as long as Korea discriminates against the Community in the protection of intellectual property.

132. Over recent years, the EC has aimed at redistributing preferential benefits from more competitive countries to less advanced suppliers. Apart from safeguard cases, least developed countries are exempt from the reimposition of tariffs on industrial products under the EEC Treaty (since 1978).⁸⁵

133. Any individual consignment is subject to a certain degree of uncertainty as regards its actual treatment under the GSP scheme. This applies particularly to later stages during the quota period when quantitative limits may be reached or safeguard measures be taken while the transport is under way. There is no possibility of advance information before shipment. According to the Commission, some quotas or duty-free amounts are already exhausted during the first three days of the year.

134. Basically, the EC applies four different sets of rules, concerning (i) the bulk of industrial products, (ii) iron and steel products under the ECSC-Treaty, (iii) textiles and clothing, and (iv) certain processed agricultural products.

⁸³In the case of Yugoslavia, the relevant preferences are exclusively provided by a bilateral cooperation agreement.

⁸⁴This standard formula is contained in the explanatory notes of the annual Council Regulations which establish the preferential scheme for the following year (for example, Regulations No. 3896/89 in respect of certain industrial products). This quotation also reflects the hierarchical system of the EC trade preferences.

⁸⁵Thirty of the 39 least-developed countries are signatories to the Lomé Convention, receiving such benefits anyway.

135. Under Council Regulation No. 3896/89, imports of non-sensitive industrial products are duty free as long as they do not give rise to economic difficulties in the Community or one of its regions. After consultations at the EC level, duties may be reintroduced against a beneficiary country if deliveries exceed a reference base of 6 per cent of all third country imports.⁸⁶ This provision has been invoked with decreasing frequency over the last years (18 applications in 1987, 11 in 1988, 10 in 1989 and no applications for the period January to July 1990).⁸⁷

136. Some 130 industrial products, deemed to be sensitive, are subject to quantitative ceilings and, in many instances, to duty-free amounts with respect to certain trading partners. The product range covers items such as certain basic chemicals, plastic products, tyre and tubes, leather categories, footwear, travel sets, tableware, iron and steel products, and electronic products (TV sets, video recorders, etc.).⁸⁸ When imports from individual sources exceed the relevant ceiling, duties may be reintroduced, after prior consultations between the Commission and the member States. In the case of duty-free amounts, the reintroduction of duties is triggered automatically.⁸⁹

137. A further range of base products is completely excluded from preferential treatment. This applies, for example, to some crude minerals (salt), chemical elements (sodium, aluminium oxide), leather categories, ferro-alloys and non-ferrous metals.

⁸⁶ For a limited range of products (certain colouring materials, ceramic products, electric motors, electronic components, etc.), the reference base is fixed at 2 per cent.

⁸⁷ During the period January 1987 to July 1990, m.f.n. tariffs were reimposed three times in the case of jewellery (Thailand), alcoloids of quinine (Indonesia), stainless steel nuts (China), zinc oxide (China (twice), Mexico). Two re-impositions were reported with respect to aluminium chloride (India), methenamine (Romania), artificial flowers (China), silicides (Brazil), cysteine (China), hexachlorocyclohexane (China) and dolls (Philippines). One product (lysine) was reclassified as sensitive.

⁸⁸ Sensitive products are selected on the basis of import and production trends. However, no pre-fixed rules and criteria are applied in this context. The final list is established in coordination between the Commission and the member States.

⁸⁹ The products and relevant quantities are annexed to Regulation No. 3896/89. The fixed duty-free amounts are administered by the Commission. Correspondingly, member States are submitting the requests for preferential treatment to the Commission which then grants duty free importation within the established limits.

138. For a large number of iron and steel products under the ECSC-Treaty, Decision No. 89/645/ECSC provides for duty-free access subject to individual ceilings and, in some categories, to tariff quotas.⁹⁰ Fixed shares of these quotas are allocated to, and administered by, member States. Tariffs are reintroduced when the individual quotas are exceeded. A more flexible régime applies to some other iron and steel products (in several cases, imports from Romania are excluded).

139. Tariff preferences for a total of 91 textile categories which are covered by the MFA are available to all least-developed countries and to trading partners (i) which have signed bilateral agreements under the MFA or (ii) which have undertaken similar commitments vis-à-vis the EC. Preferences are granted in the form of duty-free access within the limits of tariff quotas or duty-free ceilings. When import quantities surpass the tariff quotas, duties are reimposed automatically;⁹¹ in the case of ceilings, the Commission may take such a decision.

140. For 41 non-MFA textile categories, preferences are granted either subject to fixed duty-free amounts with automatic duty reimposition or to ceilings. Duty-free amounts are administered by the Commission; there is

⁹⁰ In total, the GSP scheme of the Communities - either under Regulation No. 3896/89 or Decision No. 89/645/ECSC - covers more than 90 per cent of all tariff lines under Section XV of the CCCN nomenclature ("Base metals and articles thereof").

Tariff quotas are established with respect to Brazil, Argentina, Venezuela and the Republic of Korea (as noted above, GSP treatment is suspended for the latter country). The ceilings apply to all other GSP beneficiaries with the exception of Romania which is completely excluded in this context.

⁹¹ Imports under tariff quotas are allocated to member States on the basis of a fixed scale (the same scale is being employed in the MFA framework). This allocation procedure applies to 70 per cent of the preferential import possibilities, the rest is being kept back in a Community reserve. At a later date in the quota period, member States are required to return unused parts of their shares to this reserve for an eventual re-allocation.

Since the quota period is limited to six months, the procedure is applied twice a year.

The procedure has been devised in view of a judgement of the European Court of Justice which, as a general rule, had declared the application of national fixed-scale quotas between member States as incompatible with the principles of a common market (see also Section II(4) and Chapter V).

Tariff ceilings are centrally administered by the Commission.

no allocation of imports among member States.⁹² Furthermore, jute and coir imports from certain sources are duty free.

141. Preferences are given subject to the sensitivity of the respective category, the import share of the supplying country and its level of development (per capita income). Some of the more advanced suppliers are excluded from preferential treatment. Other countries are generally accorded duty-free access up to a maximum of 1 per cent of total EC imports. Preferences for least-developed countries are exempt from any quantitative limitations.

142. In 1988, the EC imported from beneficiary countries textiles products covered by the GSP scheme worth ECU 8.9 billion. Of these, imports worth ECU 1.4 billion benefited from GSP treatment.

143. The bulk of agricultural products, in terms of their share in total EC consumption, is excluded from GSP treatment.⁹³ Preferential benefits are provided for products such as certain fish, flowers, fruit and vegetables; these items enter free or at reduced duties. In some cases, the preferences are subject to quantitative limits (preserved pineapples, extracts of coffee and unmanufactured tobacco), to seasonal restrictions or to country-specific exemptions.⁹⁴ Duty-free treatment is granted to imports from least-developed countries for a list of additional products. A specific safeguard clause entitles the Commission to reimpose tariffs if imports enter into the EC in quantities or at prices that are likely to place EC producers at a serious disadvantage. The clause was applied once in 1986 and 1987, respectively.

144. Imports of some products under the variable levy system are eligible for reduced levies (at 50 per cent) within the limits of fixed quotas.⁹⁵ The largest category is geese and parts of geese (preferential import quota of 25,000 tonnes).

⁹²This applies to all least-developed countries, to India, to Thailand (five out of six textile categories), and to Sri Lanka (one textile category).

⁹³In this context, the Commission points to a progressive extension of the list of items eligible for GSP treatment.

⁹⁴According to Council Regulation No. 3898/89, seasonal restrictions apply to asparagus, aubergines, courgettes and avocados.

For most products, preferential benefits (either duty free access or reduced duties) are available to all GSP beneficiaries. However, China, Poland and Greenland are specifically excluded from some preferences.

⁹⁵In 1990, under Council Regulation No. 3899/89, for the first time some variable levy products were included in the GSP scheme.

145. In the case of Hungary and Poland, GSP treatment of some soft fruit imports, such as strawberries and blackcurrants, coincides with long-standing informal minimum export price arrangements.

146. The Council has decided to continue the present GSP system in 1991 except for certain changes in favour of least-developed countries, such as the use of more flexible rules of origin. Major reforms are scheduled for 1992, in the light of the results of the Uruguay Round. In this respect, the Commission has enumerated the following objectives: (i) continuation of the scheme, in principle, with the present beneficiary countries; (ii) retention and, wherever possible, extension of the product coverage; (iii) simplification by avoiding quantitative limits;⁹⁶ (iv) increased stability through an extended period of application (at least three years) with a suspensive clause to cope with exceptional cases; (v) more favourable arrangements for the least developed countries; (vi) a higher degree of harmonization of donor countries policies, for example as regards product coverage; (vii) increased multilateral disciplines on the part of the more advanced developing countries. In October 1990, the Council postponed its deliberations on this issue until a later date.

147. According to a recent Council Regulation (No. 3211/90), the EC will temporarily increase its cooperation activities in favour of Colombia, Peru and Bolivia. The Decision includes the extension of GSP benefits, corresponding to the treatment of least-developed countries. It aims at supporting the fight against the cultivation of coca.

(iii) The Lomé Conventions

148. Since 1975, successive Lomé Conventions have been negotiated with a view to maintaining and developing traditional economic and commercial relations between EC member States and developing countries of Sub-Saharan Africa, the Caribbean and the Pacific area. The first Lomé Convention was concluded shortly after the accession of the United Kingdom to the EC. It substantially widened the scope of benefiting countries as compared with its predecessors, the two Yaoundé Conventions which were mainly confined to French-speaking African countries.

149. The Lomé Conventions are wide-ranging cooperation agreements which include financial aid,⁹⁷ technical cooperation and specific non-reciprocal trade preferences. In principle, ACP exports are granted unrestricted

⁹⁶ A new approach should either provide for duty-free entry (for the vast majority of products), or for reduced m.f.n. duties (for sensitive products), or for the complete exclusion of products/countries when products are extremely sensitive or when no acceptable preference margin can be offered.

⁹⁷ The Financial Protocol under Lomé IV provides grants and loans for a
(Footnote Continued)

and duty-free access to the EC market. This includes agricultural products which are not subject to a common market organization in the framework of the Common Agricultural Policy, textiles and clothing, and ECSC-products. The latter are subject to a specific safeguard provision.⁹⁸ As regards the bulk of agricultural products under a common market organization, the ACP countries are being ensured more favourable treatment than other suppliers under the most-favoured-nation clause. Under the Protocol on sugar, EC prices are guaranteed for a maximum of 1.3 million tonnes of ACP cane sugar per year.⁹⁹

150. In December 1989, the fourth Lomé Convention was signed.¹⁰⁰ It includes 69 ACP-countries, three more than Lomé III (Dominican Republic, Haiti and, after independence, Namibia).¹⁰¹ While Lomé I to III were each concluded for a five-year period, Lomé IV will cover ten years, up to the year 2000 (except for the financial protocol which remains limited to five years). However, the Convention provides for a review after five years.

(Footnote Continued)

wide range of purposes. The lion's share (grants of ECU 6,215 million for the period 1990-95) is devoted to national and regional development programmes. Further funds are established to promote structural adjustment, to offset negative price impacts on agricultural and mining exports (Stabex and Sysmin) and to provide relief in serious emergency and refugee situations.

⁹⁸ Accordingly, the EC may withdraw concessions on the relevant coal and steel products if the conditions of competition from ACP suppliers as regards prices "are likely to be detrimental to the functioning of the common market" (Protocol 9, Article 3). In contrast, the use of the general safeguard clause (Article 177 of the Lomé IV-Convention) is conditional on the occurrence of (i) "serious economic disturbances" in a sector of the EC or of member States, or of (ii) difficulties which jeopardize external financial stability or which may result in a deterioration thereof. To date, the safeguard clauses have not been applied.

⁹⁹ This applies to 18 ACP countries which are entitled under this Protocol ("agreed quantities" for delivery are allocated to each country). The Protocol is of indeterminate duration, irrespective of the time-frames of the subsequent Lomé Conventions.

¹⁰⁰ The Convention was to enter into force as of 1 March 1990. However, as the ratification procedures will still take some time, an interim régime was agreed upon. It anticipates in the sphere of trade the formal ratification by the contracting parties.

¹⁰¹ In November 1990, the ACP-EEC Council of Ministers decided to add Namibia to the signatories to the Convention.

Ten months before this date, negotiations are to be held with a view to examining proposals for amendments.¹⁰²

151. Other innovations of Lomé IV include the reduction of EC import restrictions on some forty agricultural products such as molasses, sorghum, millet, rice and several fruit and vegetables. As regards beef and veal, 39,100 tonnes of ACP production may enter the EC market under reduced levies of 10 per cent of the regular variable levy.¹⁰³ The EC import quotas for rum will be increased as of 1993 and are envisaged to be abolished after 1995.¹⁰⁴

152. All direct and indirect transports of hazardous and radioactive waste between the EC and the ACP States are prohibited (there is no such provision in other trade agreements of the EC).

153. The protocol on bananas was renewed as it stood under Lomé III. It guarantees ACP suppliers traditional access opportunities and advantages on the EC markets.¹⁰⁵ A supplementary Joint Declaration under Lomé IV contains an undertaking on the part of the EC to maintain this traditional supplier status after the completion of the Internal Market (see the Annex to this Chapter).¹⁰⁶ According to the Commission, appropriate measures in this respect are currently under consideration; details are not publicly available.

¹⁰²Moreover, the Convention may be revoked by the EC in respect of each ACP State and vice versa upon six months' notice.

¹⁰³Access opportunities under the Protocol on beef and veal are confined to Botswana (18,916 tonnes per year), Zimbabwe (9,100 tonnes), Madagascar (7,579 tonnes), Swaziland and Kenya. Additional quantities were provided for Namibia following its accession to the Convention.

¹⁰⁴The regional allocation of the rum quotas within the EC is to be progressively eliminated until the end of 1992.

¹⁰⁵According to Article I of the Protocol on Bananas, "no ACP State shall be placed, as regards access to its traditional markets and its advantages on those markets, in a less favourable position than in the past or at present".

¹⁰⁶In the event of substantial modifications in the EC banana sector, the Communities are committed to consult with the traditional suppliers "with a view to safeguarding all legitimate interests of the Parties to this Protocol".

154. The criteria for establishing product origin have been modified as compared with Lomé III.¹⁰⁷ A separate Protocol of some 50 pages elaborates the general definition of originating products, the administrative procedures involved and the working and processing requirements for specific products. The Commission stresses that a number of substantial improvements have been made since Lomé III so as to simplify the use of origin rules by businessmen and administrations.¹⁰⁸ The Commission points (i) to increased flexibility in the working and processing requirements, (ii) to a liberalization of the origin criteria for fishery products which now include catches made by chartered vessels, and (iii) to the extension of a general derogation clause to the origin rules which works "virtually automatically" if the value added from ACP or EC sources reaches 45 per cent (60 per cent under Lomé III).¹⁰⁹ If the EC fails to respond to any request for derogations within 60 working days, it is required to accept the request.

(iv) Agreements with Mediterranean countries

155. The EC has concluded association agreements with Turkey (1963), Malta (1970) and Cyprus (1972) on the basis of Article 238 of the EEC

¹⁰⁷As noted later (Chapter IV), the basic rule, or necessary condition, which is applied in this context requires a change of tariff heading as between the materials used and the finished product. As this rule is considered too imprecise for some products by the EC, product-specific working and processing requirements may be applicable. The provisions are set out by product in a lengthy enumeration of products annexed to the Convention.

¹⁰⁸EC Commission (1989), Fourth Lomé Convention, Information Memo, Brussels, 13 December 1989.

¹⁰⁹No differentiation is being made here between ACP and EC inputs. As a result, so-called assembly operations in the ACP area are excluded from preferential treatment insofar as they are being sourced from third countries.

Regarding fishery products, the respective Protocol, briefly, requires that catches have been made with vessels (i) which are registered or recorded in the ACP-/EC-area, (ii) which are flying the flag of one of the States concerned, (iii) which are owned to at least 50 per cent by nationals, and (iv) of which at least 50 per cent of the crew are nationals of these States. Some additional provisions under Lomé IV allow henceforth, under prescribed conditions, for the use of chartered or leased vessels in this context. On behalf of the ACP countries, a separate declaration is annexed to the Protocol, emphasizing that from their viewpoint all catches effected in their waters and obligatorily landed in their ports for processing should enjoy originating status.

For canned tuna, an automatic derogation for 1,500 tonnes is granted until 1992 and for 2,500 tonnes thereafter.

Treaty. The agreements provide for a customs union for industrial products according to prescribed implementation timetables. For agricultural trade, some limited concessions are foreseen.¹¹⁰ In addition, provisions on industrial cooperation, technical assistance and aid are included. At some later date, the establishment of a customs union is envisaged. To date, the EC is granting duty-free entry to all industrial imports from these countries; tariff reductions on certain agricultural products have been agreed on a case-by-case basis.

156. In 1970, an additional protocol was signed with Turkey; it established the stepwise phasing-in of a customs union.¹¹¹ Accordingly, tariffs over a wide range of industrial products were to be removed within twenty-two years. From 1976 until 1987, Turkey invoked the safeguard clause of the agreement and suspended the process of tariff dismantling. Since 1 January 1988, Turkey has resumed tariff cuts (10 per cent per year on the preferential duties on industrial imports from the EC). At present, the rate of tariff reduction by Turkey is of the order of 50 to 60 per cent, depending on product category. It is envisaged to complete the customs union for industrial products by the end of 1995. (As for Cyprus, the union is to be achieved by 1998).¹¹² Competitive pressures on the EC textiles markets have been abated by self-restraints on the part of Turkish manufacturers (see Chapter V; there is also a restraint arrangement with Malta on trousers).

157. In 1975, an agreement between the EC and Israel, concluded on the basis of Article 113 of the Treaty of Rome, entered into force.¹¹³ As for the EC, the complete abolition of tariffs and quotas on all industrial products had to be achieved by July 1977 (for some sensitive imports additional surveillance was provided until the end of 1979). Israel was to eliminate all tariffs on industrial imports from the EC by

¹¹⁰For trade in agricultural products, the association agreement with Turkey stipulates, e.g., that "special lines" are to be followed in this area in order to take into account the common agricultural policy (Article 11:1).

Turkey has granted no tariff concessions on agricultural products thus far.

¹¹¹With Cyprus, an additional protocol came into force on 15 January 1988. It provides for a two-stage transition period which must not exceed fifteen years in total.

¹¹²At present, tariff reductions for EC industrial and agricultural exports to Cyprus and Malta amount to approximately 35 per cent on average.

¹¹³The agreement replaced a previous one which was signed in 1970.

1 January 1985.¹¹⁴ By invoking a specific provision of the agreement, this deadline was postponed until January 1989. Since then, EC industrial exports have been accorded duty-free entry without restrictions.¹¹⁵

158. In 1975 and 1976, cooperation agreements with Algeria, Egypt, Jordan, Lebanon, Morocco, Syria and Tunisia were signed. Each of these agreements has a similar content. They cover both trade issues, and economic, financial and technical cooperation. As regards trade, the agreements provide for unrestricted access to the EC market for all raw materials and industrial products. In some cases (Egypt, Morocco, Tunisia), textiles became subsequently subject to restraint arrangements the terms of which, according to the Commission, have been softened progressively.

159. There are no reciprocal obligations on the part of the seven developing countries.¹¹⁶

160. In 1980, a cooperation agreement with Yugoslavia was concluded. It provided for unilateral liberalization measures by the EC; imports of industrial products are in principle unrestricted and duty free. However, certain products are subject to tariff ceilings. In agriculture, the agreement makes provision for tariff concessions on products of particular interest to Yugoslavia. In September 1990, the EC has suspended its quantitative restrictions on agricultural imports, putting Yugoslavia on a par with central and eastern European countries (see below).

161. Following its southern enlargement, the EC renegotiated with the Mediterranean countries the conditions of market access for the traditional agricultural exports to which the agreements apply. Accordingly, customs duties will be removed in tandem with the tariff dismantling for the same products exported by Spain and Portugal to their EC partners (in most cases by the end of 1995). For certain sensitive products this elimination will take place within tariff quotas.

(v) Recent agreements with central and eastern European countries

162. Since mid-1988, the EC has signed trade and cooperation agreements with Hungary (September 1988), Poland (September 1989), the Soviet Union

¹¹⁴As a first step, about 60 per cent of industrial imports from the EC were entitled to free access by 1 January 1980.

¹¹⁵Tariff concessions are also applied to a limited range of EC agricultural exports.

¹¹⁶In contrast to the other agreements, the EC/Lebanon agreement was originally drafted as an interim agreement leading to the establishment of a free trade agreement at a later stage.

(December 1989), the Czech and Slovak Federal Republic (May 1990), the German Democratic Republic (May 1990), Bulgaria (June 1990) and Romania (October 1990).

163. The agreements focus on trade in industrial products, excluding coal and steel (ECSC products) and textiles.¹¹⁷

164. The agreements with Hungary and Poland originally contained timetables for the progressive abolition of the Communities' specific quantitative restrictions by 1995. On 6 November 1989, however, the EC Council of Ministers decided that all specific restrictions were to be eliminated on 1 January 1990 and only the non-specific restrictions on the basis of Regulation No. 288/82 were to be applied (Regulation No. 3381/89). By an additional amendment, the application of these restrictions was suspended in 10 member States for one year.¹¹⁸ Moreover, imports from both countries were entitled to GSP benefits in 1990.¹¹⁹ As from 1 October 1990, the Czech and Slovak Federal Republic and Bulgaria are being treated likewise, both with respect to the elimination or suspension of quotas and to the granting of GSP. Romania is entitled to the same treatment for an improved GSP, as from 1 January 1991. The abolition or suspension of restrictions depends on the entry into force of the trade and cooperation agreement (probably May 1991).

¹¹⁷ As regards agriculture, mention is made of the possibility of granting mutual concessions which are compatible with international agreements.

¹¹⁸ The relevant Council Regulation (No. 3691/89) does not include Spain and Portugal. It allows the reintroduction of restrictions if imports are "causing or being liable to cause economic difficulties in the Community or in one of its regions".

On textiles, additional protocols to the existing agreements were signed in March 1990 providing for quota increases (Chapter V).

¹¹⁹ In this context, the so-called PHARE-initiative (Poland and Hungary - aid for economic restructuring) is also noteworthy. In 1989, the Economic Summit in Paris asked the Commission to co-ordinate this operation of 24 interested countries and relevant multilateral organizations.

Poland received, free of charge, ECU 125 million worth of EC foodstuffs in August 1989; the proceeds were to be used to carry out restructuring operations. Other measures on the part of the EC include financial support and extended European Investment Bank-loans for agreed priority areas: Food aid, agricultural restructuring, improved access to markets, investment promotion, vocational training and cooperation on the environment.

In July 1990, it was agreed among the 24 participating countries to extend the initiative to some other countries (Bulgaria, the Czech and Slovak Federal Republic, the German Democratic Republic (until German unification on 3 October 1990) and Yugoslavia).

165. The 10-year trade and commercial cooperation agreement with the Soviet Union provides for the elimination of all specific quantitative restrictions by the end of 1995 at the latest, except for a limited number of products deemed sensitive.¹²⁰ In return, EC exports are granted non-discriminatory treatment as regards the application of quantitative restrictions, licensing procedures and the allocation of currency. A safeguard clause allows for actions against increased imports which "cause or threaten to cause injury to domestic producers of like or directly competitive products". In principle, measures shall only be taken after consultations in the framework of Joint Committee.¹²¹

166. Further activities include negotiations of association agreements with some central and eastern European countries. In this context, no reference is made to the possibility of future accession to the EC. However, the Commission emphasizes the open-ended nature of the agreements which could take account of institutional aspects, and provide a forum for economic and political consultation, technical and scientific collaboration, etc.¹²² Accordingly, the links with these countries are set apart from "ordinary" trade agreements.

167. The Commission intends to recommend to the Council directives for the negotiation of a first round of such agreements. The countries mentioned in this context are the Czech and Slovak Federal Republic, Hungary and Poland. The agreements should ultimately lead to free trade in manufactures. For agriculture and fisheries, the Commission envisages special arrangements, emphasizing the need to take the particular character (of these sectors) fully into account and the functioning of the common agricultural and fisheries policies.

(vi) Further agreements and arrangements

168. A recent agreement with Andorra provides for the establishment of a customs union for industrial products; it will enter into force in 1991.

¹²⁰Annexed to the agreement are listings of products, by member States, where restrictions are either to be eliminated or suspended within one year. These measures were taken by the EC with effect from 3 June 1990 (Council Regulation No. 1434/90). Further measures are to be examined in the framework of a joint committee before the end of June 1992. The same applies to the opening of annual import quotas on the part of the EC for products "which are of interest to the Soviet Union".

¹²¹If no agreement is reached in the Committee, the party which requested consultations is free to restrict imports so as to prevent or remedy the injury. The other party is then entitled to take equivalent measures.

¹²²See Commission's Programme for 1990, op. cit.

169. In 1989, the EC concluded a cooperation agreement with the Gulf Co-operation Council.¹²³ It provides for subsequent negotiations on a free trade agreement. At present, such negotiations are underway.

170. In addition to the agreements mentioned above, the EC has concluded various trade agreements which do not involve specific concessions on the import side. They usually include measures to facilitate and promote exports from third countries (for example ASEAN, Andean, CACM).

171. Agreements under the MFA or export restraint arrangements are treated in Chapters IV and V.

(vii) Agreements on the part of member States

172. In addition to their common international obligations as part of the EC, member States are committed by a number of international treaties which pre-date their accession to the Communities. This applies, for instance, to the Friendship, Commerce and Navigation Treaties, which all EC members have concluded with the United States, the oldest ones dating back to 1815 (United Kingdom) and 1902 (Spain).

173. In general, the commitments under these treaties (for example, national treatment in commercial activities) do not interfere with objectives and procedures of the common commercial policy; some aspects go beyond existing international obligations of the EC, such as national treatment as regards the establishment and conduct of all types of financial activities.¹²⁴ Article 234 of the EEC Treaty expressly acknowledges existing international rights and obligations of member States; they are called upon to resolve any inconsistencies with the EEC Treaty.

(viii) Trade relations with the German Democratic Republic

174. According to the Protocol on German internal trade which was annexed to the EEC Treaty, trade between the German Democratic Republic and the Federal Republic of Germany was considered as part of German internal trade. No duties or levies have been imposed on deliveries from the German Democratic Republic. However, the Federal Republic was entitled to apply quantitative restrictions at any time. Re-exports to other member States

¹²³The "Co-operation Council of the Arab States of the Gulf" comprises Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. Kuwait is a contracting party to the GATT. Bahrain, Qatar and Saudi-Arabia are applying the GATT on a de facto basis.

¹²⁴However, in this respect there are substantial differences between the individual Friendship, Commerce and Navigation Treaties.

were made subject to controls. Moreover, each member State was allowed to take measures against the imports concerned.¹²⁵

175. In 1990, in parallel with the steps towards unification of the two Germanies, the German Democratic Republic has become de facto part of the EC customs territory. The Integration Treaty ("Staatsvertrag") between the Federal Republic and the German Democratic Republic which came into force on 1 July 1990 provided for a monetary, economic and social union. Subsequent to formal unification in October 1990, Community law automatically applies to the whole territory. German unification does not affect the composition of the EC Commission or voting procedures in the Council.

176. To allow the temporary continuation of the German Democratic Republic's traditional imports and thus to avoid economic and social disruption, a set of transitional trade measures was deemed necessary by the EC. A GATT waiver was requested to this effect. On 13 December 1990, the CONTRACTING PARTIES waived the EC from the provisions of Article I(1) of the GATT within the limits of the maximum quantities and values the German Democratic Republic had agreed upon with its main trading partners.¹²⁶ The EC is entitled, within these limits, to import free of duty and to derogate from certain norms and standards without extending this treatment to any other contracting party.¹²⁷ The waiver expires on 31 December 1992.

¹²⁵ Goods originating from the German Democratic Republic are estimated to have never surpassed 0.02 per cent of all annual exports of the Federal Republic to other member States.

In 1989, the European Court of Justice interpreted the provision of the Protocol on German Internal Trade as prohibiting the imposition of restrictions which would amount, de jure or de facto, to an absolute import ban on such re-exports (apart from exceptional cases where a member State's economy, taken as a whole, would be threatened).

¹²⁶ The countries concerned are Bulgaria, the Czech and Slovak Federal Republic, Hungary, Poland, Romania, the Soviet Union and Yugoslavia.

¹²⁷ In practice, imports into the former GDR of all products included in the annexes to its bilateral trade agreements with the above countries, subject to the relevant ceilings, are exonerated from duties (including anti-dumping duties). The product coverage thus extends, for example, to agriculture and to products under the ECSC Treaty. However, the variable levy mechanisms of the Common Agricultural Policy are still applicable, except for beef and living animals.

Specific provisions have been enacted for imports of wine, fruit and vegetables from Spain and Portugal into east Germany. These provisions are designed to put imports from these sources, which are still subject to a transitory régime under the Act of Accession, on a par with deliveries from the east and central European Countries.

ANNEX

National trade régimes affecting bananas

177. Total EC banana consumption amounts to about 2.85 million tonnes (1988). Main suppliers are some 17 Latin American countries (the so-called "Dollar zone") which account for some 58 per cent of EC consumption; about 18 per cent are imported from ACP countries and 24 per cent are produced domestically. EC producers are the French Overseas Departments, Spain (Canary Islands), and to a lesser extent Greece (Crete) and Portugal (Madeira).¹²⁸

178. Bananas are an example for product categories which are not yet covered by a common import régime. ACP deliveries are free of duties and charges. Deliveries from non-ACP sources to six member States are unrestricted; imports are either dutiable at the GATT-bound rate of 20 per cent or, in the case of Germany, enter under a zero tariff quota.¹²⁹ Six other member States apply quantitative import restrictions.¹³⁰

179. France, Italy and the United Kingdom are protecting outlets for producers within the EC and for ACP-countries which enjoy the traditional supplier status of the Banana Protocol. In France, the shares of protected supplies amount to 90 per cent and more, in the United Kingdom to some 75 per cent, and in Italy to less than 20 per cent (1990).¹³¹ Indirect

¹²⁸ According to the Act of Accession of Spain and Portugal, the Canaries are not part of the EC customs territory. However, its bananas are granted duty free access to the other parts of Spain which are under the Common Customs system. Thus Canarian bananas cannot be considered as being in free circulation within the EC as a whole.

¹²⁹ The quota is based on a Protocol to the Treaty of Rome; it is normally adjusted over the year so as to cover total domestic consumption (some 800,000 tonnes). In 1989, per capita imports of bananas into Germany amounted to 13.4 kilogrammes as compared with an EC average of 8.7 kilogrammes.

¹³⁰ The countries are France, Greece, Italy, Portugal, Spain and the United Kingdom.

¹³¹ The restrictions are based on Council Regulation No. 288/82. There exists no common definition of the "traditional suppliers".

According to unofficial sources, the French banana market is completely regulated by a parastatal agency (CIB), which guarantees an absolute preference for supplies from the Overseas Departments and traditional ACP sources. The French Overseas Departments (Guadeloupe, Martinique) account for almost 70 per cent of national consumption; Cameroon and Côte d'Ivoire are considered as traditional suppliers.

(Footnote Continued)

imports of non-ACP products (i.e. Latin American bananas) via other member States are restricted or barred by recourse to Article 115 of the EEC Treaty. The shares of EC and ACP production in the six open markets are close to nil.

180. Domestic production of Greece amounts to about 20,500 tonnes. In 1988, total imports were in the vicinity of 5,700 tonnes (of which some 3,400 tonnes came from Somalia). Under Regulation No. 288/82 and by virtue of Article 115, imports of Latin American bananas are restricted.

181. Portugal and Spain are impeding imports from all sources to give preference to domestic production (e.g. from Madeira and the Canary Islands).¹³² Under the Act of Accession to the Communities and the Protocol of Accession to the Lomé Convention, both countries are entitled to temporarily maintain national quantitative restrictions against banana imports from other member States. In addition, Portugal and Spain are allowed to apply charges and quantitative restrictions against third country suppliers to the extent necessary to operate their national market systems (pending the implementation of a common policy régime and not later than 31 December 1995). At present, there are no other deliveries to the Spanish market. In Portugal, imports amounted to about 12,000 tonnes in 1988; main suppliers were Honduras (4,000 tonnes), the Canaries and Cape-Verde (more than 2,000 tonnes each).

182. In 1989, the Dominican Republic and Haiti joined the Lomé Convention. It is reported that the Dominican Republic, after consultations with other ACP countries, has accepted not to take advantage of the benefits under the banana protocol of the Convention (as well as the sugar and rum protocols), particularly as regards the six protected EC markets. The interpretation and implementation of this commitment has apparently generated some concern among Caribbean ACP countries.

(Footnote Continued)

In the United Kingdom, a Government committee regularly meets to process import requests from non-traditional suppliers. Licences are only issued if Caribbean deliveries cannot meet domestic demand. Traditional suppliers of the United Kingdom are, e.g., Belize, Jamaica, Suriname and the Windward Islands. On the Italian market, Somalia is being granted this status. In 1988, it supplied about 50,000 tonnes or 13 per cent of the market.

¹³²The Canary Islands are the largest "EC producer" with approximately 430,000 tonnes in 1988; Madeira accounts for some 50,000 tonnes.

III. TRADE-RELATED ASPECTS OF DEVELOPMENTS IN THE MONETARY AND FINANCIAL AREA

(1) Exchange Rate Movements and Trade

183. The EEC Treaty calls on the member States to pursue, after co-ordination, the economic policies which are needed to safeguard the equilibrium of their balance of payments, and to maintain confidence in their currencies (Article 104 et. seq.).¹³³ Exchange rate policies shall be treated "as a matter of common concern" (Article 107). New provisions, in particular Article 102a which was inserted by the Single European Act, emphasize the necessity of cooperation in order to ensure the convergence of economic and monetary policies.¹³⁴ In this context, member States take into account the experience acquired within the framework of the European Monetary System. At the same time, however, it is made clear that any institutional changes would necessitate the unanimous consent of member States (based on Article 236 of the EEC Treaty).

(i) The European Monetary System (EMS)

184. According to the European Council in December 1978, the European Monetary System was intended as a "scheme for the creation of closer monetary cooperation leading to a zone of monetary stability in Europe". The system came into operation in early 1979.

185. The institutional pillars of the EMS are an exchange rate mechanism, a currency basket (the ECU) and special credit facilities for intervention purposes. Since its inception, 12 realignments have been effected, with decreasing frequency over time. The latest realignment took place in January 1987.¹³⁵

¹³³In order to promote policy coordination in the monetary field, an advisory committee (Monetary Committee) is set up under Article 105:2. It is commissioned to review the monetary and financial situation of member States and the EC and to report to the Council and to the Commission.

¹³⁴Table I.4 shows existing divergences concerning Government finance. In the table, member States are ranked according to their position under the exchange rate mechanism of the European Monetary System until 1989. As regards the lasting imbalances of Greece and Italy, the Commission has voiced concern that their continuation could seriously compromise economic growth in these countries and the search for more stability and greater cohesion in the EC. See EC Commission (1989), "The Community Economy at the Turn of the Decade". European Economy, No. 42.

¹³⁵There was no revaluation against the Deutsche mark which, in the view of some observers, serves as an "anchor" of the system. The Delors Committee acknowledged that the other participants of the EMS have

(Footnote Continued)

186. At present, ten member States are participating in the exchange rate mechanism (Belgium/Luxembourg, Denmark, France, Germany, Ireland, Italy, the Netherlands, Spain and the United Kingdom). Their exchange rates are allowed to fluctuate within a band of +/- 2.25 per cent (6 per cent for Spain and the United Kingdom) relative to the ECU.¹³⁶ At these margins, parities are to be defended by intervention, in unlimited amounts, by the central banks.

187. Beyond the range of participants, the EMS has influenced monetary and exchange rate policies of some other European countries. Finland, Norway and Sweden, for example, have pursued exchange rate policies with respect to a currency basket in which the EMS currencies are of considerable weight. Switzerland and Austria have conducted their monetary and exchange rate policies with particular consideration of the respective targets of the German Bundesbank.¹³⁷

188. In June 1988, the European Council commissioned a report on ways and means to achieve economic and monetary union. Under the chairmanship of Jacques Delors, the President of the EC Commission, a "Committee for the Study of Economic and Monetary Union" was established.¹³⁸ In its report, published in April 1989, the Delors Committee underlined the necessity of parallel actions towards economic and monetary union during the Single Market process.¹³⁹ A three-stage plan was proposed to that effect. It

(Footnote Continued)

benefited from this rôle in determining their own monetary and intervention policies. See also D. Gros, N. Thygesen (1988), The EMS - Achievements, Current Issues and Directions for the Future, Centre for European Policy Studies, Brussels; D. Folkerts-Landau, D.J. Mathiesen (1989), "The European Monetary System in the Context of the Integration of European Financial Markets", IMF Occasional Paper, No. 66.

¹³⁶ Italy joined the group of "narrow-band" countries in January 1990. In June 1990, Belgium decided to permanently tie the Belgian franc to the Deutsche mark at the current exchange rate.

The United Kingdom acceded to the EMS in October 1990.

¹³⁷ See EC Commission (1989), The European Financial Common Market, op. cit.; D. Folkerts-Landau, D.J. Mathiesen, op. cit.

In October 1990, Norway decided to tie the Krona to the ECU at a fixed rate.

¹³⁸ Other members of the Committee were Vice President Andriessen, the Presidents or Governors of the 12 central banks, and a further three experts.

¹³⁹ The Commission reiterated on many occasions that, in its view, there is a clear link between the establishment of the Internal Market, particularly as regards the liberalization of capital movements, and

(Footnote Continued)

was to begin on 1 July 1990, in parallel with the liberalization of capital movements in eight member States.

189. Major elements of each of the proposed stages include:

- (i) Full implementation of the Single Market programme, involving a single financial area; agreement on the multilateral surveillance of economic developments and policies of member States, including procedures for budgetary policy coordination; participation of all EC currencies in the EMS; a stronger say for the Committee of Central Bank Governors as regards monetary and exchange rate policies;
- (ii) review and, wherever necessary, consolidation of the results of the Single Market programme; evaluation and adaptation of structural and regional policies; establishment of economic policy guidelines by majority decision; creation of a European System of Central Banks and gradual transfer of decision-making powers to the EC level; narrowing of exchange rate fluctuations within the EMS as circumstances permit; and
- (iii) transition to irrevocably locked exchange rates; assignment of full monetary and economic competences to EC institutions (including the possibility of a single currency); further strengthening of structural and regional policies; introduction of binding rules and procedures for macroeconomic and budgetary policies; transition to a single monetary policy, including the full external representation in international arrangements for policy coordination and in international monetary negotiations.

190. The report explicitly avoids setting up a detailed timetable for the three stages. It underlines, however, that these stages should be viewed as a part of a single process. The start of the second stage will be linked to the enactment of a new Treaty.

191. In the Committee's opinion, this new Treaty is required to establish the final objectives, the various stages of reform and the appropriate procedures and institutions. It is recommended that the preparatory work for the negotiations on the Treaty be started immediately.

192. On 12 March 1990, the Council adopted a decision on the attainment of progressive economic convergence during stage one of the Economic and Monetary Union. The decision establishes a surveillance procedure,

(Footnote Continued)

further integration in the monetary area. Accordingly, the establishment of a financial common market "requires a higher degree of monetary cooperation between member States than currently exists". EC Commission (1989), "The European Financial Common Market", European Documentation, No. 4.

covering all aspects of economic policy. Accordingly, the Council shall undertake a twice yearly examination by applying the principles of price stability, sound public finances and monetary conditions, sound overall balances of payments, and open competitive markets. The procedure is intended to result increasingly "in compatible policies, with precise and appropriate commitments by the member States".

193. The European Council of 25-26 June 1990, together with the decision on a conference on Political Union, agreed to open a conference on Economic and Monetary Union (EMU) in December 1990 (Chapter II). Accordingly, the two intergovernmental conferences have begun to work. They are commissioned to proceed in parallel and as rapidly as possible. Ratification should be achieved before the end of 1992.

194. In a review of the first ten years of the EMS, the Commission emphasizes its stabilizing effects both on inflation rates and the exchange rates of participating member States.¹⁴⁰ The variability of exchange rates among EMS currencies decreased subsequent to the inception of the system in 1978. The same applies to the Swiss Franc, which can be considered an informal participant, against the various EMS currencies. The variability of the Yen exchange rate against these currencies remained largely unchanged while that of Sterling and, to a much larger extent, the US Dollar increased (1984-88 as compared with 1974-78).¹⁴¹ A report by the Centre for European Policy Studies suggests that, given the remaining differences in monetary fundamentals, the EMS has apparently reduced the variability of the participants' exchange rates to the possible minimum. The study¹⁴² suggests, however, that the EMS has had no impact on the outside world.

(ii) The agrimonetary system

195. The EC operates a distinct monetary mechanism in the context of its Common Agricultural Policy (CAP). Major elements are (i) a common "green ECU" which, by a positive correction factor, lies above the ECU and (ii) the application of specific swap rates for the conversion of the "green ECU" into national currencies, thus allowing for sector-specific national deviations from the official ECU exchange rates.

196. The intervention mechanisms of the CAP require that price levels (buying-in prices) in agriculture are roughly in line throughout the EC. Otherwise, unwarranted inter-regional trade effects would occur.

¹⁴⁰ EC Commission (1989), The EMS: Ten Years of Progress in European Monetary Co-operation, Brussels.

¹⁴¹ Sterling has participated in the EMS since October 1990.

¹⁴² See D. Gros, N. Thygesen, op. cit.

197. For most of the 1960s, official exchange rates were applied to convert common agricultural prices (in ECU terms) into national currencies. However, this practice changed when the French franc and Deutsche mark parities were realigned in 1969 (the first parity changes since the establishment of common agricultural prices in 1962). To cushion the resulting price and income effects, the newly established official rates were not applied simultaneously in the agricultural sphere. Monetary Compensatory Amounts were to fill the gap, thus fictitiously maintaining a common price level (as compared with prices at market rates) and ensuring the continued functioning of the intervention mechanisms.¹⁴³

198. The system was originally designed as a temporary device. However, substantial exchange rate changes continued to occur and the dismantling of the monetary gaps proved politically difficult. This applied particularly to countries with appreciating currencies such as Germany where absolute cuts in revenue might have resulted for farmers. According to a "gentlemen's agreement" of a majority of the Council in 1979, any reductions in the Monetary Compensatory Amounts should not lead to price reductions in national currencies. By implication, relatively moderate pricing policies at the EC level could further delay the removal of monetary disparities.

199. To cope with this dilemma, the so-called switchover mechanism was introduced in 1984. Basically, the positive Monetary Compensatory Amounts of Germany and the Netherlands were partly removed and transformed into a "green" ECU whose value deviated from the ECU central rate.¹⁴⁴ In the event of future parity changes, the strongest currency was to serve as a basis for adapting the "green" ECU so as to avoid the re-emergence of new positive compensatory amounts. Other member States with negative monetary gaps continued to apply specific "green" exchange rates; these had to be adapted correspondingly.

200. According to the EC Court of Auditors, this operation has led to hidden price increases and to a further complication of the system.¹⁴⁵ On

¹⁴³This meant that the Compensatory Amounts were not used in certain sectors where no trade disturbances were likely to occur or where no intervention arrangements existed, such as potatoes.

¹⁴⁴The partial dismantling of the positive monetary gaps was accompanied by a certain reduction of price levels in the "strong currency countries". To compensate farmers for the resulting income losses, Germany was allowed to enact some specific changes in its value added tax system.

¹⁴⁵Court of Auditors (1989), Special report No. 1/89 on the agrimonetary system accompanied by the replies of the Commission, Official Journal, C 128 (24 May 1989).

the whole, the Court criticized the present mechanism as being "obscure, complex, and difficult to understand".

201. Member States continued to seek special treatment for particular producer groups by spreading the "green" rates.¹⁴⁶ In early 1988, for example, Germany operated three different rates, France had six rates, the United Kingdom five, and Italy three. In the context of the farm price decisions for 1990/91, this diversity was reduced considerably. For Belgium, Denmark, France, Ireland, Italy, Luxembourg and Portugal, all negative monetary gaps were removed. Existing positive gaps were slightly reduced for Spain and remained unchanged for Germany and the Netherlands.

202. In view of the Internal Market process, a set of Council Decisions (June 1987 and June 1988) aims at achieving the full dismantling of all monetary gaps by the end of 1992. As regards the EMS-narrow band countries, a precise time-frame was established, starting in January 1989. With respect to the other member States, the same objective is set, but no details have been fixed.

(2) Foreign Exchange Allocation

(i) Liberalization of capital movements

203. The EEC Treaty (Art. 67 et. seq.) stipulates the progressive abolition of all restrictions on capital movements between member States and, in this context, of non-discrimination. In respect of external capital movements, the Commission is called upon to develop proposals for the "progressive coordination of the exchange policies of member States" (Article 70).

204. In practice, the lifting of restrictions on capital movements has proved difficult. This holds particularly true for the period since the early 1970s when the sensitivities of some member States have been heightened by external strains and shocks (collapse of the fixed-exchange rate system, surges in petroleum and raw material prices, worldwide inflationary pressures).

205. The White Paper on Completing the Internal Market gave new impetus. It emphasized the objective of "greater liberalization" of capital movements within the EC and advanced three arguments in this context. Accordingly, liberalization should (i) increase the efficiency of financial services; (ii) foster greater discipline in the conduct of economic policies (particularly with respect to prices and exchange rates); and (iii) spur economic development by an improved allocation of savings. As regards the second argument, the White Paper underlined that the liberalization of capital movements should proceed in parallel with the

¹⁴⁶Changes have to be decided by the Council on the basis of a Commission proposal.

development of the European Monetary System. Hence exchange-rate stability and convergence of economic policies should contribute to capital liberalization and vice versa.

206. With the Single European Act, the provisions of Article 70 of the EEC Treaty were made subject to majority voting.¹⁴⁷ Moreover, it was stipulated that ensuing Council Decisions on capital movements between member States and third countries shall endeavour to attain the "highest possible degree of liberalization".

207. A Council Directive of 24 June 1988 (No. 88/361) provided for the abolition of all restrictions on EC internal capital movements as from 1 July 1990.¹⁴⁸ Dual exchange rate mechanisms were to be eliminated by the same time.¹⁴⁹ The Directive contains a special safeguard clause which allows for a range of protective measures in the event of exceptional short-term capital movements and ensuing serious disturbances in a member State's monetary and exchange rate policies.¹⁵⁰ The application of such measures is to be limited to six months.

208. In addition, the existing safeguard provisions of the EEC Treaty are still available: Article 73 with respect to disturbances in capital markets, and Articles 108 and 109, in the event of balance-of-payments difficulties (see Annex to this Chapter).¹⁵¹

209. As regards capital movements to and from third countries, Directive No. 88/361 stipulates that the same degree of liberalization which is applied within the EC shall be aimed at. However, when operations

¹⁴⁷ This applies to directives which aim at the coordination and liberalization of the exchange policies of member States. By contrast, unanimity is required for the introduction of measures which "constitute a step back as regards the liberalization of capital movements".

¹⁴⁸ Spain, Portugal, Greece and Ireland have been granted longer implementation periods, at the latest until 31 December 1992, for a specified range of operations. In the case of Greece and Portugal, this time limit may be deferred for an additional three years in the event, for example, of balance-of-payments difficulties.

¹⁴⁹ Originally, Belgium and Luxembourg were allowed to continue their dual system until 31 December 1992. However, the system was eliminated with effect from 5 March 1990.

¹⁵⁰ According to Article 3:5 of Directive No. 88/361, the provisions are to be reviewed by the Council before 31 December 1992 on the basis of a report by the Commission.

¹⁵¹ As noted in Chapter II, these provisions might be changed in the context of the forthcoming Economic and Monetary Union.

involve establishment, provision of financial services and admission of securities to capital markets, they may be subjected to reciprocal commitments. To counteract difficulties resulting from large-scale short-term capital movements, member States shall consult "on any measure to be taken". In this case, there are no specific provisions limiting the range of possible actions and their duration.

(ii) Import payments and export proceeds

210. In several member States, the use of import payments and the handling of export proceeds has been unrestricted since - at least - the mid-1980s (Denmark, Germany, the Netherlands and the United Kingdom). There have only been some reporting requirements for statistical purposes. Other member countries are currently reviewing and reforming relevant provisions (see below), alongside the EC-internal liberalization processes in the monetary and financial area.

211. In several member States, import payments and export proceeds must only be made through, or offered to, authorized banks or dealers.¹⁵² In Greece, Italy, Portugal and Spain, the crediting of export proceeds to domestic accounts in foreign currencies or the maintenance of such accounts is subject to certain constraints (Italy has lifted a range of restrictions as from 14 May 1990). As a rule, exporters in Belgium/Luxembourg and Ireland are required to collect proceeds within six months of shipment; advance payments for imports that precede customs clearance by more than three months are subject to special authorisation (Belgium/Luxembourg).

(3) Foreign Direct Investment

212. Available data for the 1980s show a substantial increase in EC foreign direct investment abroad, from ECU 11 billion in 1980 to ECU 26 billion in 1986.¹⁵³ By contrast, third-country investments in the Communities remained relatively stable over this period, at ECU 10 billion for both 1980 and 1986.

213. The United States are the Communities most important investment partner. EC companies hold some 58 per cent of their foreign investment stocks in the United States (1987). More than one half of the stock of United States foreign direct investment in developed countries is placed in the EC. In 1987, the value of United States direct investment was estimated to be about 13 times the value of Japanese direct investment in the Communities. Direct investment by the United States focuses on the EC

¹⁵² Situation in December 1989. For details see IMF, Exchange Arrangements and Exchange Restrictions - Annual Report 1990, Washington D.C.

¹⁵³ Figures are taken from EC Commission (1990), Panorama of EC Industry, Luxembourg.

manufacturing sector (63 per cent of US non-oil investment in 1987). By contrast, about one half of the stock of Japan's direct investment in Western Europe was in banking and insurance (1988).

214. Among member States, the United Kingdom has attracted by far the largest shares of the United States and Japan's foreign direct investment. It accounts for more than one third of the United States investment stocks (1987) and of Japan's cumulative investments (1951-88) in the EC. As regards United States investments, Germany (20 per cent) and the Netherlands (12 per cent) ranked second and third. Germany plays a minor rôle for Japanese investors (8 per cent), as compared with the Netherlands (20 per cent) and Luxembourg (17 per cent).

215. This regional pattern reflects a variety of factors, including differences in the general degree of openness and receptiveness towards foreign direct investment, in the domestic regulatory systems and in cost levels (in particular labour costs) across the EC.¹⁵⁴ Foreign direct investment in the one member country may serve as a door of entry to the EC market as a whole. However, there are constraints, for example in the form of local content provisions.

216. Awareness of the economic potential of foreign direct investment has apparently increased in recent years. For example, Portugal and Spain have reduced local content or export requirements on foreign investors.¹⁵⁵ Changes in France, including the abolition of prior approval requirements for foreign investments (September 1988), are expected to affect locational decisions of direct investors from third countries.¹⁵⁶ Recently, further liberalization measures have been taken by France in this area.

217. In the early 1980s, investment flows between EC-member countries amounted to roughly one-half of direct investment by third countries in the EC. Over the following years, intra-EC investments expanded more rapidly. By the mid-1980s, they were about equal to the flows from third countries

¹⁵⁴ Some member States (e.g. France, Italy) tended to hamper foreign investments in "strategic sectors". Large state-owned companies might have operated as additional barriers, in tandem with the patronizing influence of banks and industrial conglomerates. The Deutsche Bank, the Flick and Quandt groups, for example, are reported to have blocked foreign takeover bids for Daimler-Benz, BMW and Porsche. Recent moves toward privatization are expected to reduce direct State influence on investment and takeover decisions. See OECD (1988), Structural Adjustment in the Automobile Industry, Paris and EC Commission, op. cit.

¹⁵⁵ OECD (1990), Progress in Structural Reform, Paris (Supplement to OECD Economic Outlook 47).

¹⁵⁶ EC Commission, op. cit. France accounted in 1987/88 for less than 10 per cent of United States and Japan's direct investments in the EC.

(some ECU 10 billion). More recent data point to a continuation of this trend, stimulated by the dynamics of the Internal Market process.¹⁵⁷

¹⁵⁷ A striking example is Spain where the value of total "authorized foreign investments" increased more than 15-fold between 1975 and 1988 (from ECU 390 thousand to ECU 6.2 million). Of these, some 55 per cent originated in other member States.

ANNEX

Protective measures on the basis of Article 73 (capital movements) and Articles 108 and 109 (balance-of-payments difficulties) of the EEC Treaty

(i) Invocation of Article 73

218. In the event of disturbances in capital markets, the Commission, after consultations with the Monetary Committee, has the competence to authorize member States to restrict capital movements under Article 73. The details of these restrictions are to be determined by the Commission. They may be later changed by a qualified majority of the Council. In case of urgency, however, member States may act on their own initiative; the measures may be maintained unless the Commission decides otherwise.

219. The above provisions have been invoked only once. In February 1979, Denmark informed the Commission that it would restrict the acquisition by non-residents of Danish kroner bonds listed on the national stock exchange. The measure was intended to stop capital inflows attracted by high interest rates; it was abolished in May 1983.

(ii) Invocation of Articles 108 and 109

220. The Commission has the mandate to investigate the situation of member States which are facing balance-of-payments difficulties and to recommend appropriate measures (Article 108:1). If difficulties persist, the Council, acting by a qualified majority, shall grant mutual assistance on the basis of the Commission's recommendation. In this context, Article 108:2 enumerates the following measures: (i) a concerted approach within other international organizations; (ii) measures to avoid trade deflection if the member State applies quantitative restrictions against third countries; (iii) granting of limited credits by other member States, subject to their agreement.

221. Article 109 provides for precautionary measures on the part of member States that are affected by a sudden crisis in their balance of payments. These measures may be maintained unless the Council, after the Commission has delivered an opinion and the Monetary Committee has been consulted, adopts a different position.

222. Since 1968, the provisions of Articles 108 and 109 have been invoked by six member States: France, Italy, Greece, the United Kingdom, Denmark and Ireland. In the case of France, Italy and Greece, trade measures have been applied; actions of the other member States were confined to capital movements.

223. In 1968, France was authorized to grant certain export aid and to limit imports of motor vehicles, household appliances, textiles, and iron

and steel products.¹⁵⁸ The time limits which were set in this context expired in the course of 1969. In addition, France was authorized to continue certain restrictions on capital movements until the end of 1986.

224. In 1974 and 1981, Italy took safeguard measures under Article 109; they were subsequently converted into measures under Article 108. In both years, a non interest bearing deposit on imports was introduced for a duration of six months. In 1974, the deposit was set at 50 per cent of the import value (goods only); in 1981, it was set at 30 per cent (goods and services). Other derogations related to certain capital movements; they lapsed in December 1987.

225. In October 1985, Greece took recourse in measures under Article 109, authorized later under Article 108. Accordingly, a non-interest bearing import deposit scheme was established and export aids were allowed to be continued.¹⁵⁹ The deposit scheme was terminated at the beginning of 1987; the export aids programme was subject to progressive phasing out by 1 January 1990. Certain restrictions on capital movements were allowed to be maintained until 30 June 1990.

¹⁵⁸Originally (May 1968), the measures were based on Article 109. In July 1968, they were authorized under the procedures of Article 108.

¹⁵⁹The deposits represented between 40 and 80 per cent of the c.i.f. value of goods. They had to be lodged for six months.

IV. TRADE POLICIES AND PRACTICES BY MEASURE

226. In the following Chapter, trade-related measures are ordered according to the activity on which they directly operate (imports, exports or production). It is evident, however, that, due to the inter-dependency of markets, any measure will eventually spread its effect throughout the whole economic system.

227. In some instances, the collection of information proved to be difficult. This applies particularly to areas where member States are implementing policies within a common legal framework or where they are pursuing individual policies, for example with a view to complementing EC activities. Such areas include export enhancement (export promotion, export financing, etc.), structural policies (State aid to industry, etc.), countertrade and State trading.¹⁶⁰ In some cases, member States have directly assumed international obligations, for example, in the context of the OECD understanding on export credits.

228. Over the last years, the EC has lifted a series of residual quantitative restrictions of member States, including specific restrictions on imports from certain central and eastern European countries. Other (non-specific) restrictions have been suspended with respect to some of these countries. Further changes are envisaged in the context of recently concluded cooperation agreements. However, due to the rapid pace of change in many areas, it proved difficult to provide a complete overview of the present situation on a comparable statistical basis, in this report.

229. Some trade-related policies of the EC will change as a result of the Single Market process. Cases in point are the elimination of internal barriers to trade; the extension of the EC public procurement rules to the so-called "excluded sectors" (transport, energy, water supply, telecommunication services); a shift of EC public funds in favour of regional and structural adjustment purposes; and the stated determination of the EC Commission to apply EC competition law rigorously in order to combat market distortions, including distortions resulting from mergers, monopolies and from State aid.

(1) Measures Directly Affecting Imports

(i) Tariffs

230. The Common Customs Tariff has about 9,500 tariff lines. Tariff rates are set up in two columns. The conventional rates generally apply to all

¹⁶⁰ Eight member States (Belgium, Denmark, France, Germany, the Netherlands, Portugal, Spain and the United Kingdom) provided specific information in response to a questionnaire by the GATT Secretariat to all EC members. The responses differ in coverage.

imports from countries which are eligible for most-favoured-nation tariff treatment. This includes GATT Contracting Parties and several other countries with which m.f.n. treatment has been agreed upon bilaterally.¹⁶¹ The autonomous rates or levies are applicable in those - relatively rare - cases where they are lower than the conventional rates or for items for which no conventional rates are established (such as for a wide range of food products).

231. The EC applies generally ad valorem tariffs. Specific duties are mainly imposed on certain agricultural products such as wine and spirits, and on coal.¹⁶² Tobacco, some fruit and vegetables (for example, apples), certain carpets, some glass categories, and watches are subject to alternate tariffs.¹⁶³ Seasonal tariffs are in place for many fruits and vegetables and on cut flowers. According to Eurostat estimates, imports of approximately ECU 1.8 billion entered under seasonal tariffs in 1988, that is 1/2 per cent of total imports. The share of items subject to seasonal tariffs in imports from GSP beneficiaries amounted to about 1 per cent.

232. In the framework of the ECSC Treaty, some member States (Germany, Greece, France and Italy) impose tariffs on coal at the national level.¹⁶⁴

233. Special provisions for relief or suspension of customs duties refer to civil aircraft, including parts for incorporation, maintenance etc., and to goods which are destined for incorporation in ships and boats.

(a) Tariff levels and bindings

234. In general, EC tariffs are relatively low. In 1988, total imports from m.f.n. sources were dutiable at 7.3 per cent (simple average) or 5.1 per cent (weighted average), respectively. The standard deviation of 4 percentage points (all ad valorem tariff items) indicates a moderate dispersion of tariff rates across the product range.¹⁶⁵

¹⁶¹ In certain cases such as imports of tuna, the application of conventional rates is conditional upon compliance with reference prices. Otherwise "countervailing taxes" are provided for.

¹⁶² Further imports under specific duties include certain salt categories and cinematographic films.

¹⁶³ In these cases, ad valorem duties apply beyond certain threshold levels (or within a band of minimum and maximum tariffs) which are established in the form of specific tariffs.

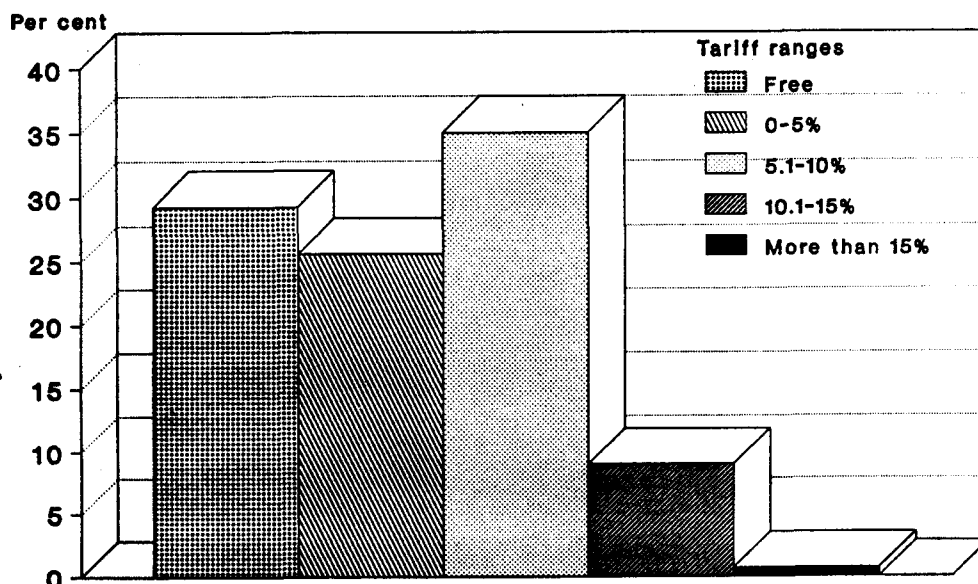
¹⁶⁴ A prominent example are the German duties on coal and briquettes. They are set at 6 DM per 1,000 kg (net); Chapter V.

¹⁶⁵ The standard deviation reflects the average spread around the simple average tariff.

235. Tariffs for industrial products are lower and more evenly spread across tariff items than tariffs for agricultural products. In 1988, the simple average tariffs were 6.4 per cent for industrial products and 12.4 per cent for agricultural products. The corresponding standard deviations are 2.6 and 11.1 percentage points. The figures for agriculture include only products which are subject to ad valorem duties. Tariff lines with specific tariff rates or subject to variable levies are not taken into account. The latter represent roughly one third of the tariff lines in agriculture. The effective dispersion of tariffs, including the tariff equivalents of specific duties and variable levies, is likely to be substantially higher than indicated by the calculations based on ad valorem tariff items.

236. The share of tariff lines which provide for duty free access is about 10 per cent, for both agricultural and industrial products (Table IV.1). In 1988, roughly 38 per cent of agricultural imports from m.f.n. sources entered duty-free. These were mainly imports of various oilseeds and oilcakes (zero tariff-binding) which alone accounted for some 28 per cent of imports of agricultural products.

Chart IV.1
Distribution of m.f.n. imports of industrial products into the European Communities by range of tariff rates, 1988



Source: GATT Tariff Study.

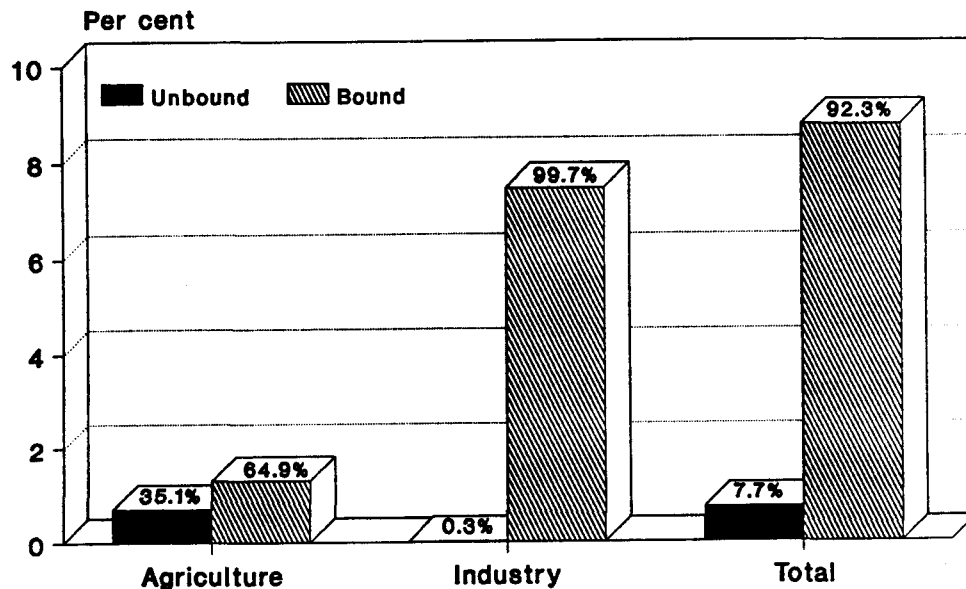
237. A range of raw materials is subject to very low or zero tariffs, including wood, hides and skins, raw rubber, unwrought copper, nickel and tin. The average tariffs are slightly above 1 per cent. By contrast, semi-finished and finished products based on these raw materials are dutiable at more than 5 per cent. In certain sectors such as metals and tobacco, a considerable degree of tariff escalation is evident (Chapter V).

238. Manufactured tobacco is charged with particularly high tariffs, ranging up to 117 per cent in the case of smoking tobacco. Cigarettes are dutiable at 90 per cent and cigars at 52 per cent.

239. Nearly all EC imports - 99 per cent of imports from m.f.n. sources - enter under bound or partially bound tariffs.¹⁶⁶ Tariffs on 92 per cent of all items are fully or partially bound. For industrial products, twenty-two of the 7,484 tariff lines are unbound. In agriculture, 65 per cent of tariff lines are bound, accounting for 88 per cent of imports (1988).

¹⁶⁶ This figure, taken as such, is not necessarily suggestive of an open trade régime over the whole product range. It might also reflect restrictive trade measures in those categories to which no bound tariffs apply, in particular products subject to variable levies.

Chart IV.2 Proportion of bound tariffs in the European Communities, 1988



Note: The total number of tariff lines was 9506 in 1988.

Source: GATT Tariff Study.

(b) Preferential trade

240. About 60 per cent of EC imports originates from preferential sources.¹⁶⁷ Among these, EFTA countries account for the largest share (23½ per cent of total EC imports in 1987-89), followed by a residual group of GSP beneficiaries, the Mediterranean countries, and the Lomé countries (Table IV.2). Trade with the residual group of GSP beneficiaries (and some other developing countries) has been strongly affected by price developments in the world petroleum market.¹⁶⁸ In the early 1980s, fuels accounted for nearly two-thirds of total imports into the EC from this group; in 1989, this share was about one-quarter. Non-fuel imports from GSP beneficiaries into the EC expanded at about the same rate as non-fuel imports from other sources.

241. The figures presented in Table IV.2 are based on total imports from preferential sources and thus overrate the actual trade coverage of preferential treatment in the EC. Preferences are generally not granted across the full product range. In agriculture, most items are not eligible

¹⁶⁷ This figure covers preferential treatment due to both contractual arrangements and unilateral concessions.

¹⁶⁸ Crude oil enters the EC free of duty on an m.f.n. basis.

for preferential treatment or concessions are rather limited.¹⁶⁹ Several industrial products are not eligible for GSP preferences, or only with respect to certain originating countries. Textile imports from GSP beneficiaries may be restricted under the MFA and, as for many other products, tariff preferences may be subject to ceilings. In some cases, access opportunities are not fully exhausted because of restraint arrangements. Furthermore, rules of origin may reduce the scope of preferential treatment. Finally, the GSP scheme and other preferential arrangements of the EC include safeguard mechanisms which allow for the reintroduction of m.f.n. tariffs.

242. As for the EC GSP scheme, Commission estimates for 1988 indicate that the scheme covered 47 per cent of total imports from the beneficiary countries; 14 per cent of imports were excluded from GSP treatment and 39 per cent entered under zero m.f.n. duties. In other words, 77 per cent of the dutiable imports from beneficiary countries were eligible, in principle, for GSP preferences; two-fifths of eligible imports¹⁷⁰ from beneficiary countries actually benefited from GSP treatment.

243. In a recent assessment, the Commission notes that the main beneficiaries of the GSP scheme have been a small number of rapidly growing countries and, to a lesser degree, some other countries which have succeeded in developing certain competitive export industries.¹⁷¹ However, least developed countries took little advantage of the scheme, partly because of inappropriate administrative structures in these countries, lack of information and restrictive effects of the rules of origin (see below).

(c) Customs valuation

244. Customs valuation in the EEC is based on Council Regulation No. 1224/80. It reflects the Tokyo Round Agreement on the Implementation of Article VII of the GATT. Since 1980, some additional ten Commission Regulations have been issued with a view to clarifying or simplifying the determination of customs values in certain circumstances. Prior to their

¹⁶⁹The concessions differ among the individual agreements (Chapter II).

¹⁷⁰In the case of sensitive products, one-third of the eligible imports actually benefited. Products are defined as sensitive if they are subject to quotas, ceilings or surveillance. According to Commission estimates, these products account for some 60 per cent of all GSP-covered imports.

¹⁷¹Commission's Communication to the Council (1990), Generalized System of Preferences: Guidelines for the 1990s, COM(90)329.

issuance, these regulations have to undergo a committee procedure in the "Customs Valuation Committee" set up under Regulation No. 1224/80.¹⁷²

245. The Commission is entitled to make inspection missions in order to ensure uniform procedures throughout the EC. About 10 missions are usually carried out every year.

(ii) Variable import levies

246. Variable levies play an important rôle in the Common Agricultural Policy. Prominent examples include bovine meat, swine, poultry, dairy products, eggs, wheat, rice, other cereals, olive oil, sugars, and processed products based on these agricultural items (including residues from processing industries, such as animal fodder). In certain cases (bovine meat), levies are raised on top of ad valorem duties. For wine, certain fruit and vegetables and some fishery products, so-called countervailing charges or countervailing taxes are imposed if exporters do not comply with established reference prices.

247. In principle, levies are calculated as the difference between an established import threshold price and the lowest c.i.f. offer price. Normally, threshold prices are considerably higher than the EC internal market price and the intervention price for EC producers. Levies thus constitute effective import barriers.

248. In 1978, variable levies were applied to more than 40 per cent of all tariff lines for food products (SITC categories No. 0, 1, 4 and 22). The share of 'levy-products' in total food imports was about 20 per cent (EC 9). Ten years later, the respective shares were one-third in terms of tariff lines, and 12 per cent in terms of food imports (EC 12; see Table IV.3).¹⁷³ In 1989, receipts from import levies contributed some ECU 1.2 billion to the EC budget as compared with a tariff revenue of ECU 10.3 billion.

(iii) Quantitative restrictions

249. Two major categories of quantitative import restrictions are in place in the EC. First, there are the residual restrictions of member States on the basis of Regulation No. 288/82. These restrictions may either be erga omnes or specifically confined to individual trading partners or country groups. Second, specific restrictions exist for imports from State

¹⁷²In this context, the same voting procedure applies as, for example, in the Origin Committee (see the following Section on the Rules of Origin).

¹⁷³The above figures are influenced by changes in the tariff nomenclature and the regional extension of the EC between 1978 and 1988. The data for these two years are therefore not directly comparable.

trading countries, including China, under Regulation No. 3420/83 as well as for imports from Cuba (dealt with in a separate Regulation).¹⁷⁴ In addition, there are a number of quantitative restrictions administered by the exporting countries, including restraints in the area of textiles and clothing under the MFA and export restraint arrangements (see Chapter IV below and Chapter V).

250. Portugal and, to a far greater extent, Spain still impose a range of national quotas for which the Act of Accession provides the legal basis under Community law.¹⁷⁵ These two countries aside, there are at present some 130 non-textile categories (at a four-digit tariff line level) which are subject, partly or totally, to national measures under Regulation No. 288/82.¹⁷⁶ In more than 120 cases, quantitative restrictions or import prohibitions are imposed. More than 50 among a total of some 70 bilateral quotas relate to Japanese products.

251. France (71) and Italy (48) maintain the bulk of national restrictions, either in the form of quotas, prohibitions or non-automatic licensing procedures. All other member States (EC 10) combined impose less than ten residual restrictions (four-digit tariff items) under Regulation No. 288/82.

252. The restrictions cover a wide range of items. In the case of France, for example, twenty-two restrictions apply to food products, seventeen to control instruments, and eight to clocks and watches.¹⁷⁷ Two thirds of the

¹⁷⁴ As noted before, the EC trade régime is undergoing a process of rapid change. This process responds principally to exigencies of the Internal Market; but also to the Uruguay Round (including its rollback commitment) and to ongoing developments in central and eastern Europe. The product and country coverage of the EC restrictions has thus been amended several times over the last two years.

The following analysis is based on information supplied by the EC Commission in August 1990, reflecting the situation at that date. On 18 January 1991, the EC Council passed a complete overhaul of the relevant Annex to Regulation No. 228/82. It was immediately made available to the GATT Secretariat. However, the new provisions could not be evaluated in time for this report.

¹⁷⁵ Under the Act of Accession to the EC, Spain is required to adapt its quantitative restrictions to the common régime by 1 January 1992. The target date for Portugal is 1 January 1993.

¹⁷⁶ At present, there are no EC-wide restrictions under this Regulation.

¹⁷⁷ According to the French Government, no effective economic barriers are imposed on many of these imports. For example, bilateral and global
(Footnote Continued)

Italian restrictions cover steel products, engines and motor vehicles. Consumer electronics (radios and TV sets), transistors and integrated circuits are the main areas where both countries maintain quotas.

253. The absence of quotas in an individual member State does not necessarily mean that access is unlimited. For example, imports of passenger cars from Japan (subject to quotas in Italy) are under administrative import barriers in France and industry-to-industry restraint arrangements in the United Kingdom. Japan moderates its exports of colour TV sets to the EC as a whole and, specifically, to Germany; other member States (France and Italy) have implemented quotas.

254. France considers it appropriate to maintain a surveillance régime and protective measures at the national level as long as no common EC policy régime has been agreed upon in certain sectors, such as consumer electronics.¹⁷⁸ According to the French Government, Asian suppliers do not always respect principles of pure and fair competition as they are charging dumping prices in France without opening their domestic markets (particularly Japan). While indicating readiness to fully liberalize the above sectors, France argues for a balanced approach, with full reciprocity and, in particular, the removal of structural barriers to imports in the relevant countries. According to the French Government, the conclusion of a self restraint arrangement with Japan on exports of consumer electronics after 1992 is being envisaged.

(iv) Import controls and prohibitions

255. Council Regulation No. 3842/86 aims at protecting trade marks and deterring the importation of counterfeits.¹⁷⁹ It entered into force on 1 January 1988. The Regulation provides for a common EC procedure which is applicable to third country imports into those member States where the trade mark in question is protected. The owner of the trade mark may lodge an application for prohibiting the release for free circulation of allegedly counterfeit goods. The application must enable the competent authorities to act "in full knowledge of the facts", it must contain "a sufficiently detailed description of the goods", and be accompanied "by proof that the applicant is the owner of the trade mark". No injury test is provided for in this context. (Regulation No. 3842/86 is the only EC

(Footnote Continued)

quotas on clocks and watches are denoted as "quantitative restrictions without limitations on quantities".

¹⁷⁸ The statement was made in response to a questionnaire of the GATT Secretariat.

¹⁷⁹ For the purposes of this Regulation, counterfeits are defined as goods bearing without authorization a trade mark which is validly registered in or for that member State in which the goods are imported.

trade remedy law without such a provision.) Member States are called upon to adopt the necessary measures which, as a general rule, should allow destruction of the counterfeits or disposal outside the channels of commerce.¹⁸⁰ The relevant national laws are unaffected by this Regulation; they may be resorted to when counterfeits have already entered into the market or when they originate within the EC.

256. The EC has implemented the "Convention on international trade in endangered species of wild fauna and flora" (CITES) by Council Regulation No. 3626/82.¹⁸¹ Accordingly, imports of certain specimens - animals and plants, including their parts and derivatives - are subject to import permits which are issued in accordance with the stipulations of the Convention. In addition, all member States maintain import bans of their own on raw and worked ivory, pending Community action under Regulation No. 3626/82.

257. Imports of whales and other cetacean products are subject to import licensing (Council Regulation No. 348/81). Imports of skins of certain seal pups and derivatives are prohibited (Council Regulation No. 83/129 and No. 85/444).

258. According to a Commission proposal, the EC intends to ban certain fur imports as from 1 January 1996. The proposed ban relates to all countries where leghold traps are still being used or where trapping methods do not meet internationally agreed 'humane trapping standards'.¹⁸²

259. Under the Vienna Convention for the protection of the ozone layer and the Montreal Protocol on substances that deplete the ozone layer, the EC has assumed obligations to reduce production and consumption of certain chlorofluorocarbons and halons.¹⁸³ The respective provisions are implemented into EC law through Council Regulation No. 3322/88. The Regulation stipulates a three-stage approach which finally limits, by July 1998, EC production of chlorofluorocarbon to a maximum of 50 per cent of their 1986 level. Imports are subject to a licensing system and to quantitative limits. In July 1990, a conference of the parties to the Montreal Protocol agreed to speed up the adjustment process and to phase

¹⁸⁰ As stipulated by Regulation No. 3882/86, it shall apply mutatis mutandis to trade marks registered in accordance with EC rules as soon as such rules enter into force.

¹⁸¹ Except for Greece and Ireland, all member States are signatories to the Convention. The EC itself has not signed.

¹⁸² Reportedly, the use of such leg-hold traps is currently not prohibited in all EC member States.

¹⁸³ The EC and all individual member States are signatories to the Montreal Protocol.

out production and consumption of chlorofluorocarbons and halons by the year 2000. Exports of the controlled substances to non-parties are to be banned by 1 January 1993. EC legislation to this effect is currently being prepared.¹⁸⁴

260. In April 1990, a new 'post-Chernobyl' Regulation entered into force (Council Regulation No. 737/90). Like its predecessor which was adopted following the accident at the Chernobyl nuclear plant in 1987, it establishes maximum radioactivity tolerance levels for agricultural imports for human consumption from third countries.¹⁸⁵ In view of the reduction in contamination risks since then, a committee procedure has been set up, allowing specific products to be excluded from the application. The Regulation is due to expire on 31 March 1995 at the latest.

261. Since October 1986, the EC has suspended the putting into free circulation of Krugerrands and other gold coins originating in the Republic of South Africa. According to Council Regulation No. 3302/86, the measure was taken in view of the continuation of apartheid and the deterioration of the situation in that country.¹⁸⁶

262. On 7 August 1990, trade with Iraq and Kuwait was embargoed (Council Regulation No. 2340/90).

263. In addition to such initiatives and actions at the EC level, member States maintain import prohibitions or restrictions of their own. Such measures may be applied under the relevant provisions of the EEC Treaty for reasons of health (for example, sanitary and phytosanitary controls), public morals or national security (Chapter II).

¹⁸⁴ Under the provisions of the EEC Treaty (Part III, Title VII: Environment), member States are allowed to maintain or to introduce stricter measures of their own for the protection of the environment. See Section II:6(iii). On 30 May 1990, the German Government decided to implement more stringent criteria than those stipulated by Regulation No. 3322/88. The decision establishes a detailed time schedule for the prohibition of production and sale of prescribed substances until the year 2000; it has not yet entered into force (Bundesrats-Drucksache 18/91 of 17 January 1991).

¹⁸⁵ Member States undertook not to apply higher tolerance levels in intra-EC trade.

¹⁸⁶ Some member States have enacted more comprehensive embargoes against South Africa (Denmark, France).

During the 1980s, the EC imposed, in two other cases, temporary import restrictions or embargoes for reasons of national security. The measures concerned Argentina (1982) and the Soviet Union (1982-83).

(v) Safeguard action under GATT Article XIX

264. Safeguard actions taken by the EC, including measures under Article XIX of the GATT, are usually based on Council Regulation No. 288/82 (Chapter II).¹⁸⁷ Though tariffs may be applied under this regulation, this has never been done by the EC. However, Spain had invoked Article XIX to increase tariffs on synthetic rubber in February 1967.

265. The EC has taken seventeen measures under Article XIX, four in the 1970s and thirteen since 1980. Agricultural products account for almost two-thirds of all cases. Four Article XIX measures were related to imports of electrical or electronic products (Table IV.4).

266. Currently, the EC maintains three Article XIX measures (Table IV.5), all pertaining to agricultural products. They were introduced in 1982 (dried grapes), 1985 (morello cherries) and 1989 (processed cherries) and established minimum import prices. In addition, one member State, Germany, is currently resorting to Article XIX. The measure, restrictions on coal imports, dates back to 1958. It is by far the longest-standing Article XIX action taken by any contracting party.

267. In the case of perishable products, the Commission prefers Article XIX action because it can be imposed quickly. As regards other products, Commission officials hold the view that import restrictions under Article XIX are not appropriate in a variety of safeguard situations. Restraint agreements with major exporters are often considered as a less contentious and more efficient course of action.

(vi) Voluntary restraints and similar arrangements

268. A report by the GATT Secretariat, published in 1989, noted 125 restraint measures, including national quotas, voluntary restraints, export forecasts, or price undertakings in anti-dumping cases etc., in which the EEC, individual member States or specific industries were involved.¹⁸⁸ The arrangements vary widely as regards their legal character, their trade coverage and the degree of restrictiveness. The bulk of these measures were concentrated on a limited number of product areas, notably agricultural and food products (21 cases), textiles and clothing (18), automobiles and road transport equipment (16), steel and steel products (12), and footwear (12). Certain arrangements, for example, in the steel sector, have expired since the date of the above publication without having been renewed (Chapter V). The same appears to apply to a range of

¹⁸⁷ The Regulation covers all industrial products under the EEC Treaty, excluding textiles (MFA products), and agricultural products which are not under a common market organization.

¹⁸⁸ GATT (1989), Developments in the Trading System - September 1988 to February 1989, Geneva.

industry-to-industry arrangements in which United Kingdom producers have been involved.

269. In Table IV.6, an attempt has been made to provide an updated overview of voluntary restraint measures, narrowly defined, involving the EC or member States on the import side (excluding, for example, price undertakings in an anti-dumping context or national quotas). Main product areas concerned are textiles, steel, machinery, electric and electronic household equipment, and motor vehicles. According to the Commission, there are no further restraint arrangements currently in place at the EC level.¹⁸⁹

270. Certain export restraint arrangements with Japan date back to the early 1980s (machinery, electrical and electronic products, and motor vehicles). They are accompanied by retrospective Community surveillance. The introduction of surveillance was deemed necessary, *inter alia*, because these imports had often been made "at relatively low prices, thereby depressing the price levels and financial results of the Community industry and thereby threatening to cause injury" (Commission Regulation No. 653/83). According to a recent Regulation which extended the measures to 1990, this reasoning has essentially remained valid (Regulation No. 4030/89).

271. At the EC level, proceedings under Council Regulation No. 288/82 offer a basis for export restraint arrangements. Upon termination of an investigation, and before taking safeguard measures, the Commission holds a disclosure session. The trading partner is informed about the findings of the investigation and afforded the opportunity to offer an appropriate export restraint arrangement. Subsequently, the member States are asked for approval. According to the Commission, the levels of restraint required are inspired by the trade restrictions available under Article XIX of the GATT. However, in contrast to Article XIX action, restraints are implemented on a selective basis.

272. In the Commission's view, the EC procedures provide for full transparency, comparable, for example, with proceedings under Section 201 of the United States Trade Act. Restraints are usually agreed for a three-year period, with degressive application over time.

¹⁸⁹In a communication of 16 November 1990, the Commission notes that member States "continue to apply over two thousand national quotas on imports from third countries, in particular in execution of Article 115 of the Treaty, and a variety of bilateral 'voluntary export restrictions' to protect their industry from third country imports in a number of sectors, including for example automobiles, textiles, toys, porcelain and chemicals". (EC Commission, Industrial Policy in an Open and Competitive Environment, Brussels.)

273. Protective actions under Regulation No. 288/82 - and any subsequent export restraints - are usually confined to one or more member States. In 1990, EC-wide measures were introduced for the first time. They concern footwear imports from Taiwan and Korea and take the form of a self-restraint arrangement, accompanied by prior import surveillance (Commission Regulation No. 1735/90 as amended by Council Regulation No. 3050/90).

274. In some cases, industry-to-industry arrangements or unilateral moderation or "forecasting procedures" operate as informal substitutes for restraint arrangements with the exporting country. Several arrangements refer to individual member countries. Content and effects (product coverage and degree of restrictiveness, etc.) are difficult to assess for any party which is not directly involved, including other EC members. The products include consumer electronics and motor vehicles (Chapter V). There is no ruling of the European Court of Justice as regards the legal status of industry-to-industry arrangements under EC competition law.

(vii) Import licensing

275. Licensing procedures are applied for administering quantitative trade restrictions or implementing surveillance measures, including the monitoring of export restraint arrangements. The procedures are carried out by member States. Basic information requirements are stipulated by EC regulations. They include the origin of products, the exporting country and the price and quantity of imports. Otherwise, member States are free to design the appropriate documents and administrative rules.

276. For surveillance purposes on the basis of Regulation No. 288/82 or Regulation No. 1765/82, an "import document" is issued (automatic licensing). The validity of the document is limited to the member States which have issued or endorsed it.

277. According to EC law, the surveillance procedures can be transformed into trade-restrictive measures, either by limiting the validity of the import documents or by changing the import rules (see Chapter II). Imports are then subject to prior import authorization, issued by the authorities of individual member States. Every month, the authorizations granted in the preceding month and the quantity of imports actually effected are reported to the Commission. It is thus in a position to administer EC-wide quotas and, if required, to transfer quotas among member States.

278. Whenever third countries have agreed to export restraints in trade with the EC, a back-to-back check system is employed. Within the agreed limits, import authorizations are issued automatically in parallel to the granting of an export permit by the exporting country.

279. As already indicated, member States are free in many procedural aspects. In general, licenses are allocated among applicants on the basis of their import performance in preceding years, with a certain share being

reserved for newcomers.¹⁹⁰ Outside agriculture and fisheries, no deposit or advance payment requirements are established. The validity of licenses range from three to nine months, with the possibility of further extension.¹⁹¹ Usually, the transfer of licenses is prohibited.

280. In agriculture, a system of import certificates is established in product areas under the Common Agricultural Policy. Certificates are issued to any interested party on request, subject to the lodging of a deposit.¹⁹² In the Commission's view, the system has no restrictive effect.

281. On the basis of Council Regulation No. 288/82, as amended by Regulation No. 1243/86, Belgium, Italy, Luxembourg and the Netherlands were entitled to continue automatic licensing or import-declaration formalities applied to imports from Japan and Hong Kong.¹⁹³

282. In July 1987, Japan notified the GATT of such licensing requirements in the Netherlands. Japan also noted that in France the issue of visas (certificates for statistical purposes etc. in the case of automatic licensing) is often delayed - thus constituting a technical barrier to

¹⁹⁰ See the notifications in response to the GATT Questionnaire on Import Licensing Procedures. In Spain, some additional criteria are being applied. The applicant has to submit, for example, information on capital, number of employees, taxes paid in the previous year, and any further economic information which may be mentioned in a quota announcement.

In Belgium, certain quotas are allocated to domestic producers of like products on a priority bases. If these quotas are not used within a specified period, a new allocation procedure without priorities is carried out.

¹⁹¹ For example, in Denmark prolongation is possible up to a total of 18 months.

¹⁹² Certificates for olive oil imports may only be issued to tenderers who have indicated a levy rate of no less than the minimum rate established for this sector.

The issuance of import certificates for certain sheep meat and goat meat products is subject to the issuance of an export certificate by the country of export (so as to allow the EC to monitor the self-restraint agreements in place).

¹⁹³ This authorization was contingent on adjustments which were to be made to Regulation No. 288/82 by December 1988, at the latest, for the purpose of greater uniformity of the rules for imports. However, no such adjustments have been made.

trade - and that the validity of visas is too short.¹⁹⁴ Further, Japan referred to an advance notification system for indirect automobile imports (via other member States) in place in Spain; it considered this system restrictive. Hungary notified the GATT of delays in the issuance of import licences for iron and steel products in Italy (July 1987).

(viii) Anti-dumping and anti-subsidy actions

283. Commission officials consider the anti-dumping and anti-subsidy law of the Communities as "one of the most important instruments of its common commercial policy".¹⁸⁵ In recent times, the relevant EEC Regulation No. 2423/88 and its actual application has been subject to controversial public debates.

284. There are no corresponding legal provisions for trade between EC member States; the price behaviour of firms established in the Community is subject to the general competition rules. However, with regard to dumping between the former EC of ten member States (EC10) and Spain and Portugal,¹⁸⁶ transitional anti-dumping rules are applicable until the end of 1992.

285. Among GATT contracting parties, the EC practices do usually not differentiate between signatories and non-signatories to the respective codes. However, certain bilateral agreements signed by the EC, such as the agreements with the EFTA and the Mediterranean countries, provide for bilateral information and consultation prior to the imposition of measures (i.e. definitive duties). According to the Commission, the practical impact of these provisions is minor, limited to a few borderline cases.

286. Complaints about dumped or subsidized imports can be lodged either directly with the Commission or via member States.¹⁹⁷ Following

¹⁹⁴ According to the notification, trade in machine tools, hi-fi equipment and work trucks was affected. See GATT NTM Inventory.

¹⁹⁵ J.F. Beseler and A.N. Williams (1986), Anti-Dumping and Anti-Subsidy Law: The European Communities, Sweet and Maxwell, London.

The EC basic legislation is Council Regulation No. 2423/88, and, as far as coal and iron and steel products are concerned, Commission Decision No. 2424/88. The procedures in case of subsidization are similar to those in the case of dumping.

¹⁹⁶ The rules are laid down in Council Regulation (EEC) No. 812/86 and Council Decision (ECSC) No. 813/86.

¹⁹⁷ The initiative may be taken by any natural or legal person or any association acting on behalf of an EC industry, which considers itself
(Footnote Continued)

consultations within an advisory committee, comprising representatives of member States under the chairmanship of the Commission, the Commission decides upon the initiation of proceedings which are then carried out under its own responsibility. The initiation is announced in the Official Journal. Interested parties have a right to be heard and to express their views at different stages of the proceedings (after the initiation of the procedure and the introduction of provisional measures).¹⁹⁸ The hearings are not public; there are no formally established procedures.

287. The Council Regulation stipulates that an investigation shall normally be concluded within one year; it shall normally cover¹⁹⁹ a period of not less than six months immediately prior to its initiation. No further time constraints are specified.

288. A total of 363 anti-dumping proceedings were initiated during the period mid-1980 to mid-1989 (Table IV.7).²⁰⁰ Of these, 200 were terminated within one year. In recent years, the number of outstanding decisions has considerably increased, apparently due to the complexity of the cases and an increasing workload. Of the 40 investigations launched between mid-1987 and mid-1988, two were terminated within one year.

289. In accordance with the GATT-provisions, both the imposition of provisional duties and of definitive duties are contingent upon the establishment of dumping - either by a preliminary examination or a final finding - and of injury caused thereby. In addition, EC legislation stipulates that measures may only²⁰¹ be taken when the interests of the Community call for intervention. According to the Commission, these interests are evaluated and taken into account on a case-by-case basis,

(Footnote Continued)

injured or threatened with injury. In the absence of such complaints, member States may directly communicate to the Commission any evidence of dumping or subsidization.

¹⁹⁸ Moreover, the interested parties have the possibility to consult non-confidential files, to participate in confrontation meetings with other parties and to be informed of facts and considerations deemed essential for the imposition of definitive anti-dumping duties.

¹⁹⁹ Article 5:5 of the GATT Anti-Dumping Code stipulates that - "except in special circumstances" - investigations shall be terminated within one year.

²⁰⁰ 216 initiations concerned parties of the GATT Anti-dumping Code, 147 affected other trading partners (including non-signatories to the GATT).

²⁰¹ This applies both to the imposition of provisional duties (Regulation No. 2433/88, Article 11:1) and of definitive duties (Article 12:1).

without applying specified criteria; there are only a few instances where such considerations have had an actual impact.

290. The Commission is empowered to impose provisional duties during the proceeding, to accept price undertakings, or to terminate proceedings when no evidence of dumping or injury could be established.²⁰² The introduction of definitive duties is decided by the Council (qualified majority) on the basis of a Commission proposal. To date, one proposal was not adopted by the Council.²⁰³ On ECSC products, the Commission is entitled to impose definitive duties without involving the Council.

291. As a rule, the Commission imposes provisional duties only after the preliminary finding of dumping and injury, provided that no price undertakings are agreed upon. The validity of provisional duties is limited to a period of four months which may be extended by an additional two months in certain circumstances.²⁰⁴

292. Dumping margins are defined as the difference by which the normal value of the product concerned (for example, in the exporter's domestic market) exceeds the export price. To obtain representative results, normal values are usually established on the basis of weighted averages for a certain time period. When no like products are sold domestically in the ordinary course of trade or when such sales do not permit a proper comparison, a constructed value is taken in most cases. The constructed value includes all production costs, "a reasonable amount" for selling, administrative and other general expenses, plus the average profit realised by the producer or exporter on the profitable sales of like products on the

²⁰²If a member State disagrees with the decision by the Commission, the matter is referred to the Council. If the latter does not decide to the contrary within one month, the Commission's proposal will take effect.

²⁰³The proceeding concerned dead-burned (sintered) natural magnesite originating in China and the Democratic People's Republic of Korea (1986).

²⁰⁴Between July 1980 and December 1989, a total of 130 provisional actions have been taken. Provisional duties are secured by cash deposits or bank guarantees, pending the Council's decision on definitive duties.

domestic market.²⁰⁵ According to the Commission, loss-making transactions are included in calculating average profits unless they constitute a "substantial" quantity of all sales.²⁰⁶

293. As regards export prices, Council Regulation No. 2423/88 provides either for the use of actual prices or of constructed prices. The latter may be established when no export prices exist, when exporters and importers are associated, or when actual prices are considered unreliable for other reasons. In general, prices are constructed on the basis at which the products are first re-sold to an independent buyer.²⁰⁷ Allowances are then made for all costs incurred between importation and resale (including, for example, overheads) and for a reasonable profit margin. These components are excluded from the export price used in the determination of dumping margins.

294. A dumping margin is calculated for each transaction. In establishing the average margin, transactions where export prices were above the normal value (involving "negative dumping margins") are treated as if the price difference was zero.²⁰⁸

295. According to EC law, anti-dumping duties imposed should be limited to the amount which is adequate to remove the injury.²⁰⁹ For the period 1987

²⁰⁵If such information is not available, expenses and profits can be calculated with reference to other (domestic) producers of like products or to (domestic) producers in the same business sector or "on any other reasonable basis" (Article 2:3(b)(ii)).

With respect to State-trading countries, normal values are based on actual prices or constructed values of like products in a third market-economy country. When third-country data are not available or reliable, prices within the EC are taken. (If the investigation confirms the occurrence of dumping, deliveries are often subjected to minimum import prices which are established on this basis. Variable anti-dumping duties are then being employed).

²⁰⁶There appears to be no generally applicable definition of the quantities considered substantial in this context.

²⁰⁷Alternatively, if products are not sold to independent buyers in the condition imported, the export price "may be constructed... on any reasonable basis" (Article 2:8(b)).

²⁰⁸Negative dumping margins are not taken into account because, in the Commission's view, this would allow "targeted dumping".

²⁰⁹As regards possible price undertakings, Regulation No. 2423/88 stipulates, inter alia, that the Commission (after consultation) will consider undertakings acceptable which eliminate either the dumping margin or the injurious effects.

to 1989, the Commission reported a total of 132 individual cases (companies) where definitive anti-dumping duties have been imposed. In about two-fifths of these cases, the duties were lower than the established dumping margins.

296. Table IV.8 traces the evolution of EC anti-dumping actions over time. No clear trend is discernible. Initiations peaked in 1982 (55 cases), and fluctuated around a considerably lower level in later years. Overall, the number of anti-dumping measures in force has declined from 187 at the end of 1986 to 120 in 1989. Of course, the number of actions is not necessarily indicative of their economic and trade policy impact. The existence of anti-dumping instruments, and their use in some cases, may by itself influence the price behaviour of exporters which are not subject to anti-dumping investigations.

297. Chemicals and allied materials were affected by 115 of the 256 measures taken during the 1980s (July 1980 - December 1989; Table IV.9). Other sectors frequently involved in anti-dumping actions include mechanical engineering (34 measures), textiles (22), iron and steel (22), and office equipment and consumer electronics (16).

298. During the 1980s, price undertakings were more frequent than the imposition of definitive duties, at a ratio of roughly two to one. Textiles and iron and steel products deviated from this pattern (Table IV.9). In a few cases, price undertakings were limited in geographic scope to certain EC regions.²¹⁰ Since 1987/88, the trend has been towards anti-dumping duties.

299. According to Commission estimates, 0.9 per cent of total EC imports were affected by anti-dumping duties in 1987 (1.2 per cent for industrialized countries, 0.3 per cent for State trading countries, 1.4 per cent for so-called newly industrialized countries, and 0.1 per cent for other developing countries).²¹¹ For the 1980s, signatories to the GATT Anti-dumping Code accounted for about 70 per cent of total initiations, 56 per cent of definitive duties, and 60 per cent of price undertakings. Most initiations (1980-88) involved Japan (7.8 per cent), Yugoslavia (7.5 per cent), the United States and Canada (together 8.9 per cent), and

²¹⁰ In 1986, for example, the EC agreed upon a price undertaking on certain glass imports into Greece with suppliers from Turkey and some eastern and central European countries (Official Journal, L 51, 28 February 1986).

²¹¹ EC Commission (1990), Seventh Annual Report of the Commission on the Community's Anti-Dumping and Anti-Subsidy Activities, Brussels.

No comparable estimates are available with respect to price undertakings.

Hong Kong, Singapore, the Republic of Korea and Taiwan (combined 8.3 per cent of initiations).²¹²

300. To prevent the circumvention of definitive duties by assembly operations, the EC anti-dumping instrument also relates to operations on the basis of imported parts and components (the so-called "screwdriver-plant legislation"). Under certain conditions, anti-dumping duties can be extended to products which were produced or assembled within the EC on the basis of imported inputs.²¹³ Since 1 September 1987, thirty-two assembly operations have been subject to investigations under these provisions (Article 13:10 of Regulation No. 2433/88 or of the preceding Regulation No. 2176/84). In all cases, imported components from Japan were involved (electronic typewriters, electronic weighing scales, hydraulic excavators, plain paper photocopiers, ball bearings, and dot matrix printers).²¹⁴ A GATT Panel found this legislation inconsistent with relevant GATT provisions (L/6657 of 22 March 1990).

301. In principle, EC law prohibits to impose anti-dumping duties retroactively (Article 13:4(a)). Specific exceptions pertain to cases where it is established that (i) there is a history of dumping which caused injury and where this injury is due to sporadic dumping (massive imports

²¹²Yugoslavia's involvement in anti-dumping cases exceeded its share in EC imports by more than six times. The share of the four Asian developing countries in anti-dumping initiations was twice their share in imports.

²¹³The party must be related to or associated with a manufacturer whose imports are subject to a definitive duty; the operation must have been started or substantially increased after the opening of the investigation; and the value of inputs used from the country of exportation must exceed 60 per cent.

²¹⁴According to EC sources, the respective assembly production of "Japanese" electronic typewriters within the EC rose from nil in 1984 - when an anti-dumping investigation was initiated - to nearly 623,000 units in 1988. At the same time, imports from Japan dropped from 678,000 to less than 36,000 units.

In seventeen out of the thirty-two cases under Article 13:10, anti-dumping duties were actually extended to the assembly production or price undertakings were accepted. More than half of these measures were repealed later, subsequent to a corresponding reduction of the share of Japanese parts. In the other cases, the investigations were terminated because the assembly operations were terminated (two cases) or because the imported value added from the country of origin (Japan) was found to be less than 60 per cent. One investigation (Orion matrix printers) is still pending.

over a short period), or (ii) an undertaking has been violated.²¹⁵ Regulation No. 2423/88 provides for the imposition of an additional duty - which also may be applied retroactively - when it is found that the original anti-dumping duty had been borne by the exporter. The EC has not levied duties retroactively.

302. As a general rule, EC anti-dumping and countervailing duties lapse after five years; this sunset provision was introduced into EC law in 1984. The dates of expiry are published in the Official Journal in advance and, in addition, made directly known to the EC industry concerned. The industry has the opportunity to show that the expiry of the duties would lead again to injury or threat thereof. After consultations with member States, the Commission can re-open an anti-dumping or countervailing duty investigation.²¹⁶

303. In the field of anti-subsidy actions, the EC initiated 10 proceedings between January 1980 and December 1989. Five measures have been taken by the EC over the last decade. Products involved were shoe imports from Brazil (price undertaking in 1981) and steel deliveries from Spain (duties in 1980 and 1984) and Brazil (duties on two categories in 1983).

(ix) Rules of origin

304. Unlike tariffs or quantitative restrictions, rules of origin are not trade policy measures on their own merits. However, their use has an impact on the operation of such measures whenever the origin of a product is relevant, for example, in the context of anti-dumping actions or in preferential trade.

305. The EC Commission stresses the non-political, neutral and technical nature of the rules of origin of the EC. Each individual case may be referred to the European Court of Justice for legal review.

306. Basically, two different systems of origin rules are applied. Non-preferential rules are linked to the general use of commercial policy instruments. Accordingly, origin is assigned to the country where a product has been wholly obtained or where it was undergone its "last

²¹⁵The wording of (i) and (ii) is identical with respective provisions of the GATT Anti-Dumping Code.

²¹⁶Such reviews may also be held during the operation of the duty at the initiative of the Commission or if a member State or an interested party so requests (the latter has to submit sufficient evidence in support of such a request). In 1988, 24 review procedures have been opened (8 in 1987 and 24 in 1986); 15 have been completed (24 in 1987 and 17 in 1986). In 5 out of the 15 cases, price undertakings expired or were abrogated; in 7 cases, price undertakings were replaced with definitive duties or vice versa.

substantial working or processing" which is economically justified.²¹⁷ Preferential rules of origin, which are applied in the context of free trade agreements, association agreements and the GSP scheme, are based on the criterion of "sufficient transformation" of a product. In any case, interested manufacturers can obtain information on the eventual origin status before starting production.

307. The first criterion, relating to the last substantial operation, can be applied in different ways. In practice, the EC either uses (i) a technical test to decide on a case-by-case basis if a certain product has qualitatively changed its characteristics through an operation and thus has acquired new properties;²¹⁸ or (ii) a value-added approach, where technical tests prove too difficult due to the complexity of certain assembly²¹⁹ operations such as in the case of tape recorders, TVs and radios.

308. An Origin Committee, comprising delegates from member States under the chairmanship of a Commission's official, has been established to develop a common interpretation of origin rules and to ensure, with respect to specific productions, their uniform application in all member States. The committee decides on the basis of a Commission proposal. In the event of unanimity, the opinion of the Committee is laid down in the minutes of the meeting and communicated to member States. The common interpretation is to be applied henceforth throughout the EC without any further formal procedures. In the absence of consensus, the Commission proposes implementing regulations as a legal instrument to enforce uniform interpretation in all member States. If the proposal is supported by a qualified majority in the Committee, it is adopted in the form of a Commission Regulation.²²⁰ As distinct from EC anti-dumping law or from

²¹⁷The basic rules, including the decision-making processes noted below, are laid down in Council Regulation No. 802/68.

²¹⁸According to a statement by the Commission, in cases of assembly production, this analysis is made in the context of all operations which are necessary for the manufacture of a complete product.

²¹⁹The European Court of Justice has acknowledged the application of such value-added tests whenever technical tests could not be performed. In a recent ruling, the Court stated that 10 per cent of domestic value added is not sufficient to confer origin (referring to typewriters assembled in Taiwan).

²²⁰According to Regulation No. 802/68, the matter is to be referred to the Council if the committee (i) disagrees with the Commission, or (ii) fails to state an opinion. (In practice, however, the Commission refrains from further pursuing its proposal if it is not supported by a simple majority of the Committee). The Council, by a qualified majority,

(Footnote Continued)

proceedings under Regulation No. 288/82, private parties have no formal right to a hearing.

309. Since 1969, 14 Commission Regulations have been passed under these procedures.²²¹ In two cases (radio and TV receivers; tape recorders), value added criteria have been applied; the other Regulations provide for technical tests. The most recent Regulations relate to integrated circuits (No. 288/89) and to photocopiers (No. 2071/89).²²² The EC considered both Regulations necessary to achieve a common and uniform interpretation of the last substantial transformation of these products. As for integrated circuits, the decisive stage in the production process, since February 1985, is the so-called diffusion process and none of the follow-up operations such as assembly and testing. In both cases, trading partners have voiced concerns about potential effects of the Regulations on trade and investment.

310. The criterion of sufficient transformation which applies to preferential trade is centred on a change of tariff headings. In principle, imported inputs are considered as being sufficiently transformed if the four-digit tariff heading of the final product differs from that of the inputs. This principle is subject to a range of product-specific qualifications,²²³ specifying the use of certain inputs or value added requirements. The rules of origin are annexed to the various preferential trade agreements of the EC or, as regards its Generalized System of Preferences, contained in a separate Commission Regulation (No. 693/88). Moreover, several regional cumulation possibilities are of relevance when origin status is to be assigned in concrete cases.

311. In the context of its GSP scheme, the EC accepts cumulation between members of several regional economic groups (Andean, ASEAN, CACM). When complying with the EC origin requirements, imports from other members of the same group may be counted as if they had been domestically obtained in

(Footnote Continued)

may then make any changes within a period of three months. In the absence of such a Council decision, the Commission may implement its proposal.

²²¹Three of these regulations, concerning textiles products, footwear and goods produced from eggs, have been amended later.

²²²In the case of integrated circuits, the Commission's proposal was approved by a qualified majority of the Origin Committee. The Regulation concerning photocopiers was implemented by the Commission on the basis of a simple majority in the committee and, subsequently, in the Council.

²²³In the context of the EFTA agreements, a range of engineering products (HS Chapters No. 84 to 92) is subject to alternative percentage rules. This means, that - contingent upon the composition of inputs - two alternatives are set with respect to the maximum value of all incorporated materials.

the country which finally exports to the EC. The agreements with the EFTA countries contain similar provisions. In this case, and differing from GSP rules, any EC inputs are also treated as if they originated within the exporting area.

312. Somewhat different cumulation rules apply to imports from ACP countries, the Overseas Countries and Territories associated with the EC (OCT), and the Maghreb States (Algeria, Morocco, Tunisia). In these cases, ACP countries, the OCT and the EC are regarded as being one region. Inputs from other parts of the region are counted as if they had been wholly obtained or as if the relevant working and processing stages had been carried out in the country which finally exports to the EC (full cumulation). The same holds for the EC and the three Maghreb States. As regards the other Mediterranean countries, only bilateral cumulation is accepted; in other words, EC inputs are considered as being produced in the preferential country.

313. Imports from other beneficiaries under the GSP scheme are not eligible for any such cumulation possibilities.

314. The EC has established a system of movement certificates and certificates of origin with a view to ensuring compliance with these rules. Apart from manifest cases of fraud, no checks are made in the benefiting countries. In order to facilitate the application of the rules, the EC organizes seminars with customs officials from third countries.

(x) Product standards, testing and certification

315. Technical trade barriers are a salient policy area in the Internal Market context. Issues such as the development of new European technical specifications and standards, the mutual recognition of testing and certification are likely to affect market access for third countries in many product areas.

316. Basically, there are three different approaches to standardization within the EC: (i) the so-called "new approach" of laying down essential safety requirements in Council Directives which then are supplemented by (voluntary) technical specifications to be developed by standardization bodies; (ii) the "traditional" approach of complete harmonization by means of Council Directives in which all relevant aspects are addressed; (iii) national standardization on the part of member States, subject to prescribed EC notification requirements (Chapter II).²²⁴

317. The EC Commission stresses that its preferred path for removing internal technical trade barriers is mutual recognition of product requirements rather than technical harmonization at the European level. Mutual recognition means that products which are legally produced or

²²⁴The Commission reports of some 300 notifications per year.

marketed in at least one member State are entitled to free circulation throughout the EC, irrespective of their origin. (For some specific qualifications see Chapter II).²²⁵

318. As regards the new approach, the Commission points out that it should be confined to difficult areas where member States have "legitimately imposed technical requirements on products for public policy reasons, and conflicting national legislation restricts the free movement of products within the Community".²²⁶ The Directives which are in force to date concern items such as simple pressure vessels, toys, building products, measuring instruments, machinery and protective equipment. New Commission proposals relate to other pressure vessels, upholstered furniture, particular kinds of machinery and telecommunication terminal equipment.

319. As noted above, compliance with additional specifications in these fields is not mandatory. When deviating, however, the onus is on the producer to show that the product complies with the essential safety requirements of the Directive. This could entail additional third party certification procedures.

320. The White Paper on completing the Internal Market places much emphasis on the work of the European standards-making organizations, notably the European Committee for Standardization (CEN), the European Committee for Electro-technical Standardization (CENELEC), and the European Telecommunications Standardization Institute (ETSI).

321. CEN and CENELEC are non profit-making private associations under Belgian law; they are common bodies in the EC and EFTA countries. CEN/CENELEC cover the broad range of industrial sectors with the exception of telecommunications. Membership is confined to the 18 national standards organizations or electro-technical standardization committees; this means that group-specific interests might be brought to bear within the relevant national bodies but not directly at the European level. A Council Resolution of 6 July 1988 calls on member States to ensure that consumers are adequately represented in national delegations.

322. By contrast, ETSI is open to all interested parties, including users and research bodies, which are situated within the CEPT area (European

²²⁵ Mutual recognition can only play an effective rôle when the use of products is not dependent on the interaction with other products or networks in which different standards are incorporated.

²²⁶ EC Commission (1990), Completing the Internal Market: The Removal of Technical Barriers to Trade within the European Economic Community, Brussels (Working Paper).

Conference of Posts and Telecommunications Administrations). Unlike CEN/CENELEC, ETSI may invite non-European organizations as observers.²²⁷

323. Standardization projects of the three organizations may either be initiated by national member organizations - the Commission in the case of the EC - or by industrial federations at the European level. As soon as the organizations embark on standardization projects which are requested by the Commission, a "standstill" is imposed on all related activities on the part of member States. The resulting standards are usually adopted by consensus; majority voting is rare.²²⁸ National member organizations are obliged to modify their standards accordingly.

324. If the initiative comes from the EC, the respective technical specifications are normally drawn up against the background of Council Directives.²²⁹ Hence they reflect essential requirements imposed by EC legislation. In general, the starting point of European standardization is international standards or working documents of the international bodies (ISO/IEC). According to the Commission, exceptions are limited to cases where international standards neither exist nor are likely to emerge in the foreseeable future.

325. The "new approach" was promulgated in 1985. It does not affect previous EC legislation or the continuation of complete harmonization in areas such as motor vehicles, pharmaceuticals, meteorological instruments and foodstuffs.²³⁰ For example, for motor vehicles, 44 Council Directives are intended to cover all regulatory aspects. To date, 41 have been approved by the Council (Chapter V).

²²⁷In the case of CEN/CENELEC, this possibility is limited to European professional organizations and industrial associations.

However, the initiation of new activities is made public and member organizations of ISO/IEC (the international standardization bodies) may put forward written statements. At a later stage, draft standards are published by the CEN/CENELEC members; via ISO/IEC they are also made known to other standards organizations. CEN/CENELEC is prepared to hold expert meetings with these organizations if, on the basis of comments received, these meetings are considered as advantageous.

²²⁸The organizations' regulations provide for weighted majority voting (mainly based on population shares). If no such majority is achieved among the 18 member organizations, a weighted majority of EC countries is sufficient to adopt the proposal within the EC.

²²⁹In addition, the Commission has initiated standardization work for industrial policy purposes, particularly in new technologies.

²³⁰According to the Commission, transformation of such (traditional) harmonization directives into 'new approach' directives is currently being considered.

326. Most existing harmonization directives are optional; individual member States are entitled to maintain, and up-date, their own national legislation in parallel. However, there are no legal possibilities to restrict imports (or domestic products) which are in compliance with the requirements of the directive.

327. In addition, member States are continuing their own legislative efforts. As mentioned earlier, all such standardization projects are to be announced in the context of an EC internal information procedure. Other member States and the Commission thus may comment or intervene if they are concerned about restrictive effects (Chapter II).

328. Table IV.10 consolidates notifications on the part of the EC and its member States of new technical regulations and certification systems under the GATT Code on Technical Barriers to Trade. Accordingly, 44 EC notifications and 176 member States' notifications have been made in the period 1985 to 1989. The corresponding figures for the preceding five years were 56 and 157.²³¹

329. A recent agreement with EFTA countries provides for the mutual exchange of all notifications of draft technical regulations. The parties are entitled to comment within 90 days. The same period applies for the EC internally, as compared to the GATT Code on Technical Barriers to Trade which provides for 60 days.²³²

330. In areas not covered by ongoing standardization work at the European level, national standards-making organizations are highly active.²³³ The results, though not legally binding, are likely to influence markets through the procurement practices or requirements of private enterprises

²³¹As mentioned in Chapter II, member States have announced 1075 technical regulations in the period 1984 to mid-1990 in the context of the EC internal notification mechanism (Council Directive No. 83/189). Under the GATT Code, only central Governments are obliged to notify new technical regulations and standards if these may have a significant impact on trade. Different notification practices of EC member States (Table IV.10) might be partly due to diverging assessments of the impact of individual regulations on trade. Moreover, according to Commission officials, some smaller member States might have been reluctant in making notifications of borderline cases since larger regional entities within other countries are not yet subject to equivalent disciplines under the GATT Code.

²³²A similar information procedure on draft standards has already been established in the CEN/CENELEC context in 1983/84.

²³³Relevant bodies are, for example, Afnor in France, DIN in Germany and BSI in the United Kingdom. According to 1986 data, their annual output of standards is in the order of magnitude of 1,100 (Afnor), 1,400 (DIN) and 660 (BSI).

and the public sector. Whenever these standards are enforced by national law (outside the procurement area), the notification requirements apply.

331. In its "Global Approach to Testing and Certification", the Commission aims at establishing options for the manufacturer's choice of conformity assessment.²³⁴ Each EC standardization directive should provide for one or more alternative certification procedures, dependent on the characteristics and risks of the product concerned. Manufacturer's declarations of conformity are expected to be one of the main rules.

332. Compliance with the statutory requirements of the "new approach" directives will be indicated by a "CE" mark. Member States are not allowed to impose additional requirements. However, other marks may continue to exist on a voluntary basis, indicating specific quality standards.

333. Products from third countries are subject to the same requirements as far as the manufacturer's self-declaration of conformity or type examination by "notified bodies" within the EC is concerned. Acceptance of third country bodies is conditional on mutual recognition agreements which might be concluded by the EC on a case-by-case basis.²³⁵ To date, no such agreements exist and no negotiations are under way. Since this area is under exclusive Community legislation, member States are not entitled, according to the Commission, to negotiate with third countries (including agreements relating to national standards legislation).

334. In the absence of mutual recognition agreements, "notified bodies" within the EC may subcontract with testing firms in third countries without prior approval of the Commission. The EC bodies are responsible to their Governments for the data supplied by the subcontractors.

²³⁴ Conformity testing and certification systems are a further prominent policy area when technical barriers to trade are to be removed. Again, a wide array of issues is involved which, by their very nature, impinge on internal and external trade as well. Topics range from (i) the choice of the assessment procedures to (ii) the establishment and recognition of independent testing and certification systems.

²³⁵ Meetings held thus far with Japan and the United States have been confined to information exchange. The Commission is currently considering further meetings on sector-specific issues with a view to evaluating the possibilities of recognition agreements.

In a Council Resolution of 21 December 1989, the following principles are established for the conclusion of such agreements: (i) The competence of the third country bodies is on a par with that of EC bodies; (ii) recognition is confined to the activities of the bodies designated in the agreement; (iii) if the EC wishes the recognition of its own bodies, a balanced situation with regard to the ensuing advantages should be established in all matters of conformity assessment for the products concerned.

335. The principles noted above apply only to the area of EC standards legislation and not to standards-making and certification activities of private organizations. These are free to sign any such agreements on their part.

336. Recently, a new organizational framework was set up for conformity assessment issues, such as the development of European certification systems and the mutual recognition of tests and certificates. The European Organization for Testing and Certification (EOTC) which covers the EC/EFTA-area, can be understood as an equivalent to the established European standardization bodies (CEN/CENELEC). Its Council is composed of representatives of consumers, producers, testing and certification bodies, and of the governments.

337. Several perceived technical trade barriers maintained by EC member States have been notified to the GATT by other contracting parties. Notifications relate, for example, to restricted membership in standards setting bodies, costly test and certification procedures, over-specified standards, and refusals to accept foreign test data. These notifications, however, do not necessarily establish the existence of trade impediments. Some concerns might basically result from differences in the institutional setting.²³⁶

(xi) Sanitary and phytosanitary measures

338. In the sanitary and phytosanitary area, the EC generally prefers common legislation to the principle of mutual recognition.²³⁷ In line with this approach, in 1964 the harmonization of member States' rules was initiated. In recent years and months, this process has been accelerated in view of the Internal Market objectives. By July 1990, some thirty Directives in the sanitary sector were still to be adopted by the Council.

339. Seven Directives on public health issues, which have been passed since 1964, cover a variety of products ranging from fresh meat (No. 64/433) to eggs (No. 89/437). The Directives stipulate conditions for production, storage and marketing as well as for controls to be applied by producers, the authorities of member States and the Commission.

²³⁶ In some member States, for instance, certain economic activities are carried out under public ownership, thus inducing more mandatory standardization, whereas in other countries the same activities are assigned to the private sector (for example, telecommunications).

²³⁷ Alternatively - in the absence of EC legislation - member States might directly resort to Article 36 of the EEC Treaty and intervene in intra-EC trade for reasons of human or animal health (Section II:6(ii) above).

340. A range of Directives, starting in 1964 with Directive No. 64/432 on cattle and pigs, harmonizes veterinary policing with respect to intra-EC trade. The Directives neither apply to member States' internal policies nor to trade with third countries; these are subject to a further set of Directives or proposals. In the event of new serious diseases which are liable to jeopardize EC livestock, the Commission is entitled to enact specific measures of protection.

341. For animal products, border controls between member States are to be abolished by the end of 1991 at the latest (December 1992 for Greece). For meat and meat products, this deadline is December 1992. According to Council Directive No.89/662, strict inspections at the point of origin and random checks at destinations shall be made instead.²³⁸ On 26 June 1990, the Council agreed on similar criteria for intra-EC trade of live animals, in tandem with a decision on measures against foot and mouth disease. Accordingly, vaccination policies²³⁹ of member States will be replaced by a policy of compulsory slaughter. For emergency cases, vaccine banks may be maintained.

342. Since early 1981, member States have been required to apply identical criteria to the authorization of veterinary medicines.²⁴⁰ Circulation of these medicines in any member State is conditional upon approval by the competent national bodies. An amendment, which establishes the principle of mutual recognition in this area, is currently on its way through the legislative process.

343. A Council Directive of March 1988 (No.88/146), the so-called Hormone Directive, imposes a general ban on the use of hormonal substances for fattening purposes and establishes detailed rules as regards their therapeutic application. The implementation of this directive and the ensuing trade effects prompted a dispute with the United States which has not yet been resolved (Chapters V and VI).

344. As regards tolerance levels for residues of medicines, a recent Council Regulation (No. 2377/90) provides for a centralized Community system. Lists of maximum residue levels for veterinary pharmaceuticals

²³⁸ If infringement is suspected, checks may also be carried out during the transport.

²³⁹ To date, only Denmark, Ireland and the United Kingdom are practising a non-vaccination policy. The Directive shall enter into force twelve months after all member States have abolished vaccination for foot and mouth disease.

²⁴⁰ The Council Directive of 1981 (No.81/851) was followed by specific rules for high-technology pharmaceuticals (for example, in the area of bio-technology; Council Directive No.87/20) and for medicated feedingstuff (No.90/167).

shall be established. These levels have to be defined before new products can be marketed; established products will be progressively covered by the system.

345. In 1977, the Council issued a Directive (No. 77/93) with the aim of harmonizing the protective arrangements of member States in the phytosanitary sector. The Directive has undergone some twenty amendments. It covers all third country imports and intra-EC trade in plant and plant products.²⁴¹ Trade within individual member States and EC exports are not bound by these provisions.

346. A Commission proposal of February 1989, not yet adopted, aims at harmonizing member States' procedures for the authorisation of plant protection products (herbicides, pesticides, etc.). Only products, whose active substances are contained in a positive Community list may be authorized by the member States. The principle of mutual recognition shall be respected by all member States as far as agricultural, plant health or environmental conditions for product use are comparable in the regions concerned. A transitional régime is provided for substances currently on the market; the régime includes a re-evaluation programme for these substances.

²⁴¹In several annexes, harmful organisms and contaminated plants are categorized. For some organisms and plants, member States are obliged to ban imports or to make importation conditional upon specified requirements, including official certification of plant health. For other categories, certain member States - they are enumerated case by case - are allowed to impose prohibitions or requirements of their own. As regards the necessary plant health inspections, member States have to ensure that "at least" intra-EC trade of plants and plant products (for example, certain wood products) are only permitted after a meticulous examination of the consignment, either in its entirety or by a representative sample in the originating member States.

If the results of health checks are satisfactory, a phytosanitary certificate according to a common layout is issued. The certificate conforms to the model introduced by the International Plant Protection Convention. In intra-EC trade, the member State of destination is only entitled to employ controls by sampling on an occasional basis (explicitly excluded are cases where the consignor member State has obviously not complied with relevant provisions or where transiting third country imports have not yet been examined). According to a recent amendment (Council Directive No. 90/168), these occasional checks are to be gradually reduced and abolished as soon as new arrangements have been set up in the Internal Market context.

As stipulated by Article 18:1, the Directive in no way affects other EC plant health provisions, except where it establishes stricter requirements. Cereals, dried leguminous plants, manioc tubers and residues from the production of vegetable oils may be regulated in special arrangements (Annex VII).

347. Council Directive No. 90/642 establishes maximum pesticide residue levels for products of plant origin and for fruit and vegetables. The Directive continues a trend towards such mandatory ceilings for the Community as opposed to the earlier approach of establishing optional levels. Similar Council Directives on maximum pesticide residue levels also exist for cereals and for products of animal origin.

348. Community quality standards for seeds and plant propagating material of most species are laid down in a series of ten Council Directives. They apply to member States' internal marketing, intra-EC trade and third country imports.

(xii) Public procurement

349. Public purchasing or procurement amounts to about ECU 590 billion, or 16 per cent of the Communities' GDP (EC 12 in 1987).²⁴² For the individual member States, the shares are estimated to range between 10.7 per cent in Portugal and 19 per cent in Germany (Table IV.11).

350. In the White Paper on Completing the Internal Market, specific reference is made to public procurement. The Paper qualifies the continued partitioning of individual national markets as one of the most evident barriers to the achievement of a real internal market (para. 81).

351. Import penetration in the public sector is substantially lower than in the private sector. According to available estimates for five member States, the share of "apparent" imports in public purchasing (i.e. purchases reported to be of foreign origin in total public sector purchases) was between 1 per cent in Italy and 21 per cent in Belgium in the mid-1980s (Table IV.12).²⁴³ One factor in the limited import penetration might have been the lack of competitive procedures and transparency; for example, it was estimated that barely 20 per cent of the

²⁴²In 1987, total central government purchases in the EC totalled some ECU 180 billion. Of these, supply contracts accounted for ECU 75 billion, work contracts for ECU 50 billion and services contracts for ECU 55 billion. The GATT Code on Public Procurement exclusively refers to non-defence supplies; the present EC rules apply to supply contracts and to work contracts (subject to the respective threshold values and the established lists of contracting entities).

²⁴³By contrast, imports as a share of national output plus imports was estimated at 19 per cent in Italy and 43 per cent in Belgium.

The above estimates on public purchasing are also influenced by specificities of the products and purposes involved. Moreover, they do not allow for the imported content in domestic purchases.

public contracts awarded in the EC complied with the relevant provisions on competitive tendering and EC-wide advertising (1988).²⁴⁴

352. To large areas of public procurement common EC rules are not yet applicable (transport, energy, water supply and telecommunication services).²⁴⁵ In addition, many contracts lie below the relevant threshold values of the EC Directives, which are ECU 200,000 (before value added tax) for supply contracts in areas which are not under the GATT Code on Government Procurement and ECU 134,000 otherwise. Contrasting with existing GATT Code provisions, however, purchases of regional and local authorities are covered by EC legislation. Invitations for tenders are now published in the Official Journal. Moreover, contracting authorities are required to announce in advance in the Official Journal their total procurement value by product area for the coming budgetary year (subject to a threshold of ECU 750,000).²⁴⁶ The results of the contracts awarded are also to be published.

353. In March 1988, the EC Council amended its Directive (No. 77/62) on procurement of supplies and equipment (including lease, rental and hire purchase).²⁴⁷ The amendments, contained in Directive No. 88/295, aim at increasing transparency and narrowing the use of the restricted procedure or of the negotiated procedure without prior call for competition.²⁴⁸ It

²⁴⁴EC Commission (1989), "Public Procurement and Construction - Towards an Integrated Market", European Documentation.

The above figures reflect the situation before the overhaul of the relevant EC legislation.

In a recent communication, the Commission holds the view that, compared with EC markets in general, "public procurement is still very closed" (EC Commission (1990), Industrial Policy ..., op. cit.).

²⁴⁵As noted below, the Council of Ministers agreed in February 1990 to open up the "excluded sectors" to EC-wide competition as from 1 January 1993.

²⁴⁶However, certain information must not be made known when its release would be prejudicial, for example, to commercial interest or fair competition.

²⁴⁷The transposition of the Directive into national legislation of member States had to be accomplished by 1 January 1989, except for Greece, Spain and Portugal which have been granted an implementation period until 1 March 1992.

²⁴⁸EC procurement rules are based on the principle of competitive tendering, either in the form of open tendering or restrictive (selective) tendering. In the latter case, potential suppliers are selected among those who have responded to a tender notice in the Official Journal; they

(Footnote Continued)

is further stipulated that, in principle, European standards or common technical specifications are to be used where they exist. Until December 1992, member States are allowed to maintain certain existing national procurement provisions in favour²⁴⁹ of their most disadvantaged regions or of declining industrial areas.

354. Long-lasting efforts to set up common procurement rules for the "excluded sectors" succeeded in February 1990. The Council agreed on a Directive which will apply to all works contracts worth over ECU 5 million and to supply contracts of more than ECU 400,000 in the fields of water,

(Footnote Continued)

are then simultaneously invited to tender. This restrictive procedure may only be used in justified cases, so as to maintain a balance between the contract value and the procedural costs or to take account of the specific nature of the procured products. In specified circumstances, however, single tendering (negotiations with certain suppliers) without prior advertisement is permitted. Contracting authorities are required to draw up a written report, containing justification for the use of that procedure. At request, the report or its main features are to be communicated to the Commission.

The minimum time limit for the receipt of bids in open procedures is 52 days from dispatch of the tender notice for publication in the Official Journal (in conformity with GATT Code provisions).

²⁴⁹ Some member States - Germany, Greece and Italy - currently provide for regional preferences in their national procurement regulations with the objective to promote producers in economically lagging areas. The continuation of such schemes is allowed under all EC procurement directives until the end of 1992, provided that they are compatible with the EEC Treaty and international obligations. In the Commission's view, regional preferences are in breach of the EEC Treaty (Article 30: Prohibition of quantitative restrictions and equivalent measures between member States) insofar as they discriminate against enterprises in other member States which are situated in regions at a similar or lower level of economic development. The Commission is in discussions with member States with the aim of bringing the infringements to an end before December 1992. As a result, Germany and the United Kingdom ended such schemes at the end of 1990.

The most manifest provisions in this respect are to be found in Italy; public contractors are required to place at least 30 per cent of their annual spending with companies established in the Mezzogiorno. An Italian administrative tribunal has referred this matter to the European Court of Justice which has outlawed these stipulations mainly on the basis of Article 30 of the EEC Treaty (case No. 21/88). According to the Commission, a number of Italian authorities have since ceased to apply their regional preference schemes.

energy and transport or ECU 600,000 in telecommunications.²⁵⁰ The Directive places certain bids at a disadvantage when they contain a majority of products originating from countries with which the EC has no agreement that ensures effective market opening. If the European content is less than 50 per cent, bids may be rejected; equivalent bids with a European content of at least 50 per cent shall be preferred if the price difference does not exceed 3 per cent. The EC considers these provisions to be an incentive to mutual opening of markets. As stated by the Council, they may be revised depending on the negotiations in the Uruguay Round. The Directive will come into force as of 1 January 1993 in 9 member States; Spain (1 January 1996), Greece and Portugal (1 July 1997) have longer implementation periods.

355. There are no similar reciprocity provisions in the other EC Directives on public procurement. Insofar as the GATT Code on Government Procurement does not apply (Greece, Spain and Portugal have not yet undertaken any obligations under this Code), national legislators are free on whether²⁵¹ or not to place third country suppliers on a par with EC companies.

356. In the late 1980s, the Commission contracted several studies on "the costs of non-Europe". In the area of public procurement, the consultants employed saw no clear evidence of officially established buy national policies in member States. According to their report, there are usually no specific measures in this respect, but "strong psychological, administrative and practical pressures". None of the authorities²⁵² interviewed admitted to a formal policy of buying national goods.

²⁵⁰The Directive was formally adopted on 17 September 1990.

Fuel or coal supplies are not covered by the Directive. Bidding procedures for exploration licences and the supply of drilling and other equipment may be excluded from its scope as well.

²⁵¹The Commission is currently in contact with the Greek, Spanish and Portuguese authorities in order to ensure the establishment of acceptable lists of entities and the introduction of the Code provision into national law.

²⁵²WS Atkins Management Consultants (1988), The "Cost of Non-Europe" in Public Sector Procurement, Commission of the European Communities, Luxembourg.

As examples for "nationalistic purchasing pressures" the following sectors and policy considerations are enumerated: (i) "visible goods" (cars, tableware, prestige furniture) where fears of criticisms for buying foreign goods exist; (ii) strategic goods (defence systems, power generation (especially nuclear), telecommunications) where there is a desire to maintain national supply capabilities; (iii) declining sectors (coal, railway rolling stock, shipbuilding and heavy fabrication) where

(Footnote Continued)

357. Complaints of other contracting parties about suspected buy-national policies and practices in EC member States mainly refer to the "excluded sectors". In several cases, mention is made of the procurement of heavy electrical equipment on the part of France, Germany, Italy and the United Kingdom.²⁵³

358. A so-called remedies Directive (Council Directive No. 89/665) requires member States to establish effective review mechanisms. These shall be available to any person who has been, or risks being, harmed by an alleged infringement in the course of an award procedure. The available measure shall allow for the suspension of award procedures, for the setting aside of unlawful decisions, and for the compensation for damages. The Directive concerns public supply and works contracts; member States have to comply with it by 1 December 1991 at the latest. A separate remedies Directive has been proposed for the implementation of the procurement directive in the water, energy, transport and telecommunication sector.

359. In 1988, the European Court of Justice confirmed some general principles concerning direct legal effects of EC directives on State authorities. Accordingly, national administrations are obliged to respect directives even when these have not yet been incorporated into national law.²⁵⁴

360. Countertrade or offset provisions in public procurement contracts are not allowed under the EEC Treaty. They would contravene the principle of free circulation of goods and services within the EC.²⁵⁵

361. Since 1989, notices of EFTA countries for supply contracts covered by the GATT Code have also been published in the Official Journal of the European Communities. There are not yet any mutual concessions beyond the

(Footnote Continued)

labour policy considerations play a rôle; (iv) major infrastructure equipment with a heritage of different national standards (water supply, power distribution and railway equipment); (v) deliberate policies amongst environmentally damaging industries (coal mining, nuclear) to support local businesses.

²⁵³This applies, for instance, to the GATT NTM Inventory and to the annual reports of the United States Trade Representative on "Foreign Barriers to Trade". However, as noted earlier with respect to technical trade barriers, international differences in ownership structures are of relevance in this context.

²⁵⁴The ruling refers to Italian rules on public works contracts (case No. 103/88). See Official Journal, C 183, 20 July 1989.

²⁵⁵The provisions of Article 30 of the EEC Treaty apply to goods originating within the EC and to goods previously imported from third countries.

obligations under the GATT Code on Public Procurement. However, the present negotiations on an European Economic Space also include public procurement issues.

(xiii) Countertrade

362. At the EC level, countertrade plays no rôle - neither in terms of economic activities nor in terms of a common or co-ordinated policy stance. Among the member States, the general approach towards countertrade differs. In some countries, Governments appear to abstain from direct involvement, with the possible exception of military products, or from encouraging business to engage in countertrade (for example, Germany, Italy, the Netherlands and the United Kingdom). Companies are even warned of the risks and pitfalls.²⁵⁶

363. Belgium, Denmark, the Netherlands and Norway participate in a trading consortium which, according to unofficial estimates, has made military offset deals worth US\$2.2 billion during the period 1980 to 1987. Comparable estimates of military offsets involving the United Kingdom, Germany and Greece amount to US\$1.9 billion, US\$800 million and US\$330 million, respectively.

364. According to information provided in the context of this report, the Netherlands Government is only involved in countertrade in the military sphere. Offsets are required for all orders exceeding Dfl 5 million. Preference is given to proposals which are technologically comparable to the order placed by the Ministry of Defence. The supplier is obliged to offer full compensation, either directly related to the supply project in question or via indirect purchases. Since 1985, offset commitments of Dfl 2.7 billion have been agreed upon; the main trading partners were the United States, Germany, Austria, Belgium, Canada, France, the United Kingdom, Italy, Sweden and Switzerland.

365. In 1985, the United Kingdom and Saudi Arabia established a common offset project (Al Yamamah Project). In this context, certain military aircraft and equipment are supplied to Saudi Arabia. In addition, support and assistance are provided with the aim of creating a wide range of joint venture activities. Venture proposals, which are not necessarily limited to the defence area, are processed by a joint UK/Saudi Arabia offset committee. In 1987, according to unofficial sources, British Aerospace negotiated an offset arrangement with an Indian State-owned aircraft manufacturer.

²⁵⁶ British Overseas Trade Board (1989/1990), Countertrade - a Guide for Exporters, London (Department of Trade and Industry).

The German Government informed the GATT Secretariat that it is not involved in countertrade deals; these would take place only at the level of private industry.

366. According to the Spanish Government, in 1989 seven private countertrade deals were concluded without any Government involvement. They concerned Spanish exports of aluminium (to Norway), copper tubes and copper bands (Morocco, Tunisia), brass coils (Morocco), industrial equipment (Cuba) and machinery (Soviet Union). In return, raw materials were imported (copper and copper scrap, brass scrap, bauxite, leather, tobacco).

367. In Belgium, some State owned companies have been involved in offset contracts (for example, the Telephone Authority, the Civil Aviation Authority and SABENA). Offset requirements are part of defence contracts of more than BF 10 million. The relative values of competing proposals are assessed on the basis of varied and complex criteria, including the regional spread of the offset activities across the country.²⁵⁷

368. Danish companies have increasingly been engaged in countertrade operations with Eastern European countries and with countries in South America, and the Middle and Far East.²⁵⁸ Many large procurement contracts with high import values contain offset clauses, particularly in the defence area.

369. In France, a special section of the Ministry of Trade has been set up in order to provide advice and information to French companies facing countertrade requests and obligations on their export markets. In addition, a private association has been established in 1977 by French industries and banks with a view to support its members by pooling offers and requests concerning countertrade. According to the French Government, some industrialists have fixed up clearing or barter agreements in central and eastern Europe and in countries with scarce foreign exchange; however, no bilateral agreement in the field of countertrade has ever been concluded by the French Government.²⁵⁹

²⁵⁷The Belgium Government informed the GATT Secretariat that it has not concluded countertrade contracts since 1985.

²⁵⁸In 1988, for instance, a private Danish company sold dry-process cement equipment to the Soviet Union and, in exchange, the State owned oil and natural gas company purchased gas from the Soviet Union. In 1989, a Danish shipyard negotiated a barter deal with the Soviet Union under which it will modernize fishing vessels and accept payment in fish (Financial Times, 8 June 1989).

The Danish Government has denied any involvement in countertrade deals.

²⁵⁹Press reports have pointed to a wide range of countertrade possibilities recently opened with the Soviet Union. Accordingly, French companies are mainly supplying agricultural and food processing equipment whereas the USSR focuses on primary products (oil). Moreover a contract worth F 17 billion is reported to have been concluded with Saudi Arabia,

(Footnote Continued)

370. In Greece, foreign bidders for public sector contracts are expected to submit offset proposals in parallel. To this effect, certain parameters are set by the Government, pertaining, for example, to counterpurchases, local manufacturing or transfer of technology. The details are to be negotiated with a Government-mandated agency or, in some cases, with the ministries concerned. Reportedly, there are no fixed minimum proportions for the countertrade value.

371. Countertrade activities of Italian companies are subject to an advance authorization from the Government. No state organizations are directly engaged in countertrade. As in the case of other member States, such trade practices play a rôle in private sector businesses (particularly with some central and eastern European countries).

(xiv) State trading

372. The EEC Treaty imposes certain disciplines on the operation of State monopolies of a commercial character, including monopolies which are delegated by the State. The rules of the EEC Treaty, in particular the competition rules, also apply to public undertakings and to undertakings with special and exclusive rights. According to Article 90 of the Treaty, member States shall not enact or maintain any measures contrary to these rules. Article 37 requires member States to ensure non-discrimination regarding the procurement and marketing of goods between nationals of member States.

373. The Commission regularly publishes an overview of adjustment requirements concerning State²⁶⁰ monopolies. In recent reports, the following cases have been enumerated:

- (i) France: State monopolies in potassic fertilizers, manufactured tobacco and matches which had discriminated against imports from Spain and Portugal (in contravention of the Accession Treaties). The rules in question were changed in 1988/1989.
- (ii) Greece: Provisions as regards the national oil monopoly, related to price ceilings and compulsory storage requirements, hindering imports and restricting exports. The Commission issued a reasoned opinion on 18 October 1989 concerning the discriminatory effects of the compulsory storage requirement.

(Footnote Continued)

involving an exchange of military equipment and petroleum products. (See Financial Times, 16 June 1989, and Frankfurter Allgemeine Zeitung, 13 June 1989).

²⁶⁰ See, for example, EC Commission (1990), Nineteenth Report on Competition Policy, Brussels/Luxembourg and EC Commission (1990), Panorama, op. cit.

- (iii) Portugal: Outstanding adjustments of the alcohol monopoly and of the oil monopoly where obligations under the Act of Accession have not yet been fully met. In the case of the oil monopoly, specific mention is made of the administration of quotas allocated to companies other than Petrogal, and of the rules governing prices and taxation of imports, which might operate in favour of domestic products. In addition, a system of minimum import prices for ethyl alcohol and wine spirits is said to violate several provisions of EC law. On 29 November 1989, the Commission decided to deliver a reasoned opinion.
- (iv) Spain: Negative trade effects of the national oil monopoly (concerning, for example, exclusive wholesale and retail rights). It is reported that the Spanish Government agreed to give redress and to admit a parallel distribution network to that of the monopoly. The Commission, however, has reserved the right - after assessment of the results achieved by 1 January 1990 - to resume the infringement procedures, and to place the matter before the European Court of Justice.²⁶¹ Furthermore, on 28 December 1988, the Commission initiated an infringement procedure concerning adjustment requirements of the national tobacco monopoly. The procedure was terminated in mid-1989 because, in the Commission's view, Spain had adopted an adequate legal framework allowing for the free marketing of manufactured tobacco.

374. In September 1990, the United Kingdom notified the GATT of State trading under Article XVII. The notification points to the following activities: Granting of licences for the exploration of small mines and opencast sites (British Coal Corporation); aircraft leasing (Lynrise Ltd.); collection, storage and sale of wool (British Wool Marketing Board); supply management and marketing of potatoes (Potato Marketing Board); milk collection and administration of certain dairy market policies (Milk Marketing Board); nuclear fuel cycle services (British Nuclear Fuels plc.). According to this notification, all previously State owned shipyards have been closed or transformed into private ownership.

375. Notifications of other member States under Article XVII date back to²⁶² the first half of the 1980s. In some cases, they appear to be outdated.

²⁶¹According to the Spanish Government, the petroleum sector will be liberalized by 1 January 1992. From that date the authorized operators will not be subject to any price controls or quantitative limitations.

²⁶²In 1981, France notified the GATT of State trading activities with respect to the following products: ethyl alcohol; unmanufactured and manufactured tobacco; coal, lignite and coke; gas; electricity; petroleum and certain derivatives; potassium fertilizers; thomas slag; powders, explosives, fuses etc.; matches; mixed alkylenes; newsprint.

(Footnote Continued)

376. In recent years, most EC member States have pursued a general policy of government retrenchment, privatization and deregulation. According to OECD assessments, United Kingdom authorities implemented the most ambitious privatization programme, selling assets of approximately £5 billion in 1987 and 1988.²⁶³ In France privatization has involved 1,100 firms with more than 330,000 employees, that is a third of the enterprises and a sixth of the labour force in the public sector. However, according to the OECD, this trend came to a halt recently. The German Government sold its stakes in Volkswagen AG (March 1988) and in a major industrial holding company (VIAG AG, May 1988). Deregulation moves have been undertaken in rail transportation, postal services and telecommunications. In Spain, the national Institute of Industry sold its shares in several companies, including the car manufacturer SEAT.

(xv) Consumption taxes

377. EC member States levy excise taxes on a wide range of product categories such as alcoholic beverages, tobacco, mineral oil, coffee and cocoa. The relevant rates and the product coverage of the individual taxes widely differ. Cigarettes, for example, are subject to taxes of ECU 0.28²⁶⁴ per packet (20 cigarettes) in Greece and of ECU 1.96 in Denmark (1985). Ireland, the United Kingdom and Denmark impose the highest taxes on beer, wine and spirits; in Germany, Greece and Italy, wines are

(Footnote Continued)

According to the French Government, there are no restrictions on the production of crude petroleum and derivatives in France.

A notification by Germany (1981) mentioned State monopolies for the import of unprocessed spirits with the aim of regulating the respective domestic markets and a monopoly for inflammables (matches etc.). Recently, the Federal Government informed the GATT Secretariat that the latter monopoly was terminated in the early 1980s. The spirits monopoly was reduced in scope due to a ruling of the EC Court of Justice.

Spain made a notification in 1984 that State trading monopolies had been established for (i) import of agrarian products (beef, pigmeat and poultry meat, alcohol, vegetable oils, butter, sugar and wheat); (ii) import, export, domestic sale and manufacture of tobacco and tobacco products; and (iii) imports, industrial handling and sale of petroleum and petroleum products.

In 1981, the GATT Secretariat was informed that there are no State trading enterprises in Ireland and Luxembourg. According to information provided in the context of this report, the same applies to Belgium, Denmark and the Netherlands.

²⁶³ OECD (1989), Industrial Policies in OECD Countries, Paris.

²⁶⁴ See White Paper on Completing the Internal Market, op. cit. For this report, no updated information was available on the situation in all member States.

free of taxes. Germany, Italy, Belgium and Luxembourg impose excise taxes on coffee.

378. Among member States, the share of excise taxes in total tax revenues (excluding social security payments) varies between some 20 per cent in Portugal, Greece and Ireland and less than 10 per cent in Germany, Belgium, Spain and the Netherlands.²⁶⁵

379. Available information suggests that there is no discrimination between imports and domestic production. However, due to the nature of the products involved, some taxes predominantly or exclusively pertain to imports. This holds, for example, for taxes on coffee, tea and cocoa.²⁶⁶

380. The EC is currently considering how to adapt the various systems of value added taxes and excise taxes to the exigences of an Internal Market without frontier controls. Relevant issues in this context are the approximation of tax rates and tax coverage, and the introduction of new modalities of tax collection. The aim is to find in early 1991 transitional arrangements to be applied after January 1992 for about five years. Thereafter, taxes should exclusively be levied in the originating member State.

(3) Measures Directly Affecting Exports

(i) Export promotion

381. At the EC level, export promotion activities are limited. Recently, the Commission reported on an increasing number of activities which were carried out in conjunction with specialized agencies from the member States, such as training and information seminars for small and medium sized businesses and Community pavilions at some international exhibitions.²⁶⁷

382. Individual member States are engaged in a variety of export promotion activities, including specific support programmes and co-financing of an institutional infrastructure (chambers of commerce, etc.). Support appears to be predominantly geared to small and medium sized enterprises and to companies which try to enter into new export markets. Aids are granted, for example, for joint presentations at overseas fairs, joint business travels and export market research (Belgium, Denmark, the Netherlands, the

²⁶⁵Estimates by the GATT Secretariat based on OECD (1990), Revenue Statistics of OECD Member Countries, Paris.

²⁶⁶These categories are referred to in Chapter V.

²⁶⁷EC Commission (1990), 23rd General Report on the Activities of the European Communities, Brussels.

United Kingdom).²⁶⁸ In Spain, official promotion activities are confined to technical assistance, information and image campaigns and the like, carried out by the Spanish Foreign Trade Institute (ICEX). Germany maintains a foreign trade information system, in addition to the services provided by embassies and chambers of commerce. Specific support may be provided for first-time participants at selected events (fairs, exhibitions, etc.).

(ii) Export finance and insurance

383. All member States participate in the OECD Trade Committee's Working Group on Export Credit and Credit Guarantees. They also participate in the OECD Arrangement on Guidelines for Officially Supported Export Credits, the so-called "Consensus".²⁶⁹

²⁶⁸ Belgium and the United Kingdom provided quantitative information in the context of this report.

Accordingly, expenditures by the Belgium Office of External Commerce (Office Belge du Commerce extérieur) totalled BF 1,466 million between 1986 and 1990. They were to cover current expenses of the Office and the costs of specific programmes (missions, joint participation of enterprises in overseas fairs, etc.). In addition, BF 544 million was granted by the National Fund for External Commerce (Fonds national pour le Commerce extérieur) during the same period. The Fund supported export promotion activities of the overseas chambers of commerce and industrial federations. Certain amounts of aid in the form of interest-free loans are transferred via the Belgium regions to individual enterprises. The aim is to support participation in international fairs and exhibitions.

The UK Department of Trade and Industry operates a variety of support schemes, essentially in cooperation with trade associations or chambers of commerce, for the purpose of export promotion. Aids are granted, up to a certain portion of total costs, for the construction of exhibition stands, group travel of business representatives, promotion seminars in overseas markets, inviting overseas businessmen or journalists to the United Kingdom, promotion activities of overseas retailers, and export marketing research. In terms of the funds involved, the Overseas Trade Fairs Scheme dwarfs the other programmes. Under this scheme, £62 million were spent between 1985/86 and 1989/90 to support participation of British companies in overseas fairs, including events in other member States. (The latter account for about one-third of total expenses.) A company's first three exhibitions in a particular country - the first five times in Japan - may be supported.

²⁶⁹ The consensus sets conditions for officially supported export credits with a duration of 2 years and more. These conditions include that (i) at least 15 per cent of the contract value is covered by cash payments, (ii) that the maximum loan term is limited to 8½ years (10 years for developing countries, and (iii) that a set of minimum interest rates is

(Footnote Continued)

384. Within the EC, a Council Decision (No. 73/391) provides for information and consultation procedures with respect to any publicly sponsored export credit, including mixed credits and global credit arrangements, which depart from certain common norms.²⁷⁰ This internal procedure also applies to the external (OECD) notification requirements. It is normally being discharged in writing. Consultative meetings are to be held on request within a specific export credits group.²⁷¹ This group discusses each transaction referred to it. However, these discussions have no binding character. The consulting member State will inform all other member States of its final decision, also indicating where and why it did not follow opinions expressed by the other participants.

385. Beyond that, there are no EC activities, institutions or legal provisions in this area. Nor has the Commission tabled any proposals,²⁷² thus far, with a view to developing common support schemes and procedures.

386. In intra-EC trade, public support for export credits would not be compatible with the EEC Treaty. Such schemes, by their very nature, are liable to distort competition between member States and thus contravene the respective rules on State aid (Article 92 of the EEC Treaty).

(iii) Export subsidies

387. Export subsidies are an important element of the Common Agricultural Policy (Chapter V). In 1989, restitutions amounted to ECU 8,257 million, up from ECU 4,020 million in 1982 (including restitutions for food aid). This development has been influenced by a variety of factors, including

(Footnote Continued)

complied with.

Specific sectoral understandings are set up for nuclear power plants, civil aircraft, and - separately among 18 OECD countries - for ships. An understanding for agricultural exports is under negotiation.

²⁷⁰The respective norms are set out in an annex to Decision No. 73/391 and in a later amendment (Council Decision No. 76/641).

²⁷¹The Export Credits Group is a subgroup of the "Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits". The latter was set up in 1960 under Article 112 of the EEC Treaty. Its aim is to ensure that member States' aid systems are harmonized to the extent necessary to prevent distortions between EC companies.

Consultative meetings of the Export Credits Group take place automatically if at least 5 member States express an unfavourable opinion on the terms of the proposed credit.

²⁷²A comprehensive overview of the export financing systems in the OECD area, including those of all EC member States, is given in: OECD (1990), The Export Credit Financing Systems in OECD Member Countries, Paris.

(i) exogenous developments in agricultural production due, for example, to climatic factors; (ii) policy changes; (iii) responses of the domestic agricultural sector to policy incentives; (iv) adjustment of third country producers; and (v) exchange rate movements.

388. The bulk of restitutions is confined to cereals, dairy products and - to a decreasing extent - bovine meat; their combined share amounts to more than 70 per cent of all export subsidies. The restitutions for individual product categories are the same throughout the EC; they may vary, however, according to destination and time of delivery. The amounts are fixed periodically by the Commission, taking account of the specific characteristics of the sector. For most products, it is possible to have the rates established in advance of an export operation, provided that an export certificate was issued by the member State and a security amounting to 120 per cent of the export refunds has been lodged.

389. No comprehensive information was available on export subsidies of the member States.²⁷³

(iv) Export cartels

390. According to the EEC Treaty, all agreements between enterprises are prohibited as incompatible with the common market which may affect trade between member States (Article 85). Basically the same applies to the abuse of a dominant position (Article 86). This means that cartels or abusive behaviour which exclusively impinge on third country markets are beyond the scope of EC law and therefore not prohibited or restricted.

391. Member States have national cartel laws. The GATT Secretariat has no evidence that the respective criteria for the operation of export cartels are substantially more stringent than in EC law, nor information about the presence of export cartels in individual member States.²⁷⁴

²⁷³ In the Commission's "Second Survey on State Aids", national aid is ordered, inter alia, according to certain "horizontal objectives" (see below). The shares of the "trade/export" category range up to 9 per cent (France), 21 per cent (Ireland) and 25 per cent (Greece) of total national State aid (average 1986-88).

However, the coverage of the respective category is considerably wider than "export subsidies", the granting of which is directly linked to export sales.

²⁷⁴ According to German law, export cartels have to be notified to the Federal Cartel Office; they could be prohibited by the Federal Minister of Economics in certain circumstances. However, this provision has never been invoked.

(v) Bilateral arrangements and understandings

392. The EC currently maintains a self-restraint arrangement with the United States, limiting its market share to 7 per cent of apparent US steel consumption (Chapter V). The GATT Secretariat has no information whether there are other such bilateral agreements or understandings at either the EC level or at the level of individual member States.

393. By the end of 1986, Germany and several non-EC countries have been warned by the United States Government not to exceed certain specified levels in their machine tool exports to the United States.²⁷⁵ Otherwise, unilateral restraints would be imposed for reasons of national security. Responding on behalf of the Communities, the EC Commission pointed to the exclusive Community competence in such trade matters. In the EC view, the measures announced were not in conformity with the United States obligations under Article XI of the GATT. No further action was taken on either side.

(vi) Exports controls and restrictions

394. As noted in Chapter II, the common rules on exports (Council Regulation No. 2603/69 as amended by Regulation No. 1934/82) are based on the principle of unrestricted trade. However, some product-related exceptions remain at the EC²⁷⁶ level (petroleum oils and gases) and in individual member States.

395. The procedures provided for by Regulation No. 2603/69 to restrict EC exports, for example, to prevent or remedy shortages of essential products, are currently not being applied. EC export restrictions on copper scrap were removed on 1 January 1990 as a result of bilateral consultations with the United States.

²⁷⁵ Exports of specified categories should be limited either to their market shares in either 1981 (non computer controlled punching and shearing machines) or 1985 (machining centres, computer controlled and non computer controlled lathes, computer controlled punching and shearing machines). Italy and Spain (and other non-EC countries) have been warned not to fill the gap caused by United States restraints with Japan and Korea. See also GATT (1990), Trade Policy Review - United States, Geneva.

²⁷⁶ Based on Regulation No. 1934/82, the following member States are entitled to impose export restrictions of their own: France and Italy (17 cases each), Ireland (6), Greece (4), Belgium (2) and Denmark (1). The products concerned range from chicory roots (Belgium), gold (Denmark, Italy), certain pocket watches (France), watch movements (France) to parts of musical instruments (Italy). According to the Commission, most of these exceptions are no longer resorted to.

396. In addition, export controls and restrictions may be imposed for a range of specific purposes such as (i) national security, (ii) the protection of life, health, and the environment, and (iii) the preservation of national treasures.

397. With the exception of Ireland, all member States participate in COCOM and, accordingly, impose export controls on the basis of an agreed list of security relevant products.²⁷⁷ The procedures are applied at the national level and include intra-EC trade.²⁷⁸ The Commission has noted that "the red tape imposed by this system" is no longer compatible with the abolition of internal frontier controls and the increasing demand for industrial cooperation within the EC and throughout Europe. In the Commission's view, it may be appropriate²⁷⁹ to take account of Internal Market aspects in the framework of COCOM.

398. Council Regulation No. 3626/82 on the implementation of the "Convention on international trade in endangered species" (see above) also provides for export controls. Accordingly, EC exports may be made subject to export permits or re-export certificates.

399. A common information and notification procedure is established for exports and imports of chemicals which are banned or severely restricted on account of their effects on health and the environment.²⁸⁰ When a dangerous chemical is exported for the first time, the member State is obliged to notify the country of destination as far as possible in advance. Information on these notifications is regularly published in the Official Journal. Any further exports to the same country are to be accompanied by a reference to this publication. However, the principle of "prior informed consent" which requires not only notification of dangerous exports, but prior approval of the country of destination, is not yet incorporated in Council Regulation No. 1734/88. The Commission proposed, in December 1990, the introduction of this principle.

²⁷⁷ Ireland applies a comparable system.

²⁷⁸ The Commission is neither participant nor observer to COCOM. Not all national laws and procedures which are relevant in this context are published.

²⁷⁹ Fifth Report ... concerning the implementation of the White Paper, op. cit.

²⁸⁰ A list of 21 chemicals to which these requirements apply is annexed to Council Regulation No. 1734/88. The list is to be reviewed by the Commission from time to time, taking account, inter alia, the development in Community rules, and developments within the province of the OECD, the UNEP and the FAO.

In addition, member States maintain their own information systems.

400. Under Council Regulation No. 428/89, exports of eight chemical products which could be used for arms production are subject to prior export authorization. The authorizations are administered by the individual member States. They are required to prevent exportation if there is reason to believe that the products will be used for chemical weapons or that there is a risk of delivery, directly or indirectly, to areas of war or serious tension. Member States also operate their own systems, covering a wider range of chemical products. A proposal by the Commission, tabled in March 1990, aims at extending the list of products under control and at introducing certain administrative provisions on an EC-wide basis. The proposal is still under examination.

401. In June 1989, the EC and several member States signed the International Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Accordingly, the EC is committed to establish export controls on products which could be used for the illicit production of drugs. Legislation on certain aspects has been passed in late 1990, further parts are expected to follow soon.

402. Council Regulation No. 2219/89 provides for export prohibitions on foodstuffs and feeding stuff which - after nuclear accidents or similar emergencies - exceed prescribed contamination levels. The same levels are laid down for EC internal application.

403. The EC has assumed obligations to control or restrict transport and trade in environmentally dangerous substances. The EC and all member States are signatories to the Basel Convention on the control of transboundary movements of hazardous waste and, as noted earlier, to the Vienna Convention for the protection of the ozone layer²⁸¹ and the Montreal Protocol on substances that deplete the ozone layer. In April 1990, the

²⁸¹The Basel Convention has not yet entered into force and, thus far, has not been ratified by the EC.

The Convention stipulates, inter alia, that hazardous waste may only be exported (i) if the exporting State cannot undertake environmentally sound management within its own borders and if there is no reason to believe that the importing country cannot guarantee this treatment, (ii) if the latter is party to the Convention and does not prohibit such imports, and (iii) if international standards and practices on packaging, labelling and transport are complied with. Additional multilateral, bilateral or regional agreements are permitted, provided that they are no less environmentally sound and stringent than the provisions of the Convention. Furthermore, an elaborated control and information system is established.

Under the Montreal Protocol on Substances that Deplete the Ozone Layer, exports of the products in question (for example, containing chlorofluorocarbons) to non-signatories are prohibited. Trade with signatories is implicitly controlled through obligations to reduce domestic consumption.

(Footnote Continued)

EC approved - as far as its jurisdiction is concerned - the OECD Council Decision/recommendation on the control of transfrontier movements of hazardous waste (Council Decision (EEC) No.90/170). It is thus committed to prohibit the export of hazardous wastes to ²⁸²all countries that have imposed prohibitions on imports for disposal.

404. Council Directive No. 84/631 stipulates supervision and control requirements for transfrontier shipments of hazardous waste within the EC. A subsequent Directive (No. 86/279) provides for additional notification procedures with respect to extra-EC exports.

405. A Draft Council Directive, aims at establishing a comparable system for radioactive waste. In this case, prior authorization and notification requirements pertain to all shipments, including transports within member States.

406. As mentioned earlier, under Lomé IV, transports of hazardous and radioactive waste between the EC and the ACP countries are prohibited, except for processed waste.

407. To prevent exports of their cultural heritage (treasures of artistic, historical or archeological value), member States have set up different control and authorization schemes. In the Internal Market context, the Commission is considering the imposition of companion measures at the EC level. Exploratory talks with member States are currently under way.

(4) Measures Affecting Production and Trade

(i) State aid (financial support)

(a) Criteria

408. The ECSC Treaty and the EEC Treaty both aim at narrowing the scope for individual member States in granting State aid in order to avoid distortions of competition by uncoordinated policies. The ECSC Treaty stipulates a general ban on all national subsidies which are declared

(Footnote Continued)

Council Regulation No. 3322/88 by which provisions of the Vienna Convention and of the Montreal Protocol were transposed into EC law, mainly impinges on domestic production and imports. As regards exports, producers and traders are required to inform twice-yearly the Commission and the competent authorities of member States of their deliveries, separately, to parties and to non-parties to the Montreal Protocol.

²⁸² According to the above Decision/recommendation, OECD member countries should also undertake to sign the Basel Convention at the earliest possible date; to provide, if need be, technical assistance for waste management; and to harmonize the existing control system for transfrontier waste movements.

incompatible with the common market for coal and steel.²⁸³ However, this prohibition has been eroded - at least temporarily - under the impact of severe sectoral adjustment pressures (Chapter V). A similar ban on any national aid "in so far as it affects trade between member States" is provided for by the EEC Treaty (Article 92.1). This general prohibition is qualified by certain exemptions.²⁸⁴

409. The Commission has authority²⁸⁵ to supervise all State aids and to intervene if deemed necessary. This authority extends to both the federal and local government levels.

410. Under Article 93 of the EEC Treaty, member States are required to notify, well in advance, any plans for granting State aid to individual industries or agriculture. Between 1986 and 1989, member States notified a

²⁸³Under Article 4(c) of the ECSC Treaty, "subsidies or aids granted by States, or special charges imposed by States, in any form whatsoever" are prohibited within the Community. This principle is to be maintained in the event of "unforeseen difficulties" or "fundamental economic or technical changes" which make it necessary to amend the Treaty and to adapt the rules for the High Authority's (= Commission) exercise of powers (Article 95).

²⁸⁴Explicitly compatible with the common market are aids granted either (a) for social purposes to consumers, or (b) for the reimbursement of exceptional losses, for example, in case of natural disasters, or (c) for the compensation of regional disadvantages due to the division of Germany (Article 92.2(a)-(c)).

Aid may be considered compatible with the common market if it aims at (a) developing backward regions, (b) promoting "important projects of common European interest" or remedying serious economic disturbances in a member State, or (c) facilitating the development of "certain economic activities or of certain economic areas" provided it does not affect trade contrary to the common interest (Article 92:3(a)-(c)).

Moreover, the Council may add further categories to this list, acting by qualified majority on the basis of a Commission proposal (Article 92:3 (d)). The latter provision served, for example, as a basis for the Directives on aid to shipbuilding (Chapter V).

²⁸⁵The Commission has two months for evaluating the compatibility of notified aid schemes with the EC Treaty. In the case of decisions regarding individual awards, the deadline is 30 working days. If the Commission considers that the aid proposal is compatible with the EC Treaty, it takes a favourable decision. If there are doubts, it opens formal proceedings under Article 93(2) which gives all interested parties an opportunity to state their views. The internal deadline for this procedure is six months; at the end of this procedure a final decision is taken.

total of 1,121 aid proposals; in more than three quarters of these cases the Commission raised no objections.

411. The supervisory powers of the Commission include existing aid schemes. In July 1990, for example, the Commission recommended four member States to abolish long-running aid schemes by year end (Belgium, Italy, the Netherlands and the United Kingdom). The Commission held the view that, due to their general nature, these schemes were liable to reduce the impact of specific aids for sectors or regions.²⁸⁶

412. Referring to the completion of the Internal Market, the Commission has confirmed its intention to apply strict criteria in exercising discipline. The Commission notes the possibility that, in many cases, the sheer volume of support granted may contravene any intended positive effects and may only result in cancelling out parallel efforts in other parts of the EC. State aid in general "can frustrate free competition not only by preventing the most efficient allocation of resources but also by being used to the same effect as tariff barriers and other forms of protectionism."²⁸⁷

413. For some industries, specific rules (frameworks) for State aid have been established with a view to clarifying and tightening the criteria for authorization. The Commission has issued such decisions in the 1970s with respect to the textiles and clothing sector as a whole and to synthetic fibres in particular. A more recent decision concerns the motor vehicles industry. State aid to steel and to shipbuilding is subject to specific aid codes, based on Council Decisions (steel) or Directives. In addition, there are frameworks on general systems of regional aid, on State aid for research and development, and on environment-related measures.

414. In its latest report on competition policy, the Commission notes that some member States have granted a relatively large number of aids without prior notification. For example, France had failed to notify more than one-third of the aids examined by the Commission between 1985 and 1987.²⁸⁸

²⁸⁶ In response, the Dutch Government has announced that it will comply with this recommendation and discontinue an aid scheme for investment outside assisted areas. The Commission has also reached agreement with the Belgian authorities concerning the abolition of general investment aid under the Loi d'Expansion Economique. Discussions are still continuing with the United Kingdom and Italy on the Industrial Development Act (the United Kingdom) and the Innovation Fund.

²⁸⁷ See EC Commission (1989), First Survey on State Aids in the European Community, Brussels.

²⁸⁸ EC Commission (1990), Nineteenth Report..., op. cit.

(b) State aid in member States

415. On EC average, State aid is estimated below 3 per cent of GDP (2.8 per cent in the period 1981 to 1986, 2.2 per cent between 1986 and 1988). However, there are considerable variations among member States (Tables IV.13 and IV.14). In the period 1986 to 1988 in Luxembourg, Belgium, Italy and Greece State aid exceeded 3 per cent of GDP, about three times above the corresponding figures for Denmark or the United Kingdom. As estimated by the Commission, State aid in Belgium, Greece and Italy amounted to 6 per cent of public expenditure, and to 23 per cent (Greece), 28 per cent (Italy) and 43 per cent (Belgium) of budget deficits in 1986-88.

416. Germany and the Netherlands were the only countries where the total ECU value of State aid increased between 1981-86 and 1986-88. Both member States expanded national support to agriculture and fisheries. In addition, Germany stepped up State aid to the mining sector, which accounted for more than one-half of all sector-specific aids in 1986-88 (Table IV.15).

417. To some extent, different support intensities among the member States are related, particularly in the first half of the 1980s, to divergent policy responses to sectoral crises, for example in steel. These adjustment problems had an uneven impact on individual member States, reflecting for example differences in location or efficiency among national

²⁸⁹The information in this section is based on various assumptions and estimates. According to the Commission, the figures for Greece do not allow for detailed comments, as they are considered unreliable; the results for Portugal should be regarded as incomplete.

In addition, some qualifications of a more general nature apply:

(i) Comparable levels of financial support do not necessarily produce comparable effects on production and trade; the incentive structures of the individual programmes differ, as does the response of the sectors.

(ii) In certain areas such as agriculture, border measures play a dominant rôle; they tend to diminish the intensity ratios on internal support, as for example, domestic prices and value added figures - or similar denominators used to calculate such ratios - are positively related to the degree of border protection.

²⁹⁰The Commission's survey includes budgetary expenditure, fiscal expenditure (tax reductions), equity participation and the estimated aid element of soft loans. Expenditures of local governments are not covered.

²⁹¹For coal mining in four member States the following estimates of assistance per employee (average 1986-88) are given: B = 84,640 ECU; F = 67,550 ECU; D = 45,560 ECU; UK = 7,970 ECU. The share of aid to current production in these figures varies between 16 per cent (F) and 52 per cent (D).

industries and firms. In Ireland and Italy, for example, State aid to the steel sector exceeded 100 per cent of gross value added of this sector (1981-85).

418. Between 1981-86 and 1986-88, aid to manufacturing industries declined on EC average, from 4.8 to 4 per cent of gross value added. Cuts in support for steel and shipbuilding were the main elements in this development. Commission estimates suggest that support intensities in the other manufacturing sectors remained virtually unchanged, at 4 per cent in 1981-86 and 3.8 per cent in 1986-88.

(c) Community aid

419. The bulk of State aid in the European Communities is provided by member States. Community intervention, that is support from EC sources, accounts for an estimated one-fourth of total support. In most cases, EC funds, as distinct from national assistance, are not directly paid to individual enterprises but used for purposes such as infrastructure, or reimbursements to national governments, or general support schemes (for example, in agriculture).²⁹²

420. At the EC level, the lion's share of sector-specific support is devoted to agriculture. Appropriations for agricultural price guarantees alone account for some or 55 per cent of the EC budget (1990). Structural operations - mainly in the context of the European Regional Development Fund, the European Social Fund and the Guidance Section of the Agricultural Fund - amount to about 24 per cent, up from 19 per cent in 1986.

421. The Single European Act places strong emphasis on the 'economic and social cohesion' of the Communities (Article 130a et seq. of the EEC Treaty). It underlines the importance of overall harmonious development in the EC and the need to redress regional imbalances in backward regions and declining industrial areas. In this context, the Act specifically refers to the structural funds, the European Investment Bank and other financial instruments. The Commission is called upon to submit proposals aiming at clarifying and rationalizing the tasks of these funds and their co-ordination with the other instruments.

422. In February 1988, the European Council agreed to double, in real terms, the commitment appropriations for the structural funds by 1993. A subsequent Council Regulation (No. 2052/88) sets up the framework of the

²⁹² A substantial amount of member States' interventions are effected under EC regulations. Hence these interventions are by definition compatible with common policy objectives. In addition to the cases under Article 92.2 of the EEC Treaty, this applies, for example, to policies in the transport sector (based on Article 77). According to the Commission, between 13 per cent (Greece) and 67 per cent (Belgium) of national aids were principally covered by EC regulations (average 1981-86).

funds in terms of their main objectives, their mutual co-ordination and the principles of cooperation with national and regional authorities.

423. In this context, the following five priority objectives were established (appropriations for the period 1989-93 in parentheses):

- (i) development²⁹³ and adjustment of backward regions (ECU 38,300 million);
- (ii) conversion of regions²⁹⁴ seriously affected by industrial decline (ECU 7,205 million);
- (iii) combating long-term unemployment, and
- (iv) occupational integration of young people (ECU 7,450 million total); and
- (v) adjustment of agricultural structures (ECU 3,415 million) and development of rural areas (ECU 2,795²⁹⁵ million) with a view to reforms of the common agricultural policy.

An additional ECU 1,150 million are reserved for transitional measures and innovation activities.

424. As a general rule, these measures are intended to complement, or back up, national measures. To this effect, close consultations are to be held between the Commission and the member States at the competent national, regional, local or other level (Council Regulation No. 2052/88). An advisory Committee on the Development and Conversion of Regions is established to give its opinion on regional plans and community support frameworks which are being set up pursuant to the above objectives (i) and (ii).

²⁹³ The measures include investments in infrastructure and support to directly productive investments. The regions which are considered as lagging behind in their development are enumerated in an annex to Regulations No. 2052/88. Greece, Ireland and Portugal in their entirety meet this criterion. No regions of Belgium, Denmark, Germany, Luxembourg and the Netherlands are mentioned.

²⁹⁴ According to the Commission, conversion into high technology industries is preferred. Other activities concern the development of tourism, the improvement of the environment and specific support to small and medium sized enterprises.

²⁹⁵ Rural development activities focus on the primary sector (agriculture, forestry, fisheries); on other activities, particularly as regards small and medium sized enterprises; on tourism and recreation; on investment in complementary infrastructure; and on vocational training.

425. To ease adjustment pressures prompted by the third enlargement of the EC in 1986, which was expected to affect mostly agriculture and small business in economically weak regions of France, Italy and Greece, a so-called Integrated Mediterranean Programme (IMP) was set up in 1985. Under the IMP, financial support is provided for the development of physical infrastructure and human resources as well as for rationalization, restructuring and conversion of production in southern regions of the Communities. The programme is sourced from existing Community funds (ECU 2,500 million), additional EC spending (ECU 1,600 million), and European Investment Bank loans (ECU 2,500 million). The share for agriculture (including development of upland areas) reached some 60 per cent of actual spending in France, 28 per cent in Greece, and 63 per cent in Italy by the end of 1987. The programme will expire in 1992.

426. Two current EC programmes are specifically geared to assisting the conversion of certain declining industrial areas. RESIDER relates to steel areas and RENAVAL to shipbuilding areas (Council Regulations No. 328/88 and No. 2506/88).²⁹⁶ The programmes are sourced from the European Regional Development Fund. The programmes are mainly intended to promote the improvement of run-down sites and the development of new activities. Eligible regions are to be selected by the Commission on the basis of certain prescribed criteria. Public authorities, private companies or individuals may apply for support (capital grants or interest subsidies);²⁹⁷ it is jointly provided by the member State concerned and the EC.

427. In June 1988, by Council Regulation No. 2053/88, a specific industrial development programme (PEDIP) was set up for Portugal. In addition to support from the structural funds and Community loans, it provided budgetary resources of ECU 500 million for the period 1988 to 1992. The programme shall contribute to the improvement of basic industrial infrastructure and vocational training facilities, to the financing of productive investment and to productivity promotion.

428. With a view to improving the processing and marketing conditions of fishery and aquaculture products, the Council issued Regulation (No. 4042/89) in the structural funds context. It aims at speeding up the adjustment of this sector in accordance with the common fisheries policy. Each member State is required to set up sectoral plans with an implementation period of up to five years. Decisions on the EC support framework are to be taken by the Commission on this basis, in agreement

²⁹⁶ At the EC level, such programmes were first established in 1989. A further initiative (RECHAR) aims at the conversion of coal mining areas.

²⁹⁷ Assistance from the European Regional Development fund may not exceed 55 per cent of total public expenditure (50 per cent in the case of infrastructure investment). Until December 1990, EC participation in Portugal is subject to a ceiling of 70 per cent.

with the member State concerned. Assistance - in the form of capital grants - is limited to a maximum of 50 per cent of the eligible investment costs in economically lagging regions and of 30 per cent in other regions.²⁹⁸

(ii) Promotion of new technologies

429. In 1989, Community financing of research and technological development amounted to ECU 1.4 billion, as compared with ECU 31.4 billion (civil programmes only) on the part of member States.²⁹⁹ EC funds accounted for 4½ per cent of public expenditure on civil R&D in the Communities, up from 1.9 per cent in 1980.

430. Among member States, in 1989 public expenditure on civil R&D was largest in Germany (ECU 9.6 billion), followed by France (ECU 7.5 billion) and Italy (ECU 5.1 billion). Member States, combined, devoted an additional ECU 10.5 billion to military research. Overall, public spending represents roughly 49 per cent of total expenditure on research and development in the Communities (1987).³⁰⁰

431. The broad objective of EC policies for R&D is "to strengthen the scientific and technological basis of European industry and to encourage it to become more competitive at international level" (Article 130f of the EEC Treaty). Against this background, multi-year framework programmes for Community research and development have been set up. The current third framework programme which covers the period 1990 to 1994 is endowed with ECU 5.7 billion;³⁰¹ the following chart shows its allocation to individual research areas.

²⁹⁸ The list of lagging regions is contained in the annex to Council Regulation No. 2052/88.

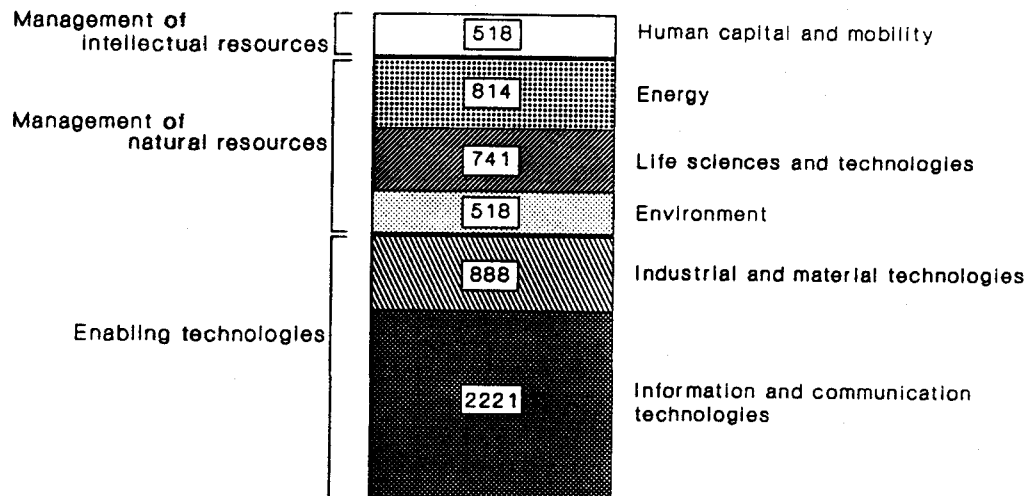
²⁹⁹ Figures are provisional.

³⁰⁰ There are various fiscal incentives and other indirect measures applied by member States which - for lack of quantitative estimates - are not included in these figures.

³⁰¹ Fields and objectives of the activities are specified in the annex to the framework programme (Council Decision No. 90/221).

Chart IV.3 Community research and development in the third framework programme, 1990-94

Million ECU



Source: EC Commission, EC Research Funding, 1990.

432. The framework programme serves as a basis for a number of specific research and technological development programmes. Some 80 per cent of its resources are used for contractual research. Participants are required to cover a substantial part of the research costs, usually 50 per cent. Research findings in the context of shared-cost projects are the property of the respective contractors, subject to obligations concerning the exploitation of results and licensing.

433. The Commission emphasises the pre-competitive nature of the respective activities and the principle of subsidiarity. In its view, Community action can be justified where it presents advantages, in terms of efficiency or financing or from a scientific and technical point of view, as compared with national or other international activities in the public or private sphere.³⁰² Each project must involve at least two mutually

³⁰² Article 130g of the EEC Treaty assigns the Community a range of research and technological development activities "complementing the activities carried out by member States".

independent partners from different member States, including affiliated companies which are controlled by third country companies.³⁰³

434. Moreover, the EC or member States are participating in some joint European research and development initiatives, such as the European Cooperation in the field of Scientific and Technical research (COST) and in pre-competitive parts of programmes of the Eureka initiative.³⁰⁴ EFTA countries may cooperate in EC activities either (i) by fully participating in certain programmes or sub-programmes, or (ii) on a project by project basis within specific programmes for which they are associated with EC organizations.

435. Specific cooperation agreements with the United States, Japan and Canada focus on nuclear energy aspects, radioactive waste management, thermonuclear fusion, mineral technology, renewable energy and the like. In the autumn of 1990, an EC-US Joint Consultative Group on Science and Technology was established. Proposed priority areas for closer concertation and possible cooperation are information technologies, prenormative research in biotechnology, energy and environment, large scale scientific projects (fusion, space stations etc.), and R&D with and for the Eastern European countries.

436. As regards research policies and programmes at the national level, member States are obliged, in liaison with the Commission, to co-ordinate these activities among themselves (Article 130h of the EEC Treaty). Moreover, State aids for research and development are subject to the general eligibility criteria of Article 92 and to the notification requirements of Article 93 (EEC Treaty). These articles, however, are primarily designed for the purposes of competition policy with a view to

³⁰³The participants are required to use R&D capacities which are established within the EC. However, according to the Commission, this does not exclude some external contributions.

³⁰⁴COST includes the EC member States, 5 EFTA countries, Yugoslavia and Turkey. A widening of this initiative to central and eastern European countries is being envisaged.

Participants in Eureka are the EC as such (with a minor share of about 2.5 per cent of both the projects and the financing), the member States, all 6 EFTA countries, and Turkey. Eureka projects, which are proposed by industry on a case-by-case basis, cover the areas of medicine and biotechnology, communications, energy, environment, information technology, lasers, new materials, robotics and production automation, and transport. Since the inception of Eureka in 1985, 385 projects have been started, involving funds of ECU 7.8 billion. In the course of time, the focus of new projects has shifted from robotics to environmental issues. Some 20 projects include third country participation (Canada, Hungary, United States, the Soviet Union, Argentina and Yugoslavia).

avoiding hidden subsidization and market distortions; they are not a co-ordination instrument as such.

437. In 1986, the Commission issued a Decision to specify the relevant criteria in this context.³⁰⁵ Accordingly, State aid for basic industrial research should not exceed 50 per cent of the gross costs of the project or programme. Higher levels (up to 10 percentage points) shall be considered when special allowances are made for least-favoured areas, specific welfare services, very high risks or the genuine participation of small and medium sized enterprises. Conversely, lower levels of aid shall apply in principle, when the respective activities are getting closer to the market place.

³⁰⁵ Community Framework for State Aids for Research and Development;
86/C 83.

V. TRADE POLICIES BY SECTOR

438. This Chapter aims at providing an overview of EC trade policies and practices in individual sectors. Information is drawn from the GATT Tariff Study (Table V.1), supplemented by additional material.³⁰⁶ With a view to maintaining immediate comparability with the other TPRM-reports, Tariff Study data are presented in US dollars. The weighted average tariffs in Table V.1 were computed using as weights m.f.n. imports subject to ad valorem tariffs.³⁰⁷

439. Some sectors which are illustrative of specific policy régimes at the EC level (agricultural, textiles) or in individual member States (coal) are dealt with in more detail. The same applies to sectors in which the EC undertook to gradually remove specific régimes in recent years (steel) or where it aims at adopting a common policy stance in view of 1992 (motor vehicles).

(1) Agriculture and Food Industries

(i) Main elements of EC agricultural policies

440. Provisions for agriculture are placed prominently in the EEC Treaty. Agricultural policy is included in Part Two of the Treaty ("Foundations of the Community") and therefore is sometimes referred to as one of the institutional cornerstones of the Communities.

441. The Common Agricultural Policy (CAP) has a wide range of objectives. According to Article 39, it aims at (a) increasing agricultural productivity, (b) ensuring a fair standard of living for the agricultural community, (c) stabilizing markets, (d) ensuring the availability of supplies and (e) reasonable prices for consumers.³⁰⁸ Moreover, these objectives must be seen in the context of the common commercial policy, where the EEC Treaty stipulates in general that member States "aim to

³⁰⁶ In a number of cases, the information gained from different sources is subject to discrepancies such as conceptual differences in product definitions.

³⁰⁷ Accordingly, the "m.f.n. imports" category in Table V.1 only includes m.f.n. imports under ad valorem tariffs. The "tariff range" column shows the range of conventional tariffs.

³⁰⁸ The Commission notes that "the simultaneous pursuit of all these objectives must inevitably lead to conflicts.....since beyond a certain point some objectives can only be achieved at the expense of others. Compromises must therefore be worked out and priorities must be set". EC Commission (1989), "A Common Agricultural Policy for the 1990s", European Documentation, No. 5.

contribute ... to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers" (Article 110).

442. As stated by the Commission, three main stages of development in the Communities' agriculture are discernible since 1960. First, a decline in production deficits; second, in the 1970s, a transition to self-sufficiency and to a net exporting situation for a number of major commodities; and, in the 1980s, the building-up of surpluses and, finally, difficulties due to disequilibria between supply and effective demand.³⁰⁹

443. The increase in self-sufficiency was accompanied by the continuously declining share of agriculture in total production and employment. Production shares dropped from 8½ per cent in 1960 to 4½ per cent in 1988 and employment from 21 to 7½ per cent (EC 12; Table V.2). Important elements in this development have been fast increases in agricultural productivity due to structural and technical improvements within agriculture; the move of labour from agriculture to expanding industries; and low growth of demand, limiting the internal absorption of booming food supplies.³¹⁰

444. The expansion of agricultural productivity and production can hardly be interpreted, however, in terms of economic strength and competitiveness. Overall, EC agriculture is a highly protected sector; many farms are ailing. The average farm size is 14 hectares. A large number of small units do not even provide full employment for one person.³¹¹ Half the EC farmers are 55 years of age or older, and about half of these have no successor.³¹²

445. Considerable structural differences among and within the member States are masked behind the above figures. Some 20 per cent of the EC farms account for 80 per cent of agricultural output in the Communities.

³⁰⁹ EC Commission (1988), "Restoring Equilibrium on the Agricultural Markets", Green Europe, No 1.

³¹⁰ As for the strong growth of EC agricultural production, it is difficult to assess the relative importance of exogenous factors (technical progress), policy-induced elements (infrastructure, investment, price incentives, etc.) and other influences. However, the EC-internal price level appears to have played a major rôle.

³¹¹ Only 32 per cent of the EC farms occupy at least one person on a full time basis (EC 10, 1985).

³¹² See EC Commission (1988), "The Future of the Rural Society", Bulletin of the European Communities, Supplement No. 4, 1988.

Average farm size in the United Kingdom exceeds the German average by a factor of 2½ and that of Italy, Spain or Portugal by factors of more than 5 (Table V.1). Farm sizes and farm incomes in Germany's Schleswig-Holstein are about three times higher than in Baden-Württemberg. Production patterns vary considerably between northern and southern EC agriculture. Ireland, for example, relies heavily on the production of beef and milk, their combined share being close to three quarters of final agricultural output. For Greece and Spain, these products account for less than 15 per cent, but fruit and vegetables for more than 20 per cent of agricultural output.

446. Agricultural policy in the European Communities is generally formulated by the Agricultural Council, comprising of the Ministers of Agriculture. The Council determines the broad thrust of policies on the basis of Commission proposals. "Fine tuning" is largely the responsibility of the Commission. In the management of markets, it closely cooperates with agricultural specialists from member States within the framework of management committees.³¹³ Individual member States - with their marked differences in agricultural structures - can either seek to enforce specific priorities by influencing common decisions or by setting up support programmes of their own, subject to the provisions of Articles 92 and 93 of the EEC Treaty (Chapter IV).³¹⁴

³¹³ Committees are established for every important product category. In 1989, there were 398 meetings in total (regulatory and management committees). In 1,754 cases, the committees agreed with the Commission proposals, on 139 occasions no opinion was expressed and once a committee disapproved of a proposal. Most active was the Management Committee for Cereals; it held forty-nine meetings and put forward 633 favourable (that is affirmative) opinions.

In addition, regular consultations are held at the national and EC levels with organizations representing farmers and farm workers, processors and workers in the processing industries, traders, agricultural credit organizations and forest owners. Twenty advisory committees, four special sections and four joint working parties meet regularly during the year to discuss matters of interest at the Community level. The European consumers organizations also take part in these meetings.

³¹⁴ Germany may serve as an example in this context. According to an official statement referring to new orientations in the common agricultural policy, "the Federal Government succeeded in defusing reform efforts of the Commission, which primarily aimed at price reductions, by supporting a double strategy which includes direct production controls" (Agrarbericht 1989 - Agrar- und ernährungspolitische Bericht der Bundesregierung, p.4 (translation by the GATT Secretariat)). Furthermore, additional national policy measures have been introduced in recent years to offset income losses due to EC policy changes, e.g., as regards the agri-monetary system. Sector-specific provisions in the value added tax system have been changed

(Footnote Continued)

447. Well over 80 per cent of EC agricultural production is subject to common market organizations.³¹⁵ Table V.3 provides an overview of the variety of instruments currently applied to the main sectors.³¹⁶ The bulk of production is covered by intervention mechanisms based on internal price support underpinned by variable import levies (or countervailing charges) and export subsidies. These measures are designed to support farm incomes independent from world market trends. Supply control measures have been added to the system over time.

448. Table V.4 shows the EC (EC 10) leading food imports in 1979 and 1988. In 1988, coffee, soybeans, oilcakes, bananas, crustaceans and molluscs ranked at the top of the list.³¹⁷ Imports of these items are mainly subject to duties.

449. In 1978, agricultural products subject to variable levies accounted for some 20 per cent of total food imports (EC 9). In 1988, their share was 12 per cent.³¹⁸ Of course, these figures reflect the restrictiveness of the variable levy system.

450. According to the Commission, exports to third countries play a vital rôle in stabilizing the internal market for flour.³¹⁹ These exports are promoted by export refunds, bridging the gap between the world market price and the (higher) internal price in the EC. Currently, the EC holds a market share of about 60 per cent in international flour trade.

(Footnote Continued)

to this effect and federal aid to disadvantaged regions - by definition about 50 per cent of the total agricultural area - has been considerably expanded. In 1988, aid amounted to DM 445 million (ECU 215 million), up from DM 65 million in 1983.

³¹⁵ For these products, all rules governing production and marketing (basic policy mechanism, quality standards, prices etc.) are generally applied or coordinated on an EC wide basis. Potatoes, with a production share of 1.6 per cent (EC 12), are one of the more important exceptions.

³¹⁶ The sectors referred to in Table V.3 cover about three-quarters of total EC agricultural production.

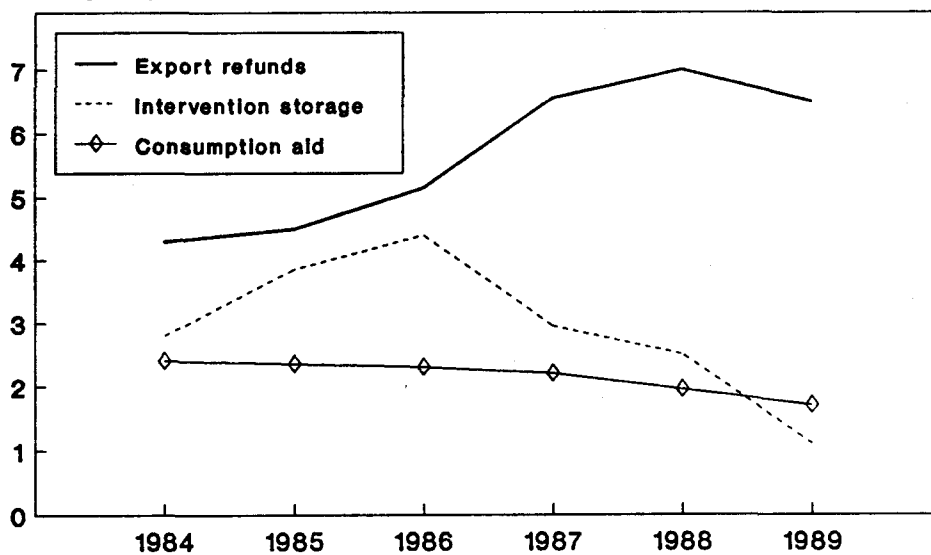
³¹⁷ Some intra-EC trade - exports from Portugal and Spain to EC 10 - is included in the figures for 1988.

³¹⁸ Food products are SITC categories Nos. 0, 1, 22 and 4. The 1988 figure refers to EC 12 and is subject to the HS tariff nomenclature. Therefore, the two shares cannot be directly compared.

³¹⁹ EC Commission (1990), Panorama of EC Industry, Brussels.

451. In recent years, for major agricultural products such as cereals, dairy products and beef, subsidized exports have replaced intervention storage as the principal tool for regulating EC markets.³²⁰

Chart V.1
Evolution of EC expenditure for export refunds,
intervention and consumption aid for
three key products, 1984-89
Billion ECU



Note: Products covered are cereals, milk and milk products, and beef. Intervention storage includes public and private stocks (depreciation excluded).

Source: EC Court of Auditors.

³²⁰ See EC Court of Auditors, Special Report No. 2/90 on the management and control of export refunds accompanied by the replies of the Commission, Official Journal, C 133, 31 May 1990.

452. Cereals, dairy products and bovine meat account for the bulk of EC export refunds, with cereals and dairy products each representing some 30 per cent. Substantial increases in refunds in the years 1986-89 partly reflect special sales actions, aimed at disposing of accumulated stocks (see Table V.5 for the development of stock levels). For example, in 1986 and 1987, 715,300 tonnes of intervention butter were sold to India, Pakistan, Mongolia and the Soviet Union (Commission Regulation No. 765/86).³²¹

453. In the 1980s, "stabilizers" were introduced in major sectors (milk, cereals, oilseeds and others) with a view to containing the growth of agricultural output and its budgetary consequences. When prescribed threshold quantities are surpassed, automatic price cuts are triggered, designed to shift part of the costs of excess production onto farmers.

454. There are marked differences among the individual systems. In the dairy sector, for example, a quota mechanism has been set up with respect to individual producers or dairies. Quotas are transferable within, but not between, member States. A levy of 11.5 per cent of the target price is charged on excess deliveries to dairies.³²² In the cereals sector, a guarantee threshold of 160 million tonnes is in force up to 1991-92. A two-tier system of co-responsibility levies has been established so as to induce farmers to adjust production accordingly.³²³

455. In February 1988, the European Council set up a reference framework for annual agricultural expenditure. Accordingly, the increase in EC

³²¹ According to the EC Court of Auditors, licences for 610,000 tonnes were awarded at an average price of ECU 215/tonne, implying subsidies of more than 90 per cent of the intervention price. (See EC Court of Auditors, op. cit.)

³²² The target price is a pre-established price which Communities' milk policy aims to attain in individual years (referring to a standard quality of milk deliveries).

In addition to the above levy, a basic co-responsibility levy applies to all deliveries. It varies at present from 0 to 1.5 per cent of the target price.

³²³ A basic levy of 3 per cent of the intervention price and an additional levy are raised at the beginning of the marketing year. The additional levy is finally set within a range from zero to 3 per cent, depending on the difference between production levels and threshold quantity in the preceding year. Moreover, in the event of overproduction, permanent price reductions of 3 per cent are triggered. The basic levy remains unchanged.

The system contains exonerations for small scale farmers, for on-farm users of cereals and for participants in the set-aside schemes (see below).

expenditure on guaranteed prices is restricted to 74 per cent of GDP growth (Council Decision No. 88/377).³²⁴

456. In many product areas, intervention rules have been tightened over the years. Further measures, including set-aside schemes, early retirement regulations, afforestation aids and extensification programmes, have been introduced with a view to reducing production capacities and developing alternative income sources for farmers. Some of these measures are intended to set new directions³²⁵ as compared with traditional price- and production-related policies. For several programmes, the granting of support is independent of the level of production.³²⁶

457. Specific investment aids are available for the qualitative improvement and conversion of production, cost reduction, energy saving, environmental protection and the like (Council Regulation No. 797/85). Aids to some livestock sectors are subject to specific ceilings. Investments up to ECU 120,000 per farm are eligible for Community aid;³²⁷ support may cover up to 45 per cent of expenditures in less favoured areas and 35 per cent elsewhere. About 15 per cent of the EAGGF guidance expenditure is being used for this scheme.

458. Recently, several measures have been taken or are under consideration to combat fraudulent claims for export refunds or internal support. They include the tightening of administrative procedures and more stringent controls on the accounts of firms receiving EAGGF payments. In addition, a new security deposit scheme for pulses (peas, beans and lupines) was

³²⁴ Exempt from this restriction are costs incurred by depreciation of stocks that have built up in the past. For this purpose, ECU 5.65 billion have been budgeted for the period 1988 to 1992. In addition, a specific monetary reserve has been established to accommodate for "significant and unexpected" changes in the dollar/ECU exchange rate.

³²⁵ Given the differences in farm sizes and productivity, price policies - despite their costs for taxpayers and consumers and their impact on the trading system - proved to be of rather limited benefit to many producers.

³²⁶ However, more than 90 per cent of EC expenditure on agriculture continues to be allocated to the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF). It is thus devoted - with minor exceptions - to price assistance (Table V.6).

³²⁷ Support intensities may be increased by additional 10 percentage points in Greece, Portugal, Ireland, Italy and Spain. As a general rule, the EC contribution must not exceed 25 per cent of member States expenditure. The most generous exceptions (65 per cent EC co-financing) are provided for Portugal, Greece and Ireland.

established as of 1 January 1990. In this context, trading partners have voiced concerns about potentially restrictive effects on imports.³²⁸

459. The transfers associated with agricultural policies in the Communities, including member States, are estimated at roughly ECU 89 billion in 1989.³²⁹ ECU 49 billion are provided by consumers through the price impact of border measures. Taxpayers contributed ECU 40 billion by way of production and export subsidies, income support to farmers, structural improvement programmes, and general support measures such as investment, infrastructure and training. In many agricultural sectors, however, internal and external support is closely intertwined.³³⁰

460. Producer subsidy equivalents (PSE) provide an aggregate estimate of the farm income which is attributable to policy intervention in the form of internal aid (subsidies) or border measures.³³¹ Table V.7 shows PSE values for major product categories.

461. Accordingly, dairy is the most heavily-protected sector in terms of the absolute level of assistance received (roughly one third of EC total support to agriculture). As regards the intensity of support (absolute level of assistance in per cent of the value of output), dairy currently

³²⁸ Similar deposit schemes are in force for rapeseed and sunflower seed where internal support is also granted at the processing stage, allowing for the possibility that imported inputs are declared as domestic production. The deposit for pulses is set at ECU 40 per tonne.

³²⁹ OECD (1990), Agricultural Policies, Markets and Trade: Monitoring and Outlook, Paris.

³³⁰ A prominent exception is the EC oilseeds sector with low levels of border protection (bound tariffs at zero level).

³³¹ The PSE figures, contained in Table V.7 cover roughly 75 per cent of EC agricultural production. PSE estimates indicate the actual amount (or share) of agricultural income due to a specific set of policy interventions under prevailing external conditions. Monetary transfers such as subsidies enter PSE estimates with the value of expenditure; for estimating the implicit (per unit) income transfer from border measures, the price differential between the domestic price and the world market price is taken. Under tariff protection, external and internal prices tend to move in parallel and, therefore, the price differential is (largely) independent from fluctuations of world market prices. In a variable levy system, internal prices are (largely) insulated from the world market and, therefore, the price differential varies as external prices fluctuate. Of course, the nature and extent of agricultural protection applied by trading entities as large as the EC influences its external environment and, hence, world market prices.

ranks a narrow third behind beef and veal, and soybeans (PSE levels exceeding 50 per cent).³³²

462. In addition to the policies noted above, a variety of other measures affect trade in agricultural products. They include packaging and labelling requirements, sanitary and phytosanitary regulations and several other restrictions.

463. Some of these measures have resulted in trade frictions. A case in point is the so-called "Hormone Directive" which completely bans the use of hormones in meat production. The Directive entered into force on 1 January 1989.³³³ It prompted retaliatory actions on the part of the United States.³³⁴

464. In a study by the Commission's services published in 1988, more than 200 obstacles to intra-EC trade have been identified in the food and beverage sector. For the most part, they refer to packaging and labelling regulations, sanitary restrictions, content or denomination regulations,

³³² Comparisons on the basis of annual PSE estimates need to be interpreted with care as the estimates are affected by short-term price movements on world markets.

³³³ Prior to the Directive, some member States such as Germany and Italy had similar prohibitions at the national level.

³³⁴ Because of diverging legal interpretations, the EC and the United States could not agree on dispute settlement procedures under the GATT so far (see GATT (1990), Trade Policy Review: The United States, Geneva).

Meanwhile, the US measures (retaliatory tariffs) have been partially lifted along with the resumption of some trade. From the United States viewpoint, the complete ban of hormone treatment runs counter to scientific evidence and constitutes an unjustifiable barrier to trade.

In 1989, the European Animal Health Federation lodged a complaint with the European Court of Justice, arguing that the EC hormone ban contravened the principle of "legitimate expectations". In the Federation's view, producers should be entitled to expect that substances are legally authorized as long as risks to health are not scientifically verified. In contrast, the Advocate-General of the European Court of Justice is reported to have stated that the lack of scientific evidence made no difference to the legal right of the Council to take the actions it did. In his words, the Council "was confronted with one of those complex economic and political situations in which the Court traditionally allows it a wide area of discretion" (Agra Europe, 9 March 1990).

In November 1990, the Court of Justice ruled in favour of the hormone ban.

specific ingredient restrictions and fiscal discriminations.³³⁵ In the context of the Single Market, efforts have been made to remove such barriers (Chapter IV).

465. The EC also operates a specific monetary mechanism in the agricultural sector (Chapter III). It was created in 1969 with a view to cushioning the impact³³⁶ of exchange rate changes between member States on prices and income. At present, agricultural support prices in the Communities are about 14½ per cent higher than they would be if the official exchange rates were applied.

466. In the light of recent developments, including the occurrence of new surplus stocks in several agricultural sectors and rapidly growing fiscal burdens, the EC is in the process of reviewing basic policy parameters.³³⁷ At the time of completing this report, this process was still under way.

(ii) Dairy products

467. Dairy is the largest agricultural sector of the EC, accounting for nearly 18 per cent of agricultural output in 1988. Budget expenditure on this sector showed no clear trend in the 1980s. Their share in total agricultural spending sharply declined (Table V.6).³³⁸

468. In the face of persistent overproduction, a quota system was introduced in 1984. The system was tightened in 1987 and 1989 (changes in the intervention mechanisms, reduction of reference quantities and enforcement of the levies on over-quota production). According to the

³³⁵ Paolo Cecchini (1988), op. cit.

³³⁶ In the event of revaluations, the principle of uniform agricultural prices throughout the EC would have required that prices in national currencies were adjusted in inverse proportion to the exchange rate changes, thus leading to immediate price and income reductions within the area of the appreciating currency. This was considered as unrealistic or unfeasible.

³³⁷ The EC is set to spend ECU 31.5 billion on agricultural support in 1991. After 3 years of relatively stable budgets, this marks an increase of ECU 5 billion over the preceding year.

Mr. MacSharry, the EC Agriculture Commissioner, was quoted as saying that the EC agricultural policy, "cannot avoid a succession of increasingly serious crises unless its mechanisms are fundamentally reviewed... one thing is clear: we cannot continue as we are." (Financial Times, 23 January 1991).

³³⁸ Guarantee expenditures on milk products amounted to ECU 4.75 billion in 1980, ECU 6 billion in 1988 and ECU 4.9 billion (budget appropriation) in 1989.

Commission, more restrictive pricing policies resulted in a 15 per cent reduction of the milk support price in real terms between 1984 and 1989.

469. Milk deliveries dropped from 107 million tonnes in 1986 to 99 million tonnes in 1988. Self-sufficiency was substantially reduced (Table V.8). The EC dairy herd decreased by 19 per cent between 1984 and 1989.

470. High volumes of exports (1987 and 1988) and special sales actions, which encouraged the use of milk products in animal feed or in industry, have contributed to a sharp decline in the EC "butter mountain", from 1.4 million tonnes (end of 1986) to some 60,000 tonnes in June 1989 (Table V.5).³³⁹ Since early 1990, however, stocks have started to increase again. At the end of October 1990, public stocks exceeded 200,000 tonnes, up from some 20,000 tonnes in January (an additional 180,000 tonnes are in private storage). Changing consumer preferences, in particular a shift in favour of low-fat dairy products, the impact of the Gulf crisis on EC exports, and increasing supplies in world markets (butterfat) have added to the difficulties in managing this sector.

471. EC approval procedures for a new biotechnology-based hormone (BST), reported to increase a cow's milk production by up to 25 per cent, are suspended until 31 December 1991. The moratorium will be used for gathering more information on the impact of BST on human and animal health, product quality and the socio-economic structures of farming.

(iii) Meat

472. Protection for the individual meat sectors of the EC varies widely. In 1989, PSE estimates ranged from 5 per cent for pigmeat to 55 per cent for beef.

473. Beef and veal is by far the largest sub-sector of EC meat production, contributing about 13 per cent to EC total agricultural output. Annual production is approximately 7.8 million tonnes. The sector accounts for 9 per cent (ECU 2.6 billion) of total guarantee expenditure on agriculture; export refunds amount to ECU 1.2 billion (1989). Some 500,000 tonnes (carcass equivalents) are being imported under tariff quotas.

474. Intervention stocks strongly declined over the past few years, due to exports and a more balanced internal market situation. By mid-1989, stocks amounted to less than 150,000 tonnes, as compared with some 700,000 tonnes

³³⁹In 1988, EC butter exports were approximately 650,000 tonnes. Of these, some 290,000 tonnes were of a commercial nature. At the same time, 616,000 tonnes of skimmed-milk powder were exported (500,000 tonnes were commercial exports).

Export refunds for dairy products were approximately ECU 3 billion in 1988 (ECU 2.4 billion in 1989).

in the mid-1980s. Currently, buoyant internal production (including the German Democratic Republic), loss of export markets in the Middle East related to the Gulf crisis, and slackening consumer demand in the wake of the so-called "mad cow disease" appear to operate against this trend.³⁴⁰ Stock levels exceeded 530,000 tonnes in October 1990.

475. Intervention purchases are subject to tendering procedures which take place if the actual market price falls below certain prescribed levels. In normal circumstances, annual purchases should not exceed a ceiling of 220,000 tonnes.³⁴¹ A "safety net" is established which, in the event of particularly low prices in one or more member States, provides for the resumption of intervention, irrespective of this ceiling. In August 1990, the mechanism first entered into force in the United Kingdom and in Ireland after prices had fallen below the trigger levels; other member States followed. In only one week, more than 50,000 tonnes were taken from the Irish market.

476. In July 1989, the Commission imposed a ban on United Kingdom exports of live cattle more than six months old in an attempt to avert the spread of the so-called "mad cow disease" (BSE). In the following months, Germany, Italy and France unilaterally enacted bans on beef deliveries from the United Kingdom. The bans were lifted on 7 June 1990, subsequent to a meeting of the Agricultural Council where the United Kingdom agreed to establish a specific export certification system.

477. From a long-term perspective, sheepmeat is the only major meat category with substantial net imports; self-sufficiency ratios are in the range of 80 per cent. A maximum guaranteed quantity of 63.4 million sheep is established for EC producers. External protection is mainly provided by export self-restraints on the part of major suppliers whose deliveries, in return, are exempt from duties (Australia, Argentina, New Zealand, Uruguay and some central European countries).

478. Animal health inspections of third country herds are requested by the EC and undertaken by Commission services if, in their view, the situation so requires. Furthermore, there are regular inspections of establishments

³⁴⁰With regard to low-priced meat deliveries from the German Democratic Republic, the Commission is reported to have demanded that Federal Republic authorities prevent further intra-EC exports (Financial Times, 4 September 1990).

³⁴¹The ceiling is to be reviewed by the Council before April 1991. The Commission has recently proposed an upward revision to 235,000 tonnes in order to take into account the production in the territory of the former German Democratic Republic.

(e.g. slaughterhouses) that have been approved for exports to the EC.³⁴² Comparable controls are undertaken in member States with respect to meat for intra-EC trade. The Commission has voiced doubts whether all of the EC slaughterhouses will meet the common standards by 1992.³⁴³ To date, 85 per cent of the 350 German slaughterhouses have the requisite EC export licence. In the Netherlands, 69 per cent of all establishments have the same status.

(iv) Fruit and vegetables

479. The contribution of fruit and vegetables to total EC agricultural production increased markedly after the accession of Spain and Portugal. For 1987, their share in output was 14.8 per cent for EC 12 as compared to 12.9 per cent for EC 10 (Table V.8). However, like other agricultural sectors, the fruit and vegetable sector of the new member States is not yet fully integrated into the common agricultural policy. The transition period lapses at the end of 1995.

480. According to OECD estimates, assistance to production in this heterogeneous sector is relatively small. However, it is noted that several trade measures such as import quotas (for apples), compensatory taxation and minimum prices have the potential of distorting trade.³⁴⁴ In 1988, the guarantee expenditure on fruit and vegetables was ECU 1.2 billion.

481. At present, stabilization arrangements are in place for ten fresh fruit and vegetables categories including tomatoes, oranges, citrus, pears and apples. This product list may be extended in the event of important intervention sales. As distinct from many other commodities, corrective measures, that is price cuts of up to 20 per cent, are not triggered by production thresholds but by the quantities eventually withdrawn from markets (intervention thresholds). Price cuts are not permanent; they do not affect prices in the following years.

³⁴²In this context, the EC decided in the fall of 1990 to no longer accept United States meat deliveries because United States slaughterhouses had allegedly failed to meet EC hygiene standards. The measures will mainly affect pigmeat supplies of some US\$13 million (1989). The United States have disputed the EC decision as contravening obligations under the GATT without being justified by any exceptions. In November 1990, the United States requested consultations with the EC under Article XXIII:1 of the GATT.

³⁴³See EC Commission, Panorama..., op. cit.

³⁴⁴OECD (1989), Report on agricultural policies, markets and trade: Monitoring and outlook, Paris.

At present, no import quotas are being imposed on apples. Major exporters have agreed on a "forecasting" procedure.

482. Basically, the same stabilization scheme applies to a range of processed fruit and vegetables (dried grapes, William pears, peaches in syrup). However, tomato products have been subject to a quota system since 1985. Prescribed production quantities are assigned to individual processing plants which have limited scope for shifting output shares between product categories.³⁴⁵ The quotas are not transferable between enterprises.

483. Tariff quotas are established for certain imports of sweet potatoes and manioc. Important suppliers of manioc are Thailand (21 million tonnes over four years, but no more than 5.75 million tonnes per year) and Indonesia (825,000 tonnes per year). Sweet potatoes for animal consumption are mainly imported from China (600,000 tonnes per year).³⁴⁶

484. Several types of fruit and vegetables enter under seasonal tariffs.³⁴⁷ In some cases, such as tomatoes, citrus fruit, and grapes, countervailing charges are levied if established reference prices are not respected. Mediterranean countries are granted preferential access opportunities (Chapter II).

485. Three products are subject to measures under Article XIX of the GATT (dried grapes, morello cherries and processed cherries); the EC operates a system of minimum import prices. At present, there are no other Article XIX actions at the EC level. Some member States - France, Greece, Spain and Portugal - have imposed quantitative restrictions or minimum price requirements at the national level, affecting, for example, imports of potatoes, tomatoes, peas and beans, grapes, melons and apricots.³⁴⁸ In

³⁴⁵ In the Commission's view, this system should only remain temporarily in place because of its questionable efficiency effects as all enterprises are treated equally.

³⁴⁶ Sweet potatoes for human consumption are exempt from restraints.

³⁴⁷ With respect to oranges, as an example, four different tariffs are employed, ranging between 4 per cent (mid-May to mid-October) and 20 per cent (mid-October until end of March). On top of the - autonomous - tariff of 20 per cent, a countervailing charge may be imposed. For the period 1 February to 30 April a tariff quota of 20,000 tonnes of high quality oranges is established (dutiabale at 10 per cent).

Conventional rates on apples vary between 6 per cent (or at least ECU 1.4 per 100 kilogramme) and 14 per cent (ECU 2.4 per 100 kilogramme) over the year.

Potatoes are dutiabale between 15 and 21 per cent, depending on the season.

³⁴⁸ In addition, France applies global quotas to certain orange juice imports; Italy has subjected juices from certain origins to non-automatic
(Footnote Continued)

Germany and Spain, certain imports of prepared potatoes are subject to non-automatic licensing.

(v) Cereals

486. Cereals account for roughly 10 per cent of EC agricultural production. Total exports of cereals amounted to 26 million tonnes in 1988. Net exports over the past years have ranged from 6½ million tonnes (EC 10 in 1984) to 19½ million tonnes (EC 12 in 1988).

487. At present, the cereal sector accounts for some 16 per cent of total guarantee expenditure on agriculture. Export refunds amount to ECU 2.8 billion (1989).

488. Since the mid 1980s, policy measures have been taken to contain the expansion of production and its budgetary consequences. They included price cuts or price freezes and the tightening of qualitative criteria. According to the Commission, the cumulative impact resulted in a price reduction of 32 per cent in real terms (1989 as compared with 1984). PSE levels for wheat dropped from 66 per cent in 1987 to 24 per cent in 1989. However, this change was affected by an increase in cereal prices abroad which, in the presence of variable levies, narrowed the gap between domestic and world market prices.

489. Specific programmes aim directly at reducing the supply potential on either a temporary or more permanent basis. Some of the measures are optional for member States (early retirement schemes), others are mandatory for the member States but remain optional for farmers (set-aside programmes, extensification aid).³⁴⁹

490. When participating in the set-aside programme, farmers have to include at least 20 per cent of their arable land for a period of five years.³⁵⁰ Set-aside premiums are determined by member States - within a range from ECU 100 to ECU 700 per year and hectare - so as to match actual income losses incurred on different qualities of land. Linking with an afforestation aid of ECU 50 per hectare is permitted. The Communities' financial share in the programme is inversely related to the premium per hectare. By mid-1989, 434,000 hectares were frozen; of these, Germany

(Footnote Continued)

licensing; Spain restricts imports of grape juices (situation in mid-1990).

³⁴⁹ Exemptions are possible for regions which are suffering from depopulation or where natural conditions argue against a decrease in production. Portugal is authorized not to apply the measures until year-end 1994.

³⁵⁰ The land must have previously been used for production under common market organizations.

and Italy combined accounted for 330,000 hectares. The corresponding production quantities were between one and two million tonnes of cereals, or about 1 per cent of annual production in the EC.³⁵¹ End of 1990, acreage set aside totalled 750,000 hectares.

491. In a recent decision, the Council extended the set-aside scheme by introducing special provisions for the conversion of "frozen" farm land to the non-food production of cereals. Premiums of up to 70 per cent of the normal aid for set-asides will be accorded for such purposes. The eligible farmers have to set aside at least 30 per cent of the area of their holding and to limit non-food production to 50 per cent of this acreage.

492. Participants of the extensification aid schemes are required to reduce production by at least 20 per cent without having recourse to set-asides.³⁵² The freed capacities must not be employed for the growing of so-called surplus products. In the case of cereals, the maximum annual support is set at ECU 180 per hectare, 25 per cent of which is covered by EC funds (Guidance Section of the EAGGF). The programme is obligatory for member States. To date, it has been fully implemented in Germany.

493. A system of conversion aid aims at encouraging a shift of production toward non-surplus products.³⁵³ Member States shall determine the production alternatives within certain sectors, such as oilseeds, tropical fruit and vegetables, shelled fruit, medical plants and non-food products.

494. Differences in protection between cereals and cereal substitutes and ensuing differences in price competitiveness have operated against the use of cereals in compound feedstuffs.³⁵⁴ The use of cereals dropped from 42 per cent in 1980 to 33 per cent in 1987 (EC 12; Table V.9.). To reverse the situation, in 1988 the Commission proposed the introduction of

³⁵¹The Commission, therefore, qualified the programme as "a wonder drug with limited effect" (EC Commission, A Common Agricultural Policy ... op. cit.).

According to the Commission, the modest results are to be partly explained (i) by the reluctant cooperation of member States (only Belgium, Germany, the Netherlands and the United Kingdom have enacted the measures in due time for the season 1988-89); (ii) by a certain lack of information; and (iii) by too low levels of financial support.

³⁵²Products eligible for the scheme include cereals, oilseed crops, peas and field beans, tobacco, cotton, vegetables, wine, olive oil, fruit, cattle, sheep and goats.

³⁵³The proposal, tabled by the Commission in April 1988, was adopted by the Council in 1990.

³⁵⁴Cereal substitutes include manioc, corn-gluten feed, molasses, brans and a host of residues from processing activities.

a premium for the use of additional quantities of feed grains, implicitly at the expense of oilseeds and cereal substitutes. The Commission is currently reviewing this proposal.³⁵⁵

495. In 1989-90, EC cereals production was slightly above the guarantee threshold. It amounted to 161.4 million tonnes, down from 163.9 million tonnes in 1988-89. In September 1990, EC stocks of common wheat exceeded 5.3 million tonnes, almost twice the level of the previous year.

496. According to forecasts by the Commission, cereal yields are expected to rise continuously by 2 per cent a year. Hence, they would reach about 175 million tonnes in the mid-1990s. In its explanatory document for the farm price proposals for 1990-91, the Commission points to the possibility that "the Community could quickly find itself with a supply of cereals which cannot easily be disposed of as it was during the previous marketing year, thereby renewing the danger of very large intervention stocks".

(vi) Oilseeds

497. The EC is the world's largest importer of oilseeds and derivatives; 1988 imports amounted to some 24 million tonnes.³⁵⁶ The sector has low levels of border protection under bound duties.

498. Domestic production was approximately 12 million tonnes in 1988. Of this, 5.3 million tonnes were rapeseed. Support for EC producers is almost exclusively provided via compensatory payments to processors (oilmills). These payments serve to offset the additional costs of purchasing domestic oilseeds which are priced above world market levels. Guarantee expenditure on oils and fats amounts to some ECU 3 billion; ECU 2.4 billion is devoted to rapeseed and sunflower seed and ECU 500 million to soybeans (1989). In the EC budget for 1991, oils and fats represent some 19 per cent of total agricultural expenditure (ECU 6 billion), thus being the most expensive sector for EC taxpayers.

499. The stabilizers régime in these sectors rests on maximum guaranteed quantities for domestic production which were set by the Council. For the period 1988-89 to 1990-91, the maximum quantities amount to 4.5 million tonnes for rapeseed (EC 10), 2.0 million tonnes for sunflower seed (EC 10; with additional 1.4 million tonnes for Spain) and 1.3 million tonnes for soybeans. Support will be cut during the marketing year if excess production is expected. As distinct from cereals, the price reductions are not permanent.

³⁵⁵ In the context of the 1990-91 price package, the Council repeated its demand for a Commission study on how to encourage the use of cereals in animal feed.

³⁵⁶ Imports of soybeans, rapeseed, sunflower seed and oilcake are duty free.

500. The EC has announced its willingness to adapt its current support system in the context of implementing the results of the Uruguay Round, in order to comply with the recommendations of a GATT Panel.³⁵⁷

501. Spain and Portugal maintain restrictions on a range of oil seeds and fats and oils. Imports of industrial fatty alcohols into France are subject to a global quota.

(vii) Sugar

502. Sugar accounts for about 2½ per cent of EC agricultural production (13 million tonnes in 1988). Imports of 1.9 million tonnes compare with exports of 4.7 million tonnes (1988). As a general rule, export refunds are granted for a quantity corresponding to the levy-free imports from ACP countries (approximately 1.3 million tonnes of white sugar equivalent).

503. PSE estimates suggest a considerable degree of protection for this sector. In 1989, PSEs amounted to 52 per cent, down from a peak of 80 per cent in 1987.

504. The Communities' regime is based on the principle that costs associated with internal production should be covered entirely by levies which are imposed on deliveries under a multi-tiered quota system. In 1989, the receipts amounted to ECU 1.4 billion (Table V.6). In recent years, however, under the impact of low world market prices, deficits occurred. In response, a system of special fees was introduced in 1987. Recent reforms aimed at expediting procedures so that the fees could be raised within the same marketing year; their level is to be decided by the Council. Recently the Commission proposed the continuation of the quota system, with some modifications in the organisation of markets, for two years.

505. France and Spain have imposed import restrictions on certain sugar confectioneries (liquorice).

(viii) Fishery products

506. According to Article 38 of the EEC Treaty, fisheries policy is part of the Common Agricultural Policy. However, the development of a common

³⁵⁷ The Panel, established in June 1988 at the request of the United States, found that the EC regulations which provide for payments to seed processors conditional on the purchase of domestic production are inconsistent with Article III:4 of the GATT. Moreover, in the Panel's view, the beneficial effects of zero tariff bindings are impaired by the EC subsidy schemes which completely protect domestic producers from price movements of imports. (Article III:4 of the GATT establishes the principle of national treatment in respect of all laws affecting the internal sale and purchase of imported products).

régime proved difficult and time consuming. In 1970, a common market organization for fish was set up (Regulation No. 2142/70) and the principle of common access to all fishing grounds was established (No. 2141/70). Member States were authorized for an additional ten years to restrict access to waters under their sovereignty.

507. In 1983, a common system for the conservation and management of fishery resources entered into force (Council Regulation No. 170/83). It includes the regulation of access and technical aspects, the determination of catches and their allocation among member States. On the basis of Regulation No. 170/83, certain marine areas under the sovereignty of the coastal member States are reserved, until the end of 2002, to those vessels which have fished traditionally in these areas (with a possibility of revision in 1992).

508. A multi-annual programme at the EC level aims at adapting the fleet capacity to the available resources, from 1.92 million GRT in January 1987 to 1.86 million GRT by the end of 1991 (Regulation No. 4028/86).

509. In 1988, EC fishing vessels landed 6.2 million tonnes of fish, which is about 7 per cent of total world catches. Danish fishermen alone accounted for 27 per cent (1,925 thousand tonnes) of EC landings.

510. In 1988, EC imports of fishery products approximated ECU 5.7 billion. Exports amounted to about ECU 1.2 billion.³⁵⁸ Simple average m.f.n. tariffs for prepared and preserved fish are in the vicinity of 20 per cent, while the rates for fresh products are around 11 per cent. All duty rates are consolidated; for several items there are also tariff quotas consolidated at a reduced level. Certain imports are subject to a reference price mechanism. Countervailing duties are imposed if, in the event of a "crisis in the market", the established reference prices are not complied with.

511. Under the EC GSP scheme, some categories, such as trout, may enter under reduced tariffs. Imports from Greenland and Poland are excluded from this provision.

512. Imports of canned tuna and sardines into France and Spain are subject to quotas. Under their Act of Accession, Portugal and Spain are entitled to maintain quotas on certain species until the end of 1992. However, Portugal has not resorted to these provisions.

(ix) Tobacco

513. EC production of tobacco leaf - some 380 thousand tonnes in 1989 - accounts for about 5 per cent of world production. Italy is the dominant

³⁵⁸ According to COMEXT statistics (extra-EC trade).

EC producer with about 160 thousand tonnes (1987), followed by Greece (144 thousand tonnes).

514. The production stabilizers in this sector are based on a total guaranteed production of 385,000 tonnes which was set by the Council for the years 1988 to 1990. Ceilings for sub-categories are decided upon annually, taking into account developments in production and demand, and the specific situation of certain regions. In the event of excess production, proportional price reductions are triggered (15 per cent at most). Annual guarantee expenditure on tobaccos is close to ECU 1 billion (1989).

515. Imports of unmanufactured tobacco (Tariff Study Category 32.01) were approximately US\$1.3 billion in 1988, as compared with imports of manufactured tobacco of US\$340 million. This may partly reflect steep tariff escalation; tariffs vary between 13 per cent for unmanufactured tobacco and more than 66 per cent for manufactured tobacco products (simple averages).

516. Under the EC GSP scheme, certain fixed amounts of unmanufactured tobaccos are eligible for reduced tariffs. GSP treatment for manufactured tobaccos is granted without such quantitative limits. The preferential rates are 35 per cent for cigars, 60 per cent for cigarettes and 90 per cent for smoking tobacco (m.f.n. rates are 52 per cent, 90 per cent and 117 per cent, respectively). Preferences are not available to China.

517. The EC is a net exporter of tobacco products. In 1987, its exports amounted to 245,000 tonnes while imports stood at 196,000 tonnes.

518. About 1.7 million people are employed in the EC tobacco manufacturing industry (1986); their annual production of cigarettes is in the order of 630 billion units. Of this, Germany alone accounts for nearly 170 billion.

519. In some member States (Italy, Portugal, Spain and France), State monopolies are established. These monopolies mainly cater for domestic consumption; foreign brands are being priced more highly than national ones.³⁵⁹ Distribution is often effected via licensed outlets. In Greece and Italy, all retail sales are through tobacconists.

520. Tobacco products are subject to high internal taxes. They vary among member States. The revenue from tobacco taxes contributes about 4 per cent to total central Government tax receipts in the EC.

(x) Beverages and spirits

521. Wine production contributes some 4.5 per cent to final EC agricultural output; it has a strong impact on certain regional economies.

³⁵⁹ EC Commission (1990), Panorama..., op. cit.

Italy and France alone account for almost 90 per cent of total EC production.

522. The main internal support measures are aids for storage and distillation. Distillation purchases are obligatory for certain quantities. In the framework of the distillation system, buying-in prices decline sharply (from 50 to 10 per cent of guide prices) once intervention purchases exceed 10 per cent of the normal market volume. Further measures aim at encouraging the permanent abandonment of wine-growing areas.

523. External protection is provided through specific duties and through a system of reference prices, underpinned by countervailing charges. In addition, Spain and Portugal employ quantitative restrictions. For limited quantities, Mediterranean countries have preferential access to the EC market.

524. The EC soft drinks industry (mineral water and non-alcoholic beverages of water and flavouring substances) has about 88,000 employees (1987). External trade plays no major rôle. The Commission notes that, except for the Benelux countries, regulations often widely differ between member States.³⁶⁰ This applies not only to the authorization of certain ingredients, but also to packaging requirements, taxation, etc.

525. Following dairy and meat, brewing is the third largest sector of the EC food industry. About 160,000 persons are employed in EC breweries (1988).

526. External trade is of limited importance. In 1987, exports represented some 0.8 million hectolitre or 4 per cent of domestic production; imports were 0.1 million hectolitre. M.f.n. tariffs of 24 per cent provide for a considerable degree of protection.

527. In terms of employment, the EC alcohol and spirits industries has less than half the size of the brewing sector.³⁶¹ However, the EC is the world's largest exporter of spirits (whiskies, cognacs, brandies, etc.). In the United Kingdom, domestic sales of whisky accounted for 16 per cent of production in 1988; the share of domestic sales of cognac in France was even lower (8 per cent). Imports are subject to specific duties.

528. France and Spain have imposed quantitative restrictions on imports of ethyl alcohols and vinegar. Denmark applies automatic licensing.

³⁶⁰ EC Commission (1990), op. cit.

³⁶¹ In 1988, 66,000 persons were employed in enterprises of 20 persons or more.

(xi) Other food products

529. Coffee is the Communities' most important food import among all five-digit SITC items (Table V.4). Tariffs range from 4 per cent on raw coffee to 15 per cent on roasted coffee (decaffeinated). The simple average tariff is 13.7 per cent. Certain categories are eligible for preferential tariffs under the GSP.

530. Tea imports are subject to a simple average tariff of 2 per cent; green tea is duty free under the EC GSP scheme.

531. Some member States impose excise taxes on coffee, tea and mate. For example, in Germany, rates on coffee vary by stage of processing from DM 3.60 (raw coffee) to DM 9.35 (coffee concentrate) per kilogramme. On tea, they are set between DM 4.15 and DM 10.40.³⁶² The ad valorem equivalent of the taxes is a multiple of the duties imposed on these products. In 1988, the German excise tax on raw coffee amounted to more than 70 per cent of the average import price; the tax incidence on coffee extracts was close to 90 per cent (1987).³⁶³ Total revenues from the excises on coffee represented DM 1.75 billion (ECU 840 million).

532. In some member countries, cocoa is also subject to consumption taxes. In Denmark, the rates for cocoa beans are set between DKr 3.75 and DKr 22.50 per kilogramme. Cocoa paste and cocoa butter are taxable at DKr 12.50; the ad valorem equivalent in the latter case amounts to more than one-third of the average import price in 1988 (20 per cent of the price in 1985). In France, the relevant taxes were FF 0.07 (cocoa beans) and FF 0.085 (butter) per kilogramme, and in Italy Lit 180 for unroasted beans and Lit 280 for butter in 1986-87.³⁶⁴

533. Under the common customs tariff, cocoa beans are dutiable at 3 per cent and butter at 9 per cent. Cocoa butter, paste and powder are eligible for GSP treatment. The preferential rate for butter is 8 per cent.

³⁶²In Belgium taxes on coffee range from BF 8 (raw coffee) to BF 28 (extracts) per kilogramme, in Denmark from DKr 4.35 to DKr 13.05, and in Italy from Lit 500 to Lit 1,500.

In Denmark, tea is taxable between DKr 5.00 and DKr. 12.50 per kilogramme.

In Portugal, the excise tax on coffee contributed ESC 2.4 billion (ECU 14.3 million) to the public budget in 1988.

³⁶³Estimates by the GATT Secretariat. The figures are affected, of course, by the decline in coffee prices in recent years. On the basis of 1985 import prices, tax incidences were estimated at 40 per cent (raw coffee) and 65 per cent (coffee extracts).

³⁶⁴For France and Italy more recent information was not available.

534. Member States' trade régimes for bananas are described in the Annex to Chapter II. In Italy, a specific consumption tax of Lit 525 per kilogramme is imposed, more than 70 per cent of the 1988 import price. Tax revenues amounted to Lit 202 billion (ECU 120 million).

535. Simple average tariffs for spices are 8.5 per cent. Some categories (pepper, nutmeg, coriander, cumin, caraway) enter free of duty. For several products, GSP preferences are available (duty-free entry or reduced tariffs).

536. Natural honey is subject to duties of 27 per cent (m.f.n. rate); the preferential rates under GSP are 25 per cent or zero for the least-developed countries. France maintains quantitative restrictions.

537. France and Spain restrict imports of chicory plants and roots.

538. Cut flower imports enter under seasonal tariffs of either 15 per cent or 20 per cent (autonomous rates subsequent to the mid-term agreement of the Uruguay Round). Tariff preferences are granted under GSP for two narrowly defined categories; all cut flower imports from the least-developed countries are free of duty.

(2) Leather, Footwear and Travel Goods

539. In 1988, the EC imported US\$5.6 billion worth of raw hides and skins, leather and furskins (Tariff Study Category 01). Tariff escalation is present. Simple average tariffs increase from raw materials (zero) over semi-manufactures (3.7 per cent) to manufactures (6.9 per cent). In the EC GSP scheme, preferential imports of some products are subject to fixed duty free amounts or ceilings. Certain import controls and prohibitions are imposed on the grounds of wildlife protection.

540. The EC Commission complains of many tariff and non-tariff barriers practised by exporting countries. In its view, these measures restrict the amount of available raw materials and distort competition.³⁶⁵

541. The EC is the world's largest footwear producer. Production, declined however, from 1,194 million pairs in 1985 to 1,048 million in 1988. About 360,000 people are currently employed in the EC footwear industry, largely working in small enterprises. Italy accounts for about 40 per cent of EC output.

542. Between 1985 and 1988, footwear imports (leather and plastic) increased from some 300 million to more than 520 million pairs. China (29 per cent of total imports in 1988), Taiwan (19 per cent) and the Republic of Korea (17 per cent) are the most important suppliers. In 1988, EC exports amounted to 263 million pairs.

³⁶⁵ EC Commission (1990), op. cit.

543. Trade restrictions, including unilateral quotas, self-restraints and industry-to-industry arrangements, have been applied in this sector for a substantial period of time.³⁶⁶ In 1988, restraints were agreed between the EC, the Republic of Korea and Taiwan with respect to the French and Italian markets (Council Regulation No. 3283/88 and No. 1733/88). In July 1990, this arrangement was followed by an EC-wide arrangement, accompanied by prior import surveillance. In agreement with the Republic of Korea and Taiwan, the system will remain in place until the end of 1992. Footwear imports from all other sources are subject to retrospective surveillance (Commission Regulation No. 274/90).

544. Further measures are in force at the level of member States. National restrictions apply to imports from a number of State-trading countries; affected suppliers are Albania, the Soviet Union, Romania, China, the Democratic People's Republic of Korea, Viet Nam, and Mongolia. Ireland applies quotas to imports of rubber and plastic footwear from Taiwan. Spain and Portugal maintain global quotas on these products. China is limiting its exports of slippers and sandals to France.³⁶⁷ Since the mid-1970s, footwear exports from the Czech and Slovak Federal Republic, Poland and Romania to the United Kingdom have been subject to restraint arrangements at the industry level; the arrangement involving Poland was suspended in 1990.³⁶⁸ Reportedly, Irish producers operate restraint arrangements with their Korean counterparts.

545. Spain applies a global quota to imports of certain travel goods (cases, bags, travel sets).

546. GSP treatment for leather, footwear and travel goods is in many cases limited by duty-free amounts or ceilings.

(3) Wood and Paper Products

547. In 1988, nearly 70 per cent of total EC wood and cork imports (US\$11.1 billion) and 75 per cent of pulp and paper imports

³⁶⁶ The following information on trade restrictions reflects the situation in mid-1990.

³⁶⁷ According to the Commission, these limitations were introduced after consultations in the context of, and in accordance with, the EC trade and economic co-operation agreement with China.

³⁶⁸ Attempts have been made to estimate the losses to British consumers under these arrangements. Accordingly, the welfare costs of rationing leather footwear amounted to some £260 million in 1986, that is approximately 25 per cent of total expenditure on these products. (L. Alan Winters, P.A. Brenton (1988), Voluntary Export Restraints: UK Restrictions on Imports of Leather Footwear From Eastern Europe; Centre for Economic Policy Research Discussion Paper No. 283, London).

(US\$20.7 billion) were of preferential origin. M.f.n. imports are dutiable at 4.4 and 7.4 per cent, respectively (simple averages). Tariffs escalate from zero (rough wood and cork, and paper pulp) to 8 and 10 per cent (paper and paperboard, and wood panels). Spain has imposed a quota on wallpapers.

548. The EC woodworking industry represents some 5.6 per cent of GDP; it ranks second in the world behind the United States. In 1989, EC imports (EC 12) of processed woods amounted to ECU 3.1 billion and exports to ECU 1,8 billion. According to the EC Commission, intra-EC trade is hampered by a large number of technical trade barriers such as national standards, major differences in approval procedures, and susceptibilities to specific aspects of use (emissions from components, etc.).³⁶⁹

549. Imports of photo albums from Hong Kong and the Republic of Korea are subject to anti-dumping measures (price undertakings).

(4) Textiles and Clothing

550. The textile and clothing industries illustrate the marked inter-regional differences in production structures within the EC. On average, textiles and clothing accounts for about 9 per cent of manufacturing employment in the EC.³⁷⁰ However, the combined share of these industries in manufacturing employment varies between 4 per cent in the Netherlands and more than 29 per cent in Greece and Portugal (1986). To a certain extent, these differences reflect differences in productivity levels and in the size of - more labour intensive - clothing industries as compared with textiles.

551. At Community level, the production of textiles remained fairly stable throughout the 1980s while clothing output apparently followed a downward trend. Both industries considerably lagged behind the expansion of manufacturing production as a whole.³⁷¹

552. Since the mid-1980s, the Communities trade deficit in textiles and clothing has substantially widened. While EC exports moderately expanded from ECU 17.8 billion in 1984 to ECU 19.9 billion in 1988, imports increased from ECU 18.5 billion to ECU 26.7 billion. The traditional export surplus of the EC in textiles persisted, albeit at lower levels, but

³⁶⁹ EC Commission (1990), op. cit.

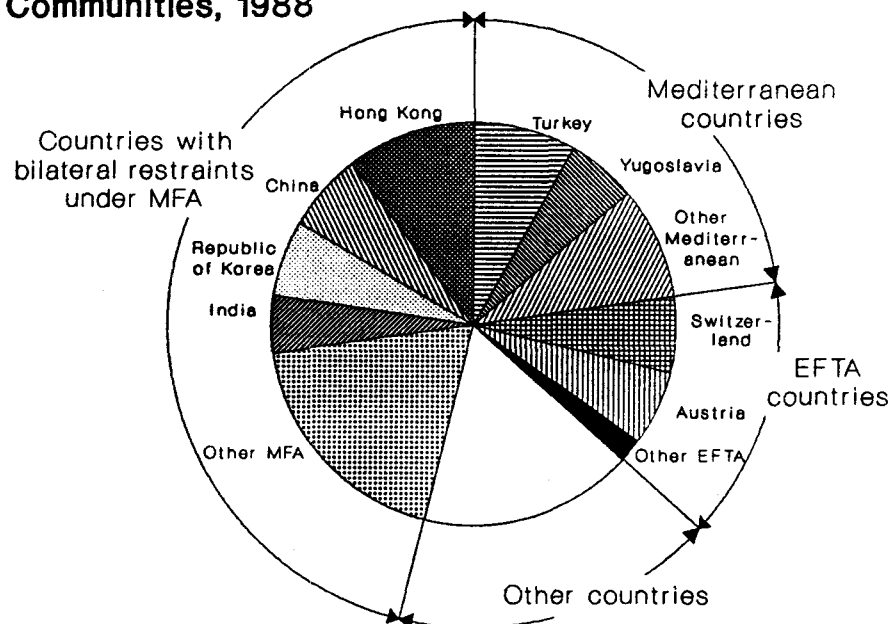
³⁷⁰ In 1988, employment was about 1.548 million in the EC textiles sector, and 1.051 million in the clothing industries (in enterprises of 20 employees and more).

³⁷¹ At the level of member States there are notable deviations from this overall trend. For example, clothing production in Italy nearly doubled between 1981 and 1988 (without any major recorded impact on employment).

the deficit in clothing considerably increased. In 1988, clothing exports amounted to ECU 8.5 billion and imports to ECU 16.5 billion (Table V.10).

553. Major suppliers of textile and clothing products include MFA restrained countries (46 per cent in 1988), the Mediterranean countries (22½ per cent) and the EFTA countries (14 per cent). In 1988, the most important single source was Hong Kong, accounting for 10½ per cent of the value of EC imports (Table V.11).

Chart V.2
Major suppliers of textile products to the European Communities, 1988



Source: GATT Secretariat (based on EC statistics).

554. In the recent past, the Mediterranean countries have outperformed other third-country suppliers. EC imports from these countries rose by nearly 25 per cent (1988/1989), as compared with a 5 per cent increase in total EC imports of MFA products and a 1 per cent decline of imports under the bilateral MFA agreements.

555. The EC currently maintains 19 restraint agreements under Article 4 of MFA IV, down from 23 under MFA III.³⁷² Since 1978, all agreements follow

³⁷²Table V.12 shows the evolution of imports from the 19 MFA
(Footnote Continued)

the same format and include all MFA textiles products. However, in practice restrictions have not been applied to all items.

556. In each agreement, the restraints on individual products are determined depending on the relative importance of the category in bilateral trade. In all agreements, the total number of restraints has been reduced under MFA IV. However, some new restrictions have been introduced. In general, growth rates and flexibility provisions are more favourable than under the previous MFA, with considerable variations from category to category and between groups of suppliers.³⁷³ For some of the most sensitive products and for dominant suppliers growth is limited to 0.1 per cent.

557. Agreements with the Czech and Slovak Federal Republic, Hungary, Poland and Romania contain additional provisions on prices ("price clauses").³⁷⁴ Accordingly, consultations may be requested by the EC if a textile product is considered as being imported at "abnormally" low prices.

(Footnote Continued)

restrained sources since 1984.

In addition to the restraint agreements, there are several exchanges of letters (e.g. with Haiti, Colombia, Guatemala, Mexico) and consultation agreements (e.g. with Bangladesh and Uruguay which were previously restrained).

EC imports from Yugoslavia - which are not included in the above figure - are governed by an additional protocol to the cooperation agreement which contains some MFA-type administrative provisions. However, growth rates and flexibility provisions are more generous than for the bilateral MFA agreements, similar to the restraint arrangements with some other Mediterranean countries.

³⁷³ Flexibility provisions allow for the use of unutilised portions of a quota in the following year ("carry over"), for the advance drawing against next year's quota ("carry forward"), and for transferring free parts of a quota from one product category to another ("swing"). In most agreements, swing is available up to 7 per cent of a quota level; in other agreements (with dominant suppliers and with Eastern European countries as regards sensitive categories), it is limited to 4 per cent. Swing into highly sensitive categories is generally excluded. Carry over is usually limited to 7 per cent of an individual quota level. In the case of dominant suppliers (the Republic of Korea, Hong Kong and Macao), consultations are to be held when 2 per cent is reached; the corresponding shares in the case of carry forward are 5 per cent and 1 per cent.

³⁷⁴ In March 1990, the EC concluded additional protocols to its textiles agreements with Hungary and Poland. For 1990 and 1991, they provide for quota increases of 13 per cent (Hungary) and 23 per cent (Poland). Residual restrictions of member States on non-MFA textiles imports from both countries were eliminated in November 1989 (Section II:8(V)).

In extreme circumstances, the EC is entitled to temporarily suspend imports of the products concerned until a mutually acceptable solution is reached. To date, these provisions have not been applied.

558. The individual agreements under MFA IV contain an undertaking on the part of the EC not to resort to Article 3 of the MFA and not to introduce quantitative restrictions under Article XIX of the GATT. However, the EC may still avail itself of other commercial policy measures such as anti-dumping and anti-subsidy actions.

559. Categories which are not restrained are subject to the so-called "basket exit mechanism". When imports from a given country reach a specified share of total imports, consultations may be held with a view to introducing mutually agreed limitations. The "trigger levels" vary across five groups of countries and three product groups.³⁷⁵ If no agreement on limitations is achieved, the EC has reserved its right to impose restraints unilaterally according to a prescribed formula. In any case, EC action requires the prior assent of member States to a Commission proposal in the context of the EC Textile Committee.³⁷⁶ The basket exit mechanism is also applicable for restraints at the level of member States; in the majority of cases, it is used to this effect.

560. Under the MFA IV bilateral agreements, the exit mechanisms have been applied twenty-seven times to impose new restrictions (1986 to July 1989). On an annual base (about 10 cases), less use was made than under MFA III (eighteen cases) and MFA II (forty cases). One out of four basket exits was EC-wide, as against one out of twenty under MFA III.

561. In addition to the MFA agreements, the EC and individual member States maintain a range of measures and agreements outside the MFA in the textiles and clothing sector. For example, there are textile agreements with non-MFA participants, such as the Soviet Union, and Bulgaria, and there are autonomous restrictions on the part of individual member States.³⁷⁷ These restrictions are covered by EC legislation. With the aim of "maintaining orderly trade relations" with the

³⁷⁵The application of this mechanism is subject to constraints, including a review in the GATT Textiles Surveillance Body. It has never been used in an automatic manner; specified import levels are usually exceeded several times before consultations are requested.

³⁷⁶To this effect, the respective Council Regulation (No. 4136/86) provides for a voting mechanism which is roughly in line with the regulatory committee procedure as outlined in Chapter II. In the end, the Commission is entitled to adopt the proposed measures if the Council, by qualified majority, does not disapprove of it.

³⁷⁷Autonomous restrictions were notified under Article 11 of the MFA.
(Footnote Continued)

European Community, Japan operates a system of export ceilings and approvals for various textiles and clothing categories.³⁷⁸

562. Textiles and clothing arrangements with Yugoslavia and some other Mediterranean countries (Egypt, Malta, Morocco, Tunisia and Turkey) have been negotiated in parallel with the association or cooperation agreements.³⁷⁹ They provide for export self-restraints over a two or three year period.³⁸⁰ On the EC side, a system of import surveillance is established (Commission Regulations No. 2985/89, 4032/89, 4033/89 and 4034/89). In general, provisions are more generous and flexible than those under the MFA agreements. In the case of Turkey, which is the second most important textile supplier to the EC (in terms of import value), self-restraints have been agreed with the textiles manufacturers.³⁸¹ In accordance with the EC Commission, Turkish manufacturers are controlling their exports to the EC, including the distribution of products among member States.

(Footnote Continued)

They are applied against imports from Albania, Mongolia, the Democratic People's Republic of Korea, and Viet Nam. Quotas are fixed on an annual basis.

Vis-à-vis the Soviet Union, a MFA-type textiles agreement, which basically covers all MFA products (including linen), came provisionally into effect on 1 January 1990.

In the case of Chile, Bolivia, Paraguay, Honduras, Venezuela, Costa Rica, Cuba, Ecuador, EL Salvador and Nicaragua (all non-MFA participants), there is an exchange of letters in the framework of the GSP with a view to qualifying for GSP-treatment.

According to the Commission, trade with Asian MFA participants is exclusively governed by the bilateral agreements under the MFA. However, there are some residual restrictions of member States on non-MFA products.

³⁷⁸ The measures pertain to synthetic filament fabrics, cotton fabrics, cotton outer garments, handkerchiefs, shawls, scarves, woven mufflers. The EC Commission is not aware of these measures.

³⁷⁹ Egypt, Turkey and Yugoslavia are MFA participants. The above arrangements largely vary in coverage. In the case of Turkey, e.g., roughly 76 per cent (by weight) of all textiles exports to the EC are covered. The arrangement with Malta, by contrast, only refers to one category (trousers).

³⁸⁰ In the absence of such self-restraints, the countries concerned would be entitled to unrestricted access, subject to the safeguard clause of the association agreements.

³⁸¹ In 1988, Turkey accounted for 8 per cent (ECU 1,820 million) of EC imports of textiles and clothing. In terms of import volume, Turkey is the most important single supplier.

563. Several bilateral agreements contain specific access provisions with respect to outward processing traffic (OPT). To this effect, OPT-quotas are established in addition to the normal quotas; they do not apply to all member States.³⁸² Imports are only dutiable with respect to the value added abroad. The French and German clothing industries are particularly engaged in OPT.

564. The bilateral agreements provide for administrative cooperation in cases of fraud (e.g. transshipment fraud). Accordingly, EC officials are entitled to carry out investigations abroad, in cooperation with the authorities of the country concerned. If irregularities are established, quota reductions against the offending countries are put in place in line with the procedures laid down in the individual agreements. A number of investigations have been carried out under these provisions. One case - transshipments from Brazil - was brought to the Textiles Surveillance Body in 1987.

565. Most import quotas under the MFA agreements are negotiated for the EC as a whole. Community quotas are generally allocated to individual member States according to traditional trade patterns. In addition, a "burden sharing formula", based on a range of economic indicators, is applied. Accordingly, import growth rates during the term of the agreements are to be higher in those member States which, at the beginning, have not been assigned their appropriate share.

566. In the context of the Single Market process, special provisions have been designed to facilitate the inter-regional transfer of quotas. This possibility of EC internal re-allocation is subject to quantitative ceilings³⁸³ which are gradually expanded up to 1991 (expiry date of the MFA).

567. Following a ruling of the European Court of Justice (27 September 1988), national fixed-scale quotas run counter to the principle of free competition. However, the Court recognized that under

³⁸² Throughout the 1980s, OPT quotas were largely used by Yugoslavia (36 per cent of all processing traffic), Eastern European countries (38 per cent), and Mediterranean suppliers (16 per cent). In total, in 1989 imports under OPT régimes accounted for 12 per cent of EC clothing imports.

Outward processing of MFA and non-MFA clothing in Albania, Bulgaria, Romania and the Czech and Slovak Federal Republic is subject to additional unilateral import quotas. (As regards the Soviet Union, these quotas are integrated in the recent agreement). The quotas for Hungary and Poland were suspended for 1990.

³⁸³ In the case of non-dominant suppliers, quotas of individual member States could be increased by a maximum of 16 per cent in 1991, as compared with 2 per cent in 1987.

the current state of EC trade policies, the breakdown of an EC quota by member States could still be justifiable on binding administrative, technical, or economic grounds. Thus far, the ruling has had no immediate impact on the EC internal textiles régime.

568. In 1989, 78 out of 119 authorizations under Article 115 referred to textiles and clothing. France (54 cases), Ireland (12), Italy (10), and the United Kingdom (2) were involved. In recent years, Hong Kong, China, Taiwan, the Republic of Korea, India and Pakistan combined accounted for more than 90 per cent of all cases (from January 1987 to July 1989).

569. As of 1 September 1990, the EC maintained six anti-dumping measures on certain textile imports. In total, 17 originating countries were affected.³⁸⁴

570. Since the early 1970s, the Commission has aimed at containing specific support schemes of member States for their textile and clothing industries. In 1971, a communication to member States was issued with a view to directing the design of measures when intervention in the national textile industry was considered essential.³⁸⁵ In this context, joint research, structural adjustment and conversion of capacities was favoured. However, a more restrictive stance was adopted with respect to investment aid for the sector's internal modernization or reconversion. Some years later (1977), the Commission noted a tendency of member States - in particular the United Kingdom, the Netherlands, Belgium and Italy - to enact specific aid schemes for particular textile sectors.³⁸⁶ In response, the general principles were modified so as to better take account of narrowly defined sectoral situations; future aid to industries with overcapacities should be confined to new activities.

571. Moreover, a specific aid control system for the synthetic fibres sector was set up in 1977. Under the system, since extended until 19 July 1991, all aid is banned which leads to capacity expansion. Sympathetic consideration shall only be given to conversion or reduction of capacities.

³⁸⁴ Acrylic fibres: Mexico, Israel, Romania and Turkey; polyester yarn: Mexico, the Republic of Korea, Taiwan and Turkey; polyolefin woven bags (provisional duties): China, sisal twine: Brazil and Mexico; synthetic textile fibres of polyester: Mexico, Romania, Taiwan, Turkey, the United States and Yugoslavia.

³⁸⁵ EC Commission (1972), First Report on Competition Policy, Brussels.

³⁸⁶ EC Commission (1977), Sixth Report on Competition Policy, Brussels.

572. According to a communication of the EC to the GATT Textiles Committee, there are no textile-specific aid programmes in force.³⁸⁷ The textile schemes of member States, which had been approved in the past, lapsed by the end of 1984 at the latest. To date, the sector is only eligible for generally available aid programmes such as regional support or for projects which may be developed in broader programmes such as the ESPRIT or Eureka context.

573. As stated by the Commission, it has continued to tighten controls of national State aid to the textiles and clothing sector. The objective is to ensure that these aids are not merely palliatives which transfer remaining structural problems to other regions within the EC.³⁸⁸ The guidelines of 1971 and 1977 are still used in this context.

574. International economists have undertaken considerable research to assess the effects of textile policies. The GATT Secretariat has recently put forward an overview for the Textiles Committee³⁸⁹ of studies on the impact of trade liberalization in textiles and clothing.

575. For example, as regards the United Kingdom, a Government-mandated study estimated that clothing prices would be about 5 per cent and textile prices about 2 per cent lower if there was no MFA.³⁹⁰ The ensuing fall in employment was estimated at 32,900 jobs under pessimistic assumptions. This means that the costs for consumers of each of the jobs protected under the MFA approximates £29,700 (1988 prices), that is three or four times the average annual earning per employee in the textiles and clothing sector.

(5) Ores and Metals

576. Total EC imports of ores and metals (Tariff Study Category 08) amounted to US\$ 35.9 billion in 1988. Imports worth US\$11.8 billion originated from m.f.n. sources. Metallic ores, and iron and steel accounted for roughly half of the ore and metal imports.

577. Tariff protection - particularly at early stages of production - is relatively low. Some non-ferrous metals, such as unwrought copper, nickel and tin enter the EC duty free. Semi-manufactures are dutiable at

³⁸⁷ See Sub-Committee on Adjustment (COM.TEX/64, 25 May 1990).

³⁸⁸ Submission of the EC to the GATT Textiles Committee, op cit.

³⁸⁹ The Economic Consequences of Liberalizing World Trade in Textiles and Clothing: A Survey of the Empirical Literature. COM.TEX/W/223, 3 April 1990.

³⁹⁰ Z.A. Silberston (1989), The Future of the Multi Fibre Arrangement - Implications for the UK Economy, HMSO, London.

6.0 per cent (copper), 4.2 per cent (nickel) and 3.4 per cent (tin), thus giving rise to tariff escalation. This applies also to other non-ferrous metals such as aluminium, lead and zinc. Average tariffs on ferro-alloys are 4.9 per cent.³⁹¹

578. Many ferro alloys and unworked metals are excluded from GSP treatment.

579. In the case of iron and steel, tariff escalation is less pronounced. Simple average tariffs are 3.5 per cent for unworked products, 5.6 per cent for semi-manufactures and 5.4 per cent for manufactures. GSP benefits are limited by quotas and ceilings (see Chapter II).

580. However, in addition to tariff protection, other forms of policy support, in particular voluntary export restraint arrangements and internal measures, are manifest. In the iron and steel sector, such measures proliferated in the 1970s.

581. In the course of the 1970s, the EC steel industries, like those of other advanced market economies, experienced serious adjustment pressures.³⁹² Major factors in this development included shifts in overall output and demand patterns towards less steel-intensive products and services, steel-saving substitution processes in traditional user industries (e.g. automobiles), and competition from new sources of world market supply. While apparent EC steel consumption grew by 55 per cent in the 1960s, it stagnated during the following decade.³⁹³ Capacity utilization in crude steel production dropped from 87 per cent in 1974 to 56 per cent in 1982, prompting parallel losses in employment of roughly 260,000 persons (Table V.13).

582. The EC aimed at containing the external pressures by voluntary restraint arrangements or autolimitations of major exporters. Some 16 countries were covered by such schemes in the late 1970s. The arrangements have been annually renewed during the 1980s, and since 1985 with gradual reductions both in country and product coverage.³⁹⁴ The share

³⁹¹The respective figures are simple average m.f.n. tariffs.

³⁹²Following the Soviet Union and ahead of Japan, the EC is the world's second largest steel producer.

³⁹³During the same period, world steel consumption increased by 5.8 per cent and 1.9 per cent respectively (ECE estimates).

³⁹⁴In 1990, restraints were in effect with Bulgaria, the Czech and Slovak Federal Republic, Hungary, Poland, Romania, and Brazil. These countries account for about 15 per cent of total EC steel imports. Agreements with the Republic of Korea and Venezuela were terminated in

(Footnote Continued)

of steel imports (ECSC products) under such arrangements dropped from 68 per cent (6.103 million tonnes) in 1980 to 19 per cent (1.915 million tonnes) in 1989.

583. Supply from other sources are subject to a basic import price mechanism. Reference prices are to serve as benchmarks for domestic industries that consider themselves affected by allegedly dumped imports. According to the Commission, the system does in no way affect the anti-dumping procedures; the existence of dumping has to be established case-by-case on the basis of actual prices. Mexico, Turkey and Yugoslavia

(Footnote Continued)

1990.

The agreements provide for the maintenance of "traditional patterns of trade". According to a so-called "triple clause", exporters are required to spread their deliveries over the year, throughout the EC and across the product range. No quantitative targets are specified to this effect; consultations are to be held if problems arise. However, a sanction mechanism is established with respect to eventual price infringements. Landed prices are not allowed to undercut EC prices by more than 6 per cent - 4 per cent in speciality steel - with some additional bonuses for transportation costs.

An exchange of letters with three EFTA countries (Austria, Finland, Sweden) aims at ensuring compliance with ECSC rules. It contains specific consultation procedures to deal with market disturbances, independent from the Joint Committees under the free trade agreements. The procedures have not been invoked over the last three years.

Japanese steel producers have maintained cartels which also served to restrain the volume of steel exports to the EC. According to newspaper reports, the Japanese Fair Trade Commission and the Ministry of International Trade and Industry recently found, after considering the low level of steel exports to the EC, that existing export ceilings were economically meaningless. Hence, these ceilings are reported to have been lifted as from 1 January 1991. (The Wall Street Journal, 9 January 1991).

National restrictions for non-ECSC steel products under Regulation No.288/82 are imposed on ferro-alloys (France, Spain) and on a wide range of semi-manufactured products (Italy and Spain against Japan). Portugal restricts imports of certain wires from Japan.

In addition, imports from central and eastern European countries are subject to autonomous quotas of 5 member States (Belgium, Germany, Italy, the Netherlands, Luxembourg) which predate the ECSC Treaty.

To restrict intra-Community trade and thus to prevent circumvention of any regional quotas, Article 71 of the ECSC Treaty can be used to an effect comparable to that of Article 115 of the EEC Treaty. Accordingly, the Commission is empowered to propose to member States the methods by which they shall afford each other "mutual assistance".

have been³⁹⁵ the countries mainly affected thus far by anti-dumping measures.

584. On the export side, the EC (and other suppliers) have agreed in the continuation of their self-restraints on the United States market until March 1992. Under the new steel agreement, concluded at the end of 1989, the EC share slightly increased from 6.7 to 7 per cent of United States steel consumption (equivalent to about six million tonnes per annum). For the purpose of internal administration within the Communities, a system of export licences, transferable between steel and distribution enterprises, has been established.³⁹⁶ The arrangement also stipulates certain disciplines for the granting of new subsidies and other forms of State intervention, and the phasing-out of existing subsidies. The dispute settlement procedures provide for binding arbitration if no solution is reached in consultations.

585. The Commission announced that it is prepared to negotiate, in the Uruguay Round and in any case before 1992, a similar multilateral agreement which imposes³⁹⁷ strict discipline on State intervention, including trade barriers. In late 1990, exploratory talks with the aim of finding a common position were held among the countries which had agreed in bilateral restraints with the United States. The discussions are to continue in 1991.

586. With respect to the internal policy régime, the ECSC Treaty allows for considerably stronger Government intervention than the Treaty of Rome. In the crisis situation of the early 1980s and against the background of divergent responses on the part of member States, a system³⁹⁸ of EC-wide production quotas and price controls was established. The Davignon

³⁹⁵ As of September 1990, the EC maintained the following measures: (i) Sheets and plates of iron and steel (originating from Mexico and Yugoslavia); (ii) steel coils (Algeria, Mexico, Yugoslavia); (iii) steel sheets of iron or non-alloy steel, flat rolled (Yugoslavia); (iv) steel sections, hot rolled (Yugoslavia, Turkey); (v) tubes of iron or non-alloy steel (Romania, Yugoslavia) (vi) ferro-silico-calcium (Brazil); (vii) ferrosilicon (Brazil, Iceland, Sweden, Venezuela, Yugoslavia, Norway); (viii) silicon metal (China); (ix) ferroboron (Japan); (x) tungsten ores (provisional duties: China).

³⁹⁶ The system covers 32 steel categories, with supply shares being allocated among member States on the basis of traditional trade flows.

³⁹⁷ EC Commission (1990), General Objectives Steel- 1995. COM(90)201 final, Brussels.

³⁹⁸ The strict prohibition of national aid made under Article 4 of the ECSC Treaty was obviously eroded by increasing government intervention, resulting in distortions between competing industries.

plan, named after the Commissioner in charge of this dossier, was based on Article 58 of the Treaty. According to this Article, in the event of a "manifest crisis" the Commission is entitled - after consultations with a consultative Committee and with the assent of the Council - to establish a quota system. A so-called steel aid Code was introduced which linked the approval of sectoral assistance (including operational and investment aids) to the closure or adjustment of production capacities.

587. The original version of the Code was tightened in 1981. Henceforth, with the exception of emergency support, all undertakings receiving aid (available until December 1984) had to submit specific adjustment programmes. The amount and intensity of support was proportional to the restructuring efforts (capacity closures, etc.). Under the Code, capacity of more than 30 million tonnes was dismantled. The Code expired at the end of 1985. Production quotas were gradually liberalized;³⁹⁹ in June 1988, they were replaced by a system of surveillance.

588. In total, the Commission approved ECU 36.4 billion of aid (1 February 1980 to 31 December 1985). The shares of individual member States amounted to 33 per cent (Italy), 25 per cent (France), 16 per cent (the United Kingdom), 12 per cent (Belgium), and 11 per cent (Germany).

589. After the expiration of the steel aid Code in 1985, support could only be authorised for the purposes of research and development, environmental protection and plant closure (Decision No. 3484/85/ECSC).⁴⁰⁰ In 1989, this decision was extended to 31 December 1991. On the basis of the Act of Accession (1986), a specific transitional period was provided for Spain (3 years) and Portugal (5 years), during which operating and investment aids are permitted. Industrial conversion of steel areas is supported by the RESIDER programme at the EC level (Section IV:4(i)).

590. Recently, steel consumption and production has recovered. Crude steel output in the EC reached about 140 million tonnes in 1989, up from 126 million tonnes in both 1986 and 1987 (Table V.14). The Commission points to a radical change of the climate, as compared with the situation 5 years ago.⁴⁰¹ For most steelmakers, normal conditions of competition were restored again. EC crude steel production is expected to rise to 143 million tonnes by 1995. Against this background, the Commission argues

³⁹⁹The Commission originally offered to agree to the continuation of some quotas provided that industries agree in the closure of 75 per cent of remaining excess capacity. As market conditions brightened, no such undertakings have been made.

⁴⁰⁰There have been cases in the past, however, where agreed deadlines for plant closure have not been met. The Bagnoli steel mill in Naples (Italy) may serve as an example.

⁴⁰¹EC Commission (1990), General Objectives Steel, op. cit.

in favour of a continuing liberalization process and a less interventionist policy stance which gives steelmakers the initiative and the responsibility for all commercial decisions. With the aim of preventing unfair trade practices and the ensuing negative price impacts, the Commission intends "to exhaust all possibilities under GATT to improve the effectiveness of anti-dumping procedures".

591. The White Paper of 1985 on the completion of the Internal Market does not explicitly refer to products under the ECSC Treaty. This Treaty will expire in 2002; any prior changes would require the unanimous approval of member States. However, working groups are currently examining ways of removing intra-Community barriers in line with the 1992-process. In the Commission's view, this process will exert a liberalizing influence on the Treaty of Paris⁴⁰² and thereby contribute to a general change in philosophy in this sector.

592. Imports of metal manufactures (metal flatware) are subject to certain restraints, including industry-to-industry arrangements, at the level of member States (Belgium, Luxembourg and the Netherlands with the Republic of Korea).⁴⁰³ Japan maintains quantitative export restrictions with respect to the EC as a whole.⁴⁰⁴ France has imposed global and bilateral quotas on imports of knives; Spain maintains restrictions on cutlery, several hand tools and other metal manufactures such as screws and household articles.⁴⁰⁵

593. Imports of containers corner fittings from Austria and of cycle chains from the Soviet Union and China are subject to anti-dumping actions.

(6) Coal, Natural Gas and Petroleum

(i) Coal

594. Hard coal production in EC member States was approximately 215 million tonnes in 1988, equivalent to 6 per cent of total world production. For brown coal (lower grade coal, including lignite), EC production⁴⁰⁶ totalled nearly 180 million tonnes or 14½ per cent of world production. However, the EC share in world trade is very small; its

⁴⁰²EC Commission (1990), op. cit.

⁴⁰³The Governments of Belgium and the Netherlands have informed the GATT Secretariat that they are not aware of such arrangements.

⁴⁰⁴The EC Commission is not aware of these restrictions.

⁴⁰⁵Situation in mid-1990.

⁴⁰⁶Leading producers of hard coal are China (899 million tonnes in
(Footnote Continued)

third country exports amount to less than 1 per cent of total world trade in coal. Even allowing for intra-EC deliveries, coal exports do not loom large for any coal producing member State, including Germany and the United Kingdom which together produced more than 80 percent of EC coal in 1988 (Table V.15).

595. Solid fuels accounted for 21½ per cent of the EC primary energy consumption in 1987 (the respective share in 1980 was 23½ per cent). The shares of the individual member States vary widely, from 9½ per cent in France and Italy to 40 per cent in Denmark.

596. In 1988, total EC imports of coal, coke and agglomerates (Tariff Study Category 09.01) amounted to US\$4.6 billion. Predominant suppliers were the United States, Australia, Poland and South Africa which together accounted for almost 90 per cent of EC imports.⁴⁰⁷ The simple average m.f.n. tariff was 3.3 per cent. However, this figure needs to be interpreted with care. Some member States impose tariffs and - economically more important - operate specific policy schemes at the national level.⁴⁰⁸ In Germany, for example, long-term contractual obligations of user industries appear to be the binding factor in restricting market access.⁴⁰⁹ Border protection, in the form of a complex

(Footnote Continued)

1988), United States (784 million tonnes) and the Soviet Union (526 million tonnes). For brown coal, the German Democratic Republic holds the lead with 310 million tonnes in 1988. (The statistical concept of the above figures on the EC deviates from that used in Table V.15; for reasons of comparability the latter is based on coal equivalents).

⁴⁰⁷Denmark and France have embargoed South African deliveries since 1986.

⁴⁰⁸At present, imports of anthracite and bituminous coal are duty free in 11 member States, whereas Germany imposes a specific duty of DM 6/1,000 kg. Brown coal (lignite) imports are dutiable at 5 per cent in Greece and 2.2 per cent in France; they are free in other member States.

⁴⁰⁹Germany has invoked Article XIX of the GATT since 1958, submitting m.f.n. imports of hard coal and hard coal products to non-automatic licensing (Chapter IV).

On 18 July 1990, the Commission repealed the ECSC-derogation under which Germany had been entitled to impose the tariffs since 1958 (Commission Recommendation No.90/443/ECSC). In this context, the Commission pointed to the Federal Republic's declining share in EC coal imports (from 40 per cent in 1958 to 9 per cent in 1989) and to alternative instruments of intervention under the ECSC aid régimes (see below). According to the Commission, these aids may be compatible with the proper functioning of the common market if they contribute to an improvement in competitiveness. Germany is therefore required to remove the tariffs as of 1 January 1991.

quota system, mainly serves as a flanking instrument with respect to non-ECSC and non-EFTA deliveries.

597. During the 1980s, coal production declined in Germany, the United Kingdom, France and Belgium. Available PSE estimates for Germany and Belgium suggest that, in parallel, State intervention strongly increased (Table V.16).⁴¹⁰ Policies apparently aim at shielding domestic producers from adverse price trends on world coal markets and decreasing price competitiveness with respect to oil, and to cushion adjustment processes. Security arguments - the perceived need of maintaining some domestic capacities and ensuring a certain diversity of supplies - as well as regional and social policy objectives were advanced as important considerations in this context.

598. In June 1986, the Commission established new criteria for the approval of State aid to coal (Decision No. 2064/86/ECSC). Under this Decision, which is applicable until the end of 1993, aid may be considered compatible with the Common Market when it contributes either to (i) improving the competitiveness of the coal industry, or (ii) the creation of new capacities that are economically viable, or (iii) the solution of social and regional problems arising from the contraction of the coal sector. In this context, several aid categories may be granted, including deficit grant aid, sales aid, investment aid (up to 50 per cent of investment costs), aid for underground staff, and aid to cover inherited liabilities. The Commission has to ensure, however, that their use does not lead to discrimination between EC buyers or users of coal and coke (Article 11:1).

599. The support systems which are currently in force differ considerably among member States. As already noted, there is no overriding policy framework which could be compared, for example, with the CAP. In the following, the systems in place in Belgium, the United Kingdom and Germany are specifically addressed because of the production quantities or the support volumes involved.

600. Geological conditions in Belgium (and in some coal regions of Germany) are among the most unfavourable worldwide. The industry has undergone profound restructuring during the 1980s; between 1979 and 1988, annual hard coal production dropped from 4.4 to 1.9 million tonnes of coal equivalents (Table V.15). The Belgium authorities intend to close the remaining two underground mines by the end of 1992.

⁴¹⁰ As noted in the context of agriculture, PSE values of individual countries are not directly comparable because of statistical and methodological problems. In the case of coal, as distinct from the estimates for agriculture, attempts have been made to exclude assistance which is not devoted to current production.

601. Under the present régime, direct State aid is granted to match operating losses. In the 1980s, this occurred partly under the guise of increased State ownership.⁴¹¹ Deliveries to electricity plants are encouraged by subsidies, designed to offset the price differential between domestically produced and imported steam coal. Almost total domestic coal production is used for electricity generating (1.45 million tonnes in 1989).⁴¹² Imports from and exports to non-Benelux countries are subject to licensing which, according to the Belgium Government, is not restrictive.

602. The United Kingdom produced 86 million tonnes of coal equivalent in 1988, down from 99 million tonnes a decade before. Available information suggests that support to the coal industry is considerably below the support levels in other member States. This applies both in terms of subsidies per worker and producer subsidy equivalents (Table V.16). Public aid has been provided via deficiency grants to British Coal. Under the Coal Industry Act 1990, the Government is empowered to make such grants in order to reduce or eliminate accumulated deficits at 31 March 1990. In addition, and beyond that date, aid is available in respect of historical liabilities, for example, pensions to redundancies, and current social costs of restructuring. According to the UK Government, all coal purchases, whether from domestic or third country sources, are made on a commercial basis; imports are unrestricted.

603. The International Energy Agency notes that a previous long-term understanding between British Coal and the electricity industry was seen by both sides as advantageous, providing reliable supply for electricity producers and stable prices for the mines. The understanding lapsed in 1989; new contracts were subsequently negotiated with the privatized electricity industry.

604. In Germany, hard coal production amounted to 73 million tonnes (coal equivalents) in 1988, as against more than 89 million tonnes in 1979. Assistance is mainly based on long-term agreements between coal producers and the steel and electricity industries; these agreements are encouraged by the federal Government and the Länder. Under the "Hüttenvertrag", German steel mills are committed to use exclusively domestic coal supplies. The relevant prices are fixed somewhat above world market levels, but far below production costs. Subsidies offset the difference. In February 1990, the EC Commission approved subsidies of DM 2.865 billion for deliveries to the steel industry which had been granted in 1989.

⁴¹¹In the Kempense Steenkoolmijnen (KS), the company which runs the underground mines, the public share in equities thus rose from 7 to 100 per cent during the 1980s.

⁴¹²Deliveries to steel producers amounted to 419,000 tonnes in 1988 and 15,000 tonnes in 1989.

605. Under the "Jahrhundertvertrag" (contract of the century), German electricity producers are obliged to use certain amounts of domestic coal (40.9 million tonnes per annum from 1991 to 1995). A basic quantity of 31 to 33 million tonnes is completely reserved to this effect.⁴¹³ Imports may be used to cover excess demand on a one-to-one ratio with German coal.⁴¹⁴ The electricity utilities are partially compensated through a special fund for the inflated costs of their coal inputs. The fund is sourced by a levy, the so-called "Kohlepfennig" (coal penny), which is imposed on consumers as part of the electricity bill.⁴¹⁵ Moreover, additional State aids are available to support hard coal production and to cushion adjustment pressures.

606. The Kohlepfennig-mechanism is under intense discussion between the German coal industry, the German Government and the EC Commission. The Commission's approval of aid under this scheme (DM 4.9 billion for 1988) was subject to the presentation, by 30 September 1990, of plans for curbing the compensatory payments to electricity producers and for restructuring, modernising and streamlining the coal industry.⁴¹⁶ For 1989 and 1990, the Commission, referring to trends in the German energy market, limited its authorisation for public support under the mechanism to DM 4.98 billion (1989) and DM 4.68 billion. The Federal Government has disputed the legal basis of the Commission's decision.⁴¹⁷ The matter was submitted to the European Court of Justice.

⁴¹³For some 20 million tonnes, the support scheme offsets the price difference between heavy fuel oil (including excise taxes) and domestic coal. For some additional 11 million tonnes, electricity producers are compensated for the price gap between imported coal (at 1980 prices) and domestic coal.

⁴¹⁴Prior to 1988, the ratio of imports to domestic coal was one to two.

⁴¹⁵The Kohlepfennig varies between the Länder with a view to reducing the additional costs in areas of higher electricity prices. For 1990, it was set at an average level of 8.25 per cent of the electricity price. It will be reduced in steps of 0.25 percentage points until 1993. Receipts under this scheme amounted to DM 5.2 billion in 1989.

⁴¹⁶According to newspaper reports in February 1991, the German Government has apparently failed thus far to submit a restructuring plan. (Wall Street Journal, 7 February 1991).

⁴¹⁷Moreover, with support from the Land of Bavaria, a German electricity consumer has recently challenged the legality of the Kohlepfennig-mechanism. According to the claimant, the mechanism amounts to an excise tax-scheme but fails to meet the basic fiscal policy requirements of such schemes. The case was referred to the Constitutional Court of Germany.

607. The Commission also issued Decision in 1989 and 1990 demanding the Government of Spain to submit plans for scaling down subsidies and indirect support (via electricity producers) for Spanish coal mines.

(ii) Natural gas and petroleum

608. EC natural gas consumption followed an upward trend over the last decade, from 1.8 million teracalories in 1978 to more than 2.2 million teracalories in 1989 (Table V.17). Domestic production accounts for some 1.4 million teracalories (1989); major suppliers are the Netherlands (44 per cent of EC production in 1988) and the United Kingdom (29 per cent).

609. Total EC gas imports from third countries (Tariff Study Category 09.02) were approximately US\$7.4 billion in 1988. They were mainly sourced from the Soviet Union (15 per cent of EC consumption), Norway (12 per cent) and Algeria (11 per cent). Tariffs on m.f.n. deliveries are suspended for an indefinite period.

610. In 1989, EC consumption (refinery intake) of crude oil amounted to 447 million tonnes, down from a peak of 590 million tonnes in 1978 (Table V.18). The decline is related to the sharp increase in oil prices in 1979/80. Between 1980 and 1985, refining capacities were reduced by 42 per cent in Germany, 34 per cent in France, 29 per cent in the United Kingdom and 26 per cent in Italy.⁴¹⁸

611. Domestic oil production accounts for some 30 per cent of EC refinery intake, with the largest share (20 per cent) stemming from the United Kingdom. OPEC deliveries amounted to 49 per cent of refinery intake.

612. In total, the EC imported petroleum (Tariff Study Category 97) worth US\$44 billion in 1988, 77 per cent of which was crude petroleum. These imports are duty free. Refined petroleum is dutiable at 3.1 per cent (simple average m.f.n. tariff); the bulk of imports enter duty free.

613. The Commission points to various obstacles for the achievement of the Internal Market in the gas and petroleum sectors. They include preferential conditions for State companies in the granting of exploration and production rights (e.g., reserved areas); local landing obligations in two member States; special rights for specific gas operations conferred on States or State companies; and local procurement obligations or pressures. It is recorded, however, that access procedures for ⁴¹⁹exploration licences are increasingly becoming more open and diversified.

⁴¹⁸ See International Energy Agency (1989), Oil and Gas Information 1986-1988, Paris.

⁴¹⁹ EC Commission (1990), Panorama, op. cit.

614. In some member States, State monopolies have been established for the importation, refining or distribution of oil. However, several changes are under way. The European Court of Justice is currently scrutinizing the terms and conditions under which the Greek import monopoly has been relaxed and opened for other EC refineries. Recently, the Commission issued a reasoned opinion concerning discriminatory storage requirements; they do not apply when petroleum products are purchased from domestic refineries.⁴²⁰ In Portugal, automotive fuels have been distributed by a State company or by some private companies via monopoly transfer. Recently, this system was partly liberalized; new operators may establish services stations subject to administrative authorization. The Commission pursues an infringement procedure because, in its view, the rules for prices and taxation might still favour domestic production. The Spanish Government has agreed to admit an independent distribution company parallel to CAMPSA, the State monopoly.⁴²¹ Supply is limited, however, to imports from other EC countries.

615. Some member States have provided tax incentives designed to promote the introduction of unleaded fuel. The most generous reductions of fuel taxes are to be found in Luxembourg, Denmark, Germany and the Netherlands. Moreover, specific regulations aim at replacing leaded regular gasoline with unleaded gasoline (for example in Denmark, the Netherlands and Germany).

(7) Minerals and Fertilizers

616. EC imports under this category (Tariff Study Category 06) were some US\$7.3 billion in 1988. Average tariffs ranged from close to nil on crude minerals and fertilizers to some 5 per cent on manufactures. Tariffs on glass products are in the range of 7½ to 9 per cent.

617. The EC maintains anti-dumping measures on urea imports. Suppliers from 10 countries have agreed to price undertakings; in four additional cases duties are imposed. Price undertakings are also applied to flat glass imports from central and eastern European suppliers (four countries) and from two Mediterranean countries (situation as of 1 September 1990).

⁴²⁰ EC Commission (1990), Nineteenth Report on Competition Policy, op. cit.

⁴²¹ The Spanish Government informed the GATT Secretariat that all price controls and quantitative limitations on imports in the petroleum sector will be lifted by 1 January 1992. From that date, the authorized operators will be free of any such restrictions.

618. Some member States apply national measures to imports of ceramic ware, tableware and fertilizers.⁴²² Japan maintains quantitative restraints on its pottery exports to the United Kingdom.⁴²³

(8) Chemicals

619. The EC chemical industry employs some 1.9 million people and represents around 10 per cent of total EC value added (1988). Many sectors are characterized by highly qualified employees and intense R & D spending. Public support at the EC level is provided, inter alia, in the context of specific research programmes for biotechnology (BAP and Bridge).

620. EC trade is in large surplus. In 1988, EC exports of some ECU 51.1 billion exceeded imports by more than ECU 24 billion. Average tariffs of most product groups are in the range of 6 to 10 per cent. For a number of chemicals, GSP treatment is limited by duty-free amounts or ceilings.

621. Basic chemicals are a particularly prominent sector with respect to the imposition of anti-dumping measures. As of September 1990, 18 products from 46 sources were affected by definitive or provisional duties or price undertakings.⁴²⁴

622. Specific regulations aim at containing the environmental impact of production, transport and consumption of certain chemicals. This applies, for example, to legislation in the wake of the Montreal Protocol on substances that deplete the ozone layer (Chapter IV).

⁴²²In 1990, imports of certain ceramic ware and tableware into France, Portugal and Spain were subject to bilateral quotas (France, Portugal) or non-automatic licensing. The French quotas are reported to be non-restrictive. Greece was restricting tableware deliveries from Asian countries; Denmark limited certain imports of ceramic tiles from Taiwan.

Urea imports were subject to automatic licensing in the Benelux countries and to global quotas in Greece. Spain applied non-automatic licensing to a wider range of fertilizers.

⁴²³An arrangement on pottery at the industry level appeared to have lapsed at year-end 1987. According to the Danish Government, the same applies to an arrangement by Poland on table porcelain exports to Denmark.

⁴²⁴The imports originated in China (8 cases), the Soviet Union (7), the Czech and Slovak Federal Republic (5), Poland (5), Bulgaria (3), Romania (3), the German Democratic Republic (2), Hungary (2), the United States (2), Yugoslavia (2), Brazil, Canada, Japan, the Republic of Korea, Norway, Sweden and Taiwan.

623. The Benelux countries, France, Greece, Italy, Portugal and Spain restrict trade in several chemical products under Regulation No. 238/82.⁴²⁵

624. The pharmaceutical sector represents about 15 per cent of the chemical industry's total production and exports. It displays one of the highest research expenditure to sales ratios among EC industries (15 per cent).

625. The Commission holds the view that the regulatory environment is generally less favourable in the Communities than in the United States or in Japan.⁴²⁶ The EC market is fragmented. Producers and importers have to cope with country-specific regulations, pricing policies and patent protection laws in the individual member States. Available estimates suggest that average pharmaceutical prices in Germany and the Netherlands exceed the price levels in France and Italy by more than twice (1987).⁴²⁷

(9) Machinery, Optical Goods, Watches and Sound Recorders

626. Non-electrical machinery, electrical machinery, photographic and optical goods, watches, record-players, and like products account for around one-third of EC imports of industrial products (excluding petroleum). The value of imports of these products was US\$94 billion in 1988.

627. In the Commission's view, the EC mechanical engineering industry is a worldwide leader, not only in quantity but also in quality.⁴²⁸ Among member States, Germany is by far the most important producer, representing about 45 per cent of total EC production of ECU 210 billion, followed by

⁴²⁵In mid-1990, imports of certain nitrates into Greece were under global quotas; deliveries to the Benelux countries and to Spain were subject to licensing (non-automatic licensing in the case of Spain). France had imposed quantitative restrictions on imports of certain colouring materials and carbon preparations (global quotas and bilateral quotas with respect to Japan and State trading countries). Italy maintained bilateral quotas on imports of certain essential oils (affecting North American, Latin American and certain Arabian and Asian suppliers). Spain restricted imports of certain polishes and creams, of modelling pastes, and of a wide range of plastic materials (vinyl chlorides etc.) and plastic products.

⁴²⁶EC Commission (1990), Panorama..., op. cit.

⁴²⁷Commissariat général du Plan, "L'industrie chimique et pharmaceutique française dans la perspective de 1992". La Documentation française, Janvier 1990. (Excerpts are published in Problèmes économiques, No. 2, 1990).

⁴²⁸EC Commission (1990), Panorama....., op. cit.

Italy (17 per cent). EC net exports are about one-fifth of total output for the EC mechanical engineering industry.

628. In 1987, the United States informed the German Government of target market shares it had unilaterally set with respect to certain machine tool exports. The EC refused to accept such measures because they were considered not to be in compliance with Article XI of the GATT (Chapter IV).

629. Japanese exports to the EC of certain machine tools (NC lathes, machining centres and forklift trucks) are subject to export floor prices.⁴²⁹ The EC monitors the relevant imports in parallel. Trade in machining centres and NC lathes has been a bilateral issue at least since 1981 when Japan established the floor price systems in order to avoid anti-dumping actions. Exports of ball bearings have to be approved under Japan's Export Trade Control Order.⁴³⁰ In addition, the domestic markets of certain EC member States are specifically protected by quotas or other restrictions. They apply to machine tools, ship cranes, forklift trucks and agricultural machines (Spain), to engines and to sewing machines (Italy, Spain and Portugal).⁴³¹ The measures taken by Italy and Portugal focus on imports from Japan. Since 1981, France has accepted only limited imports of machining centres (260 units per year) and NC lathes (360 units) from Japan.

630. Almost 50 per cent of the EC telecommunications equipment market consists of public network equipment. A major part of EC production is destined for the telecommunication entities which are, with one exception (the United Kingdom), public companies in the EC member States.⁴³² The close links of the major manufacturers with these entities have guaranteed

⁴²⁹ According to the Government of Japan, it has operated in accordance with the Export and Import Transaction Law, a system of export floor prices and quantitative ceilings on deliveries of forklift trucks to the EC since 1987. Exports of machining centres and NC lathes are only allowed subject to confirmation, under the above law, that certain price standards are being met. See GATT (1990), Trade Policy Review - Japan, p.69.

⁴³⁰ The EC Commission has informed the GATT Secretariat that it is not aware of such a requirement.

⁴³¹ Situation in mid-1990.
Industry-to-industry arrangements on machining centres, numerically controlled lathes and forklift trucks (Japan/United Kingdom) appear to have been terminated in 1988-89.

⁴³² The EC telecommunication equipment market represents ECU 21.6 billion (1987), that is, according to EC estimates, one-quarter of the world market. Net EC exports in 1988 were ECU 0.1 billion.

sales outlets and funds for R&D. However, in the view of the Commission, this situation has weakened the response of EC producers to changing world demand for terminal equipment.⁴³³ Reform efforts - based on the Commission's Green paper on telecommunications (1988) - aim at liberalizing the terminal markets (by the end of 1990 at the latest in all member States) and at opening the procurement procedures to competitive bidding. In this context, a buy-European clause is to come into force in January 1993, subject to review in the light of the results of the Uruguay Round (Chapter IV).

631. Electronics and, in particular, information technologies are among the most dynamic industries of the EC, with a wide-ranging impact on other sectors. The EC has sought to strengthen research and development in these industries since the early 1980s. Efforts include the ESPRIT programme of 1983 in electronics, the RACE programme of 1986 in telecommunication, and JESSI (Joint European Submicron Silicon Initiative) in microchip technologies. ESPRIT II is endowed with EC funds of ECU 1.6 billion for the period December 1987 to December 1992 and RACE with ECU 550 million for five years starting in June 1987. BRITE/EURAM is devoted to industrial technologies and advanced materials; it is funded with ECU 499.5 million (1989-1992).

632. Consumer electronics such as video-cassette recorders, cassette tapes and disc players, and office machines such as electronic typewriters, printers and photocopiers are currently subject to anti-dumping duties or price undertakings. In most cases, Japanese producers are involved; other actions concern exporters from Hong Kong (video cassette tapes) and the Republic of Korea (disc players, small screen colour TVs, video recorders and video tapes).⁴³⁴

633. Japan has monitored its exports of colour TV sets, colour TV tubes and video tape recorders to the EC since 1983.⁴³⁵ Korean video tape recorders are subject to a similar moderation arrangement. Moreover, the Korean industry has agreed to limit its exports of microwave ovens to the

⁴³³ EC Commission (1990), Panorama ..., op. cit.

⁴³⁴ In some cases, measures have been extended to assembly plant operations within the EC (Chapter IV).

⁴³⁵ According to the Japanese Government, exports of video tape recorders to the EC were limited between 1983 and 1985. The restrictions which had been agreed upon in Ministerial Consultations in early 1983 were intended to prevent anti-dumping actions on the part of the EC and to replace administrative import barriers of France.

The EC has continued to apply import surveillance.

EC (the Commission is not aware of the existence of such measures).⁴³⁶ The arrangements concerning video tape recorders was originally intended to grant protection for the proliferation of a European recording system (V 2000). However, this system was not accepted by the market.

634. Japanese exports to individual member States (France, Germany, Italy and Spain) are affected by further measures, such as import quotas, export restraint arrangements or monitoring procedures.⁴³⁷ In 1989, France was authorized, under Article 115 of the EEC Treaty, to restrict indirect imports of 13 electronic products; Spain applies such measures to two products.

635. Several estimates are available as regards the cost to consumers of the current anti-dumping measures in the electronics area. According to recent assessments by the National Consumer Council (the United Kingdom),

⁴³⁶In 1988, an anti-dumping investigation into microwave ovens from Japan, the Republic of Korea and Singapore was terminated after the complaint was withdrawn subsequent to a change in the market situation (see EC Commission, Seventh Annual Report on Anti-Dumping and Anti-Subsidy Activities, op. cit.).

According to reports, the above arrangement envisages a 30 per cent share of the EC market; the arrangement is to be prolonged every six months.

⁴³⁷In mid-1990, the following Japanese products were subject to bilateral quotas under Regulation No. 288/82: Radios and TV sets (France, Italy and Spain), colour TV sets, transistors and integrated circuits (France and Italy), TV cameras, TV tubes, car radios, hi-fi radios, radio recorders and antennae (Italy) and insulators (France).

Exports of Japanese video tape recorders and TV tubes to France are restrained under an industry-to-industry arrangement; exports of Japanese colour TV sets to Germany are subject to moderation.

Denmark operates quantitative restrictions against imports of insulated cables and wires from Taiwan.

Portugal and, to a greater extent, Spain have imposed global quotas or non-automatic licensing on a range of consumer electronics and electronic components (Spain: Turntables, tape recorders, video recorders, radio receivers, TV sets, capacitors, tubes, integrated circuits, etc.). Both countries employ non-automatic licensing with respect to wire and cable imports from Japan.

In the early 1980s, UK producers operated several self-restraint arrangements with their counterparts in Japan, the Republic of Korea, Singapore, Taiwan and Thailand concerning certain consumer electronics. Reportedly, these arrangements are no longer in force.

Furthermore, restrictions apply to certain clocks (Spain and Portugal), watches (France, Spain and Portugal), and cameras (Italy). According to the French Government, most of the French measures (quotas on watches) are non-restrictive.

EC consumers have to pay some additional ECU 272.5 million per year for video cassette recorders (1989), ECU 146.1 million for compact disc players (1989), ECU 48 million for video cassettes (1987), ECU 512.6 million for dot matrix printers (1988), ECU 104.5 million for electronic typewriters (1987) and ECU 339.5 million for photocopiers (1988).⁴³⁸

636. These costs are on top of customs tariffs which, in many cases, are substantial. Most integrated circuits, radios, television receivers, and video recorders are dutiable at 14 per cent.

637. In 1987, the EC requested a GATT Panel to investigate certain aspects of an arrangement between Japan and the United States on semi-conductors.⁴³⁹ In the course of a trade dispute between the United States and Japan in the context of this arrangement, the United States imposed retaliatory tariffs of 100 per cent on a range of Japanese exports. In parallel, the EC implemented a surveillance mechanism designed to trace any trade deflection and to possibly intervene (no measures have yet been taken in this respect). As stated by the EC, the United States measures are still partially applicable and therefore the continued monitoring of import trends for the respective products - personal computers and electropneumatic drills - was deemed necessary.⁴⁴⁰

638. In January 1990, the EC accepted a price undertaking by 11 Japanese semi-conductor producers of dynamic random access memory (DRAM) chips. The agreement put an end to an anti-dumping investigation which was initiated in mid-1987. It set a floor price which the Commission considered adequate to eliminate "to a satisfactory extent" the injury caused to the complainant companies (Commission Regulation No. 165/90). The price is established every three months on the basis of constructed values of certain DRAM types for each Japanese exporter. In parallel, an anti-dumping duty of 60 per cent was enacted with respect, inter alia, to eventual "grey market" sales to the EC.

639. In Regulation No. 165/90, the Commission emphasizes the importance of a strong electronics industry for the EC economy and the strategic rôle of DRAMs in this context. Research projects such as JESSI were launched to improve the competitiveness of the European industry on the understanding that it will operate in a fair market environment.

⁴³⁸ National Consumer Council (1990), International Trade and the Consumer. Working Paper 1: Consumer Electronics and the EC's Anti-dumping Policy, London. These estimates are subject to a variety of assumptions with which the EC Commission does not agree.

⁴³⁹ See GATT (1990), Trade Policy Review Mechanism - Japan, Geneva and Table VI.2.

⁴⁴⁰ Commission Regulation No. 4031/89.

640. Further anti-dumping actions in force in September 1990 concerned electronic weighing scales (Japan); electric motors (nine central and eastern European countries); diesel engines (Finland, Sweden); deep freezers (the German Democratic Republic and Yugoslavia); tungsten halogen lamps (provisional duties: Japan) outboard motors (Japan); hydraulic excavators (Japan); ball bearings (Japan and Thailand); miniature ball bearings (Japan and Singapore); and housed bearing units (Japan).⁴⁴¹

641. Various machinery, machine parts and precision instruments are subject to national restrictions under Regulation No. 288/82 (situation in mid-1990).⁴⁴²

(10) Road Motor Vehicles

642. The EC Commission considers the motor vehicle industry as a strategically important sector, with a vital impact on upstream and downstream activities.⁴⁴³ The industry accounts for 8 per cent of manufacturing employment (1.8 million people in 1988) and for 9 per cent of industrial value added. In 1988, imports amounted to ECU 16.3 billion; preferential trade accounted for some 30 per cent of imports. Exports stood at ECU 32.8 billion (EC 12; Table V.19). Output, demand and trade patterns for this sector in five member States are presented in Table V.20.

643. Domestic markets account for more than half of total sales in many cases, such as Rover (nearly 80 per cent), Fiat (62 per cent), Peugeot (54 per cent), Renault (54 per cent) and GM (53 per cent). Major producers with a lower share include Daimler-Benz (47 per cent) and Volkswagen (38 per cent).

644. Currently, border protection and domestic policies among member States differ substantially. The EC average tariff is 9.5 per cent (simple average). A variety of - more restrictive - national trade measures is in

⁴⁴¹ A further anti-dumping measure concerns mechanical wrist watches (the Soviet Union).

⁴⁴² Italy applies quantitative restrictions to imports of ball and roller bearings from Japan. France has imposed global and bilateral quotas on imports of electric motors; certain transformers enter under automatic licensing. France also maintains quantitative restrictions on precision instruments (for example on microscopes, navigation instruments, testing machines, thermometers and barometers). Most of the above product categories are also subject to quantitative restrictions in Spain and Portugal. In some cases, the measures are exclusively imposed on Japanese deliveries (for example, non-automatic licensing on electric motors, generators and transformers).

⁴⁴³ EC Commission (1989), Community Framework on State Aid to the Motor Vehicle Industry, (89/C123/03).

force. In some cases, intra EC-trade is affected by additional actions against transiting imports. Moreover, national car markets are segmented by the remaining differences in technical standards and the lack of EC-wide type approvals. In some countries, government interference via subsidies or State ownership has played a considerable rôle.

645. Most trade measures are targeted against Japan.⁴⁴⁴ The bilateral import quotas of Italy date back at least to 1962 and administrative barriers in France to the late 1970s. Japanese exports to Spain and Portugal are subject to quantitative restraints. Since 1977, exports to⁴⁴⁵ the United Kingdom are covered by an industry-to-industry arrangement.

646. Since 1986, Italy has accepted some 2,500 direct car imports and 750 light commercial vehicles annually from Japan. In France, the market share of Japanese cars and light commercial vehicles is limited to about 3 per cent; imports of Japanese motorcycles of less than 50 cc must not exceed a share of 5 percent. Spain admits 1,000 direct imports of passenger cars and 200 commercial vehicles from Japan; Portugal applies a ceiling of 20,000 units to imports of passenger cars from third countries (excluding State trading countries).⁴⁴⁶ Under the UK arrangement, the Japanese manufacturers association has agreed not to exceed a market share of 11 per cent for passenger cars, light commercial vehicles and four-wheel-drive vehicles and not to make any shipments of heavy commercial vehicles over 3.5 tonnes. The restrictive effect of some of these measures also depends on parallel interventions, based on Article 115 of the EEC Treaty, in intra-EC trade. However, as long as technical harmonization is not complete at the EC level, different standards - and ensuing certification and type approval procedures - might produce similar effects.

647. According to recent Commission authorizations under Article 115, the number of indirect imports of Japanese cars into Italy and Spain was to increase in 1990 (in Italy from 14,000 in 1989 to 17,000; in Spain from 5,142 to 7,800).⁴⁴⁷ In addition, Spain was allowed to limit indirect

⁴⁴⁴ In addition, Greece, Italy, Portugal and Spain are applying some quantitative restrictions against central and eastern European countries on passenger cars and on trucks of less than 5 tonnes.

⁴⁴⁵ See also the TPRM report on Japan. (GATT (1990), Trade Policy Review - Japan, Geneva).

⁴⁴⁶ Of these, 12,000 cars are accepted immediately; the rest is kept in reserve. In addition, 12 buses and 12 four-wheel-drive vehicles may be imported.

⁴⁴⁷ The Commission has refused to authorise Italy under Article 115 to impose restrictions on four-wheel-drive vehicles. In 1990, the numbers of Japanese imports into Italy totalled 54,000 vehicles, up from 13,000 in
(Footnote Continued)

imports from the Republic of Korea to a maximum of 600 units, up from 500 in 1989. Portugal did not apply for such authorization (there are no parallel importers established). In the case of France and the United Kingdom, where actions are not based on EC legal acts recourse to Article 115 is not available.⁴⁴⁸

648. Moreover, for several years Japan's Ministry of International Trade and Industry has operated self-limitations or monitoring procedures for exports of passenger cars, commercial vehicles and motorcycles to the EC. In 1989, total EC imports of motor vehicles from Japan reached 1,237 thousand units, up from 964 thousand in 1984. The value of imports increased from ECU 4.7 billion (1984) to ECU 7.3 billion in 1988 (Table V.21). The share of Japanese producers in the EC import market for road motor vehicles was 57 per cent in 1988.

649. In the early 1980s, Japan undertook not to exceed certain growth rates in its car exports to Germany.⁴⁴⁹ In recent years, the market share of Japanese passenger cars in Germany has remained close to 15 per cent.

650. Producer-specific distribution networks can facilitate market segmentation and thus compliance with established market shares in the case of export restraints. In 1985, pointing to certain beneficial effects for the consumers (maintenance and availability of spare parts), the Commission granted, subject to qualifications, a "block exemption" from EC competition law (Article 85 of the EEC Treaty). The motor vehicle industry is allowed to maintain exclusive distribution clauses with respect to a dealer's contract territory (Commission Regulation No. 123/85). According to the Regulation, dealers must not be confined to satisfying demand within this territory; they must be able to serve customers in other areas of the EC.

(Footnote Continued)
1986.

For 1991, the Italian authorities are reported to have received requests for indirect imports of over 280,000 Japanese passenger cars. Of these, 11,500 units will be admitted in the first half of the year. Further imports may be barred, according to a recent decision under Article 115. (Europe, 24 January 1991.)

⁴⁴⁸By contrast, the restrictions of Italy, Portugal and Spain are included in the Annexes to Council Regulation No. 288/82.

⁴⁴⁹OECD (1988), Structural Adjustment in the Automobile Industry, Paris.

According to the German Government, there are presently no import restrictions on cars in this member State; the Federal Government endeavours to ensure that the forthcoming EC import régime will not lead to a de-liberalization of the German market.

In practice, manufacturers have aimed at hampering such cross-border sales.⁴⁵⁰

651. In a report for the EC Directorate General for the Environment, Consumer Protection and Nuclear Safety, the Bureau Européen des Unions des Consommateurs (BEUC) has recently enumerated several measures in this context. The study concludes that the EC market is still highly fragmented. It is reported that inter-regional price gaps within the EC have tended to widen over the past years. The BEUC reported a case of a Japanese car for which prices (without charges) in the United Kingdom exceeded the prices in Belgium by 31 per cent, in 1989 (as compared with 52 per cent in 1981 and 19 per cent in 1987).⁴⁵¹

652. "Parallel importers" of Japanese cars who operate in the French market have sued the Commission before the European Court of Justice for not having adopted decisions based on Article 30 (prohibition of quantitative restrictions) and Article 85 of the EEC Treaty (prohibition of cartels). The Court declared this application inadmissible with regard to Article 30;⁴⁵² the remainder was referred to the European Court of First Instance.

653. Some observers suggest that the quantitative restraints have spurred qualitative improvements (up-grading) on the part of the Japanese car

⁴⁵⁰ In parallel with the above Regulation, a Commission notice sets out certain principles as regards the application of the block exemption. Accordingly, it might prove necessary to withdraw the exemption if price differentials exceed 12 per cent over sufficiently long periods. In its Nineteenth Report on Competition Policy, the Commission notes that it had initially taken the view that these differentials were not on a scale which could justify withdrawal in specific cases. However, for some time there had been indications that this might no longer apply. The Commission would not hesitate to amend the notice, or the regulation itself, should the situation so require.

⁴⁵¹ BEUC (1989), EEC Study on Car Prices and Progress towards 1992, Brussels.

⁴⁵² Official Journal, C 166, 7 July 1990.

Article 85 of the EEC Treaty prohibits, subject to certain qualifications (Article 85:3), all agreements between undertakings and concerted practices which may effect trade between member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market. Particular mention is made, inter alia, of agreements which (a) directly or indirectly fix purchase or selling prices or any other trading condition; (b) limit or control production, markets, technical development or investment; (c) share markets or sources of supply.

industry.⁴⁵³ In addition, the export restraint arrangements and the uncertainties related to them, are likely to affect locational decisions and to induce direct investments within the EC.⁴⁵⁴ At present, one large Japanese plant is operating inside the Communities (Nissan in north England); other producers are expected to follow.⁴⁵⁵ The origin to be conferred on these products - and closely related, their treatment under the national quota régimes - has been subject of discussions within member States and at the EC level.⁴⁵⁶ According to the Commission, the so-called transplant products and main components are not subject to any type of trade measure within the EC.

654. The EC and Japan are in intensive discussions with respect to the future EC car régime. Press reports suggest that both parties are envisaging an arrangement on the following four issues: (i) the gradual opening, subject to surveillance, of the hitherto protected EC markets; (ii) export self-restraints by Japan; (iii) information and, possibly, consultation procedures with respect to Japanese investments within the EC; and (iv) monitoring of indirect (parallel) imports.⁴⁵⁷

⁴⁵³ It is difficult to empirically assess this notion. The unit value of Japanese car exports to the EC 12 increased from ECU 4,850 in 1984 to ECU 6,056 in 1988. However, this development is also affected by factors such as autonomous changes in consumer preferences, additional technical equipment (e.g. catalytic convertors), specific tax incentives or disincentives for the purchase or use of cars. (In 1989, value added taxes on cars were 12 per cent in Germany, 28 per cent in France and 33 per cent in Spain).

⁴⁵⁴ According to an OECD study, "the most important Japanese response to the export barriers in the United States and Europe was to begin to invest in facilities offshore for the first time on any significant scale..... The second response of the Japanese in North America was to move their sales mix upmarket and to raise their prices". OECD (1988), Structural Adjustment....., op. cit.

⁴⁵⁵ Toyota and Honda are reported to envisage setting up plants in the United Kingdom; Mazda is contemplating cooperation with Ford in Germany.

⁴⁵⁶ According to unofficial sources, the manufacturers have agreed with the United Kingdom Government to aim at a local content of 80 per cent.

A recent study of the Commission confirms that a threshold of 80 per cent is currently considered to be the informal benchmark for "good behaviour". EC Commission (1990), Panorama...., op. cit.

⁴⁵⁷ The arrangement is expected to cover the period 1992 to 1997 or 1998. In 1997 (1998), the market share of Japanese cars, including transplant products, should amount to 18 per cent, that is about twice the
(Footnote Continued)

655. In a business survey carried out by the services of the Commission, motor vehicles were the top ranking industry as regards technical barriers to intra-EC trade. However, it is noted that some of the difficulties might be due to intrinsic technical disparities, such as left-hand driving in the United Kingdom and Ireland.⁴⁵⁸

656. A total of 44 directives have been submitted by the Commission to promote the technical harmonization of cars; to date, 41 have been adopted by the Council. Proposals on windscreens, tyres, weights and sizes for vehicles have not yet been agreed upon.⁴⁵⁹ This means that member States are not required to recognize intra-EC car imports as completely approved; they may continue to apply their own certification procedures. Some member States (France, Italy, Spain) have apparently linked their position to agreement on a common car régime after 1992.⁴⁶⁰

(Footnote Continued)

present level. Half of these are to be imported, the other half is to be supplied from Japanese factories within the EC. See European Report, 1 November 1990, and Nihon Keizai, 29 September 1990. These reports have not been confirmed by either side.

A recent study has tried to estimate the costs for consumers of hypothetical EC-wide import restrictions on Japanese cars after 1992. The respective imports were set at 1.1 million as compared with an assumed 2 million units in an open environment. Under "plausible assumptions", annual losses amounted to ECU 2.8 billion. (National Consumer Council (1990), International Trade and Consumer - Working Paper 4: Cars - The Cost of Trade Restrictions to Consumers, London).

⁴⁵⁸ Michael Emerson et. al. (1988), op. cit.

⁴⁵⁹ For heavy vehicles and motorcycles, additional legislative requirements will have to be proposed and adopted in the Internal Market context. As regards motorcycles, the Commission intends to proceed via Council Regulations which, after their adoption, will immediately enter into force in all member States (as compared to directives which have to be transposed into national law). Once the regulatory framework is completed, the Commission intends to propose that all elements are made mandatory, thus giving up the previous approach of optional harmonization.

⁴⁶⁰ European Report, 14 March 1990.

According to the Wall Street Journal (6 March 1990), the then French European affairs minister, Mrs. Edith Cresson, stated that if France were obliged to open its borders and if this "would kill (its) industry, then (it) would be absolutely ready to make an exception (from the completion of the Internal Market) for automobiles" (words in parentheses added). France could block registration of Japanese cars.

657. According to the Commission, environment-related standards for cars have generated numerous uncertainties.⁴⁶¹ However, the EC finally agreed on new European standards to be implemented in all member States by 1 July 1992 for new type approvals and by 31 December 1992 for all new cars. The standards for cars with either petrol or diesel engines are said to be at least as severe as regulatory requirements in the United States.⁴⁶² National tax incentives can be used to anticipate the introduction of the new EC standards. Based on Article 100a:4 of the EEC Treaty, Denmark has already enacted strict car emission standards as from 1 October 1990 (Section II(6)iii).

658. Subsidies and State ownership are further facets of government interference in the EC motor vehicle industry.⁴⁶³ However, such measures appear to be of declining importance. As from 1 January 1989, the

⁴⁶¹ EC Commission (1990), Panorama...., op. cit.

⁴⁶² As for trucks and buses, a two-stage approach is foreseen: Standards corresponding to the 1991 US standards would become mandatory on 1 July 1992; and standards corresponding to the proposed 1994 US requirements would apply as from October 1996 to new types and October 1997 to all new vehicles.

⁴⁶³ Alfa Romeo, Renault and Rover are cases in point. Prior to the sale of Alfa Romeo to FIAT in 1986, Alfa Romeo received two capital injections from its State-owned holding company (Finmeccanica) which were not notified to the Commission. The aids were not tied to any rationalization measures and contributed, in the Commission's view, to keep the company artificially afloat until it was sold. In 1989, the Commission ordered the former holding company to repay the aid. The case is currently before the European Court of Justice.

In the Case of Renault, the Commission had approved a FF 13 billion State subsidy in 1988 provided, inter alia, that production capacities are reduced by 25 per cent and that the company is exposed to normal commercial conditions (by abandoning its "régie" status). Because these conditions were not fully met, the Commission - after negotiations with the French Government - determined in May 1990 that Renault must pay back FF 6 billion (FF 3.5 billion were to be repaid immediately; the rest has to be converted into long-term debt). However, the French Government recently decided to inject FF 4.13 billion of fresh equity capital into Renault. EC officials were quoted as saying in this context that, because France has the right to boost the capital of State-owned companies, there was little they could do about it. (Financial Times, 21 January 1991).

When selling Rover to British Aerospace in July 1988, the British Government had granted specific "sweeteners" in the context of a side letter to the sales contract. These aids were granted on top of debt write-offs of £469 million which the Commission had accepted in return for capacity reductions. In June 1990, the Commission demanded recuperation of the "sweeteners" (£44.4 million).

Commission put into effect a framework on State aid for the EC motor vehicle industry. Accordingly, any aid of more than ECU 12 million to companies in the automobile sector has to be notified in advance.⁴⁶⁴ Moreover, all subsidies which are not destined for particular projects must be notified, irrespective of their volume (including aid under subsidy schemes already approved by the Commission). The granting of new operating aid is prohibited; as regards existing aid, proposals for their progressive abolition are being announced. The provisions will be reviewed by the end of 1991.

659. In the Eureka context (Chapter IV), European car producers are cooperating in several publicly funded longer term research projects. For example, the PROMETHEUS initiative of 1986 (Programme for European Traffic with Highest Efficiency and Unprecedented Safety)⁴⁶⁵ includes applied industrial research as well as basic research.

(11) Civil Aircraft (Commercial Jets)

660. The EC aerospace industry has experienced continuous growth throughout the 1980s. Its total turnover, including all civil and military sales, rose from ECU 25.4 billion in 1981 to ECU 46.1 billion in 1988. The consolidated figures - net of intra-EC transactions of parts and components - are ECU 16.7 billion and ECU 32.4 billion (Table V.22). This is less than half the size of the respective United States industry

⁴⁶⁴ EC Commission (1989), Community Framework, op. cit.

Some exceptions are provided, for example for work trucks, military vehicles and other vehicles for special purposes.

Germany and Spain originally refused to apply this framework. According to the German Government, undesirable sectoral policy objectives were being pursued in this context. Moreover, the framework was considered detrimental to the effectiveness of regional aid schemes; it might interfere with the continuity and predictability of such aid. In response, the Commission stated that an effective aid policy at the EC level required that individual cases were appraised before the aid is authorized. Strict disciplines were deemed necessary to avoid unilateral measures of member States which subsequently might lead to compensatory interventions elsewhere. The Commission therefore decided that Germany shall notify all aid measures of more than ECU 12 million under the aid scheme as from 1 May 1990 (Official Journal, L 188, 21 February 1990).

The Spanish authorities declared their readiness to apply the framework provided it formed part of a comprehensive Community industrial policy for this sector. The Commission, however, declined to make the framework subject to any such preconditions.

⁴⁶⁵ Participants are, inter alia, BMW, Daimler-Benz, Fiat, Matra, Porsche, PSA, Renault, Rover, Saab, VW and Volvo.

(43 per cent in 1988).⁴⁶⁶ The civil sector accounts for some 35 per cent of total EC aerospace turnover. Employment remained relatively stable in the vicinity of 500 thousand.

661. External civil trade was roughly in balance over the last several years. In 1988, aerospace exports amounted to ECU 10.8 billion as compared with imports of ECU 10.2 billion (Table V.23).

662. The simple average tariff on aircraft, airships and parts (Tariff Study Category 13.02) is 3.7 per cent, and the weighted average 0.5 per cent. Civil aircraft and certain components are completely relieved from duties under the Common Customs Tariff.⁴⁶⁷ France has prohibited imports of parachutes, certain aeroplanes and gliders.

663. In the context of the OECD "Consensus" on export credits, EC member States participate in a sectoral understanding for civil aircraft. It contains specific provisions as regards minimum interest rates and other credit terms and conditions.

664. In France, Germany, Spain and the United Kingdom, the civil aircraft sector is strongly influenced by the Airbus programme. This programme accounts for about 50 per cent of total civil aerospace turnover in the EC.

665. In 1966, France and Germany agreed to establish a common consortium with the aim of developing and producing a wide bodied twin engined aircraft. The United Kingdom and Spain joined later. The plane, called A 300, was expected to fill a void in the commercial aircraft market. In 1972 it was put into operation. Since then, further models were launched, broadening the range of planes supplied by Airbus Industries.

666. Airbus Industries is operating under the French legal status of a "Groupement d'Interêt Economique". It involves one company from each participating country. Aérospatial (F) and Messerschmitt-Bölkow-Blohm (D) - through its subsidiary Deutsche Airbus - both hold a 37.9 per cent stake; British Aerospace (20 per cent) and Construcciones Aeronauticas (4.2 per cent) account for the remaining capital. Meanwhile, the Airbus Programme has achieved a share of about one-third of the expanding world commercial jet market.

⁴⁶⁶ According to estimates by EC Commission services.

⁴⁶⁷ Industries such as aircraft and shipbuilding appear, by their very nature, more prone to internal support policies than to external protection. Given the international dimension of these industries and related transport services, border protection (and the ensuing higher price levels) may easily prove inefficient and counterproductive - even from a sectoral perspective.

667. The development of new jets involves high risks, and costs estimated at more than US\$2 billion (engines excluded) for a medium-sized commercial airliner. The four "Airbus Governments" contributed substantially to these costs. It is difficult, however, to provide comprehensive assessments of all subsidies or the subsidy equivalents⁴⁶⁸ of support (via State guarantees, public ownership etc.) granted thus far.

668. The Airbus programme has led to friction between the EC and the United States. On the European side, the support schemes are justified on grounds of industrial and competition policy. The aircraft sector is considered instrumental in advancing new technologies in a wide spectrum of industries (technological spill-over effects).⁴⁶⁹ It is also argued that the Airbus programme contributes to increasing competition in the relevant

⁴⁶⁸ In its annual report on subsidies, the German Government has published the following figures on State aid for the civil aircraft sector as a whole: DM 353 million in 1987, DM 753.6 million in 1988 and DM 1,287.6 million (target) in 1989. (Zwölfter Subventionsbericht, Drucksache 11/5116 of 1 September 1989).

In a different context (Drucksache 11/4375 of 19 April 1989), the Federal Government provided the following figures on the Airbus programme: Total government aid of DM 10.7 billion from the inception of the programme until the end of 1988 (with actual disbursements of DM 5.3 billion); development aid amounted to DM 6.7 billion (granted until 1996), sales aid to DM 473 million (disbursements), and production aid to DM 3.3 billion (granted until 1984).

In the United Kingdom, gross launch expenditure for Airbus A320 and A330/340 amounted to £213 million (April 1985 to March 1990). In total, up to £ 450 million of launch aid will be provided to British Aerospace for participating in the A 330/340 project. The aid is "fully repayable on terms designed to yield an acceptable return in real terms on the Government's investment". (Statement of the Secretary of State for Trade and Industry before the House of Commons on 14 May 1987).

The EC Commission provides the following breakdown of public support to the EC aerospace industries (civil contracts only). For sales and maintenance, ECU 850 million in 1987 and ECU 922 million in 1988; via research and development contracts, ECU 1,310 million in 1987 and ECU 1,171 million in 1988. See EC Commission (1990), The European Aerospace Industry - Trading Position and Figures, Brussels (Working Paper, DG III), p.206.

According to the United States Trade Representative, the total support provided by the four "Airbus Governments" since 1970 amounts to no less than US\$12 billion.

⁴⁶⁹ It is argued, that there are also considerable spill-overs within the aerospace industry between military and civil programmes. According to estimates by the EC Commission, the share of military sales in total aerospace turnover is of the order of 65 per cent in the EC and 70 to 75 per cent in the United States. (Source: see footnote above).

jet markets, thus preventing monopolistic practices. In contrast, the United States are pointing to market distortions and uncertainties arising from strong State intervention in favour of Airbus. Concerns have been voiced that the support schemes, in particular exchange rate guarantees, might set a precedent for other sectors and programmes.

669. Several bilateral consultations, including two ministerial meetings, have been held between the EC (Commission and "Airbus-countries") and the United States. The United States has called for more transparency and for strict limits on the terms and conditions of government support. The issue is still under discussion inside and outside the GATT.⁴⁷⁰ A particular bone of contention is the so called "dollar clause" which allows for the partial compensation of losses due to exchange rate changes. This clause is part of an agreement between the German Government and Daimler-Benz which has taken a major stake in Messerschmitt-Bölkow-Blohm (November 1989).⁴⁷¹ Accordingly, Daimler-Benz is protected against certain exchange rate related risks up to the year 2000. The risk-sharing formulas negotiated in this context vary between different Airbus Programmes; from 1996, private sharing in the exchange rate risk will progressively increase.

670. According to the Commission, the relative importance of public R & D funding in the EC aerospace industry is declining. Public involvement in France, Germany and the United Kingdom is reported to have decreased from an average of 75 per cent of R&D costs in 1971 to 58 per cent in 1985 (military activities included).

671. In a recent communication, the Commission argues in favour of stronger cooperation among EC aerospace companies, including the creation of world-scale entities.⁴⁷² Economies of scale are considered a decisive factor of competition in this industry where, according to the Commission, "the stakes are high and crucial to Europe's industrial and technological independence".

⁴⁷⁰ The Committee on Subsidies and Countervailing Measures and the Committee on Trade in Civil Aircraft have been involved in this matter. Apparently, the EC and the United States had difficulties in agreeing upon the appropriate legal framework. In April 1990, the issue was discussed in the Subsidies Committee.

In February 1991, the United States requested the establishment of a Panel under Article 17:3 of the Subsidies Code to adjudicate an exchange risk programme for the German Airbus participant (see below).

⁴⁷¹ Deutsche Airbus was reorganized in parallel. Daimler-Benz/MBB now has an 80 per cent share. The Kreditanstalt für Wiederaufbau, a State-owned development bank, holds 20 per cent.

⁴⁷² EC Commission (1990), A Competitive European Aeronautical Industry, Brussels (SEC(90) 1456 Final).

(12) Shipbuilding

672. The EC shipbuilding sector has experienced severe adjustment pressures since the early 1970s. These pressures are related to declining, though widely fluctuating, world demand for ships and to competition from new sources of supply, particularly in South East Asia. EC merchant ship production has fallen substantially since the mid-1970s, as has the EC's share in world output of merchant ships.

673. In 1988, the EC accounted for some 13 per cent of the gross tonnage of world merchant ship production, half its share during the years 1975 to 1979. The decline in market share was particularly pronounced for Spain, France, the United Kingdom and the Netherlands (Table V.24) .

674. EC tariffs for merchant ships are low. Imports of sea-going ships for the transport of goods and persons and of fishing vessels are duty free; other categories are dutiable at 2½ per cent under the Common Customs Tariff (m.f.n. rate). Duties are suspended on imports which are intended for incorporation in ships, boats and other vessels. According to the GATT Tariff Study (Category 13.03), average tariffs of 1.8 per cent (simple) and 0.5 per cent (weighted) were levied on imports of ships and boats in 1988. However, France maintains a system of import licences on a range of sea-going ships (cruise ships, tankers, fishing vessels).

675. A variety of non-border measures are in place to cushion adjustment pressures on shipbuilders and promote structural change within the industry, for example towards the production of specialized vessels. Support includes subsidies, concessional credits, credit guarantees and public injection of equity capital. The Governments involved justify the measures by industrial policy considerations; regional and social policy motives; the necessity to maintain capacities for strategic reasons; or the perceived need to counter policy support granted elsewhere. Table V.25 provides an overview of the individual support schemes of seven member States.⁴⁷³

676. At the EC level, a series of Directives on aid to shipbuilding has been issued on the basis of Article 92:3(d) and Article 113 of the EEC Treaty (see Section IV:4(i)). The sixth Directive (No. 87/167) established, with the exception of Portugal and Spain, a common ceiling for all forms of production aid, including sectoral, general and regional aid schemes and the grant equivalents of aid to shipowners. The ceiling is subject to an annual review by the Commission. As of 1 January 1990, it

⁴⁷³ These member States (Denmark, France, Germany, Italy, the Netherlands, Spain and the United Kingdom) account for more than 90 per cent of EC merchant ship production (1985-88). In most cases, Table V.25 reflects the situation in mid-1988.

was reduced from 26 per cent to 20 per cent of the contract value.⁴⁷⁴ For small vessels the maximum aid rate is set at 14 per cent. Excluded from this limit are shipbuilding aids which are granted as development assistance and credit subsidies which comply with the respective OECD "Consensus".⁴⁷⁵ In principle, restructuring aids (investment aid and aid for closures) and aid for research and development are considered compatible with the common market and thus may be granted under the Directive.

677. Directive No. 87/167 lapsed on 31 December 1990. Its successor, the Seventh Directive on aid to ship building provides for the further application, until year-end 1993, of the same rules and principles. Again, the Commission is mandated to set common ceilings for production aids. As of 1 January 1991, support must not exceed 13 per cent of the contract value (nine per cent for small vessel). Spain and Greece are granted a one-year derogation.

678. A specific programme (RENAVAL) in the context of the European Regional Development Fund aims at promoting new activities in declining shipbuilding areas (Chapter IV).

679. As already indicated, EC member States have undertaken certain commitments under the OECD "Consensus" on export credits. A sectoral understanding for ships contains specific provisions for the maximum duration of credits (8½ years from delivery), minimum payments (20 per cent of the contract price by delivery), and minimum interest rates (8 per cent).

680. According to the Commission, there are no incentive schemes or legal requirements at the EC level with a view to encouraging the use of domestically built ships (cabotage).

681. In June 1989, the Shipbuilders Council of America filed a petition calling for action under Section 301 of the United States Trade Act of 1974, as amended. In the petition, Germany (in company with Japan, the Republic of Korea and Norway) was accused of massively subsidizing its shipyards and, hence, of distorting competition. Later, the petition was withheld for the duration of negotiations on an international agreement to reduce subsidies. Negotiations are currently under way within the OECD.

⁴⁷⁴The ceiling concerns shipbuilding and ship conversion. According to Directive No. 87/167, it shall be fixed with reference to the prevailing differences in cost structures between the most competitive EC yards and the prices charged by their main competitors, particularly in those market segments in which the Community yards "remain relatively most competitive".

⁴⁷⁵The Directive refers to the OECD Council resolution of August 1981 (Understanding on Export Credits for Ships).

(13) Other Products

682. Tariff Study Categories 02, 07, 16, 17, and 18.02 to 23 include rubber, precious stones and precious metals, photographic and cinematographic supplies, furniture, musical instruments, toys, works of art, firearms, office and stationary supplies and a residual category of manufactures. In 1988, the imports of this heterogeneous group of products combined amounted to some 10 per cent of EC total industrial imports (excluding petroleum).

683. In general, tariffs are at moderate levels. Some products are subject to anti-dumping actions (cycle tyres from the Republic of Korea and Taiwan, and paintbrushes from China are subject to definitive duties; provisional duties are imposed on typewriter ribbon fabrics from China). A variety of national restrictions are in place under Regulation No. 288/82. France maintains a bilateral quota on umbrellas.⁴⁷⁶ Spain employs global quotas on umbrellas, combs, imitation jewellery, lightings and certain prefabricated buildings. Imports of certain toys are restricted in Spain and, under bilateral quotas, in France. Italy applies quotas to Japanese photographic films and, in parallel with Portugal, to Japanese rubber tyres and tyre tubes. Certain tyre categories are also subject to restrictions in Ireland (with respect to Japan and State-trading countries), to automatic licensing in Greece and to non-automatic licensing in Portugal (against Japan) and in Spain.

⁴⁷⁶ Situation in mid-1990.

According to the French Government, these quotas are non-restrictive. They coincide with an industry-to-industry arrangement, involving Singapore, Taiwan and Thailand.

VI. TRADE DISPUTES AND CONSULTATIONS

(1) GATT Dispute Settlement

(i) Complaints under Article XXIII of the General Agreement

684. The EC has frequently participated in GATT dispute settlement cases, both as a complainant and as a party complained against. In more than two-fifths of all GATT Article XXIII complaints which have been raised since 1960, the EC was involved. Tables VI.1 to VI.4 provide an overview of these cases.

685. As emerges from Tables VI.3 and VI.4, the EC complained twice under Article XXIII in the 1970s, 1973 and 1976, while there were four complaints against the EC in the 1960s and 11 in the 1970s. Between 1980 and 1990, the EC raised 21 complaints under Article XXIII and was the target of 25 complaints (some complaints concern the same cases, e.g. EC restrictions on apples or export refunds on sugar).

686. Rulings of most Panels initiated by the EC since 1960 supported basic elements of its complaints (eight out of 11 Panels). All 14 rulings on complaints by other contracting parties questioned at least some of the disputed EC measures.

687. The focus of the Article XXIII cases involving the EC deviates somewhat from the pattern of its external trade. For example, the United States accounts for 18 of the 40 complaints against the EC and for more than half of the 23 EC initiatives, while, in 1989, bilateral trade represented some 19 per cent of EC exports and imports. From a sectoral perspective, more than half of all Article XXIII disputes in which the EC has been involved during the last three decades were related to agricultural and food products.

688. Japan was the target of four EC complaints, two of which led to Panel rulings. It initiated one Panel against the EC - the only Panel which has been requested by Japan so far (EC anti-dumping regulation on imported parts and components).

689. Except for two cases (Finland and Switzerland) which have not been pursued further, the EC has never invoked Article XXIII against parties to its free trade, association or cooperation agreements. None of these countries has ever raised such a complaint against the Communities.

690. Two Panel rulings against the EC have not been adopted by the GATT Council. Both cases - production aid on canned peaches and tariff treatment of citrus imports from Mediterranean countries - were raised by the United States. Solutions to the trade problems underlying these cases were found subsequently in a bilateral context (in the latter case, after retaliatory action by the United States and counter-retaliation by the EC).

691. Two further Panel reports which argued against EC measures - subsidies for oilseeds producers (No. 31 in Table VI.1) and anti-dumping

actions on parts and components (No. 35) - were adopted by the GATT Council in January and May 1990, respectively. The EC has expressed its readiness to comply with the recommendations of the first Panel in the context of the implementation of the results of the Uruguay Round. As regards the second ruling, the EC made changes of its anti-dumping regulations conditional upon satisfactory results of the Uruguay Round which would allow it to combat circumvention.

692. Following a complaint by the EC, in June 1989 the GATT Council established a Panel to examine the United States import restrictions, applied under a GATT waiver, on sugar and sugar containing products. The Panel found the measures not to be in breach of the GATT or of the terms of the Waiver. At several meetings of the GATT Council, the EC expressed reservations with regard to the Panel's interpretations. However, the EC did not oppose the adoption of the report at the Council meeting in November 1990.

693. In August 1990, the EC and Canada agreed to take recourse in the arbitration procedures provided by the Mid-term Agreement of the Uruguay Round on dispute settlement. The issue at stake was negotiating rights under bilateral agreements on quality wheat and on ordinary wheat. The agreements were concluded in 1962 in the context of Article XXIV:6 negotiations. The arbitrator found that Canada still maintains its initial negotiating rights under the agreement on quality wheat but that it has relinquished any rights it may have possessed under the agreement on common wheat.⁴⁷⁷

(ii) Tokyo Round Agreements

694. The EC has also been involved in many disputes - about three-fifths of the total - under the Tokyo Round Agreements. In 13 cases, Code signatories complained against EC measures; eight complaints were raised by the EC (Table VI.5).

695. Five complaints against the EC and four complaints by the EC were made under the Subsidies Code. The adoption of four Panel reports has been virtually deadlocked for several years. This applies to two reports which were initiated by the United States with respect to EC export subsidies on wheat flour and on pasta, and to two reports which, at the request of the EC, look into the definition of affected industries in the United States and Canada. In three of these cases, the parties involved have found ways to deal with the adverse trade effects. According to recent discussions in the Subsidies Committee, in the fourth case, countervailing duties on

⁴⁷⁷ A second recent example of recourse to arbitration also concerned the EC and Canada. In April 1988, the parties asked the Director-General of the GATT to render an advisory opinion whether a tariff concession granted by Portugal to Canada in 1961 was applicable to wet salted cod. The opinion was made available to the two parties on 15 July 1988.

manufacturing beef (Canada; No. 8 in Table VI.5), important trade effects persist.

696. Issues related to State aid to Airbus have been raised by the United States before the Civil Aircraft Committee (1987) and, more recently, before the⁴⁷⁸ Subsidies Committee. Apparently, the issue is still under discussion.

(iii) Other cases

697. In addition to the dispute on citrus imports from Mediterranean countries, in two more cases the EC was subject to retaliatory measures, or the threat of them, under Section 301 of the United States Trade Act of 1974.⁴⁷⁹ One was linked to GATT Article XXIV:6 negotiations subsequent to the accession of Portugal and Spain. The other is related to the EC Animal Hormone Directive where the EC and the United States have failed, thus far, to agree on the appropriate dispute settlement procedures either under the Code on Technical Barriers to Trade or under Article XXIII of the General Agreement (No. 20 in Table VI.2 and No.13 in Table VI.5). The United States took recourse to retaliatory measures in early 1989. In response, the EC Council approved a list of countermeasures which were intended to match the same trade volume. Implementation of these measures, however, is still pending.

(2) Dispute Settlement in the Context of Preferential Trade Agreements and Sectoral Arrangements (Steel)

698. The trade and cooperation agreements concluded by the EC provide for several instruments and procedures for the settlement of disputes. Dispute settlement provisions range from binding arbitration (Lomé Convention) to common decision making and, in the absence of agreement, to unilateral interpretation and action (free trade agreements with EFTA countries).

699. Each of the free trade agreements with EFTA countries establishes a Joint Committee which is responsible for⁴⁸⁰ the administration of the agreement and its proper implementation. The Committee is composed of representatives of the Communities and of the other contracting party. In implementing the agreement, the parties are required to exchange

⁴⁷⁸ In February 1991, the United States requested the establishment of a Panel by the Subsidies Committee to look into an exchange risk programme for the German Airbus participant (Chapter V).

⁴⁷⁹ Before taking these measures, the United States did not seek to obtain the authorisation of the GATT CONTRACTING PARTIES under Article XXIII:2. See also GATT (1990), Trade Policy Review - United States of America, Geneva.

⁴⁸⁰ See also GATT (1990), Trade Policy Review - Sweden, Geneva.

information and, upon request of either party, to hold consultations. If a certain trade practice is regarded as incompatible with the agreement, it may be referred to the Committee for examination. If the offending party fails to abolish the disputed practice within the period fixed by the Committee, or in the absence of an agreement on this matter, the affected party may adopt any safeguard measure considered necessary to deal with the situation. In particular, tariff concessions may be withdrawn.

700. To date, while consultations have been held in several cases, safeguard measures have not been taken.

701. Under the association agreement with Turkey, a Council of Association is set up. The Council consists of members (or representatives) of the Governments of the member States, of the EC Council, of the EC Commission and of the Turkish Government. Decisions are taken unanimously. If disputes about the application or interpretation of the agreement are submitted to the Council of Association, it may either settle the case by a decision or refer it to the European Court of Justice or to any other court or tribunal. According to the EC Commission, these provisions have never been applied thus far.

702. Under the Lomé Convention, a Council of Ministers, is established. It is composed of the members of the EC Council, members of the EC Commission and a Government member of each ACP State. Any dispute concerning the interpretation or the application of the Convention shall be referred to the Council of Ministers for settlement. Between meetings of the Council, a Committee of Ambassadors shall be involved. If no solution is achieved in the Council, it may initiate, at the request of either party, a good offices procedure. Otherwise an arbitration procedure is provided for.⁴⁸¹ Each party to the dispute is obliged to comply with the arbitrators' decision.

703. According to the Commission, there is a clear preference, however, for solving conflicts at a political level, without taking recourse to formal dispute settlement mechanisms. No arbitration procedures have been initiated.

704. The steel arrangement with the United States provides for binding arbitration if disputes cannot be settled by means of consultation. One arbitrator is to be appointed by the EC and the United States, respectively. These two appointed arbitrators have to choose a third arbitrator from a pre-established list of persons or by random selection.

⁴⁸¹The procedure is to be initiated by the Council of Ministers upon request. The parties involved shall appoint two arbitrators, one by each side. These are then required to agree on a third arbitrator. Otherwise, the latter shall be appointed by the co-President of the Council of Ministers from among eminent independent persons. The arbitrators shall make their decision by majority vote.

The panel shall decide by majority vote within a three month period following the appointment of its chairman.

(3) Other Issues

705. As one of the major trading entities, the EC maintains myriad contacts with its trading partners, at various levels. These contacts serve, inter alia, to gather information on trade-relevant policies, keeping potential disputes under control and finding common ground in specific areas, whether or not covered by existing GATT obligations. The issues may involve the full range of trade policies and practices, including aspects of standardization and certification, rules and procedures in the public procurement sector, questions related to export restraint agreements and arrangements and the harmonization of trade policies in the Internal Market context. Motor vehicles are a prominent case in point (Chapter V).

706. Trade-related issues are also dealt with in direct contacts between third countries and member States. For example, this applies to areas which are not yet fully covered by a common policy régime or to issues which fall under existing commercial policy agreements of member States (Chapter II). In many cases, these contacts are of an informative nature. For example, in 1988, a United States fact-finding mission sought to explore the procurement practices of some member States in the 'excluded sectors' (in particular electrical equipment; Chapter IV). Similar missions concerned aspects of telecommunications (procurement, standardization, etc.).

707. When individual member States are the target of specific trade policy actions of third countries - or when such actions are in the offing - a common EC response is normally provided for (based on Article 113 of the EEC-Treaty). A case in point is the EC response to the attempt by the United States to unilaterally establish maximum market shares for machine tools (Chapter IV).

708. Given its economic size and importance in international trade, the EC is potentially well equipped to act against foreign trade practices which are deemed illicit or prejudicial. The "New Commercial Policy Instrument" of 1984 might be used for such purposes. However, the relevant Council Regulation (No. 2641/84) stipulates that no action can be taken before the termination of international dispute settlement procedures whose results have to be taken into account (Chapter II).

709. In one case, relating to intellectual property protection in the Republic of Korea, the EC responded with the withdrawal of tariff preferences under the GSP. The Republic of Korea has been suspended from GSP treatment for as long as its allegedly discriminatory practices in this area persist.