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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/36B.

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 required by the Decision, in preparing its report the Secretariat has sought clarification from the European Communities on its trade policies and practices.

Document C/RM/G/36 contains the report submitted by the European Communities.

NOTE TO DELEGATIONS

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

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CONTENTS

SUMMARY OBSERVATIONS

(1) The Economic Environment

1. Following the strong economic upturn in the years 1986-90, when average growth rates exceeded 3 per cent, the EC economy lost momentum and entered a period of stagnation or, in some member States, even recession. Overall economic growth fell to about 1 per cent in 1992. Only France and Ireland showed higher growth than in 1991.

2. This slowdown reflected both internal and external factors. Persistent macroeconomic imbalances in certain member States had an adverse impact on currency markets, consumer sentiment and investment decisions. The demand effects of German unification initially helped to maintain growth in Germany itself and, to a lesser extent, in other member States, but its fiscal and monetary consequences later imposed an additional brake on the EC economies. Economic slowdown in important foreign markets, including most EFTA countries, the United States and Japan, and an appreciation of European currencies against the dollar compounded these difficulties, which were not significantly counterbalanced by improvements in other markets.

3. The EC's merchandise trade deficit with all its major partners widened in 1991. Among the member States, only Denmark, Germany and Ireland ran merchandise trade surpluses, and the German surplus was much reduced from 1990.

4. Currency turmoil in the second half of 1992 brought long subdued macroeconomic tensions to the surface. In mid-September 1992, the United Kingdom and Italy suspended the participation of their currencies in the European Exchange Rate Mechanism (ERM) which, under the Maastricht Treaty, is intended to serve as the basis for a common EC currency. In several other member States, the defence of parities led to continued monetary tightening, exacerbating an already difficult environment for long-term investment decisions.

5. The Communities' strong economic growth in the late 1980s appears to have been stimulated by the Internal Market programme and to have minimized economic frictions resulting from the implementation process. By contrast, the present downturn has both reduced growth impulses stemming from the programme and compounded the pressures arising from external challenges, such as the transition in central and eastern Europe and the former Soviet Union and the stalemate in the Uruguay Round. This has increased the risk that more defensive trade policies will be followed.

(2) Developments in the Institutional Framework

6. Internal developments in the EC - the world's largest trading entity - cannot be separated from their effects on the international environment. Any steps to "deepen" or "widen" the Communities, by intensifying integration among current members, or extending its geographical scope, are bound to impact on the multilateral system.

7. The Single European Act of 1987 provided the legal and institutional framework for "deepening" the EC integration process, establishing "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured". Under the Act, the scope of qualified (two-thirds) majority voting by members States in the Council was extended from agricultural and commercial policy to virtually all issues relating to the Internal Market. This enabled progress to be made on deregulating and harmonizing national trade practices.

8. At the same time, partly prompted by the increasing pace of EC integration, a growing number of countries in the European Free Trade Area, in central and eastern Europe and the Mediterranean basin have sought to conclude new agreements with the Communities, with the aim of securing and/or extending preferential market access, albeit with differing degrees of coverage and reciprocity.

9. The Treaty on European Union (the Maastricht Treaty), signed in February 1992, but not yet ratified by all member States, aims to open new areas of integration. While maintaining existing EEC policy

responsibilities in the field of trade, the Treaty seeks to extend the scope of Community action, inter alia, through economic and monetary union, including the introduction of a single currency by 1 January 1996 or 1999 at the latest. The relevant decisions are to be taken by the Council, meeting in the composition of Heads of State or Government, based on the performance of each member State with respect to four eligibility criteria (price stability, fiscal balance, exchange rate stability within the ERM, and convergence of long term interest rates). In mid-1992, only France and Luxembourg would have met the benchmark values.

(3) Trade Policy Features and Trends

(i) Harmonization in the Internal Market

10. Over the past two years, the EC has removed many long-standing "residual" national trade restrictions protecting individual member States' markets from external supplies, especially of Asian or central and eastern European origin. Some of these measures may already have become obsolete in the process of internal and international structural change, and the abolition of others may have been aided by the generally favourable macroeconomic climate during the second half of the 1980s. No decision had been taken, at the time of writing, on the treatment of remaining non-liberalized products, such as footwear, textiles and toys, from certain east European and Asian countries, China and Cuba.

11. The legal provisions of Article 115 of the EEC Treaty (which allows member States to erect national barriers, with the approval of the Commission, against indirect deliveries of imported goods) remain in force. However, the Single European Act provides no scope, as from 1 January 1993, for any internal trade measures against imports from external sources. The number of new Article 115 restrictions authorized has fallen from 119 in 1990 to 48 in 1991 and 8 in 1992. The single market also implies that substitutes for internal border measures, such as national registration and type approval procedures, will no longer be available.

12. While the Communities' bilateral restraint agreements on textiles and clothing under the MFA remain in force, national import quotas within the system were abolished with effect from 1 January 1993. Although restrained suppliers have agreed to cooperate to avoid sudden and prejudicial changes in traditional trade flows, the creation of a unified EC market in the sector should enhance flexibility for such exporters.

13. In certain sensitive areas, EC-wide arrangements with foreign suppliers or new Community restrictions are to replace a previous maze of national restrictions.

- A "consensus" with Japan on cars, containing regional market forecasts, is intended to provide temporary and declining relief for Community producers, with the objective of full liberalization by the year 2000. Open questions appear to include the allocation of Japanese supplies among car categories and producers; the adjustments required on both sides if demand forecasts are not fulfilled; and the application of the consensus to new member States joining the EC before 2000.

- In the banana sector, a tariff quota system, with very high duties on over-quota supplies, is due to enter into force on 30 July 1993. The new system will apply to all member States, including markets that were previously completely open (Germany) or covered by the Communities' bound tariff of 20 per cent. Affected Latin American suppliers have invoked GATT consultation and dispute settlement procedures and raised the question in the context of the Uruguay Round. Pending the implementation of the common régime, France and the United Kingdom have been granted new authorizations under Article 115.

- Under a new market organization in the fisheries sector, imports of canned tuna and sardines are subject to Community quotas until end-1996. These apparently substitute for national restrictions previously maintained by France and Spain, although the new quotas, which contain growth factors, set higher EC-wide import levels than those actually realized in 1991.

- Steel deliveries from the CIS Republics, which previously entered five member States under national restrictions, now face Community quotas. Current proposals are for an extension until end-1995.

14. National excise taxes on certain tropical products (coffee, tea, cocoa) are not scheduled for harmonization. Five member States maintain coffee taxes with ad valorem incidences of up to 100 per cent in 1991. Italy quadrupled its rates in January 1991, giving rise to protests within the GATT system.

15. Where common technical regulations exist, any EC or third country products meeting these requirements may circulate freely within the single market. In the absence of common rules, goods qualify for free circulation throughout the EC whenever they conform to regulations valid in any of the member States. In areas of health and safety, harmonization of technical rules or the specification of essential common requirements has been preferred to mutual recognition. Implementation into national law of new directives laying down essential requirements has, however, proved difficult, and the establishment of supplementary norms has taken longer than scheduled. Technical barriers may thus continue to affect intra-EC trade in certain areas, including machinery, for some time. By contrast, both imported and EC-produced motor vehicles that qualify under comprehensive harmonization provisions may be traded among member States without standard-related impediments as from 1 January 1993.

16. National procurement entities are, in general, required to apply EC rules to all supplies worth more than ECU 200,000. However, in the "excluded sectors" (water, energy, transport and telecommunications), a new EC Directive sets the thresholds at ECU 400,000 or, in telecommunications, at ECU 600,000. In these sectors the Directive permits the rejection of bids with a foreign content of over 50 per cent from countries that have not agreed equivalent access to EC supplies, and requires Community preference to be given if the price differential is 3 per cent or less.

17. Harmonization of export-related policies, such as financing and insurance, has not so far gone beyond the stage of mutual information and consultation. Areas such as countertrade also remain the responsibility of individual member States. No up-to-date information on national policies in these areas has, however, been made available for this report.

(ii) Type and incidence of trade policy instruments

18. Abolition of national restrictions and harmonization of trading conditions among member States have increased the relative importance of Community trade policy instruments, in particular the Common Customs Tariff. In some sensitive areas, however, the tariff appears to be less relevant than instruments such as anti-dumping actions, bilateral restraint agreements, and export monitoring or moderation on the part of competitive foreign suppliers. In some other areas, such as shipbuilding and coal, protection in certain member States may rely heavily on production subsidies or exclusive supply contracts between domestic producers and users. In addition, almost all major temperate-zone agricultural commodities, except oilseeds, are virtually isolated from external competition by the Communities' system of variable import levies.

19. Due largely to the ongoing Uruguay Round, no significant tariff changes have been implemented in recent years. Almost all EC tariffs on industrial items are bound in GATT, averaging slightly below 6½ per cent. Significant tariff escalation exists in areas such as fish, tobacco, leather, rubber, textiles and metals. Further escalation may result from tariff suspensions on basic inputs such as chemicals and microelectronic components.

20. Also in view of the unfinished state of the Uruguay Round, the EC has made no substantial changes to its system of GSP preferences. The Commission admits that benefits under the scheme are reduced by considerable administrative costs, uncertainties resulting from its application and, in sensitive product areas, the use of tariff quotas that may be exhausted within a few days. The new "Europe Agreements" with central and eastern European countries are, moreover, liable to erode the advantages granted to other preferred suppliers.

21. Apart from the "consensus" on motor vehicles with Japan, no new bilateral restraint monitoring or moderation arrangements have apparently been concluded by the EC in the past two years. Many such arrangements, exchanges of letters and understandings affecting imports of iron and steel products have expired, and surveillance of imports of certain consumer electronics and machinery from Japan and Korea has been terminated. However, in the context of association or cooperation agreements, the EC and its Mediterranean partners have continued export moderation and monitoring arrangements on certain sensitive textile and clothing products. These seek to prevent "market disruption" and, thus, avoid restrictive action by the Communities under the safeguard provisions of the agreements.

22. Steel imports, except from EFTA countries, are subject to retrospective or automatic prior surveillance; and new prior surveillance has recently been introduced on apples. While aimed at gathering up-to-date information on trade flows, such measures may prompt affected exporters to exercise "prudence", with a view to avoiding new import restrictions. Continued unilateral export monitoring by Japan and the Republic of Korea on sensitive items, such as steel semi-manufactures, metal flatware, travel goods, pottery and chinaware, appears intended to ensure undisturbed access to major export markets, including the Communities.

23. Subsidies to industry are granted mainly at national level, subject to Community control. Although the level of such State aids was lower in the period 1988 to 1990 than between 1986 and 1988, it is unlikely to have declined further, given the large amount of aid channelled into the east German economy (some ECU 24 billion in 1992) since unification.

(iii) Temporary measures

24. Anti-dumping measures, in the form of duties or price undertakings, continue to be the Communities' most frequently used trade remedy instruments. In September 1992, over 160 measures were in force. A sunset clause provides for their expiry five years after their introduction, last modification and confirmation, unless affected parties invoke a review procedure. Since 1985, over three-quarters of the measures have expired as scheduled.

25. Chemicals and fertilizers account for about two-fifths of all anti-dumping measures, followed by textiles, base metals and metal semi-manufactures. Such traditional industries may be more vulnerable to alleged unfair price competition - or exert more pressure - than more dynamic industries in earlier phases of product development. Structural rigidities, stemming from industrial concentration in mature segments of the economy, may further increase the likelihood that low priced imports are regarded as causing serious injury. In these circumstances, anti-dumping action may conflict with competition policy objectives. A recent case in which the EC authorities intervened to restore competitive conditions concerns soda-ash, where domestic producers had sought anti-dumping protection to defend cartel rents against competing imports. The companies involved were convicted under EC competition law and the anti-dumping measures repealed in 1990/91.

26. In sectors regarded as central to the development of new industries in the Community - such as electronic memory components - anti-dumping actions were considered in the "Community interest", being aimed at restoring a "fair" market environment and reducing dependence on foreign supplies. A recent decision by one EC company to develop a new generation of memory chips jointly with a Japanese producer and a U.S.-based firm may, however, prompt discussions about the notion of minimum self-sufficiency in assessing "Community interest" in this field.

27. Safeguard actions under Article XIX of GATT are rarely used by the Communities. Between January 1991 and December 1992, the EC took three such actions, all on food products; and in February 1993, minimum prices

were introduced on imports of certain white fish. Germany continues to invoke Article XIX in connection with its coal policy; dating from 1958, this is the longest-standing safeguard action in GATT.

28. In the period under review, the EC has applied one safeguard provision under a preferential trade agreement. In the second half of 1992, it imposed selective import quotas on steel deliveries into France, Germany and Italy. These measures, taken under the "Europe Agreement" with the then Czech and Slovak Federal Republic, were introduced after bilateral discussions on voluntary action had failed; they expired on 31 December 1992.

29. Recent proposals by the Commission aim to change the procedures for EC trade remedy actions, by giving the Commission the right to implement measures unless disapproved by a qualified majority in the Council of Ministers. This would lead to an important change in the institutional decision-making balance, away from the member States towards the Commission. Currently, a qualified majority of the Council has to approve Commission proposals for remedial actions - including anti-dumping and countervailing duties - in order to bring them into force.

30. While safeguard provisions under the Communities' general import legislation (Council Regulation No. 288/82) are based on Article XIX of the GATT, the new market organizations for fisheries, tobacco and bananas contain less stringent constraints on EC action. In these areas, the EC may take emergency action in the event of imports causing or threatening to cause serious disturbances which "may endanger" the objectives of the Common Agricultural Policy. The Commission is empowered to introduce the "appropriate measures" immediately; the Council would need to achieve a qualified majority against the Commission in order to amend or revoke a measure.

(iv) Trade-related aspects of competition policy

31. The EEC Treaty places a general ban on anti-competitive practices affecting trade between member States. The Commission has applied these

provisions to prevent private arrangements from substituting for formal trade barriers and thereby thwarting the integration process. The use of EC competition policy as an instrument to support integration has been facilitated by an extensive definition, developed in EC case law, of practices considered to affect trade between member States and, accordingly, to fall within Community competence.

32. Arrangements involving EC or foreign Government authorities, such as export restraints vis-à-vis the EC or individual national markets, do not infringe competition law if the companies involved remain within the set limits. Export cartels among EC companies are outlawed if they have repercussions on EC internal markets.

33. The Commission may grant exemptions to competition law for specified periods, for agreements between companies contributing to objectives such as improving the distribution of goods or promoting research and development. General conditions for cooperative arrangements deemed acceptable have been laid down in block exemptions. One of these, enacted in 1985, covers supply contracts between producers and dealers of motor vehicles ensuring exclusive territories within the same franchise system. However, the Commission has stressed that it will not tolerate practices, such as refusal of maintenance services, aimed at deterring sales across contract territories and among member States.

34. Most functions of EC competition policy - developing rules and guidelines, policing, prosecuting, and passing decisions - are vested in the Commission. As in the anti-dumping area, no independent institution is involved in the investigation and decision-making process, and there is no need for the Commission as a body, should its final decision diverge from the position taken by its competent service (Directorate General IV), to make such deviations public or to give reasons.

35. The Commission's rôle in competition policy extends to the area of State aid. Under the EEC Treaty, the Commission is entrusted to keep under constant review all subsidy systems within the Community. It has the exclusive competence to decide on the compatibility of such systems with the common market objectives.

36. Within the European Economic Area, the participating EFTA countries are required to accept the "acquis communautaire" of EC rules and case law, in such areas as technical regulations, public procurement, competition policy and State aid. Full implementation of the "acquis" in these areas also prevents EEA members from introducing anti-dumping or countervailing actions on each other's shipments.

(v) Sectoral policy developments

37. Reflecting the diversity of national production structures and, as a result, the redistributive effects associated with many policies, EC decision-making on sectoral issues tends to be difficult and time consuming. The need to agree, for any significant reforms, on complex packages that cater to the sensitivities of at least a qualified majority of member States, helps explain the longevity of certain costly programmes, such as in agriculture, as well as the problems in responding swiftly to external stimuli, including those arising from the Uruguay Round. However, it also testifies to the political momentum involved in pursuing and implementing the Internal Market programme and, more recently, passing reforms in the Common Agricultural Policy.

38. Available information suggests that the implementation of the Internal Market programme has improved access, transparency and legal security in many sectors. Fears that the EC would turn more inward-looking do not seem to have been justified, and there is little evidence of any major intensification of protective measures in the industrial sphere. However, not all measures have been fully implemented to date, and many of the new régimes are awaiting their first tests.

39. In a number of regulated industries, the Community has taken steps to harmonize the regulatory framework among member States, ease entry barriers, and inject competition into hitherto strictly controlled areas. For example, considerable efforts have been made to reduce distortions resulting from the exclusive position of national telecommunications carriers on procurement markets, and to trim the coverage of their supply monopolies. In pharmaceuticals, issues such as approval criteria and

procedures and the mutual acceptance of tests have been addressed through comprehensive EC directives. A common framework for product acceptance, applicable as from 1995, should promote market integration in important areas and ease conditions for external trade. However, the diverse price or profit control mechanisms operated by member States and national reimbursement systems remain largely unchanged.

40. Most coal-producing member States, except Germany, have liberalized their policies in the sector or decided on major adjustments. Large parts of the German market continue to be reserved for domestic production, shielded from both intra-EC and international competition through subsidization and an intricate system of exclusive supply relations. Recent Commission proposals aim to establish a common policy framework for the sector, based on a reference price mechanism that is intended to reflect supply security aspects. The Commission does not, however, regard coal production as an end in itself, irrespective of economic viability, and stresses that supply security is also related to the diversification of energy sources.

41. In the steel sector, movement towards restoring market mechanisms has continued, as shown by the expiry of voluntary restraint arrangements and a tighter rein on subsidies. However, with stronger import competition, a dramatic decline in domestic demand and deteriorating export markets, compounded by countervailing and anti-dumping actions in the United States and Canada, the Communities' resolve to defend these achievements is under challenge. Import surveillance remains in force and some imports from central European countries and Egypt have recently been made subject to anti-dumping duties or price undertakings.

42. Exchange rate guarantees granted by the German Government in privatizing Deutsche Airbus, together with more general issues of production subsidies for Airbus, have been a trade irritant between the EC and the United States. A solution was found in 1992 by the abolition of the exchange rate guarantees, in the context of the full privatization, ahead of schedule, of Deutsche Airbus; in July 1992, the United States and the EC signed a bilateral agreement specifying disciplines for large civil aircraft programmes.

43. In May 1992, the EC Council decided on a major overhaul of the Common Agricultural Policy. The changes imply a significant decline, from 1993/94 onwards, in levels of price support and, hence, the degree of policy distortion particularly in the grain sector. Basic principles and mechanisms of the CAP, including the concept of Community preference and the variable levy system, remain intact. While the agreed price cuts may contribute to containing overproduction in the sectors concerned, and thus reduce the Communities' export push on world markets, their significance for import demand is yet to become clear; in 1989/90, EC self-sufficiency in cereals stood at 136 per cent, more than 10 percentage points higher than in the mid-1980s. Other supported areas, in particular milk and sugar, are largely unaffected by the reform package.

44. To date, there has been little change in the intensity of agricultural protection. PSE levels in the order of 50 per cent for 1990 and 1991 suggest that, on average, about one-half of EC farm income results from policy intervention. Assistance is based mainly on border protection, with variable levies insulating most internal prices from world market developments. Over time, various measures have been designed to contain farm output, such as producer quotas, early retirement schemes and extensification programmes. Community expenditure in the sector nevertheless reached over ECU 4,100 per farm worker in 1991, varying from less than ECU 3,000 in Portugal, Greece and Spain to over ECU 15,000 in Belgium. Additional payments are granted at national and regional levels, for example on environmental grounds, subject to Commission approval. Following adjustments in the Communities' agrimonetary system, Germany has been authorized, since 1984, to compensate its farmers for ensuing income losses; national payments in this context amounted to DM 2.7 billion in both 1991 and 1992.

45. With a view to cushioning the impact of currency adjustments on national farm incomes, country- and product-specific "green" exchange rates have been used for more than two decades to convert common ECU prices into national currencies. For certain products and countries, the principle of a single EC market, with uniform producer prices, was thus more fictitious than real. By contrast, the post-1992 agrimonetary régime is essentially based on a uniform exchange rate, corresponding to the ecu central rate of

the national currencies. For the next two years, however, a "switchover" mechanism will be retained; in the event of realignments, the green rates will be varied in order to avoid price decreases in the stronger national currencies, leading in turn to additional income gains for farmers in weak-currency countries. For the time being, exchange rate adjustments among member States will thus result in complex accounting operations and could require significant Community expenditures.

(4) Trade Policies and Foreign Trading Partners

46. Five purely m.f.n. suppliers, including the other major trading entities, account for some 27 per cent of the Communities' external trade. Imports from all other sources may qualify, with wide variations between countries and sectors, for free-trade area treatment or for contractual or unilateral preferences. This results in a complex hierarchy of preferential relations, with varying dispute settlement provisions, safeguard clauses, rules of origin, and differences in product coverage.

47. The conclusion of the Internal Market process has encouraged the development of overlapping preferential trading systems within Europe: spreading outward from the EC to the European Economic Area agreements with EFTA countries (except Switzerland), the "Europe Agreements" with central and eastern European countries, and parallel free-trade agreements among the latter countries and between them and the EFTA members. These moves liberalize trade in many products but create an area of further departure from the m.f.n. system, both among the signatories and towards third countries.

48. In the event of conflicts, the Community and its preferential trading partners have usually sought to negotiate solutions, and to avoid invoking formal dispute settlement mechanisms under their agreements or the GATT. For more than a decade, the Communities' recourse to Article XXIII of the General Agreement has been confined to disputes with its m.f.n. suppliers, in particular the United States.

49. The New Commercial Policy Instrument, whose inception in 1984 appears to have been motivated by Section 301 of the U.S. Trade Act, cannot be used to enforce unilateral interpretation of international law. Where

international obligations exist, as under the GATT, the EC is committed by the NCPI to respect the outcome of the relevant procedures, however long these may take. Only four investigations have been opened under the Instrument, three in areas not covered by the GATT. The Communities' resistance to internal pressures to sharpen the NCPI with a view to using it more actively or aggressively, has contributed to maintaining the integrity of multilateral dispute settlement mechanisms.

50. Certain provisions of the recent Europe Agreements seem to set a new tone. While the "old" free trade agreements with the EFTA members explicitly refer to, and reaffirm, the obligations arising from other international agreements, no comparable reference exists in the "new" Europe Agreements, except in the areas of dumping and subsidization. Thus, in imposing bilateral restrictions on steel imports from the Czech and Slovak Federal Republic in 1992, the EC used the safeguard provisions under the Agreement in a way that seems to suggest that not only bilateral preferences but also GATT obligations have been suspended.

51. Trade policies in any administration are defined and implemented within a field of competing economic interests. The current macroeconomic problems and uncertainties in the Communities, compounded by adjustment pressures stemming from the Internal Market programme, the "Europe Agreements" and the need to integrate the east German economy fully with the EC, may strengthen inward looking interests. In these circumstances, more leeway in decision-making, possibly at the expense of contractual obligations, may be seen as an advantage, enabling policymakers to respond swiftly and "pragmatically" to challenges. Without a stable and effective framework of multilateral rules and disciplines, however, such decision making may be vulnerable to short-term pressures and vested interests.

52. The present stalemate in the Uruguay Round thus contains serious risk. Given its weight in, and impact on, the multilateral trading system, the EC has a major rôle in preventing narrowly-defined regional and sectoral interests from gaining the upper hand, and in bringing about

a successful conclusion to the Round. This would consolidate and strengthen the Communities' position in the world trading system and contribute greatly to the stability and development of international trade relations. New multilateral trading rules and agreements, as well as the significant improvements in market access, which will come from a successful Round, will both support European integration and provide a firm basis for its outward-looking evolution.

I. THE ECONOMIC ENVIRONMENT

(1) Recent Economic Performance

1. After a five-year period of robust growth, the EC economy joined in a world-wide economic downturn in late-1990. The preceding boom (1986-90) had brought an increase in the real GDP of the Communities of over 3 per cent per annum and a significant rise in employment, from 127 million in 1986 to 134 million in 1990. Unemployment came down from 10.7 per cent to 8.3 per cent. The economic environment thus proved favourable for the implementation of the Communities' 1992 Internal Market programme, launched in 1987, while the programme, in turn, appears to have contributed to increasing the locational attractiveness of the EC for expanding industries and services sectors.

2. All member States, except Denmark and Greece, shared in the Communities' strong economic expansion in the second half of the 1980s. Portugal, Spain and Ireland performed best, with annual[1] growth rates of 4½ per cent and more between 1986 and 1990 (Chart I.1). Though income disparities within the EC remained very high, more rapid growth in the southern countries, except Greece, has contributed to narrowing the gap[2] between these countries and the central and northern member States. Inflation varied between some 2 per cent in Germany and over 16 per cent in Greece.

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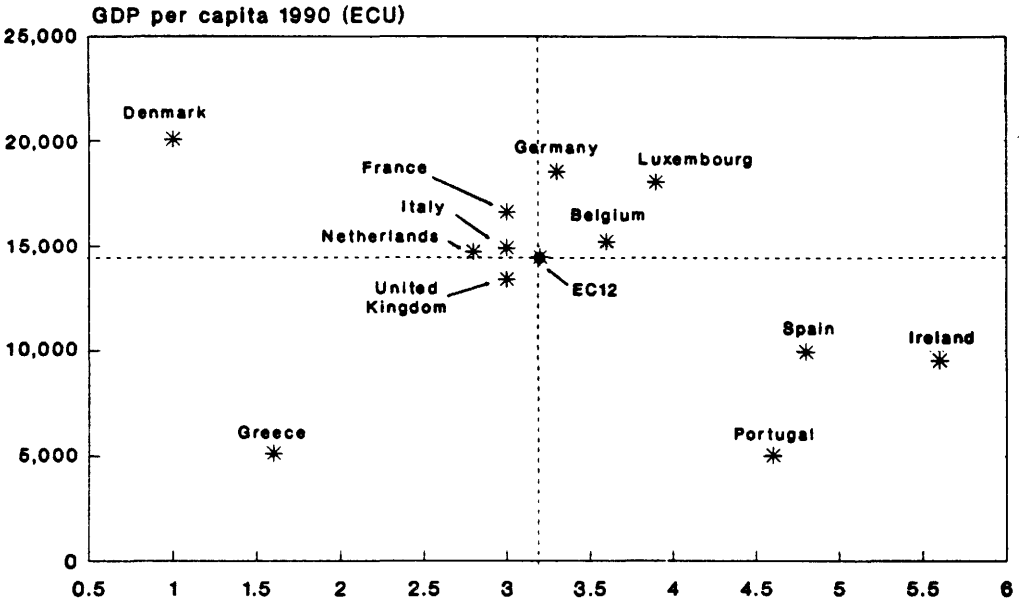
[1] Portugal and Spain joined the Community in 1986.

[2] The coefficient of variation of national per capita incomes (standard deviation as a percentage of the mean income) sank from 40 per cent in 1986 to 35½ per cent in 1990. The population-weighted coefficient came down from 30 per cent to 25 per cent.

Valued at current prices and exchange rates, Denmark's per capita income in 1990 was four times higher than those of Portugal and Greece (see Chart I.1). In terms of purchasing power parities, Germany was at the top of the EC income league, with a per capita income of 2½ times as high as that of Greece.

Chart I.1
Per capita income and growth by member State, 1986-90



Source: Eurostat (1992), National Accounts 1970-1990, Theme 2, Series C.

3. Economic performance in the period 1990-92 has shown considerable variations among the member States (Chart I.2). For example, while the United Kingdom registered a fall in economic activity since the third quarter of 1990, the German economy was, in 1990 and 1991, still buoyed by the demand effects of unification.[3] Between mid-1990 and mid-1991, GDP growth in Germany exceeded 5 per cent as compared with 1½ per cent for the EC as a whole and a 3½ per cent decline in the United Kingdom. In the second half of 1991, however, the German economy also started flagging, adding, in turn, to the general sluggishness of economic activity in the Community. Unemployment rose again, exceeding 9½ per cent by mid-1992, and hopes for an early and strong recovery dimmed (Table I.2). In the third quarter of 1992, GDP fell in Denmark and Italy while the other EC economies were virtually stagnant.

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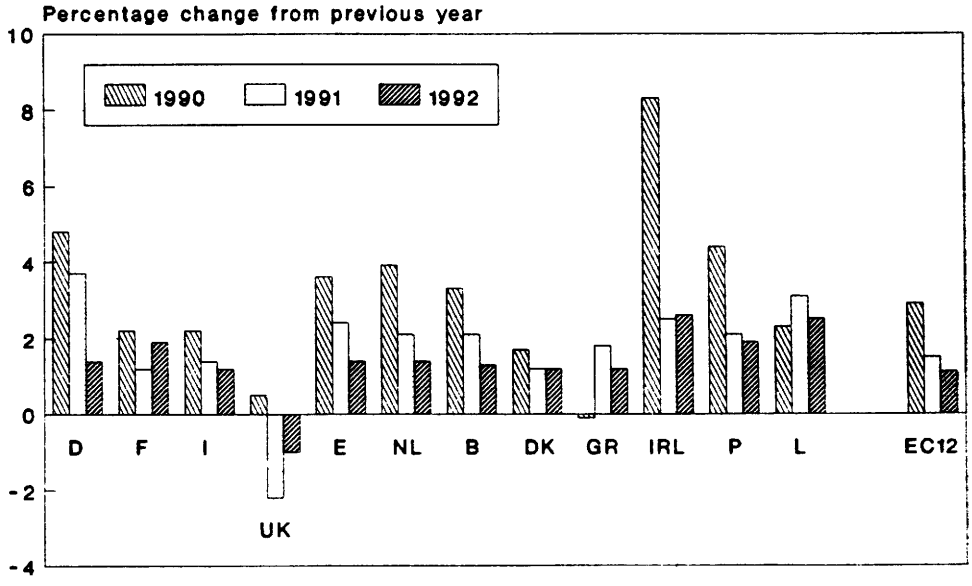
[3] The Commission has estimated that the immediate demand effects resulting from German unification have contributed half a percentage point to the Communities' GDP in both 1990 and 1991 (statement in the context of this TPRM report).

Chart I.2
Growth of real GDP by member State, 1990-92



Note: Member States are ranked in descending order of aggregate GDP.
Source: OECD, Economic Outlook, December 1992.

4. During the period under review, considerable fiscal and monetary frictions have emerged in the Communities. Fiscal expansion in the context of German unification, in the autumn of 1990, coincided with monetary tightening aimed at containing inflationary pressures.[4] The ensuing strains on capital markets drove up real interest rates, which peaked in Germany and France at close to 6 and some 7½ per cent, respectively, in late 1990 (Chart I.3).[5] This, in turn, had a depressing effect on business investment in the course of 1991/92, compounding the negative effects on export competition of a weak U.S. dollar - largely mirroring the

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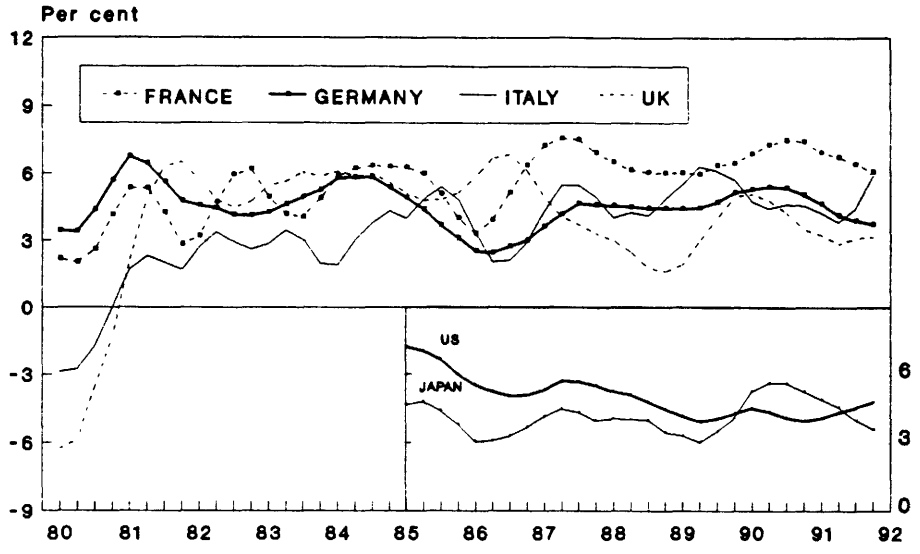
[4] However, it has become increasingly difficult in recent years to assess the actual stance of monetary policy. Different aggregates are giving contradictory signals. For example, the broad aggregate targeted by the German Bundesbank, M3, has risen fast since late-1991, while the growth of the narrower M1-aggregate has fallen sharply. This appears to reflect changes in the structure of interest rates; the growth in short-term rates has tended to increase in particular the attractiveness of certain deposits included in M3. Such effects may have been reinforced by changes in portfolio patterns following the announced introduction of a withholding tax on interest revenue in Germany (IMF, 1992).

[5] Difference between the yields on fixed interest government securities and the growth in the GDP deflator over the preceding year. By mid-1992, long-term real interest rates were in the order of 3½ to 4 per cent in Germany as against some 6 per cent in France and over 7 per cent in Italy.

transatlantic gap in interest rates - and of sluggish demand on major foreign markets, notably the United States and the EFTA area.

Chart I.3
Real interest rates on government securities in the EC, Japan and the United States, January 1980 - March 1992[a]



a Yield on fixed interest government securities minus the increase in the GDP deflator from the preceding year; three-period moving average.

Source: GATT Secretariat estimates based on Eurostat, Eurostatistics, Theme 1, Series B, various issues, and OECD (1992), Quarterly National Accounts, No.3.

5. Despite the diversity of monetary and fiscal conditions throughout the Communities, the European Exchange Rate Mechanism remained stable for almost five years, following a major realignment in 1987. However, in the course of 1992, tensions surfaced. They were fuelled, inter alia, by persistently high real interest rates and political and economic uncertainties resulting, in particular, from the negative Danish vote on the Maastricht Treaty in June 1992, large fiscal deficits in a number of member States, and continued adjustment problems in the German economy.[6] From September 1992, these tensions led to a major upheaval in the operation of the European Exchange Rate mechanism; three member State currencies were devalued within the system and two others were suspended from participation. The upheaval within the ERM also had significant effects on other European currencies.

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[6]Developments in the ERM to date are discussed in Sections III.1(i) and (ii).

6. According to the Commission's Annual Economic Report for 1993, the conditions for investment and growth have since deteriorated further. The report points, in particular, to uncertainties relating to the ERM; the deadlock in the Uruguay Round; the future course of the U.S. economy; the economic downturn in Japan; the difficulties of the reform process in central and eastern Europe; and the ethnic conflict in the former Yugoslavia.[7] The combination of these factors, and the ensuing risks for traders and investors, superseded the growth effects expected to result from progressive deregulation and liberalization in the final stages of the Communities' Internal Market programme (Chapter II).

(2) Trade Performance

7. Since 1988, EC imports have grown considerably faster than exports and the Communities' trade deficit widened from ECU 25.0 billion to ECU 70.5 billion in 1991 (Chart I.4). As indicated above, the trends in imports and exports reflect both domestic economic conditions within the EC, exchange rate developments and the recent slack in export demand. The deterioration was particularly pronounced in trade with the United States, the single most important partner (Table AI.2), where an export surplus of ECU 3.5 billion in 1988 turned into a deficit of ECU 20.7 billion in 1991.[8] The bilateral balance with the EFTA area was negative for the first time ever in 1991, while the Communities' deficit with Japan exceeded ECU 29½ billion, up from ECU 24½ billion in 1988, with a further deterioration underway.[9] The EC has also continued to register a trade deficit with developing countries as a group. This deficit more than doubled after 1988 to reach ECU 7.7 billion in 1991, including deficits with the ACP countries and Latin American suppliers of ECU 3.2 billion and ECU 8.4 billion, respectively, and a surplus with Mediterranean countries of ECU 2.4 billion (Chart I.5 and Table AI.4). Overall, the demand effects resulting from German unification (see below) and an unfavorable external

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[7] EC Commission (1993).

[8] Imports from the United States increased by more than one-third after 1988 to reach some ECU 92 billion in 1991, as compared with exports of slightly over ECU 71 billion in both years. The United States International Trade Commission has attributed this development to the depreciation of the dollar, strong growth in the EC, more favourable business conditions stemming from the Internal Market Programme, and improved manufacturing competitiveness of U.S. firms (USITC, 1992).

[9] Between 1988 and 1991, the Communities' imports from Japan increased by one-quarter, from ECU 41.6 billion to ECU 51.8 billion, while exports grew by 30 per cent to reach in 1991 ECU 22.2 billion. Between the first six months of 1991 and 1992, shipments from Japan rose by 4 per cent in value while the Communities' supplies to Japan declined by 6 per cent.

environment appear also to have accentuated the long-term tendency of intra-EC trade to expand more rapidly than external trade.[10]

8. The economic transition in central and eastern Europe was accompanied by an intensification of EC trade with this area, starting, however, from a low level. Between 1990 and 1991, the Communities' exports to the "Europe Agreement" countries (Bulgaria, Czech and Slovak Federal Republic, Hungary, Poland, Romania) increased by 30 per cent in value, turning a small trade deficit into surplus.[11] EC exports of food and beverages developed particularly dynamically (Table AI.6). By contrast, the EC is running a deficit with the successor States of the former Soviet Union.[12]

9. Given the relatively small share of bilateral trade with the former Soviet bloc, its collapse has left far less trace in the Communities' trade relations than the process of German unification. The ensuing surge in (east) German demand for manufactures not only stimulated imports into the Community, but siphoned (west) German and other member States' supplies into the east German market. While spurring production, this also limited the potential for exports to third countries. In addition, as noted above, Germany's external sector, like that of all other member States, suffered from an unfavourable international environment.[13] From 1990 to 1991, Germany's surplus slipped from ECU 23 billion to ECU 6.2 billion in external trade, and from ECU 24 billion to no more than ECU 2.6 billion in intra EC trade.[14]

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[10]It may be added, however, that abrupt changes in the value of the Communities' external imports during the 1980s, as shown in Chart I.4, mainly reflect sharp commodity price fluctuations, in particular of oil imports. In real terms, extra and intra-EC imports have developed more in line than current value figures suggest.

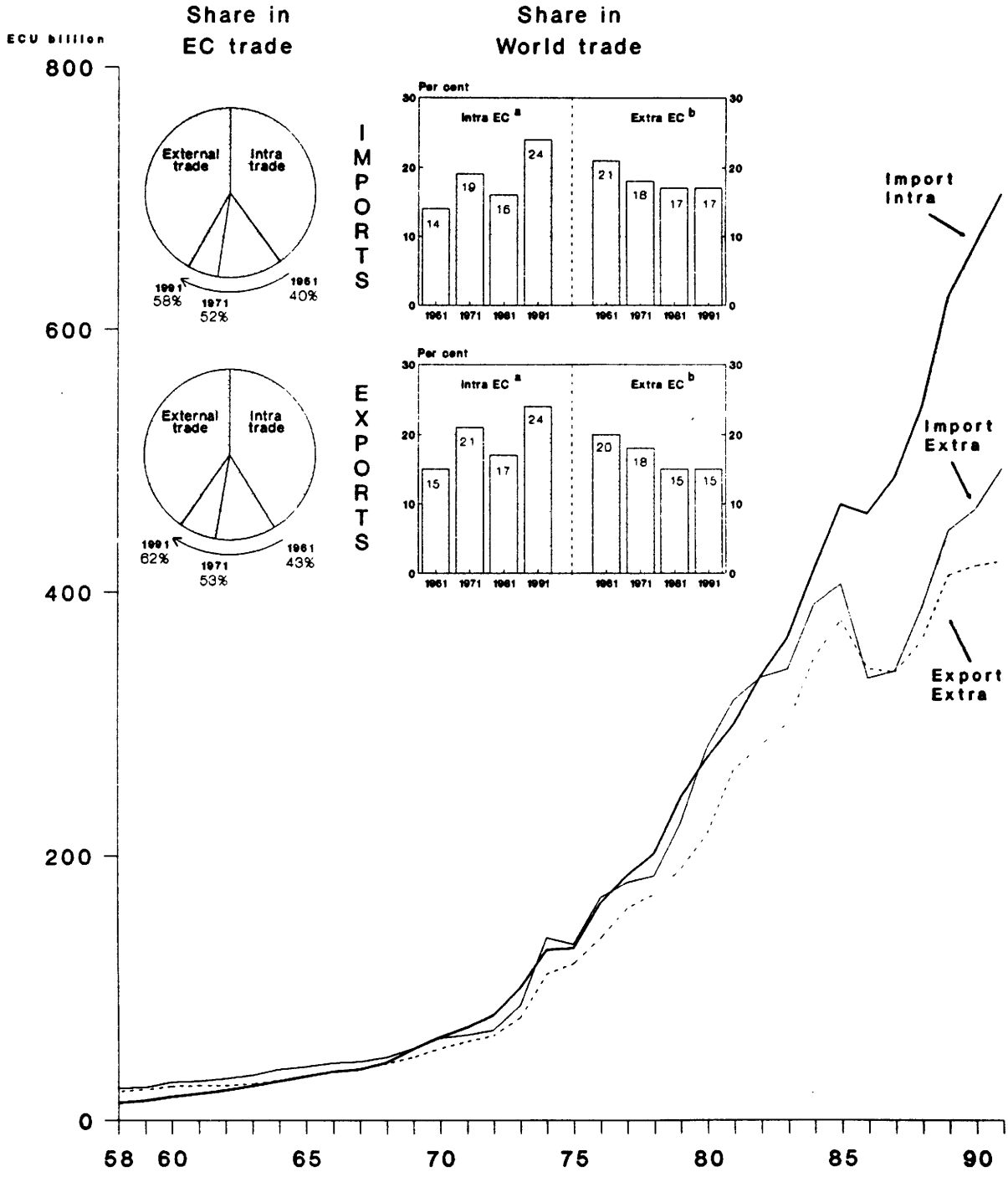
[11]An overview of the content of the Europe Agreements is given in Section II.5(iii).

[12]Members of the Commonwealth of Independent States and the Baltic Republics combined accounted for 3.5 per cent of the Communities' total external imports and 3.3 per cent of its exports in 1991 (Table AI.2). Close to 60 per cent of the Communities' imports from this area are fuels.

[13]However, domestic and international developments are intertwined. The recent decline in the U.S. dollar/DM exchange rate may be partly attributed to fiscal expansion subsequent to German unification. Rapidly rising government deficits, in conjunction with monetary easing in the United States and stability-conscious policies in Europe, drove German and other European interest rates far above the U.S. level. This, in turn, contributed to strengthening core ERM currencies, especially the Deutsche mark.

[14]As shown in Table AI.1, Germany's current account surplus plunged in parallel, from 4.9 per cent of GDP in 1989 to 0.8 per cent in 1991 (western Germany), while most other member States improved their position.

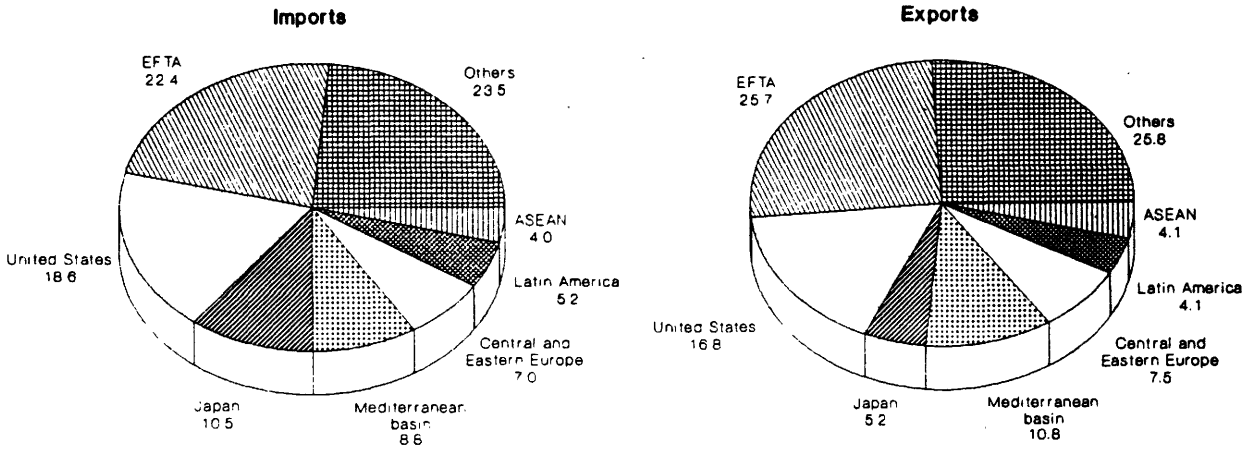
Chart I.4
Regional pattern of EC trade (EC 12), 1958-91



a Intra EC imports (exports) as per cent of total world imports (exports).
b Imports from (exports to) third countries as per cent of total world imports (exports).

Source: Eurostat (1992), External Trade - Statistical Yearbook, Theme 6, Series A; GATT Secretariat estimates.

Chart I.5
EC external trade by region, 1991
Per cent



Total imports: ECU 493,990 million

Total exports: ECU 423,497 million

Source: Eurostat (1992), External Trade - Statistical Yearbook, Theme 6, Series A.

10. While trade is a central element to all member States' economies, its relative importance varies significantly. Chart I.6 gives an overview of the shares of exports and imports in overall economic activity (GDP) and of the significance of external versus internal trade.[15] Not surprisingly, the smaller member States are generally more trade-oriented than the larger countries among which, in turn, Germany displays the strongest trade links. Germany, Denmark and Ireland were the only member States to register trade surpluses in 1991.[16]

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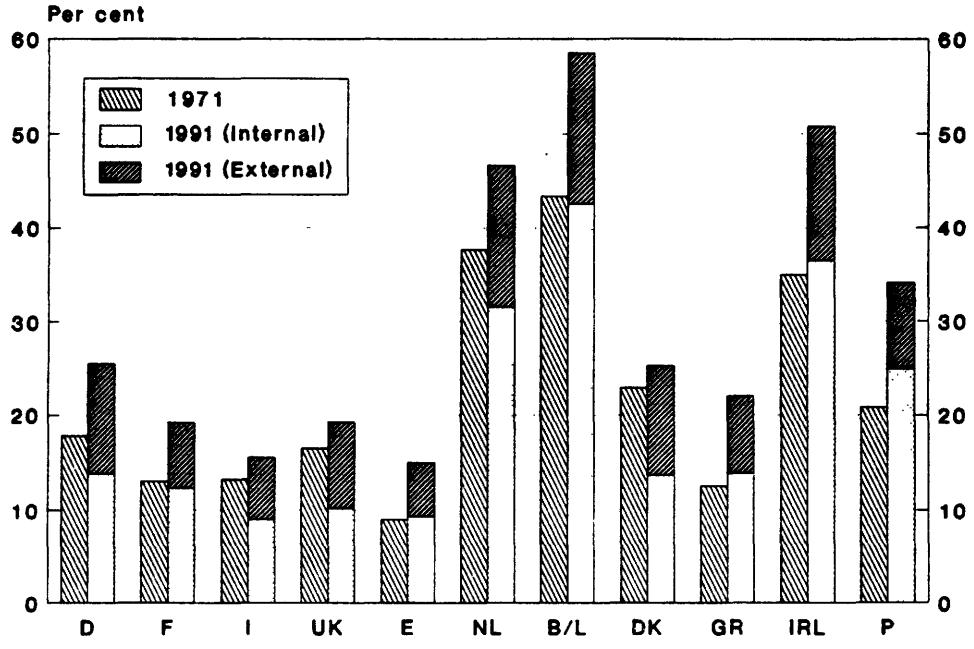
[15]The pattern presented in the Chart reflects not only the degree of "openness" of the national economies, but a variety of additional factors, including differences in size and, hence, in the individual member State's potential for efficient internal or international specialization. Findings for smaller member Sates may be distorted by high shares of transit trade and re-exports after processing. See also EC Commission (1992).

[16]By contrast, in 1990 and 1991, Greece's imports were almost 1½ times higher than exports; the country's trade deficit stood in the order of 18 per cent of GDP in both years.

Chart I.6
Trade orientation by member State, 1971 and 1991[a]

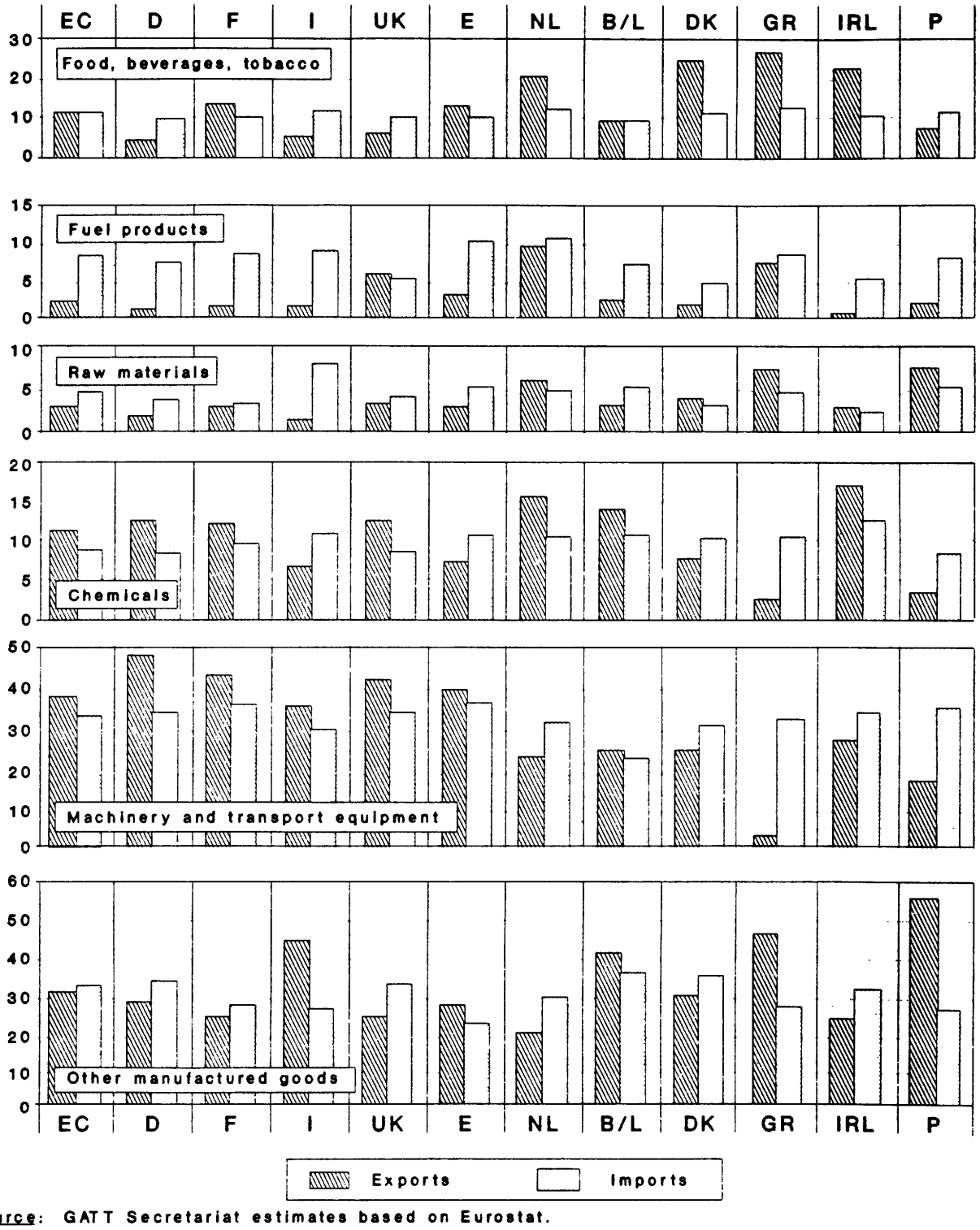


a Average of exports and imports as percentage of GDP.
Note: Member States are ranked in descending order of aggregate GDP.
Source: GATT Secretariat estimates based on Eurostat.

11. The diversity of economic, geographic and climatic conditions among the member States is reflected in significant differences in their commodity trade patterns. For example, food products are more than twice as high a share in the export baskets of Greece, Denmark, Ireland and the Netherlands than on average in the EC (Chart I.7);[17] the latter three countries, accompanied by France, are the only member States with surpluses in this area. (In view of the intensity of EC farm support policies, these figures may, however, not necessarily be an indicator of competitive strength.) The trade of Germany, France, Italy and the United Kingdom, in contrast, is much more strongly focused on manufactures, particularly machinery and transport equipment.

[17]The 40 leading products in EC external trade are shown in Table AI.3.

Chart I.7
Commodity pattern of member States' trade, 1991
Percentage share of main product categories in member States' total exports and imports



Source: GATT Secretariat estimates based on Eurostat.

(3) Outlook

12. The EC economy is likely to remain fragile for some time. Risks and uncertainties result, in particular, from high fiscal deficits and inflation in some member States, the persistence of tensions within the European Exchange Rate Mechanism, adjustment problems in labour markets, and the rapid downturn in key sectors such as motor vehicles and steel. Compounded by a difficult external environment, including the unresolved Uruguay Round and the economic crisis in the CIS Republics, these factors may continue to depress confidence well into 1993. The Commission expects a return to slightly healthier growth rates in 1994 at the earliest. This implies that, over the coming months, unemployment could well reach again its 1985 peak level of 11 per cent.[18]

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[18] EC Commission (1993).

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) Overview

13. Over the past two years, the European Communities' external and internal trade relations have undergone rapid changes related to three main developments: the implementation of the Internal Market Programme; a major reorganization of trade relations in Europe through new Association Agreements and the forthcoming European Economic Area (EEA); and the economic integration of eastern Germany into the common market. In addition, the Maastricht Treaty is awaiting ratification by all member States and the Community is preparing for negotiations on new accessions.

14. The Internal Market programme has resulted in the abolition of border controls on trade in goods between the member States.[1] The Agreement with the EFTA countries on a European Economic Area (EEA) will contribute to intensifying the integration of industrial markets and liberalize trade in services as well as the movement of capital and persons. Agriculture remains excluded.[2] The association agreements ("Europe Agreements") with Poland, Hungary, the former Czech and Slovak Federal Republic, Bulgaria and Romania provide for progressive market opening for industrial products within ten years, while allowing for significant safeguards. In order to qualify for entry into the EC under free-trade conditions, goods must meet the origin requirements under either the EEA Agreement or the individual Europe Agreements; there is no possibility of cumulation of processing stages between the areas.

(2) Basic Institutional and Legal Structure

15. Since its entry into force in 1958, the EEC Treaty has undergone one major reform, under the Single European Act of 1987. It continues to be complemented by the Treaties establishing the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (Euratom). The three Treaties together form the legal basis of the European Communities.[3]

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[1] Implementation of the programme was facilitated by the introduction of qualified-majority voting, instead of unanimity, for Council decisions on harmonization issues in 1987. Safeguards in the EEC Treaty which would in principle allow for continued national derogations from common requirements, e.g. for environmental and health policy reasons, have had very limited impact thus far.

[2] As noted in Section V.2(i), an "evolutionary clause" provides for regular reviews with a view to liberalizing agricultural trade progressively.

[3] See GATT (1991) for more details. Unlike the EEC and Euratom Treaties, which are of indefinite duration, the ECSC Treaty is due to expire in 2002. Agreement has been reached among the Commission and the member States to use the flexibility of the ECSC Treaty with a

(Footnote Continued)

16. Despite their differences in substance, the Treaties are administered by one Commission and one Council. At the highest political level is the European Council consisting of the Heads of State or of Government of the member States, assisted by their Ministers of Foreign Affairs, and the President and one member of the Commission. The European Council is required to meet at least twice a year.

17. Under the EEC Treaty, the Commission is the main initiator of common policies. It also has considerable supervisory, regulatory and decision-making powers, which are usually exercised within the limits of Council regulations and decisions. While normally bound to decide on the basis of drafts and proposals tabled by the Commission, the Council of Ministers has the final say on every important piece of EC legislation. No substantial changes can occur without the Council's assent, which means without the approval of all or, depending on the issue, of a qualified or simple majority of member States (Note II.1). However, the institutional framework normally affords the Commission certain leeway in deciding on whether, when and on what legal basis to refer issues under Community competence to the Council.

18. Council decisions on commercial and agricultural policy issues and the Internal Market are taken by qualified majority; proposals are accepted if they muster at least 54 affirmative votes. The voting weights of member States vary from two for Luxembourg to ten for France, Germany, Italy and the United Kingdom. There have been no changes subsequent to German unification.

19. The European Parliament has the right of censure over the Commission, which must in that case resign as a body. The Parliament must be consulted in several fields of Community activities and may approve, reject or propose amendments to Commission proposals in these fields.[4] In other areas, "cooperation" provisions enable Parliament to reject Council positions (which may then be reaffirmed by the Council, but only unanimously), or to propose amendments.[5] The European Parliament may also refer back to the Council any accession or association agreements or any trade agreement of significant importance.

(Footnote Continued)

view to gradually extending EEC Treaty provisions to the coal and steel sectors (see also Sections V.3(v) and(vi)).

[4]They are: free movement of goods, the common agricultural policy, transport policy, legal dispositions for directives requiring unanimity in the Council; research and development policies; economic and social affairs; and the environment.

[5]The areas are: free movement of labour, mutual recognition of qualifications; legislative provisions concerning areas where a qualified majority is required; implementation of research and development policies.

20. Legal authority at Communities' level is exercised by the European Court of Justice (ECJ) - the highest Communities' court - and the Court of First Instance. The ECJ is empowered to judge the legality of EC acts and those passed by national and regional authorities, in terms of the Treaties. The Court of First Instance was set up in 1988 to improve the operation of the judicial system by relieving the Court of Justice from cases which required the close examination of complex facts, to allow the ECJ "to concentrate its activities on its fundamental task of ensuring uniform interpretation of Community law".[6]

21. The Community's main trade legislation has remained unchanged since the initial TPRM report. An overview of the current system of import and export regulations is given in Table AIV.2. Certain changes are currently under consideration in view of Internal Market requirements (e.g. concerning quotas) and the need to streamline and harmonize decision-making mechanisms (Section IV.2(v)(f)).

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[6]Council Decision No. 88/591.

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Note II.1 Decision making in the Council of Ministers

The Council of Ministers may take decisions either by unanimity, by qualified (two-thirds) majority or by simple majority. There are 76 Council votes overall; ten each for France, Germany, Italy and the United Kingdom; eight for Spain; five each for Belgium, Greece, the Netherlands and Portugal; three each for Denmark and Ireland; and two for Luxembourg.

Unanimity must be achieved in certain institutional areas (Article 138 on Parliamentary voting procedures, Article 201 on the replacement of financial resources from member States by the Communities' own resources, Article 235 on the power of initiative of the Commission, and Article 237 on the admittance of new member States). The unanimity rule also applies to "sensitive" subjects in the diplomatic, political and social fields. Unanimity is considered as achieved even if one or more member States abstain.

A qualified majority must be obtained in many significant areas including aspects of the Internal Market, workers safety and health, trade and agriculture policy questions and "new areas". A decision made on the basis of a Commission proposal must receive 54 out of 76 votes to be adopted. A Council decision based on its own powers must, in addition, receive affirmative votes from eight member States or more.

Simple majority voting covers any area where no specific procedure is specified. In practice, its scope is limited to Articles 128 (professional training), 152 and 213 (commissioning of studies).

During the first stages of EEC integration, until December 1965, Council Decisions on most common issues, including commercial policy matters, had to be taken unanimously. The partial shift to majority voting caused a decision making crisis in 1965-66, hinging on the question of whether and to what extent individual member States could continue to demand unanimity if "very important national interests" were at stake. An agreement reached in 1966 (the Luxembourg Compromise) provided that, whenever such interests were concerned, the Council would endeavour, within a reasonable time, to reach solutions which could be adopted by all members while respecting their mutual interests and those of the Community. The French Government stressed in this context that, in its view, the discussion must be continued until unanimous agreement was reached.

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(3) The Internal Market Programme

(i) Objectives and framework

22. The Internal Market initiative was launched in the mid-1980s with a view to refocusing and revitalizing EC integration. The elements were set out in the Commission's White Paper on Completing the Internal Market of 1985.[7] This identified a wide range of barriers perceived to hamper the flow of goods, services, persons and capital among member States, and established a timetable for their abolition by the end of 1992.

23. In the area of technical regulations, the White Paper underscored the principle of mutual recognition of member States' established legislation. Should common regulations prove necessary, these should, whenever possible, be limited to defining essential health and safety requirements.

24. The Single European Act (SEA) of 1987 reinforced the Communities' legal and institutional framework in view of the Internal Market objective. The SEA introduced into the EEC Treaty the target date of 31 December 992 for achieving "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured" (Article 8a). From that date, any controls or penalties imposed in connection with the crossing of an internal frontier would contravene the Treaty.[8]

25. The removal of internal controls also implies external trade effects. Under the SEA provisions, Member States will no longer be able to enforce at their internal borders any national trade restrictions against third countries, even though the legal basis for such action (Article 115 of the EEC Treaty) is still available.[9] Moreover, it is difficult to see how regional supply targets under the MFA (Section V.3(vii)) or other voluntary restraint arrangements could in future be applied effectively. To the extent that technical requirements are harmonized and EC-wide type approval is introduced, internal substitutes for border measures, such as national

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[7] EC Commission (1985).

[8] EC Commission (1992a).

[9] Article 115 empowers the Commission, on the basis of a request from a member State, to authorize the member State to restrict internal trade flows in order to defend national trade policy measures against indirect imports. Article 115 can be used only to defend commercial policy measures taken in accordance with the EEC Treaty; it has no rôle in the context of informal measures. The duration of Article 115 restrictions may vary between two months and one year, depending on the Commission's decision. Article 115 is due to be modified, but not abolished, under the Treaty on European Union (see below). However, as noted by the Commission, with the harmonization of national import régimes (Section IV.2(ii)), the legal grounds for its application are bound to disappear, quite apart from the requirements of Article 8a of the EEC Treaty.

registration procedures, would also vanish. All this should contribute to freer trade conditions for extra-Community imports as well as for goods produced within EC boundaries.

26. The Single European Act provides for qualified majority voting by the Council on harmonization issues (Article 100a). The Commission considers the shift to majority voting one of the principal factors in advancing the 1992 Programme, in particular in areas such as veterinary and phytosanitary legislation, pharmaceuticals and motor vehicles.[10] (Majority voting under the relevant provisions of Article 100a does not extend to sensitive issues such as fiscal legislation, on which unanimity is still required.)

27. Provision is made in the SEA for national derogations from harmonized policies "on the grounds of major needs" in areas related to national security, culture, health, commercial and industrial property (Article 100a:4 and 36). From the point of view of an integrated market, such a provision weakens the majority voting principle; individual member States may, on the other hand, see it as an essential safeguard against excessive centralization, particularly where they maintain more stringent regulations than others. Such measures, which may become permanent derogations from EC legislation, are subject to confirmation by the Commission after verification that they are not means of arbitrary discrimination or disguised trade barriers (Article 100a:4).[11] The Commission has emphasized the exceptional character of any such exemptions, which would affect intra-EC and third country supplies equally. To date, only one case has been confirmed by the Commission (Germany's restrictions on PCBs, see (ii) below).

28. The Single European Act also specifies that, in appropriate cases, harmonization measures must include a safeguard clause allowing member

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[10] According to the Commission, the rules applicable to accompanying pets are the only issue in the veterinary sector to remain unresolved to date. Basic phytosanitary rules necessary to adjust the plant health régimes to the abolition of border controls, have been adopted by the Council and implementing measures are being developed. The only important phytosanitary proposal still awaiting adoption is considered by the Commission not to affect the suppression of border controls (it concerns the financing of measures to control or eradicate harmful organisms and the responsibility of member States in case they neglect required inspections).

Harmonization issues relating to motor vehicles and pharmaceuticals are dealt with in Sections V.3(ii)(a) and V.3(iv).

[11] In addition, Article 118a:3 and 130t allow individual member States to take more stringent measures for the protection of working conditions (118a:3) and of the environment (130t). Such actions are not subject to confirmation, consultation or notification. Observers have argued that whenever the focus of a Community initiative is primarily on enabling the free movement of goods, persons, services and capital with as few standard-related barriers as possible, only the more restrictive provisions of Article 100a:4 could provide legal cover for national derogations, regardless of any safety or environmental aspects that might be involved (Falke and Joerges, 1991).

States to take provisional measures for health, safety, environmental and similar reasons (Article 100a:5 and 36). Invocation would be subject to a Community control procedure. The Commission considers this as a last line of defence to protect consumers or the environment from unsafe products that do not conform to EC technical specifications or that pose risks not adequately addressed in the directives concerned. Such provisions are part of many directives concerning pharmaceuticals and food;[12] in practice, they have proved most important in the pharmaceuticals area.

29. Effective progress towards a single market depends not only on the drafting and enacting of new EC legislation but, in many instances, also on its incorporation into national law and enforcement by all member States. This applies in particular to initiatives in the area of technical barriers, which are usually addressed by way of Council directives (Note II.2).

30. A Declaration annexed to the Single European Act states that the deadline of 31 December 1992 for completing the Internal Market has no automatic legal effect. However, this may not deprive the date of legal relevance; observers have argued that delays in the harmonization and implementation process might lead to findings of "failure to act" under Article 175 of the EEC Treaty.[13] A ruling by the European Court of Justice in November 1991 held that member States which fail to comply with Community law, including failure to implement EC directives, are liable for the ensuing damages caused to individuals.

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[12] Statement by the Commission in the context of this TPRM report. The Commission also noted that, in most cases, only individual batches of a product were involved and that there has never been any discrimination between third country and EC products.

[13] Schermers (1991).
Article 175 entitles member States and Community institutions other than the Council or the Commission, to refer failures to act to the Court of Justice with a view to establishing an infringement of the Treaty. Private parties may then claim for damages unless it can be demonstrated that (i) the postponement of measures was necessary in view of overriding public interests and (ii) it had been announced sufficiently in advance for legitimate expectations to be adapted.

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Note II:2 Hierarchy of EC legal instruments

Under Article 189 of the EEC Treaty, the following hierarchy of Community legislation is established:

Regulations are directly applicable and binding in their entirety in all member States. They need no enabling legislation.

Directives are binding, with regard to the specified results, on the member States to which they are addressed. In order to become legally effective, national implementing legislation is necessary.

Decisions are binding in their entirety on the member States or on the private or legal persons to whom they are addressed.

Recommendations and opinions have no binding effect.

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(ii) Current state of implementation

31. Since 1986, the Commission has published annual progress reports on the implementation of the Internal Market Programme. The most recent report, reflecting the situation in mid-1992, noted that "the economic framework for the single market is now in place".[14] Operational rules in the customs area had been implemented, and no documents were required to accompany Community goods moving between the member States or imports released by a member State for free circulation within the Communities. Some 90 per cent of the White Paper proposals had been adopted by the Council by mid-August 1992, as against 75 per cent one year before. Remaining problems, according to the report, were related to the control of persons crossing frontiers, aspects of indirect taxation, industrial property, double taxation of firms and company law. A Council Resolution of 7 December 1992 invites the Commission to propose, by the end of January 1993, any practical arrangements to help ensure the smooth running of the Single Market and to take, if appropriate, any initiatives to this end by the end of March 1993.[15]

32. Like its predecessors, the Commission's 1992 Report suggests that in important areas of standardization and public procurement, a number of member States has been unable to take the necessary implementation measures

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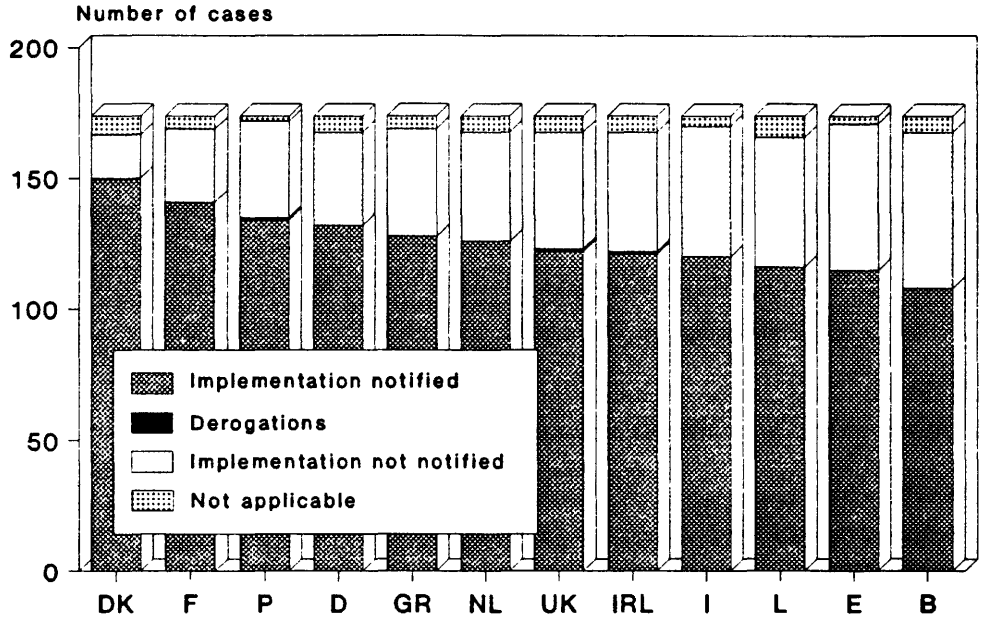
[14] EC Commission (1992b).

[15] Council Resolution on making the Single Market work (92/C 334/01).

as scheduled (see also Sections IV.2(vi) and (vii)). Delays have occurred, for example, in the context of "new approach" directives in the standards area.[16] In view of such problems, the Commission has proposed additional transition periods during which manufacturers may choose between the "old" national requirements and the new Community rules (Section IV.2(vii), Table IV.6).

Chart II.1
Implementation of measures for completing the Internal Market by member State, mid-August 1992



Source: EC Commission.

33. Reflecting the headway made in harmonizing member States' external trade régimes, in particular through the abolition of national import quotas (Section IV.2(ii)), recourse to Article 115 has declined progressively in recent years. In 1991, 48 new authorizations were granted, mostly (32) for textile products, as against 176 authorizations in 1985 and 119 in 1989. In 1992, the number of new restrictions came down to eight (three by Italy, two each by Spain and France, and one by the United Kingdom).

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[16]For example, in mid-August 1992, only three member States (Denmark, France and Portugal) had notified the Commission of full incorporation into national law of Directive No. 89/336 on electro-magnetic compatibility, which was originally due to be implemented by 1 July 1991.

34. Under the Act of Accession of 1985, Spain and Portugal are required to align their tariffs on industrial products with the common trade régime by end-1992. Full market integration for a range of agricultural and fisheries products (fresh fruit and vegetables, vegetable oils and fats, sensitive fish species) is scheduled to take until end-1995.

35. In June 1992, measures stricter than EC legislation, taken by a member State on environmental grounds, were for the first time confirmed by the Commission under Article 100a:4 of the EEC Treaty. Germany was entitled to maintain a complete ban on the use of PCBs (polychlorinated biphenyls), introduced in December 1989, despite the adoption of an EC Directive in March 1991.[17]

(4) The Treaty on European Union

36. The Treaty on European Union, signed by the member States in February 1992 ("the Maastricht Treaty") is intended to usher in a new phase of European integration. While the current EEC Treaty is primarily, and almost exclusively, aimed at promoting economic and trade expansion within a common market[18], the Maastricht Treaty also embraces the objectives of

(i) economic and monetary union, including the introduction of a single currency;

(ii) the implementation of a common foreign and security policy (including the eventual framing of a common defence policy);

(iii) the introduction of common citizenship; and

(iv) the development of close cooperation on justice and home affairs.[19]

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[17]The EC Directive bans the use of PCB with four exceptions, including wood preparation and impregnation of certain textiles (Europe, 12 June 1992).

[18]Pursuant to Article 2 of the EEC Treaty, the European Economic Community has as its tasks, "by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it".

[19]Denmark and the United Kingdom have reserved the right not to move automatically, once the criteria are fulfilled, to the final stage of monetary union (introduction of one common currency). The European Council decided in December 1992 that Denmark would not participate in the single currency and would retain its existing powers in the field of monetary policy. (Decision of the Heads of State and Government, meeting within the European Council, concerning certain problems raised by Denmark on the Treaty on European Union; Official Journal, No. C 348 of 31 December 1992).

The Treaty is to enter into force upon the deposit of the last instrument of ratification by a signatory State.[20]

37. The Union is to be founded on the European Communities, supplemented by additional policies and forms of cooperation. These include inter-Governmental cooperation within the Council, for example, on common foreign and security policy issues. In areas already covered by the EEC, the Maastricht Treaty builds on the "acquis communautaire", the achieved degree of integration and the existing body of Community legislation.

38. The Maastricht Treaty does not change the EEC's commercial policy framework or its agricultural policy making (see also Chapter V.2(i)). However, the Treaty provides the basis for a common policy on development cooperation, complementary to member States' policies. It is aimed at fostering (i) the sustainable economic and social development of the developing countries, and more particularly of the most disadvantaged countries; (ii) the smooth and gradual integration of the developing countries into the world economy; and (iii) the campaign against poverty in the developing world.

39. Under the Treaty, the Communities' basic institutional structure would remain unaffected. The powers of the European Parliament are increased; for the first time, it would be empowered to disapprove Community legislation in specified areas.[21] It will also have the right to request legislative proposals from the Commission (the Commission's exclusive competence to draft new EC law has remained unchanged), to set up Committees of Inquiry and to appoint an Ombudsman.[22] However, the Treaty does not give it the right to introduce bills. Member States are required to consult the Parliament before nominating Commissioners. The President and the Commission as a body can only be appointed, by common

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[20] All member States but Denmark and the United Kingdom had ratified the Treaty by end-1992. After having agreed on a set of arrangements designed to meet concerns raised by Denmark (see above), the European Council meeting of 11-12 December 1992 stressed that this would enable "the Community to develop together, on the basis of the Maastricht Treaty, while respecting, as the Treaty does, the identity and diversity of Member States".

[21] Parliamentary "co-decision" under the Maastricht Treaty extends to trade-related issues such as the approximation of national law in the Internal Market context (Article 100a); EC initiatives aimed at ensuring high levels of public health and consumer protection (Articles 129 and 129a); and the setting up of multiannual framework programmes for research and technological development (Article 130i).

[22] Normally, community legislation begins with the drafting of a Commission proposal, possibly initiated by the Council.

accord of the member States, after the Parliament has given a vote of approval.[23]

(5) EC Enlargement and the Structure of the Communities' External Trading Relations

(i) Overview

40. The vast majority of the Communities' trading partners qualifies for some sort of preferential treatment. Among GATT contracting parties, the EC has no more than a handful of purely m.f.n. suppliers: the United States, Japan, Canada, Australia and New Zealand.[24] However, reflecting both the economic weight of these countries and limits in the coverage of the preferential trade schemes, the bulk of external supplies enters under non-preferential conditions. Thus, while total imports from developing countries other than the Lomé countries accounted for close to 30 per cent of EC imports, only 6 per cent of the Communities' shipments in 1991 are estimated to have qualified for GSP preferences (Chart II.2).

41. In 1992, agreement was reached with EFTA partners to create the European Economic Area, to replace the existing free trade agreements between the EC and individual EFTA countries. New Association Agreements ("Europe Agreements") have been negotiated with the Czech and Slovak Federal Republic, Hungary, Poland, Bulgaria and Romania. The Europe Agreements will reinforce the multi-layered network of association and other preferential agreements and arrangements between the EC and its trading partners (Table II.1).

42. Five EFTA members and three other European countries have lodged an application for EC membership: Turkey (1987), Austria (1989), Cyprus and Malta (1990), Sweden (1991), Finland, Switzerland and Norway (1992).

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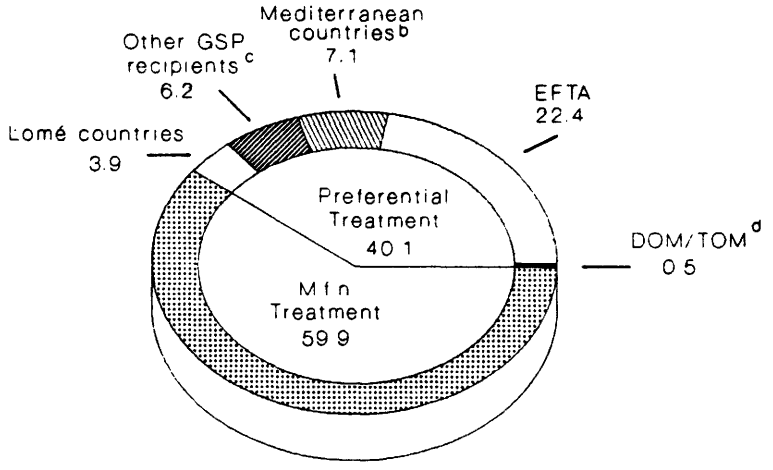
[23]Under the EEC Treaty, the Parliament has no influence on the composition of the Commission.

[24]In 1991, the United States accounted for some 18 per cent of the Communities' external imports, followed by Japan (10 per cent) and Canada (2 per cent).

Chart II.2
Treatment of imports, 1991[a]
Per cent



Total imports from all sources: ECU 497,374 million

a Imports receiving m.f.n. or preferential treatment, by area of origin.
b Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Syria, Tunisia, Turkey, Yugoslavia.
c Estimates, excluding products not qualifying for GSP.
d French Overseas Departments and Territories.
Source : EC Commission.

43. Accession to the Communities by current EFTA countries would imply their acceptance of the EC's external régimes in the tariff and non-tariff areas; of the Common Agricultural Policy as well as of other issues not already covered by the EEA Treaty (e.g. regional and structural policy, budget and finance). While adoption of the common tariff should, in principle, enhance the flexibility in trading conditions for goods once imported into the enlarged Communities, certain non-tariff issues may prove far more important from a third-country perspective (e.g. the extension of the CAP to new members, the question of a common textiles and clothing régime, and the treatment of the new members under the Communities' bilateral restraint arrangements).

44. Each new accession may require additional institutional adjustments and Treaty amendments.[25] Under the EEC Treaty, these could be achieved via Article 237 (governing application and accession of new members)[26] or, if that were considered too narrow, Article 236. Conditions and criteria

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[25] Ehlermann (1992)

[26] Article N of the Final Provisions of the Maastricht Treaty (prospective successor to
(Footnote Continued)

for accession to the EC were set out in a report by the Commission to the European Council in Lisbon, June 1992.[27] The report does not consider the accession of EFTA countries, which have lodged an application to date, to create unsurmountable problems. For other European countries, currently in economic transition, trade and cooperation agreements of various kinds, appropriate to their situation, should offer possibilities for economic and social improvements and the strengthening of political cooperation with the EC.[28] In this context, the Commission report emphasizes the need to fully exploit "the dynamic and evolutionary nature" of the Europe Agreements.

45. In December 1992, the European Council decided that enlargement negotiations with Austria, Finland and Sweden should start at the beginning of 1993. They should be transformed into negotiations under the Treaty on European Union (Article O), once it entered into force, and could only be concluded after the Treaty had been ratified by all member States. The conditions of admission would be based on the acceptance in full of the Treaty on European Union and the "acquis communautaire", subject to possible transitional measures.[29]

(ii) The European Economic Area (EEA)

46. The EEA Agreement aims to create a "homogenous European Economic Area" embracing the following elements: (i) the free movement of goods, persons, services and capital; (ii) the establishment up of a system of

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(Footnote Continued)

Article 236 of the EEC Treaty) provides that amendments to the Treaty can be proposed to the Council either by the government of any member State or the Commission. If the Council gives a favourable opinion, an intergovernmental conference shall be convened to decide, by common accord, on the amendments. The European Parliament is is to be consulted. The amendments enter into force after ratification by all member States.

Article O (corresponding to Article 237 of the EC Treaty) stipulates that any European State may lodge an application for EC membership with the Council. The latter is due to act unanimously after consulting the Commission and having received the assent of the European Parliament. The conditions of accession and any adjustment to the founding Treaties are to be specified in an agreement between the member States and the applicant, to be ratified by the national Parliaments.

[27]These were identified as (i) European identity, democratic status, and respect of human rights; (ii) acceptance of the Community system, the "acquis communautaire", and capacity to implement it; and (iii) acceptance and implementation of a common foreign and security policy as it may evolve over time. A functioning and competitive market economy was viewed as a prerequisite for fulfilling the second criteria.

[28]According to the Commission, the "chance to share more fully in the benefits of access to the European market, and the prospect of membership, can help to bring prosperity and peace" to a region still suffering from poverty, nationalism and fear.

[29]The Commission report to the European Council of June 1992 pointed to possible adjustment problems in areas not covered by the EEA Agreement (e.g. agriculture) and to the need for the acceding countries to accept the Maastricht provisions relating to a common foreign and security policy.

competition rules that prevents market distortions; and (iii) closer cooperation in areas such as research and development, the environment, education and social policy. Upon its entry into force, originally scheduled for 1 January 1993, the Agreement is due to take precedence over the free trade agreements between the EC and the individual EFTA countries.[30]

47. Under the Agreement, the EC and the EFTA countries would each retain their own tariffs and non-tariff measures towards third parties, as well as the current and any future preferential arrangements. Strict rules of origin continue to govern the conditions for EC/EFTA trade;[31] there is no guarantee of free circulation within the EEA for goods imported into the EFTA or the EC, as there is within the EC. Agricultural trade is not covered by the Agreement (Section V.2(i)).

48. On the other hand, provisions exist for the harmonization of EC and EFTA legislation in many trade-related areas, including technical regulations, sanitary and phytosanitary issues, subsidization, government procurement and competition policy.[32] In all these areas, the EFTA members have agreed to accept the acquis communautaire, i.e. the existing body of EC law, which is specified in 22 detailed Annexes. This means, as an example, that the EFTA countries are committed to accepting common EC standards where these exist and to extending the principle of mutual recognition (developed in EC case law) to the whole of the EEA territory. This obligation also holds for the EC member states.

49. The institutional framework of the Agreement comprises an EEA Council, an EEA Joint Committee, an EEA Joint Parliamentary Committee and an EEA Consultative Committee with representatives of social groups. Administration and implementation of the Agreement lie in the hands of the Joint Committee. Its decisions are taken by consensus between the EC Commission, on the one side, and the EFTA countries on the other side (the "EFTA pillar" speaks with one voice). The EEA Council is expected to provide political impetus and lay down guidelines. The EFTA countries have agreed to establish an independent Surveillance Authority and an EFTA Court

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[30]On 6 December 1992, the Swiss electorate, in public referendum, voted against their country's participation in the EEA. In view of this, the remaining contracting parties will convene a conference to appreciate the situation.

[31]However, the EEA Agreement would bring about certain simplifications of the current system of EC/EFTA rules of origin.

[32]Individual aspects of the Agreement are dealt with below in their specific context (anti-dumping measures in Section IV.2(v)(d), competition policy in IV.4(i)(c), State aid in IV.4(ii)(b), agriculture in V.2(i), coal in V.3(v), and dispute settlement in VI.5).

of Justice in order to ensure consistency of interpretation and application on their side.

50. New EC legislation in all areas covered by the Agreement shall, when being prepared by the Commission, be subject to a continuous information/consultation process with the EFTA countries. At significant stages of Community decision-making, prior to a formal decision by the EC Council, consultations can be held in the EEA Joint Committee upon request. However, the Community has retained its full decision-making autonomy in its internal procedures.

51. New EC law is to be incorporated into the Agreement as closely as possible to the adoption by the Community with a view to ensuring its simultaneous application. The relevant decision is to be taken by the EEA Joint Committee. Failure to do so, including failure to agree on other possibilities (e.g. to recognize the equivalence of legislation), could ultimately result in suspension of the affected parts of the Agreement.

52. Whenever EEA and EC rules are identical in substance, they are to be interpreted in conformity with the case law established by the European Court of Justice prior to the date of signature. New developments in case law of the EC Court of Justice and the EFTA Court are to be reviewed by the EEA Joint Committee which "shall act so as to preserve the homogeneous interpretation of the Agreement" (Article 105:2). Otherwise, the general dispute settlement provisions would apply (Section VI.5).

53. The EC and the individual EFTA countries are entitled to take safeguard measures under the Agreement in the event of "serious economic, societal or environmental difficulties of a sectoral or regional nature liable to persist" (Article 112). The clause relates not only to trade in goods, but extends to other areas, such as migration of workers or freedom of establishment, and the range of possible actions is not further specified. The measures apply to all other contracting parties. Proportionate rebalancing measures may be taken by any other party if its rights or obligations under the Agreement are affected. The safeguard measures and any subsequent actions must be notified to the Joint Committee where consultations are to be held with a view to finding commonly acceptable solutions. Actions for the Community would be taken by the EC Commission.

(iii) The "Europe Agreements"

54. New Association Agreements with the Czech and Slovak Federal Republic, Hungary and Poland were signed in December 1991. They aim to "establish free trade areas, in the sense of Article XXIV of the General

Agreement, over a maximum period of ten years".[33] Pending ratification, Interim Agreements entered into force on 1 March 1992. According to the parties, these contain all GATT-relevant trade provisions of the new Agreements.

55. The Europe Agreements (EA) are considerably wider in coverage than the Community's previous association agreements, for example, with Turkey, Malta and Cyprus (see also Sections IV.4(i)(b) and (c)). A clause in the Preamble holds that the final objective of the three EA countries is to become members of the Community and that "this association, in view of the parties, will help to achieve this objective".

56. The Agreements provide for the immediate abolition of all quantitative restrictions, except for textiles and coal, and of EC import tariffs on the bulk of industrial products. (In many areas commitments under the Agreements simply replace existing benefits previously granted under GSP.) A specified range of products, largely identical with those usually excluded from GSP, is subject to longer implementation periods.[34] The phasing-in process may be accelerated in view of the general economic and the sectoral situation; recommendations to this effect may be made by the Joint Committees established under the Agreements (Article 8 of the Interim Agreements).

57. In the textiles area, provision is made for the phasing out of tariffs on direct imports over six years.[35] New protocols on quantitative

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[33]GATT document L/6992, 3 April 1992

[34]Tariff elimination within one year is foreseen for certain mineral products, chemical elements and basic chemicals, leather skins, ferro-alloys, unwrought lead and zinc and other base metals. A four-year phasing out period applies to certain ferro-alloys; unwrought aluminium (in the Agreements with Hungary and Poland) and unwrought lead and zinc (Poland). A further range of products is scheduled for full liberalisation after five years, starting with duty-free annual tariff quotas or ceilings which are due to increase progressively. Products concerned, with variations between the Agreements, include chemical elements, organic chemicals, fertilizers, primary plastics and plastic plates, rubber and rubber products, leather products, footwear, ceramic and glass products, steel semi-manufactures, TV tubes, and motor vehicles. ECSC-products and textiles and clothing are treated separately (see following paragraph).

Cars produced in the three east and central European countries have qualified for free entry into the EC since March 1992. On the other side, Hungary is committed to open an import quota for EC passenger cars of 50,000 units per year to be increased progressively by an annual rate of 7 per cent, and to phase out its tariffs by 1 January 2001. Any existing quantitative restrictions in the Czech and Slovak Federal Republic were to be phased out immediately, tariffs over nine years. Poland is required to allow free imports of cars within a tariff quota of 30,000 units per year (including 5,000 cars with catalytic equipment), which is to expand at an annual rate of 5 per cent or, for cars with catalyser, 10 per cent. Tariffs, currently at 35 per cent, are to be eliminated by 1 January 2002. See also Section V.3(ii)(a).

[35]Tariffs on re-imports of products transformed under the Community's Outward Processing Traffic (OPT) régime were eliminated on the date of entry into force of the Agreements.

restrictions are to replace the existing bilateral agreements on trade in textile products which expired on 31 December 1992. The protocols are to provide for the elimination of quantitative restrictions between the parties within half the period agreed in the Uruguay Round, but in no case before 1 January 1998. Quantitative restrictions on ECSC steel products are to be lifted immediately, and tariffs over five years. In the coal sector, the EC is required to phase out tariffs within one year, except for shipments from Hungary, Poland and the Czech and Slovak Republics into Spain and Germany (four years), and to abolish quantitative restrictions. The Agreements do not, however, affect the contractual relations between coal producers and major user industries in certain member States (Section V.3(v)). Their economic impact on these EC markets - and, as a consequence, their benefits for the coal sectors of the supplier countries - are thus likely to be limited.

58. The parties are entitled to take safeguard measures in the event that increased imports cause or threaten to cause serious injury to competing domestic producers, or serious sectoral disturbances or difficulties which could bring about a serious deterioration in the economic situation of a region (Article 30).[36] The relevant criteria ("serious sectoral disturbances" or "serious deterioration in the economic situation") and the meaning of "region" (e.g. EC member States, Départements or Bundesländer) are not defined in the Agreements. Before taking measures, the Joint Committee is to be informed with a view to finding a mutually acceptable solution. The same applies whenever a party initiates an anti-dumping investigation. For the purpose of establishing normal values, the EC considers the three EA countries as market economies in any investigations opened after the entry into force of the Interim Agreements. The signatories have retained their rights under Article VI of the General Agreement (see also Section IV.3(v)(c)).

59. In the area of agriculture, the Agreements consolidate the preferences granted so far under GSP, with certain improvements. Moreover, the EC is committed, on entry into force of the Agreements, to lift its remaining specific quantitative restrictions under Regulation No. 3420/83 (Section V.2(v)). A range of specified farm products is scheduled for levy or tariff reductions. They are, in general, subject to quotas or

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[36]Separate safeguard provisions allow, in specified circumstances, to suspend concessions in view of market disturbances in agriculture, exchange restrictions approved by the IMF (not in the Agreement with Hungary), balance-of-payments difficulties, and adjustment pressures arising from foreign direct investment. In mid 1992, each of the Joint Committees under the three Agreements, decided to set up contact groups for steel. The groups are mandated in particular to survey steel exports to the EC with a view to anticipating situations that might cause the Community to invoke the safeguard clause.

quantitative ceilings, which are to increase over five years.[37] The tariff reductions on certain fruit categories are linked to minimum price arrangements. The Joint Committees under the Agreements are mandated to examine the possibility of granting further concessions. In the event of serious market disturbances, a more specific safeguard procedure is available; immediate consultations are to be held and, pending a solution, the affected party is allowed to take the measures deemed necessary.

60. Like the Communities' other preferential trade agreements, the three Europe Agreements contain detailed rules of origin, based on a change-of-tariff-heading criterion for products not wholly produced in the territory of the exporting party. Additional requirements for a range of specified products are set forth in an Annex of some 40 pages. According to the Commission, the rules are comparable in substance to those applicable to imports from the Mediterranean countries. Cumulation of origin is admitted within the "Europe Agreements" area; shipments from any of the three EA countries qualify for EC preferential treatment whenever the decisive working and processing stages had been accomplished within one of the countries or the EC. Cumulation with other EC preferential trading partners or country groups, including the EFTA members or individual Mediterranean countries, is not possible under current rules.

61. The trade provisions of the Agreement are complemented by a range of measures designed to promote economic, monetary and industrial cooperation, investment, education and training. Financial support is granted under the G-24 PHARE programme and through the European Investment Bank. This has led observers to suggest that the Europe Agreement countries have probably received more external support from the Community than any other non-member countries.[38]

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[37] EC imports of ducks and geese benefit from levy reductions of 50 per cent since the entry into force of the Agreements, subject to quotas which are due to increase progressively over five years. Prepared or preserved meat of swine, natural honey, cut flowers, certain fruit and vegetables, and some additional products qualify for EC tariff reductions without ceilings (implemented on entry into force of the Agreements). A further range of products is due to benefit from levy and duty reductions of 60 per cent, to be phased in on a "harmonious and reciprocal basis" over three years and subject to quota ceilings which will be expanded over five years. The product range includes, with certain variations among the countries: bovine meat; meat of sheep, goat and swine; chicken; turkey; butter and cheese. Quota ceilings for butter in the fifth year, as an example, are set at 1,400 tonnes in the Agreements with the Czech and Slovak Federal Republic and Poland. Butter is not covered by the Agreement with Hungary.

The increase in the deliveries of sheep and pigmeat from the three countries is destined for the markets of other central and eastern European countries, the supply contracts are guaranteed by the EC (Nachrichten für Außenhandel, 16 January 1992).

[38] Langhammer (1992).

62. Negotiations on Europe Agreements with Romania and Bulgaria have been concluded. The Commission expects interim Agreements to enter into force by mid-1993.

63. In October 1992, the Council adopted negotiating briefs for cooperation agreements with members of the Commonwealth of Independent States (CIS). The trade provisions of the agreements are envisaged to be m.f.n. based, complemented by autonomous tariff concessions in the GSP context.

(iv) Other trade arrangements and preferential régimes

64. All preferential schemes operated by the EC, with the exception of the GSP, are contractual in nature; GSP preferences are autonomous and non-binding. Some of the agreements with Mediterranean countries go side by side with restraint arrangements on sensitive textiles and clothing categories; the product range varies among the countries concerned (Section V.3(vii)).

65. The Lomé Conventions (Lomé IV since 1 March 1990) provide a comprehensive framework for financial aid, technical cooperation and trade between the EC and developing countries of Sub-Saharan Africa, the Caribbean and the Pacific region. Tariff preferences under the Convention are free of quantitative limits and wider in their product coverage than those under any other unilateral EC scheme. Guarantees are given for the continuation of preferential benefits on bananas and preferential delivery quantities and price levels are specified for sugar.

66. The Banana Protocol assures the ACP countries of continued advantages on their traditional EC markets (e.g. Cameroon and Côte d'Ivoire in France; Belize, Jamaica, Suriname and the Windward Islands in the United Kingdom).[39] The Sugar Protocol entitles 18 ACP suppliers to ship up to 1.3 million tonnes of cane sugar per annum to the EC at the guaranteed Community price. The Protocol is of indeterminate duration, regardless of the timeframe of the subsequent Lomé Conventions (Lomé IV is due to expire in 2000). Some temporary compensation has been provided by the EC in view of the more restrictive price policy, since the mid-1980s, in the sector.[40] A marketing premium of ECU 30 million for a period of three years (1989/90

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[39]Article 1 of the Protocol on Bananas stipulates that "in respect of its banana exports to the Community markets, no ACP State shall be placed, as regards access to its traditional markets and its advantages on those markets, in a less favourable situation than in the past or at present".

[40]EC sugar prices have remained largely unchanged since the mid-1980s (Chart V.5).

to 1991/92) is designed to maintain the supply of ACP raw sugar to EC refineries and to support adjustments in the ACP economies.

67. The EC GSP scheme ranks at the foot of the Communities' hierarchy of preferences. It provides duty-free entry for a broad range of manufactures and semi-manufactures (subject to a safeguard clause). Certain primary products are excluded, while sensitive categories are submitted to quantitative limits (ceilings, reduced-duty or duty-free amounts).[41] Iron and steel products and textiles are treated under a separate regulatory framework; eligible supplies from beneficiary countries enter in general under preferential tariff quotas or duty-free ceilings. The least developed countries and, since 1991, four Andean Group countries (Bolivia, Colombia, Ecuador and Venezuela), the CACM members (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua)[42] and Panama are, however, free from such limits. Since the late 1980s, imports of certain agricultural products under a common market organization also qualify for preferential treatment.

68. A Commission Communication of 1990 highlighted perceived shortcomings of the current GSP scheme. It indicated uncertainties ensuing from its annual application and the disproportionate costs caused by the administration of ceilings and quotas.[43] Certain quotas and fixed duty free amounts were already exhausted within the first days of the year. While noting that ceilings allow in principle for more flexibility, the

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[41]While in the case of preferential ceilings, m.f.n. duties may be reintroduced once the relevant levels are reached, the reimposition of duties is triggered automatically whenever shipments are in excess of fixed amounts (i.e. tariff quotas). Depending on their origin, individual products may be subject both to ceilings and fixed amounts.

In 1991, more than 70 non-textile and non-ECSC products from developing countries were affected by tariff ceilings (including chemicals and petrochemicals, rubber tyres, leather products, footwear, household articles of earthenware, certain glassware, copper bars, microwave ovens, certain media for sound recording, reception apparatus for radio-telephony, TV receivers, toys, textiles and clothing). Close to 120 items, more than 40 of which were also subject to tariff ceilings, carried fixed duty-free amounts and/or fixed reduced-duty amounts with regard to individual suppliers or groups of countries.

Preferences for 41 non-MFA textile categories were granted under fixed duty-free quotas or ceilings.

In addition, 12 non-sensitive products were made subject to "safeguard" limitations after individual suppliers had exceeded a reference supply basis which, for almost all categories, is set at 6 per cent of total supplies (Portland cement, certain chemicals and petrochemicals, copper bars, bicycles and other cycles).

Mostly affected from the introduction of country-specific limitations on industrial products (other than textiles) were shipments from China (92 products), the Czech and Slovak Federal Republic (59), Poland (47), Hungary (39), Pakistan (35), Thailand (33), Brazil (31), India and Indonesia (28 each). (UNCTAD, 1992)

[42]30 of the 42 least developed countries also qualify for extended preferences under the Lomé Convention. Textile and clothing deliveries from some of the Latin American countries mentioned above are governed by bilateral exchanges of letters (see also Section V.3(vii)).

[43]See also GATT (1991).

Communication pointed out significant planning problems among suppliers and importers, since the preferences could be suspended at any time once the threshold levels are reached (after consultations between the Commission and member States). The Commission thus proposed developing a simplified system which, in principle, would be free of quantitative limits and whose coverage would remain stable over longer time periods. According to the Commission, products and countries that cannot be fitted into such a system should not be included at all; the present product range should, however, be maintained and improved wherever possible.

69. In late 1990, the Council postponed its deliberations on this issue until a later date. The established GSP system was thus carried over into 1991, 1992 and 1993 without substantial changes, except for its country coverage. The Commission considers it unlikely that major reforms can be decided upon and implemented prior to, and independently from, a more comprehensive liberalization package which takes into account the results of the Uruguay Round.

70. The suspension of the Republic of Korea from GSP, since January 1988, was lifted on 1 January 1992. This move responded to a change in Korean legislation on the protection of intellectual property, which had been criticized by the EC for perceived discrimination (Council Regulation No. 3912/87). Various other changes in the list of GSP beneficiaries have resulted from recent developments in eastern and central Europe.[44]

71. In the context of the Uruguay Round, the EC has made its concessions in the area of special and differential treatment of developing countries contingent on the exclusion of Hong Kong, the Republic of Korea and Singapore from such treatment.[45]

72. In mid-1992, the EC held exploratory talks with Morocco with a view to concluding a "partnership agreement" that would eventually lead to bilateral free trade.

73. Negotiations on a free trade agreement with the Gulf Cooperation Council, referred to in the first TPRM report, have not yet been concluded.

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[44]In 1992, Albania, Croatia, Estonia, Latvia, Lithuania, Mongolia, Slovenia, Bosnia-Herzegovina and the Yugoslav Republic of Macedonia were included. As for the countries previously forming part of Yugoslavia, GSP cover is confined to agricultural products, trade in industrial products is covered by an autonomous régime replacing the earlier agreement with Yugoslavia. The Czech and Slovak Republics, Hungary and Poland, beneficiaries in 1991, no longer qualify since the entry into force of the (Interim) Europe Agreements in March 1992. The successor States of the Soviet Union (CIS Republics) were added as from January 1993.

[45]GATT document MTN.TNC/W/92, 19 December 1991.

ANNEX

German Unification

74. Subsequent to German unification in October 1990, a variety of policy initiatives were taken at EC and national level to promote economic restructuring in eastern Germany. An EC framework for structural assistance for the new Bundesländer was set up for the period 1 January 1991 to 31 December 1993. It is endowed with ECU 3 billion and will add, during that period, to national investment initiatives of almost ECU 14 billion. The German Council of Economic Advisers has estimated that support for business investment in eastern Germany, made available through various schemes, can bring about liquidity effects of up to 50 per cent of the purchase cost within one year.[46]

75. Provision has been made in the context of several EC policy schemes, including sector-specific aid Directives, to accommodate adjustment problems in eastern Germany. For example, certain temporary exemptions from "normal" subsidy disciplines are provided by the Directives for shipbuilding and steel (Sections V.3(ii)(c) and V.3(vi)).

76. In December 1990, the CONTRACTING PARTIES granted the EC a temporary waiver from the m.f.n. obligations under Article I:1 of the GATT, to run until 31 December 1992. The waiver is designed to provide legal cover for tariff suspensions on imports from the former GDR's main trading partners. The suspensions, aimed at preventing trade disruptions, apply to industrial and agricultural products shipped from the eligible countries into eastern Germany.[47] They are subject to specified quantitative ceilings. (The relevant Council Regulation of December 1990 (No. 3568/90) does not, however, cover beef and live animals and excludes the whole range of farm products under variable levies, compensatory amounts and reference or minimum prices.)

77. A report by the EC to the GATT Working Party on German Unification indicates that, until mid-1991, very limited use was made of the import

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[46]Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung (1991).
In late November 1992, the German Government announced a new DM 12 billion aid package for the east German economy. Details are still to be worked out. According to the German Minister of Finance, while the package would require a supplementary budget in 1993, it should not result in a further increase in net government borrowing. The German Government is also reported to consider preserving "core industries" of the east German economy which cannot be privatized before the end of 1993, but are supposed to have a good chance of survival after restructuring (Financial Times, 25 November 1992).

[47]See also GATT (1991).

possibilities offered under the waiver.[48] This was viewed predominantly as a reflection of the economic downturn in both the former GDR and the beneficiary economies, which were exposed to fundamental economic changes.

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[48]GATT document L/6974, 17 January 1992.

III. TRADE RELATED DEVELOPMENTS IN THE MONETARY AND FINANCIAL SPHERE

(1) The Monetary Environment

(i) The European Monetary System

78. The European Monetary System (EMS) was established in 1978 to pursue three main objectives: (i) promoting monetary stability in Europe; (ii) improving economic policy co-operation between member States; and (iii) alleviating global monetary instability through a common external approach.[1] The centrepiece of the EMS is the Exchange Rate Mechanism (ERM). Within the ERM, exchange rates of participating currencies are specified in relation to the European Currency Unit (ecu).[2] The ecu, in turn, is defined in terms of a currency basket, made up of specified amounts of the currency of each EC member State.[3]

79. Individual ERM currencies may fluctuate within intervention bands defined in terms of their bilateral ecu cross-rates. Whenever two currencies are close to their upper or lower intervention limits, the monetary authorities of the member States involved are expected to take appropriate steps, such as intervening in the market or adjusting interest rates.[4] The intervention limits for the participating currencies are set at +/- 2.25 per cent, except for the Spanish peseta and the Portuguese escudo which are allowed to fluctuate by +/- 6 per cent. In addition to participating in the ERM, Belgium, Luxembourg and the Netherlands have pegged their currencies informally to the Deutsche mark.

80. Parity rates can be changed only as a result of a common decision-making process, involving the Commission, the central banks and member States' Finance Ministers; the Ministers need to give their unanimous

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[1] EC Commission (1989).
The basic elements of the EMS are specified in a Resolution of the European Council of 5 December 1978. The EMS came into operation on 13 March 1979.

[2] Currently, Belgium, Denmark, Germany, Spain, France, Ireland, Luxembourg, the Netherlands and Portugal participate in the ERM. The United Kingdom and Italy participated until September 1992.

[3] The largest components are the Deutsche mark, representing about 30 per cent of the basket, the French franc (20 per cent), the pound sterling (12 per cent), the Italian lira and the Dutch guilder (both between 9 and 10 per cent). The precise weights vary over time as a result of exchange rate movements.

[4] Whenever the exchange rate of a currency exceeds 75 per cent of its maximum spread of divergence against all other participating currencies ("divergence indicator"), there is a presumption that action will be taken.

assent. After a major realignment in 1987, the eleventh in the history of ERM, the system proved stable until mid-September 1992.[5]

81. The 1978 European Council Resolution establishing the EMS provides the possibility for "European countries with particularly close economic and financial ties with the European Communities" to participate. Such participation should be based on agreements between the central banks, to be communicated to the Council and the Commission. However, though there have been discussions about associate membership, no formal agreement has been concluded to date.[6] Most EFTA countries have rather sought unilaterally to pursue a stable nominal exchange rate policy with respect to the ecu or the Deutsche mark.[7] Since July 1976, the Austrian schilling has been tied to the DM; the Norwegian krone has been pegged to the ecu since October 1990; and in the spring of 1991, Sweden and Finland decided to follow (see, however, Section (ii) below). On 19 June 1992, the Cypriot pound was also linked to the ecu.

82. Over time, the ecu has become extensively used in private transactions. However, it has a much larger rôle in the financial sphere than in trade in goods. For example, some 14 per cent of the Eurobond market is denominated in ecu, while it is estimated that less than 1 per cent of member States' merchandise exports are invoiced in ecu.[8] The recent currency upheavals and the Danish rejection of the Maastricht Treaty may have operated against the use of ecu in financial markets.[9]

(ii) Exchange rate developments

83. Between mid-1990 and September 1992, the ERM currencies displayed a considerable degree of nominal stability against each other. As shown in

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[5]In January 1990, the Italian lira was devalued by 3 per cent against the ecu, simultaneously with its entry into the +/- 2.25 per cent fluctuation band.

[6]According to the Commission, attention should be given in this context to (i) the progress of the candidates as regards economic convergence; (ii) the balance between the objectives of extending the EMS zone of monetary stability and, thus, reinforcing the credibility of other European countries' economic and monetary policies and, on the other hand, the need to ensure that the stability of the EMS is not jeopardised in the process towards Economic and Monetary Union; and (iii) the perspective of EC membership for the country concerned which implies, in turn, participation in the preparatory process towards Economic and Monetary Union.

[7]Switzerland and Iceland appear to be the only EFTA countries to have never formally linked their currencies to the ecu or to an ERM currency. The Swiss National Bank has sought to smooth out exchange rate fluctuations considered erratic, in particular with regard to the DM and the ecu. See GATT (1991b).

[8]Situation in mid-1991 (EC Commission, 1991a).

[9]Eurostat (1992).

Chart III.1(A), the ecu rates of "narrow band" participants remained approximately within a one-per cent range around their central ecu parities. Until August 1992, the variability of monthly exchange rates did not, in general, exceed 0.5 percentage points.[10] By contrast, the three "wider-band" currencies - the pound sterling, the Portuguese escudo and the Spanish peseta - experienced both larger exchange rate changes and variability, with monthly variability coefficients amounting to 1.8, 1.2 and 1.0 percentage points, respectively.[11]

84. The Greek drachma has never participated in the ERM. Between 1990 and mid-1992, it depreciated by some 10 per cent per year and was relatively unstable, with the variability of the monthly drachma/ecu exchange rates exceeding 6 percentage points. Its variations against the ecu were comparable with those of major non-EC currencies.

85. Inflation rates have varied significantly among the ERM participants (Table III.1), implying that the relative stability of nominal exchange rates within the mechanism has been accompanied by considerable real changes.[12]

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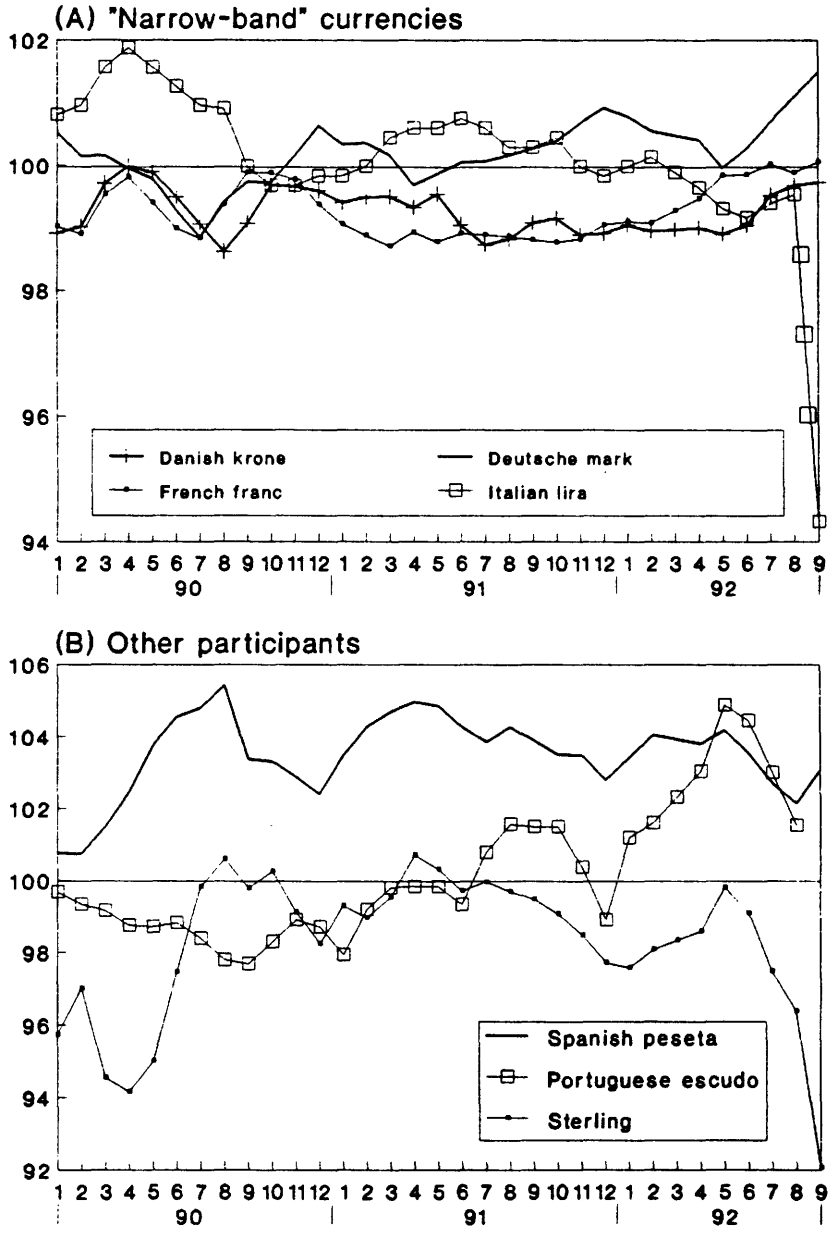
[10] Variability is defined as the standard deviation of monthly average exchange rates vis-à-vis the ecu as a percentage of the mean exchange rate (over the period January 1990 to June 1992). Deviating from the general pattern, the Italian lira showed a variability of 0.8 per cent.

[11] The peseta tended close to the ceiling of its 6 per cent fluctuation band for two years from mid-1990. With financial liberalization (Section III.3 below), international capital flows appear to have responded massively to comparatively high short-term interest rates in Spain, intended to fight inflationary pressures, as long as the restrictive stance of monetary and fiscal policies was considered sustainable and credible.

[12] For example, while the real effective exchange rate of the Deutsche mark fell by 1.9 per cent between 1991 and 1992 (second quarter), the peseta and the escudo appreciated by 1½ and 11 per cent, respectively. The lira's real effective rate remained stable over this period (IMF, International Financial Statistics, October 1992).

Chart III.1
Exchange rate movements within the ERM, January 1990 - September 1992



Note: Exchange rates (ecu/national currency) are expressed as a percentage of their central parity; an increase indicates an appreciation.
The individual observations reflect period averages, except for Italy in September 1992, where end of period exchange rates are used to show the effects of devaluation.
The Belgian franc and the Dutch guilder have been following the Deutsche mark closely.

Source: IMF, International Financial Statistics, Eurostat, and GATT Secretariat estimates.

86. In the second half of 1992, the ERM currency grid came under increased pressure. The impact of high German interest rates, resulting from fiscal expansion and monetary tightening in the Federal Republic, and the persistent gap in monetary and fiscal conditions among some member States (Table III.1) coincided with the asymmetrical impact of a weakening U.S. dollar on the ERM participants. On 16 September 1992, after a period of severe strains in foreign exchange markets, the pound sterling and the Italian lira were suspended from the ERM and allowed to float.[13] The peseta was devalued by 5 per cent and later, on 23 November 1992, by an additional 6 per cent. The second move was parallelled by a 6 per cent depreciation of the escudo. The Irish Pound, one of the narrow-band participants, was devalued by 10 per cent on 30/31 January 1993.

87. Among the currencies shadowing the ecu, the Finnish markka was devalued by approximately 12 per cent in November 1991 before it was formally delinked on 8 September 1992. The Swedish krone was delinked on 19 November 1992, after record interest rates had proved insufficient to defend its parity. On 10 December 1992, the Norwegian krone was allowed to float.

88. Since 1990, considerable nominal exchange rate fluctuations have occurred between the ecu, the U.S. dollar and the yen. As regards the ecu/dollar exchange rate, these fluctuations did not result in a definite trend; a 13 per cent depreciation of the dollar in 1990 was reversed in 1991 at the end of the Gulf war (Chart III.2). The variability of the ecu/dollar monthly exchange rate reached nearly 6 per cent between January 1990 and June 1992. The nominal yen rate appreciated considerably against the ecu up to the end of 1991; it was over 15 per cent higher in the third quarter of 1991 than in the corresponding period of 1990. Monthly variability also exceeded 6 percentage points.

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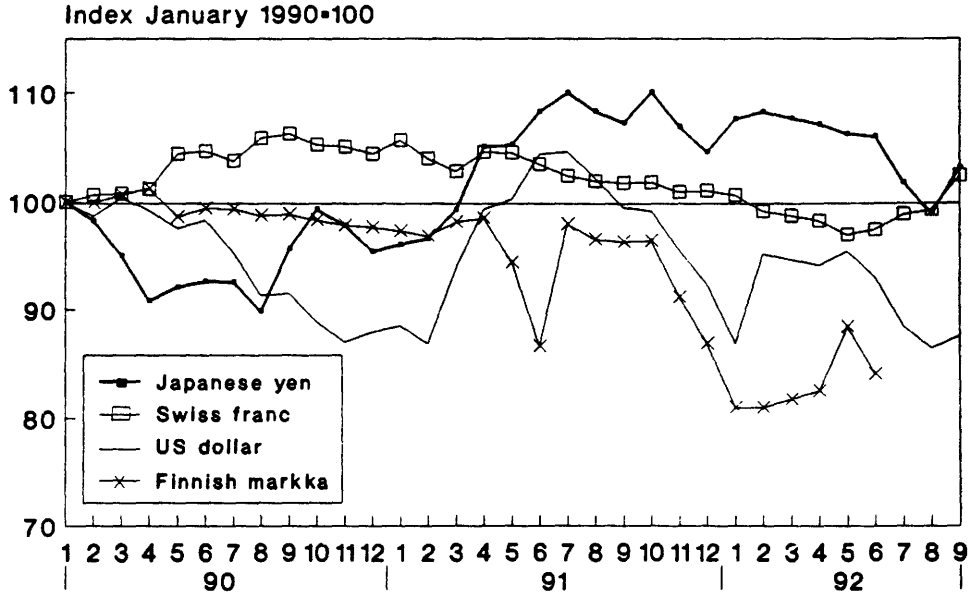
[13] A 7 per cent devaluation of the lira, on 14 September 1992, had proved insufficient to restore confidence. (Technically, a 3.5 per cent devaluation by the lira within the parity grid was accompanied by a 3.5 per cent appreciation of the other participating currencies.)

Chart III.2
Exchange rates of non-ERM currencies vis-a-vis the ecu, January 1990 - September 1992



Note: An increase indicates an appreciation.

Source: IMF, International Financial Statistics, Eurostat, and GATT Secretariat estimates.

(2) The Agrimonetary System

89. Since 1969, the EC has operated a separate, and increasingly complicated, monetary régime in the agricultural sector. The system has emerged over time as Governments were anxious not to confront their farmers with the full price and income impact of currency readjustments. It provided for country- and, to a varying degree, product-specific deviations of agricultural ("green") exchange rates from the market ecu rates.[14]

90. With the abolition of border controls on 1 January 1993, the system will no longer be sustainable. Any significant differences in national price levels would result in cross-border arbitrage.

91. In December 1992, the Council adopted a Regulation governing the post-1992 agrimonetary system.[15] While retaining the principle of a common

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[14]The green rates are used to convert farm prices, set in ecu, into national currencies. See also GATT (1991a).

[15]Council Regulation No. 3813/92.

price level, to be fixed in ecu, it aims at simplifying the conversion mechanism and making it more uniform. For the participants in the narrow-band of the EMS, the future green rate is set to correspond to the ecu central rate of the national currencies. For the other member States, a representative market rate is to be used. A monitoring system is designed to trigger adjustments once the monetary spread between the green benchmark rates of the latter currencies and their actual market rates exceeds 2 percentage points. Half of the excess is to be removed on the first day of the following month.[16] However, the current "correcting factor" mechanism ("switchover") will be retained for another two years; in the event of realignments, the green rate of the strongest currency or currencies will be raised in parallel with the ecu central rate(s), thus avoiding price decreases in national currencies. One-quarter of any increase in the correcting factor is to be dismantled at the beginning of the following marketing year through a cut in the prices fixed in ecus.

92. The Regulation makes provision for compensatory aid aimed at cushioning the price impact of declining green rates for non-participants in the narrow-band of the EMS. The payments will be made in a degressive way, co-financed from EC and national funds.

(3) Rules on Capital Movements and Current Payments

93. At the time of the initial TPRM report, Greece, Ireland, Portugal and Spain operated certain restrictions on intra-EC capital movements; these have progressively been reduced in scope.[17] In the context of the currency turmoil in September 1992, Spain, Ireland and Portugal reintroduced or tightened certain restrictions on a temporary basis (controls on forward foreign exchange markets or short-term lending by domestic banks for speculative purposes). The three countries abolished all exchange controls by end-1992. A recent Council Directive allows Greece to maintain a

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[16] In addition, any bilateral gaps should be limited to 4 points.

[17] In May 1991, Greece fully liberalized tourist expenditure, the use of credit cards abroad, the acquisition by residents of real estate abroad and of foreign long-term securities. Also in May 1991, Portugal abolished all remaining restrictions on direct investments abroad by residents, real estate investments (inflows and outflows) and personal capital movements (inflows and outflows). Spain terminated a non-interest bearing compulsory deposit on financial credits obtained by residents from non-residents (March 1991) and liberalized peseta-denominated credits granted by Spanish credit institutions to non-residents (April 1991). A more comprehensive liberalization package, implemented in Spain in February 1992, consisted of the admission of domestic bonds abroad, financial credits (inflows and outflows), opening of bank accounts abroad by residents, and of physical exportation of means of payments of less than Peseta 5 million. As from 1 January 1992, Ireland abolished all restrictions on short-term Irish pound deposits by non-residents, medium-term financial loans to non-residents, and acquisition of foreign short-term securities by residents.
The EEC Treaty provisions governing capital movements are presented in GATT (1991a).

limited range of controls on short-term capital movements until 30 June 1994.[18]

94. In most member States, import payments and the use of export proceeds are unrestricted. Certain reporting requirements exist for statistical purposes. Greece, Ireland and Portugal have, however, maintained certain constraints on the use of export proceeds since the initial TPRM report; however, with full liberalization these have ceased to apply in Ireland and Portugal.[19]

95. The Treaty on European Union provides for unrestricted capital movements and payment transfers inside the EC as well as with third countries as of 1 January 1994 (Article 73b). A derogation clause allows for the continuation of existing restrictions on capital movements until 31 December 1995 at the latest. Given the liberalization achieved in the other member States, the clause will only apply to Greece (see above).

96. Safeguard measures are available should capital movements with third countries cause or threaten to cause serious difficulties for the operation of Economic and Monetary Union (Article 73f). The decision would have to be taken by a qualified majority of the Council, based on a Commission proposal and after consultations with the proposed European Central Bank (see below). The maximum duration is limited to six months. In addition, Article 228a allows for the introduction of urgent measures for foreign policy and national security reasons.

97. Under the Treaty on the European Economic Area (Section II.5(ii)), EC and EFTA members are committed to removing all existing restrictions on capital movements and on payments related to the movements of goods, persons, services and capital (Articles 40 and 41). Safeguard provisions allow for countermeasures in the event of distortions resulting from

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[18]In this context, the Directive (No. 92/122) refers to acquisitions of foreign money market securities or funds of less than one year maturity, current and deposit accounts held abroad, short-term financial loans and credits, personal loans, physical import and export of financial assets, and miscellaneous capital movements.

Table AIII.1 gives an overview of member States' reservations to the OECD Code of Liberalization of Capital Movements as at March 1992. These reservations, which have been accepted by the OECD Council, allow for individual derogations from agreed liberalization lists under the Code.

[19]IMF (1992). In Greece, export proceeds must in general be surrendered within 180 days of the date of shipment of the goods. Ireland had required exporters to obtain payment of shipments exceeding £Ir 250 within six months and to offer foreign currencies received to an authorized bank. In Portugal, exporters were required to sell to an authorized bank export proceeds exceeding Esc 1 billion unless these were credited to a foreign exchange account. Prior verification by the Banco de Portugal was needed for settlement periods or prepayments above specified thresholds.

different exchange rules, disturbances in the functioning of capital markets, distortions of competition after exchange rate changes, and balance of payments difficulties.

(4) Inward Foreign Direct Investment

98. The United Kingdom has proved a particularly attractive location for foreign direct investments in the EC.[20] During the 1980s, it accounted for two-fifths of total Community inward direct investment, clearly outdistancing France (15½ per cent), Belgium/Luxembourg, Spain and the Netherlands (8 to 8½ per cent each).[21] Germany attracted no more than some 6 per cent of total EC inward investment in the 1980s, down from over 16 per cent a decade before. In contrast, the United Kingdom and Spain managed to increase their shares in EC inward investment by 8 and 4 percentage points, respectively.

99. The United States is the Community's most important third country source of foreign direct investment. U.S. companies are estimated, for example, to own over two-fifths of the stock of inward direct investment in the United Kingdom and Belgium/Luxembourg, and about one-third in Germany. U.S.-owned investments play a considerably larger rôle in the U.K. economy than those held by investors from all other member States combined.[22] This contrasts conspicuously to the ownership structure in Spain, Italy and France, where other Community members account for over half of total direct foreign investment; the U.S. share in each of three countries is significantly below 20 per cent. The relatively stronger reliance of these member States' economies on internal rather than EC-external trade (Chapter I) thus finds its counterpart in the investment sphere. Japanese investments in the EC gained momentum in the late 1980s, but Japan's share in the total stock of investment in all member States still remained relatively low.[23]

100. The distribution of foreign inward investment within the Community is likely to reflect a variety of factors, including geographic and cultural distance (language barriers), profitability considerations and differences

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[20]The following paragraphs draw on EC Commission (1991c).

[21]Including inflows from other member States.

[22]In 1984, the book value of U.S.-owned investment stocks represented 47 per cent of total inward stocks in the United Kingdom, as compared with 26 per cent from other member States.

[23]Between 1987 and 1989, annual inflows from the United States increased from ECU 10 billion to ECU 14 billion, as compared with a rise in Japanese investment from ECU 5½ billion to ECU 14½ billion (excluding Greece and Denmark).

in the individual member States' policy approaches. A 1991 Commission report indicates particularly open policies towards foreign investment in Belgium, Ireland, the Netherlands and the United Kingdom.[24] Despite certain problems in prominent cases (Fuji Heavy Industries in 1989), France is considered to have moved in a liberal direction.[25] As regards the low level of foreign investment in Germany, the report points, as a possible explanation, to high labour cost and to access barriers resulting from intensive cross-holdings between domestic banks and industrial conglomerates.

(5) Towards Economic and Monetary Union (EMU)

101. In the Preamble to the Treaty on European Union (Maastricht Treaty), the signatories express their resolve "to achieve the strengthening and the convergence of their economies and to establish an Economic and Monetary Union (EMU) including, in accordance with the provisions of this Treaty, a single and stable currency". The Treaty sets out conditions for EMU, the institutional framework and the criteria for participation.

(i) Institutional framework

102. Under the Maastricht Treaty, EMU is to be implemented in three stages. The first stage, up to 1 January 1994, comprises efforts towards closer economic and monetary cooperation between member States within the existing institutional framework. The second stage is designed to reinforce economic and monetary convergence; in particular, a European Monetary Institute (EMI) will come into operation. The Institute, which is scheduled to be replaced by the European Central Bank (ECB) in the third stage, will have a central rôle in specifying technical and institutional provisions.[26] Policy competence will, during this stage, remain with the national authorities.

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[24] EC Commission (1991c).

[25] Direct investments by non-EC residents in existing French firms are generally subject to prior declaration to the Ministry of Economy and Finance, except for investments in real estate and, if less than F 10 million, in hotels, restaurants, retail trade and services. The Minister may suspend the acquisition within a 30-day period. EC-controlled companies are obliged only to notify the Treasury of their scheduled participation in a French company. Above a certain threshold, these companies may be granted permanent EC status, in which case they are exempt from all declaration or notification requirements. The Minister of Economy and Finance is empowered to prohibit any foreign participation, regardless of nationality, on the grounds of danger to public health, order, security and national defence. (IMF (1992), reflecting the situation as at end-1991.)

[26] Article 109f of the Maastricht Treaty requires the EMI, inter alia, to strengthen cooperation between the national central banks; to strengthen the coordination of the member States' monetary policies with the aim of ensuring price stability; to monitor the
(Footnote Continued)

103. The Council, meeting in the composition of Heads of State or Government, is to decide no later than 31 December 1996 on whether a majority of member States fulfils the necessary conditions for the adoption of a single currency (see following Section) and whether it is appropriate to enter the third stage of economic and monetary union.[27] This decision is to be taken by a qualified majority. At the very latest, however, the third stage is to begin on 1 January 1999, on the basis of the participation of the member States judged by the Council, before 1 July 1998, to meet the eligibility criteria at that date.[28] Those found ineligible are considered for participation at least once every two years or at their own request. Formal reservations have been made by the United Kingdom and Denmark, which are committed only to participating in the second stage. Denmark has reserved the right, in a separate protocol, not to move automatically to stage three, while the United Kingdom has made this move contingent on the assent of its Parliament.[29]

104. At the beginning of the third stage, the ecu is to become a currency in its own right. The Council, by unanimous vote of the participating member States, is to adopt "irrevocably fixed" conversion rates for the currencies concerned as well as the rate at which the ecu will be introduced. The Council will also take the other measures necessary "for

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(Footnote Continued)

functioning of the EMS; and to hold consultations on issues within the competence of the national central banks and affecting the stability of monetary institutions and markets. In view of the third stage, the EMI is to prepare the instruments and procedures for a single monetary policy and the rules for operations of national banks within the framework of the European System of Central Banks. The EMI shall specify, at the latest by 31 December 1996, the regulatory, organisational and logistical framework necessary for the European System of Central Banks (see below) to perform its tasks in the third stage.

[27] Article 109j(3).
The Council is to act on the basis of recommendations by the Council of Ministers, taking into account reports by the Commission and the EMI, and the opinion of the European Parliament.

[28] Article 109j(4).
The specifying of a convergence process, with fixed deadlines, has been criticized from two angles. On the one hand, it has been noted that "by laying down convergence criteria oriented to stability, yet at the same time setting firm deadlines, the negotiating parties have combined two elements which are dangerously contradictory. If, as appears likely, as many member States as possible or indeed all of them wish to enter the final phase, the firm deadline does not increase the pressure to adjust but, if anything, actually relaxes the economic entry requirements" (Jochimsen, 1992). On the other hand, it has been held that attempts to qualify for participation could render exchange rate and, perhaps, budgetary policy in some member States too rigid in the coming years (Bank for International Settlements, 1992).

[29] As noted in Section II.4, the European Council decided in December 1992 that Denmark would not participate in the single currency.
In October 1992, the German Government indicated that it would seek parliamentary approval before moving to full monetary union. The German Minister of Finance was quoted as saying that this should not, however, amount to a second ratification or escape clause. (European Report, 10 October 1992).

the rapid introduction of the ecu as the single currency of those member States".[30]

105. The European System of Central Banks (ESCB), comprised of the national central banks acting under the authority of the European Central Bank (ECB), is to conduct monetary policy and foreign exchange operations, hold and manage official reserves of the member States and promote the smooth operation of the payment systems.[31] The ECB is to be prohibited from taking instructions from any other body, including EC institutions and those of member States.[32] Each member State is required to ensure, by the date of establishment of the ESCB, that its national legislation, including the statutes of its national central bank, is compatible with the Treaty and the ESCB Statutes.[33]

106. The Maastricht Treaty provides the possibility for the ecu to participate in formal exchange rate agreements with non-Community currencies. The terms of such agreements are to be decided unanimously by the Council. Any subsequent adjustments within such exchange rate systems, or the abandonment of the ecu's participation, would need to be approved by a qualified majority of the Council. The relevant decision-making processes also involve the ECB, the Commission and the European Parliament.[34]

107. Article 104 and following provisions of the Treaty aim to strengthen budgetary discipline among member States. For example, the ECB and national central banks will be prohibited from providing credit facilities to Governments or Community institutions, other than publicly-owned credit institutions, and the Community and member States will, generally, not be allowed to assume the financial obligations of other Governments or their

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[30]Article 109l(4). The decision is to be taken on a proposal by the Commission and after consulting the ECB. The wording of Article 109l(4) implies that, for some time during the third stage, national currencies may coexist with the ecu at fixed exchange rates.

[31]Article 105(2) and Protocol on the Statute of the European System of Central Banks and of the European Central Bank.

[32]Article 107.

[33]Article 108.

[34]Article 109:1 requires the Council to take its decisions "after consulting the ECB in an endeavour to reach a consensus with the objective of price stability" (Article 109:1). This implies that the Council is to ensure, in consultation with the European Central Bank, that obligations resulting from an exchange rate agreement would not contravene monetary policy targets; the final say, however, lies with the Council. The German Council of Economic Advisers has voiced concern about this allocation of competence, stressing that the fixing of exchange rates should be exclusively in the hands of the ECB. See Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung (1991).

public institutions (Article 104b). Member States will be required to avoid "excessive government deficits" and the Commission will monitor the budgetary and government debt situation in the member States.[35] In extreme cases, the Treaty provides for penalties to be levied against member States failing to correct excessive deficits.[36]

(ii) Criteria for participation

108. The guiding principles of Economic and Monetary Union, as stipulated in the Maastricht Treaty, are price stability, sound public finances and monetary conditions, and a sustainable balance of payments (Article 3a). Against this background, the Treaty specifies several criteria for participation in stage three of the Union:[37]

(i) High degree of price stability

The average rate of inflation, measured by the consumer price index, must not have exceeded "that of, at most, the three best performing member States" by more than 1.5 per cent in the preceding year.[38]

(ii) No excessive government deficits

The ratio of planned or actual government deficit to GDP must not have been decided by the Council to be "excessive" (see above).[39]

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[35]Article 104c. Reference values of 3 per cent of GDP for "planned or actual" government deficit and 60 per cent of GDP for total government debt are established in the Protocol on the Excessive Deficit Procedure.

[36]This would only occur in the event that a member Stated failed to comply with a decision by the Council to give notice to it to take remedial measures within a specified time-limit, and after a lengthy procedure of Commission/Council consultations and recommendations.

[37]Table III.1 illustrates the performance of member States in relation to these criteria in 1992. All criteria leave room for interpretation and especially that on "excessive" deficits.

[38]Article 1 of the Protocol on the Convergence Criteria (referred to in Article 109j of the Treaty).

[39]Government means general government, including central, regional and local governments.

The existence of an excessive deficit would have to be decided by the Council, acting by a qualified majority on a recommendation of the Commission. The Treaty stipulates that a deficit may not be considered excessive if it has declined substantially and continuously and has reached a level close to the reference value; or alternatively, if the excess has only been exceptional and temporary and remained close to the reference value. These qualifications are not further specified.

(iii) Exchange rate stability

Participants must have respected the normal fluctuation margins of the ERM without "severe tensions" during the preceding two years. In particular, a member State must not have devalued its currency's bilateral central rate on its own initiative against any other EC currency.

(iv) Convergence of long term interest rates

For at least one year, the average nominal long-term interest rate (return on government bonds or similar securities) must not exceed "that of, at most, the three best performing member States in terms of price stability" by more than 2 per cent.

109. In 1992, six member States would have satisfied the criterion on inflation. In four member States the government deficit was less than 3 per cent of GDP, and in five member States public debt stood below the 60 per cent benchmark serving as a criterion in the procedure concerning "excessive deficits" (Table III.1). The seven narrow-band participants would have met the exchange rate criteria and eight member States the condition on interest rates. Only two countries - France and Luxembourg - would have fulfilled all EMU benchmark values. However, since all criteria leave room for interpretation, in particular that on excessive deficits, it is not possible to pass on a prior judgement on the member States participating in stage three. Ultimately, the decision is to be taken by the Heads of State or Government.

(iii) Objectives and expectations

110. The EC Commission expects a single currency to be economically superior to any fixed or quasi-fixed exchange rate system. In the Commission's view, only a common EC currency will be able to eliminate transaction costs, maximize the credibility of the Union, provide for complete price transparency, exploit the economies of scale of a large, integrated financial market, and offer the full advantages of a major international currency.[40]

111. The Commission has identified two types of costs incurred by firms engaged in intra-EC trade: the financial costs of currency conversion (mainly exchange rate costs and hedging costs) and the in-house costs in

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[40] EC Commission (1990) and Emerson (1991).

companies required to devote resources to foreign-exchange related operations. These costs, and thus the potential savings attributable to EMU, are estimated to range between ECU 13 billion and ECU 19 billion (at 1990 prices), equivalent to 0.3 to 0.4 per cent of GDP.[41] With regard to extra-EC trade, the advantages of a common currency are considered to be more limited. The Commission expects a wider use of the ecu in extra-EC transactions once the Union is in place; the reduction in transaction costs in trade with third countries should range between 0.03 and 0.05 per cent of GDP.

112. From the Commission's perspective, the EMU should translate into better macro-economic performance, including low and stable inflation rates and lesser fluctuations in output and employment.[42] Price discipline is expected to result from the clear commitment towards price stability in the statutes of the ESCB. Positive growth and investment effects are attributed to such factors as (i) lower exchange rate variability and uncertainty; through the elimination of risk premiums these are deemed likely to promote economic activity by an accumulated 5 per cent of GDP over the long run; (ii) changes in economic expectations and behaviour patterns which could shift the economy onto a higher performance path with lower unemployment levels; (iii) more market-oriented conduct of wage bargainers in view of a credible monetary policy; and (iv) an absence of shocks resulting from exchange rate instability and uncoordinated monetary policy. Macroeconomic stability, in turn, should stimulate internal and external trade.

113. The Commission expects that, once the EC is of one public voice, Community interests could be pursued more effectively. International policy co-ordination would prove easier among four rather than seven major players (from G7 to G4); in the longer term, EMU could be a building block for "establishing a balanced tripolar monetary régime".[43] Apparently, the Commission considers a system of few large currency areas to imply less frictions than the present, more hegemonic structure of international monetary relations.

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[41]The Commission expects that the benefits accruing to smaller countries from the reduction in transaction costs are up to eight times higher than in larger member States, reflecting the greater share of trade in total production (EC Commission 1990).
According to the Bank for International Settlements (BIS), such estimates should, however, be viewed in the light of any ensuing weakening of bank profitability and the costs and risks of price rises and financial market disturbances resulting from the conversions to a common currency (Bank for International Settlements, 1992).

[42]EC Commission (1990).

[43]EC Commission (1990).

114. Fiscal policy competence would remain essentially with the national Governments, subject to certain constraints (Article 104; see above). Member States are required to regard their economic policies as a matter of common concern and to coordinate within the Council. While the German Council of Economic Advisers has in principle welcomed this "adequate" solution which "takes into account the principle of subsidiarity", other observers have pointed to the absence of a sufficient basis for "true coordination", i.e. for mutual adjustment processes that translate into significant modifications of the participants' policies.[44]

115. Considering the regional impact of EMU, the EC Commission indicates both opportunities and risks, "..with no a priori balance of relative advantage for the original or newer member States". The loss of independent control over monetary policy would be of potential consequence only for those countries whose wages and prices adjust slowly to economic shocks, as they would be unable to resort to currency depreciation to regain competitiveness.[45] (Oil price rises might serve as an example of external shocks, which, reflecting the differences in economic structures, would have an asymmetrical impact on the member States. Under the current system, this could be accommodated by way of currency adjustments.)

116. Any potential advantages of monetary and exchange rate autonomy for rapid adjustment would have to be set against the possibility of policy errors. For example, the foundering of earlier plans for monetary union in the 1970s, frequently attributed to the differing effects of oil price rises, could also be interpreted as a result of inconsistent policy reactions at that time.[46] Model simulations by the Commission seem to suggest that the EC economy could have worked out the major shocks of the past two decades with less disturbances in terms of inflation and, to some extent, real activity if it had operated within a single currency area.[47] (Individual member States might draw different conclusions, depending on their own macroeconomic performance during this period.) The Commission takes the view that while "exchange rate changes can help for an initial period to protect employers from the effects of an economic shock", this

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[44]Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung (1992) and Kenen (1992).

[45]EC Commission (1990).

[46]Bank for International Settlements (1992).

[47]EC Commission (1990).

could also be "at the cost of poorer results in terms of inflation and also, in the medium term, dissipation of the employment gains too".[48]

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[48] EC Commission (1990).

IV. TRADE POLICIES AND PRACTICES BY MEASURE

(1) Overview

117. Changes to the European Communities' trade régime since 1990 have been inspired, or required, by the Internal Market programme, developments in the EC's relations with countries in transition in east and central Europe, the extension of new preferential trade agreements, and developments in the GATT and the Uruguay Round. This chapter shows how these changes have affected individual trade policy instruments and provides an overview of the application of such instruments over the past two years. It also focuses on certain areas not dealt with in the initial TPRM report, such as trade-related aspects of EC competition policy.

118. Most reforms related to the Internal Market programme were either implemented or well advanced, by late 1992 (Section II:2(ii)). The programme is intended to remove trade barriers and reduce discrepancies in regulations within the EC. By doing so, it also has a significant impact on the Community's external trade relations, in particular on the import side. Internal Market reforms fall into two groups: (i) measures which have an immediate impact on access, such as the abolition or "communitization" of residual national import quotas, or the treatment of external deliveries under the new EC procurement rules; and (ii) measures which, while not directed at imports, can nevertheless be expected generally to change access conditions for external suppliers as well as for EC producers, such as the recognition or harmonization of technical regulations among the member States or the abolition of internal border controls.

119. Lack of harmonization in national policies does not imply that no common disciplines exist. Whenever national regulations impede and distort internal trade, these can normally be challenged by the affected parties, other member States or Community institutions under EC law. In addition, there are common external commitments, including the Communities' or individual member States' international obligations, for example under the General Agreement and the Tokyo Round Agreements or in OECD fora.

(2) Measures Directly Affecting Imports

(i) Tariffs, import levies and charges

(a) General features

120. The Community's tariff régime, including the variable levy mechanism, has remained virtually unchanged since 1990.[1] Modifications in tariff rates and bindings on only 15 tariff items were introduced in 1991 and 1992, following amendments made by the Customs Cooperation Council to the Harmonized System nomenclature. Basic features of the common customs tariff, as presented in the first report, thus remain:

(i) strong reliance on ad valorem duties, with relatively few exceptions;[2]

(ii) low tariff averages (7.3 per cent overall and 6.4 per cent for industrial products on a simple average basis);

(iii) a very high proportion of bound tariffs on industrial items (close to 100 per cent, as compared with some 65 per cent in agriculture); and

(iv) significant tariff escalation in sectors such as fish, tobacco, leather, rubber, textiles and metals.[3]

121. Variable levies apply to about one-third of tariff lines on food products. The levy system is geared to offset price advantages of external suppliers and to grant EC producers a "Community preference" by setting import threshold prices above the domestic price level. No fundamental changes in the mechanism are foreseen under the recently agreed farm reform

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[1]An overview of average tariff rates and tariff ranges, by main categories of the GATT Tariff Study, is given in Table AIV.1. For more details see GATT (1991b).

[2]Certain agriculture-based products, such as wine and spirits, and coal are subject to specific duties. Tobacco, some fruit and vegetables, certain carpets and glass categories, and watches enter under alternate tariffs.

[3]For example, tariffs of 11.1 per cent on fresh fish (including frozen and preserved products) compare with 20.1 per cent on prepared or preserved fish; tariffs of 13 per cent on unmanufactured tobacco with over 66 per cent on manufactured products; and tariffs of 1.2 per cent on unwrought metals (copper, nickel, lead etc.) with 6.2 per cent on non-ferrous metal products (simple averages).

package, although the levels of price support on meat and grains are to decline significantly (Section V.2).[4]

122. The Communities' rules and procedures for customs valuation have also remained unchanged. To ensure uniform application of EC customs rules at external borders, these have recently been consolidated in the Community Customs Code.[5] In addition, a common database on tariffs and non-tariff measures (TARIC) has been set up, and efforts are being made to intensify administrative cooperation between the national customs administrations.

123. In 1991, tariff revenues contributed 22 per cent (ECU 12.8 billion) to the Community budget. Agricultural levies, including those on sugar, accounted for a further 4.8 per cent. By contrast, more than half (ECU 30.3 billion) of total EC revenue originated from value-added tax. These shares are significantly lower than in previous years, reflecting the increased importance of the Communities' GNP-based "own resources", which contributed some 20 per cent to the 1991 budget, up from 6½ per cent two years before.

(b) Tariff suspensions

124. Article 28 of the EEC Treaty provides the basis for autonomous tariff changes or suspensions. Decisions are taken by the Council, by qualified majority on the basis of a Commission proposal.[6] A Commission Communication of September 1989 specifies that the aims of tariff suspensions are to afford EC producers better access to raw materials, semi-finished goods and components that are not available in the Communities.[7] Suspensions may only be granted in exceptional cases for products incorporating a higher degree of processing or for finished goods; they are thus essentially employed to increase effective tariff protection for users of non-EC inputs.

125. Tariff suspensions have been relatively frequent in areas such as chemicals and microelectronics, accounting each for some 550 cases per year

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[4]Variable levies are operated an almost all major temperate-zone agricultural products grown within the EC, with the exceptions of oilseeds and potatoes, and the related processed products. On wine, certain fruit and vegetables, and fisheries products, "countervailing charges" or "countervailing taxes" are imposed if suppliers fail to comply with established reference prices.

[5]Council Regulation No. 2913/92.

[6]Unlike in other trade policy areas, such as rules of origin and trade remedy legislation, there are no implementing regulations.

[7]Communication No. 89/C 235/02.

and duties forgone in the order of ECU 600 million, followed by agriculture with some 20 to 25 cases and ECU 20 million.[8] Overall, the revenue losses are approximately 5 per cent of total duties collected. Suspensions are granted mostly for one year, or in some cases for six months, with the possibility of extension. Requests may be lodged by, or on behalf of, any EC-based processing and manufacturing company.

(ii) Quantitative restrictions

126. Many EC import restrictions on industrial products are remnants of the member States' régimes from before the founding of the Community. Reflecting their origins, the restrictions have traditionally been applied at national rather than at EC level. This implies, in turn, that they are unsustainable within a fully integrated market. The Internal Market process should therefore result in either their abolition or their harmonization.

127. In August 1990, the member States, other than Spain and Portugal, restricted imports of more than 120 industrial products under Council Regulation No. 288/82 (at four-digit tariff line level).[9] As noted in the first TPRM report, France (71 cases) and Italy (48) accounted for the lion's share of the measures, which often affected supplies from Japan and/or other Asian suppliers.

128. Since then, the picture has changed significantly. In two steps taken in October 1991 and September 1992 (Council Regulations No. 2978/91 and 2875/92) the number of restrictions was reduced to 30 for France and and 19 for Italy.[10] The remaining measures focused on fruit and vegetables (including tomatoes, grapes, melons, apricots, pineapples and bananas) and consumer electronics (such as TV tubes, TV receivers and radio receivers of Japanese and other Asian origin). Italian restrictions also covered a variety of motor vehicle categories, as well as parts and components, from

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[8]Annual average since January 1988.

[9]Council Regulation No. 288/82 applies to imports from all sources not considered as State-trading countries and covers all products, except for MFA textiles, ECSC coal and steel products and agricultural products subject to a common market organization. See Table AIV.2 for an overview of the Communities' main trade regulations.

[10]Situation in October 1992. Some of the restrictions maintained by France and enumerated in the Annex to Regulation No. 288/82 were termed "quantitative restrictions without restrictions on quantities".

Japan; and France maintained restrictions on imports of canned tuna and sardines.[11]

129. The Communities' import régime towards the former "State-trading countries" has also undergone several changes. In January 1990, imports from the Czech and Slovak Federal Republic, Poland and Hungary were freed from all specific restrictions imposed under Regulation No. 3420/83, as well as from non-specific restrictions under Regulation No. 288/82 (except for trade with Spain and Portugal) and, from October 1990, made eligible for GSP treatment. Interim association agreements with these countries ("Europe Agreements") entered into force in March 1992. On 1 January 1992, the EC also lifted all specific restrictions and suspended all non-specific restrictions on imports from the three Baltic Republics and the CIS member States.

130. Overall, these changes have led observers to conclude that "the picture of the EC's quantitative protection has drastically shifted into a liberal direction".[12] At the time of writing, decisions on the future common import régimes for a variety of sensitive products were still outstanding.[13] Generally, residual national restrictions listed in the Annex to Regulations No. 288/82 would be abolished and the relevant products fully liberalized as part of the completion of the Internal Market. The Commission has indicated that only for a "handful" of products would some form of Community measures be needed; details of the measures were, in late 1992, still under discussion.[14]

(iii) Import controls and prohibitions

131. In May 1992, the EC prohibited all trade with the Republics of Serbia and Montenegro pursuant to United Nations resolutions. A similar embargo imposed on Iraq in August 1990 continues to apply.

132. The suspension from free circulation of Krugerrands and other gold coins from the Republic of South Africa, introduced in October 1986 in view

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[11]The latter products have since been made subject to Community quotas (Section V.2(x)).

[12]Costello and Pelkmans (1991).

[13]In October 1992, Spain maintained 178 and Portugal 58 restrictions under Regulation No. 288/82 on agricultural and industrial products (all areas except textiles and clothing and ECSC products, at four-digit tariff line level). Some of these measures were maintained under the Act of Accession of 1985, which afforded both countries adjustment periods for their quantitative restrictions of between 6 and 10 years, depending on the product area.

[14]Statement in early December 1992.

of apartheid, was lifted in January 1992. In March 1992, France terminated an embargo on South African coal, introduced in 1985.

133. As precautionary measures following the outbreak of cholera in 1991, the EC made shipments of fishery products, fruit and vegetables from Peru, Colombia and Ecuador subject to specific export control and certification by these countries;[15] additional inspection requirements have been imposed on intra-EC re-exports. According to the Commission, no other such measures have been introduced since the initial TPRM report.

134. The GATT Secretariat has not received any further information on changes in the Communities' system of import controls and prohibitions, e.g. for environmental, health and national security reasons over the past two years.

(iv) Emergency trade measures

(a) Safeguard actions under Article XIX of the GATT

135. Article XIX actions by the Community are relatively rare, in particular in the industrial sphere. The three initiatives taken since 1990 concern processed agricultural products and Atlantic salmon (Table IV.1). In December 1992, two Article XIX actions existed at EC level, relating to dried grapes and processed cherries.[16] In addition, coal imports into Germany were restricted under a measure dating back to 1958; it is the longest-standing action taken by any GATT contracting party under Article XIX.

136. An action on Atlantic salmon, from November 1991 to May 1992, mainly affected imports from an EFTA country, Norway (Note IV.3). According to the EC Commission, such Article XIX measures would still be possible under the EEA Agreement.

137. Article XIX measures are only one facet of the EC system of emergency trade protection. As noted in the first TPRM report, in disclosure sessions following investigations under Council Regulation No. 288/82, the legal equivalent under EC law to Article XIX, affected exporters are

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[15] See GATT documents L/6845 and L/6845/Add. 1, 17 May and 20 November 1991. Export controls imposed by Colombia and Equador on fruit and vegetables are limited to supplies from specified regions of origin.

[16] In late February 1993, the EC invoked Article XIX to introduce minimum import prices for various white fish categories (Section V.2(x)).

informed of the Commission's findings.[17] The countries concerned may, according to the Commission, find it to their advantage to offer and negotiate export restraints. Certain such measures are enumerated in Table IV.2. The Commission has stressed in the context of this TPRM report that this is not the Communities' preferred outcome of safeguard proceedings.[18]

(b) Selective import restrictions

138. In August 1992, the Commission authorized Germany, France and Italy to impose quotas on imports of certain iron and steel products from the Czech and Slovak Federal Republic (CSFR), under the safeguard provisions of the Agreement with the CSFR.[19] As noted in Section VI.3, the Community seems to consider these provisions to allow not only for the suspension of concessions granted under the Agreement but also of obligations under the GATT (e.g. Article XIX). The measures lapsed on 31 December 1992.

(c) Restraint arrangements, export monitoring, Community surveillance and similar measures

139. Table IV.2 gives an overview of additional trade measures known to the Secretariat - actions other than tariffs, levies, quotas, MFA restrictions, anti-dumping and anti-subsidy measures - which affected exports to or imports by the Communities' over the past two years.[20] According to the Commission, the arrangements concerning sheepmeat, motor vehicles from Japan and textiles are the only real examples of voluntary restraints or of actions taken after discussion and/or agreement between

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[17]According to the Commission, this stage of the investigation is aimed at guaranteeing the basic rights of parties involved in administrative procedures.

[18]However, see GATT (1991b), page 100 ff.

[19] Article 30 of the Europe Agreement (Article 24 of the Interim Agreement) entitles the affected party to take "appropriate measures" in the event of increased quantities that cause or threaten to cause serious injury or serious sectoral and regional problems (see Section II.5(iii)).

Recommendation No. 92/434/ECSC specifies annual import quotas for hot-rolled coils (France, Germany, Italy), cold-rolled sheets (France) and bars and rods (Germany), and Decision No. 92/433/EEC establishes quotas for certain steel pipes (Germany). According to the latter Decision, Italy had also applied for safeguard measures on the same products. While refusing this application the Commission announced that it would "closely monitor" import trends and, if necessary, re-examine the situation on the Italian market.

[20]Given the information and definition problems involved, any such listing can only be tentative. The individual measures may differ widely with regard to trade coverage, restrictiveness and potential implications on third countries. Retrospective Community surveillance, as an example, may be considered a merely statistical exercise without an impact on trade flows. However, as a possible precursor to trade restraints, it may also serve as a warning signal for the suppliers concerned. In other cases, it may used to monitor compliance with price or quantitative undertakings given.

the Community and exporting countries. Since 1990, a number of such arrangements on steel products have expired.

140. In mid-1992, the EC and Japan concluded a "consensus" on exports of cars and light commercial vehicles from Japan (Section V.3(ii)). The framework of "forecasts" under the consensus is designed to replace existing national restrictions in several member States; it is to be phased out by the year 2000.

141. The new association agreements with central and eastern European countries (Europe Agreements) contain provisions which may serve as a basis for concerted trade actions. In sensitive areas such as steel, the three countries might prefer restricting or moderating their exports with a view to pre-empting possible invocations of the safeguard clause by the EC.[21] (Similar considerations appear to have prompted several Mediterranean countries, years ago, to restrain their exports of certain textiles and clothing categories to the EC (Table IV.2)) However, as indicated in Section (b) above, the CSFR seems to have declined to cooperate in mid-1992.

142. Community surveillance of imports of certain machine tools and electrical and electronic products from Japan, introduced in 1983 and extended annually since, was discontinued at end-1992. The measures were originally taken on the grounds that the imports were "depressing the price levels and financial results of the Community industry and thereby threatening to cause injury" (Commission Regulation No. 653/83). The Commission considers that such surveillance actions have no direct implications for the Communities' trade relations, since they serve only to collect statistical information and do not imply any further obligation on the economic operators concerned.

143. Council Regulation No. 288/82, as amended by Regulation No. 1243/86, allowed Belgium, Italy, Luxembourg and the Netherlands to make all imports from Japan and Hong Kong subject to automatic licensing or import-declaration formalities (see first TPRM report). According to the Commission, this authorization is no longer in force.

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[21] In mid-July 1992, the German Minister of Economics was quoted as saying, after a meeting with major steel producers, that he would urge the east European suppliers in bilateral talks "to cease underpricing". In the event of failure, he would take initiative at EC level. (Reportedly, the German producers had called for an invocation of the safeguard clause under the Europe Agreement.) According to Wall Street Journal Europe, 15 July 1992. See also Section V.3(vi).

144. On 20 February 1993, the Commission made apple imports subject to a priori surveillance (Commission Regulation No. 384/93). The decision was taken because, given the Community's current high production, "excessive imports" were deemed likely to cause serious market disturbance and endanger the objectives of the Common Agricultural Policy (see Section V.2(i)). A licensing system is designed to allow close monitoring of imports; licences are issued, with a delay of five working days after application, subject to the lodging of a security.[22]

145. In some cases, industry-to-industry understandings may have contributed to mitigating import pressure and terminating anti-dumping proceedings. For example, in July 1992, the European Confederation of Iron and Steel Industries (Eurofer) withdrew an anti-dumping complaint concerning imports of wire-rod from five countries (Argentina, Egypt, Yugoslavia, Trinidad and Tobago, and Turkey). A Eurofer spokesman indicated that the suppliers had agreed in contacts with Eurofer to exercise "stricter market and price disciplines" (see also Section V.3(vi)).[23]

(v) Anti-dumping measures

(a) Overview of actions

146. The Community continues to make relatively frequent use of anti-dumping procedures. Since the mid-1980s, the number of new investigations has fluctuated between 20 and over 40 per year, and the measures in force between 207 (1986) and 139 (1990). At mid-1992, there were 144 anti-dumping measures in force (provisional and definitive duties and price undertakings; Table IV.3).

147. Chart IV.1 shows recent developments in the country and product profile of outstanding actions. Overall, there appears to be a slight shift in country focus from eastern and central European producers to Asian

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[22]Until 1991, the Community's apple imports from major suppliers were covered by voluntary restraint arrangments. In order to monitor compliance with agreed quantities, the EC already operated a licensing system in 1988 (see OECD, 1991). In this context, it suspended the issuances of licences for a number of suppliers considered to have exceeded the agreed quantities. A GATT Panel, whose report was adopted by the GATT Council in June 1989, found these suspensions inconsistent with Articles X, XI:1 and XIII of the General Agreement (BISD, 36th Supplement, p. 35).

[23]According to Nachrichten für Außenhandel, 3 September 1992.
The Commission Decision terminating the anti-dumping proceeding (No. 92/455/ECSC) holds that "the complainant formally withdrew the complaint ... due to a change of the circumstances that had led to the lodging of the complaint"; there was thus no reason to continue the investigation.

suppliers; new action has been taken in such areas as textile products and consumer electronics (including accessories such as tapes).[24]

148. During the past years, it has proved increasingly difficult for the Commission's services (DG I) to terminate investigations within one year from initiation, as required both by the GATT Anti-Dumping Code and by the Communities' own legislation. Of the 37 investigations launched between mid-1989 and mid-1989, 16 required 21 months or more (Table AIV.3). However, efforts have been made to speed up proceedings. At year-end 1991, the number of outstanding investigations was lower than at any time since 1987.[25] Of the 33 investigations terminated in 1991, 19 resulted in the EC imposing anti-dumping duties; a further three led to price undertakings.

(b) Legal and institutional aspects

149. There have been no changes to the Communities' anti-dumping and anti-subsidy legislation (Council Regulation No. 2423/88) since 1990 (Note IV.1). The Commission has, however, recently proposed some procedural reforms (see Section (f) below).

150. Within the EC institutional framework, the Commission is empowered to initiate and carry out investigations, to decide on the application of provisional duties and, in certain circumstances, to accept price undertakings. However, it is for the Council to pass the Regulations, prepared by the Commission, laying down the final determination of dumping, injury and Community interest and imposing definitive anti-dumping duties. Representatives of member States, gathering in an Advisory Committee, are consulted at important stages of the proceedings (Note IV.1). By bringing the views of member States to the Commission, the Committee also serves to anticipate and defuse problems that might otherwise be expressed later at Council level.[26] The EC system does not provide for a separate, independent institution, comparable to the U.S. International Trade Commission or the Canadian International Trade Tribunal, to carry out the injury determination.

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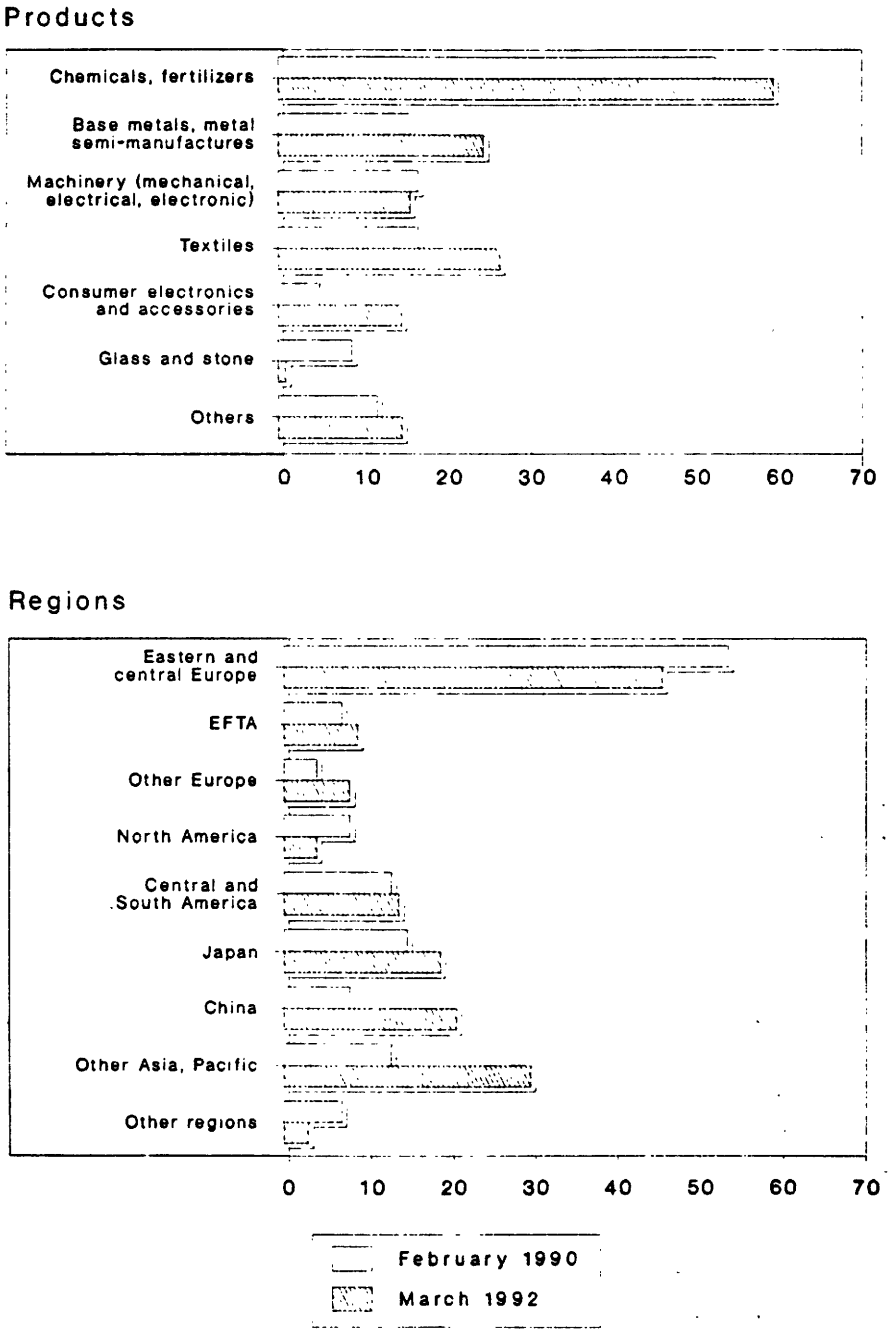
[24]It needs to be noted, as a general feature, that the number of cases neither reflects the restrictiveness of the measures imposed nor their impact on profits and sales of the industries concerned (EC producers, directly affected suppliers, and other foreign producers). The mere existence of anti-dumping legislation and its use in prominent cases may affect trade flows and investment decisions across a much wider range of industries.

[25]EC Commission (1992b).

[26]Steenbergen (1989). This contrasts to an observation that the Council as a rule limits itself to rubber-stamping Commission proposals for definitive action (Bellis, 1989).

Chart IV.1
Product and country-profile of anti-dumping measures in force, February 1990[a] and March 1992



[a] Excluding the former German Democratic Republic.

Source: GATT Secretariat.

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Note IV.1: Basic elements of EC anti-dumping legislation (Council Regulation No. 2423/88)

Anti-dumping actions in the EC are dependent on: (i) the occurrence of dumped imports; (ii) the existence of injury (or threat thereof) to EC industry; (iii) a causal link between dumping and injury; and (iv) the existence of Community interest calling for intervention.

An anti-dumping complaint may be lodged by any natural or legal person, or by any association representing a Community industry. It must contain sufficient evidence that the above criteria (i) to (iii) are met. Member States in possession of such evidence are required to inform the Commission. On this basis, consultations are held within an Advisory Committee, comprising representatives of member States under the chairmanship of the Commission. If the evidence is considered to justify initiating a proceeding, the Commission is required to announce the initiation in the Official Journal, to inform the parties involved and the exporting country, and to begin a Community wide investigation. It should normally be concluded within one year, either by termination or definitive action.

Provisional duties may be imposed by the Commission immediately after a preliminary finding of dumping and injury, unless a price undertaking is agreed. Their validity is limited to four months; an extension of two months is possible. Of the Communities' 378 anti-dumping initiations during the 1980s, 279 resulted in measures being taken. Of these, 183 were price undertakings; in 96 cases, definitive duties were imposed. Provisional duties were levied in 130 cases.

The dumping margin is defined as the margin by which the normal value of a product (e.g. the domestic market price) exceeds the export price. If domestic market prices are not available or reliable, the normal value is either established as the comparable price of like products exported to third countries or constructed by adding actual production cost, including overhead cost, and a "reasonable" profit margin. (The Commission tends to prefer the latter approach.) The amounts taken for overhead cost and profits are based on the expenses incurred and the profits realized by the producer or exporter on the profitable sales of like products on his domestic market or, if unavailable, unreliable or not suitable for use, by other producers or exporters on profitable sales of like products in the country of origin or export. If neither approach can be applied, the relevant expenses and profits are established by reference to the sales made by the exporter, or by other domestic producers in the same business sector or on any other reasonable basis.

Regulation No. 2423/88 also provides for the construction of an export price if, for example, the price actually paid or payable for the product is deemed unreliable. In this case, the reference basis is the price at which the imported product is first resold to an independent buyer in the EC or, if not applicable, any other reasonable basis. Allowance is to be made for all costs incurred between importation and resale and for a reasonable profit margin.

Dumping margins are calculated for each transaction. In averaging the individual findings, the Commission does not count in any transactions with an export price above the normal value; these are treated as if the margin was zero.

While Regulation No. 2423/88 enumerates criteria for examining the existence of injury (see main text), the concept of Community interest is not further specified.

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151. Affected parties may refer decisions for legal scrutiny to the European Court of Justice or, for example in cases concerning collection of duties, to national courts. While the first anti-dumping case was brought before the Court only in 1979, recent publications enumerate more than 80 cases raised since.[27] The Court's review is restricted to "manifest errors" in the assessment of facts and compliance with procedural rules.[28]

152. Under EC anti-dumping law, duties must be limited to what is sufficient to remove the injury suffered by EC industry.[29] The Commission estimates that in around half of all cases in which definitive duties were imposed between 1 January 1991 and 30 June 1992, these were less than the full dumping margin. In addition, a public interest clause in Regulation No. 2423/88 requires the EC authorities to take action only if it is in the Community interest. However, this interest provision has rarely led the EC to refrain from measures once all other conditions were met; one investigation has been terminated since 1990 on these grounds (Atlantic

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[27]Van Bael and Bellis (1990).

[28]Bellis (1989) and Steenbergen (1989); see, however, Section (f) below.

[29]This rule corresponds to a provision in the GATT Anti-Dumping Code, stipulating that "it is desirable" that the duty be less than the dumping margin if sufficient to remove the injury.

Salmon from Norway; see also Note IV.3). Observers have noted that, as a general rule, the finding of dumping, injury and of a causal link prompts the Commission and the Council to conclude that Community interest calls for action (see also Section (f) below).[30]

153. Assessment of material injury hinges mainly on such variables as production, capacity utilization, stocks, sales, market shares, prices, costs and profitability (as enumerated in Regulation No. 2423/88, based on the GATT Anti-Dumping Code).[31] For example, in a recent case concerning audio cassettes from Japan and Korea, the Council confirmed the Commission's provisional findings that the Community industry had suffered material injury as evidenced, in particular, by a loss of market share, price erosion, insufficient profitability and employment losses. According to the Council, the EC industry "was unable to defend its price, brand image and volume of sales" (see also Section (f) below).[32]

154. Some consultations and disputes have emerged from the application of EC anti-dumping legislation in the period under review (Section VI.2(ii)). In October 1992, at the request of Japan, a panel was established under Article 15:5 of the Code in order to investigate various aspects of an action against audio cassette tapes (initiation in 1988, definitive duties in May 1991).[33]

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[30]Bourgeois (1991). Van Bael and Bellis (1990) note that "Community institutions have more or less equated the interests of the Community with the interests of Community producers". The Commission does not share these views.

[31]According to a ruling by the European Court of Justice, this listing is merely indicative; the Community authorities are free to choose the most relevant factors as a sufficient basis for judgment (cases 273/85 and 107/86). The Court also held that it was possible to hold a supplier responsible for injury caused by dumping even if the resulting losses were merely part of more extensive injury attributable to other factors (see van Bael and Bellis, 1990).

[32]Council Regulation No. 1251/91.
The Commission stressed in its Annual Report on Anti-Dumping Activities (EC Commission, 1992b), that "the fall in sales suffered by the Community industry was combined with the phenomenon that, through the effects of dumping, the consumer developed a lower perception of the quality of Community products; indeed, in order to try to counter the growing pressure of dumped imports, the Community industry was obliged to lower its prices and consequently and above all, the costs of advertising and packaging its products." The dumping margins established varied between zero and 64.2 per cent and the duties imposed between zero and 23.4 per cent.

[33]The complaint by Japan includes the following points: (i) asymmetrical comparison of export price and normal value; (ii) distortions in averaging the dumping margins (counting cases of transactions involving "negative dumping" as if the margin was zero); (iii) shortcomings in determining injury and establishing a causal link with allegedly dumped imports. (GATT documents ADP/79 of 4 June 1992, ADP/85 and ADP/85 Add. 1 of 13 and 21 October 1992; see also Section VI.2(ii)).

155. In May 1990, the GATT Council adopted a Panel report finding measures taken under the Community's "screwdriver-plant legislation" inconsistent with the General Agreement.[34] The EC, which disagreed with the Panel's interpretation, considered it essential that a solution to this problem be found within the framework of the Uruguay Round.[35] No new investigations under these provisions have been launched since then. The EC Commission confirms that the undertakings concluded continue to apply.

156. The Community's current anti-dumping Regulation (No. 2423/88) allows for the imposition of an additional anti-dumping duty if it is found that the original duty was borne, in full or in part, by the exporter. The first four complaints under this "anti-absorption clause" were lodged by EC producers in 1991.[36] In June 1992, the EC raised an additional anti-dumping duty under Article 13:11 on silicon-metal from China, doubling the level of duty from ECU 198 to ECU 396 per tonne (Council Regulation No. 1607/92). Observers have considered this decision a precedent.[37] In two other cases, relating to compact disc players, a full review was initiated.

157. Over the past two years, the European Court of Justice has given several rulings on EC anti-dumping procedures regarded to be of general importance:

(i) In June 1991, the Court annulled a Regulation imposing anti-dumping duties on urea from Saudi Arabia, because of a lack of evidence that the company affected had received full information from the Commission to enable it effectively to defend its interests. The ruling held, inter alia, that the procedural rules did not provide all the guarantees for the protection of the individual which existed in certain national legal systems.[38] However, since the Court did not call into question the Commission's general approach to processing and handling confidential data, no procedural changes are envisaged.

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[34]Article 13:10 of Council Regulation No. 2423/88 allows for the extension of anti-dumping duties to products assembled in the EC on the basis of imported components.

[35]GATT document L/6676, 16 May 1990.

[36]The cases concerned silicon-metal and polyolefin woven bags from the People's Republic of China, and compact disc players from Japan and the Republic of Korea.

[37]See Europe, 9 July 1992.

[38]Case 49/88.

(ii) In November 1991, the Court rejected a complaint by the European Consumers' Association (Bureau Européen de Consommateurs; BEUC) which had claimed the right to be heard and granted access to non-confidential information in anti-dumping proceedings. The ruling upheld the Commission's view, considering consumers, and organizations like BEUC, not to be parties directly concerned because anti-dumping activities were not targeted on practices attributable to them.[39]

(iii) In a more recent ruling (March 1992), referring to a refund proceeding, the Court of Justice upheld the Commission's practice of treating anti-dumping duties as a cost element in constructing export prices.[40] The Court rejected all pleas put forward, including the claim that the basic EC Regulation was unlawful because it infringed Anti-Dumping Code provisions.[41]

(c) Non-market economies

158. On average, during the 1980s, almost one-half of all anti-dumping initiations concerned "non-market economy countries". In these cases, the Commission employed a different approach to establishing normal values and dumping margins, from that used for other countries. Normal values were estimated on the basis of the actual price, or the constructed value of like products in a third country market economy (the reference country) or, if neither alternative was considered adequate, on the price actually paid or payable in the Community.[42] If the existence of dumping was confirmed

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[39]Case 170/89, cited in EC Commission (1992b).
This does not affect the right of consumer organizations to make own submissions in the context of an anti-dumping investigation.

[40]The Commission had deducted the anti-dumping duties paid from the export price, thus establishing a dumping margin higher than deemed justified by the exporters involved and lowering the amount of duties to be reimbursed.

[41]While the Anti-Dumping Code stipulates that, in constructing export prices, "allowance for cost, including duties and taxes, incurred between importation and resale ... should also be made", the EC Regulation specifies certain duties and other costs, including anti-dumping duties, for which allowance shall be made. The Court considered the latter provisions to be consistent with the Code (case 188/82).

[42]The measures are taken pursuant to Article 2:5 of Regulation No. 2423/88 which refers to imports "from non-market economy countries and, in particular, those to which Regulations No. 1765/82 and 1766/82 apply".
Observers have noted that in selecting a reference market economy, the Commission has tried to ensure that the like product was produced there with the same manufacturing process and technical standards and on the same scale as in the non-market economy concerned; however, the brief reasoning given in individual cases did not always make it possible to grasp the relevant factors. The levels of economic development, in terms of per capita
(Footnote Continued)

by the investigation, the shipments concerned were often made subject to minimum import prices and, accordingly, variable anti-dumping duties.[43]

159. In September 1992, twelve anti-dumping actions were in force concerning the three "Europe Agreement" countries; exports from the Czech and Slovak Federal Republic and Poland were affected in five cases each, and Hungarian supplies in two cases.[44] The product focus was on basic chemicals. In November 1992, the EC imposed provisional duties on certain seamless steel tubes from the three countries.[45] The Commission has indicated that with the entry into force, on 1 March 1992, of the Interim Agreements, the then CSFR, Poland and Hungary are considered as market economies; future anti-dumping investigations would thus not normally be based on the reference country approach.[46]

(d) The European Economic Area

160. The Agreement on the European Economic Area (Section II.5(iii)) imposes a general ban on the use of anti-dumping and countervailing measures in intra-area trade. This is related to the agreed application of EC competition rules throughout the EEA territory (Section IV.4(i)) and, thus, limited to areas covered by the Agreement in which the "acquis communautaire" is fully implemented. According to the EC Commission, existing cases will be examined individually against this background once the Agreement has entered into force. In September 1992, exports from Austria (2 cases), Finland (1), Iceland (1), Norway (2) and Sweden (2) were subject to anti-dumping measures.[47] No new investigation concerning these countries was underway; an investigation into Norwegian salmon was

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(Footnote Continued)

income, of most of the reference countries had tended to be substantially higher than those of the non-market economies concerned (according to van Bael and Bellis, 1990).

[43] GATT (1991b).

[44] The most recent action concerned ferrosilicon from Poland. The Commission Regulation which provided for the imposition of provisional anti-dumping duties (No. 1808/92 of 30 June 1992) held that during the reference period (January 1990 to March 1991) Poland could not be considered a market economy country. The normal value was based on a constructed value established by adding production costs in Norway and a "reasonable profit margin" (6 per cent).

[45] The notice of initiation (December 1991) held that the allegation of dumping is based on a comparison between export prices to the EC and costs in a reference country, for which the complainant suggested Yugoslavia.

[46] The same applies to the Republics of Croatia, Slovenia, Bosnia-Herzegovina and the Yugoslav Republics of Macedonia, Montenegro and Serbia. By contrast, the successor States of the former Soviet Union and the three Baltic Republics are treated as non-market economies.

[47] The products concerned were urea and container corner fittings (Austria), Diesel engines (Finland, Sweden), ferrosilicon (Iceland, Norway, Sweden), pentaerythritol (Sweden), and silicon carbide (Norway).

terminated in March 1991, for perceived reasons of Community interest (see above and Note IV.3).

161. The EEA participants reserve the right, unless other solutions are agreed upon, to intervene in intra-area trade with a view to avoiding circumvention of anti-dumping measures aimed against third countries.[48]

(e) Review cases

162. A sunset provision in Council Regulation No. 2423/88 provides for the expiry of anti-dumping or countervailing measures five years after their entry into force, last modification or confirmation.[49] The impending expiry is announced in the Official Journal and made directly known to the Community industry concerned. "Interested parties" are thus given an opportunity to show that they would or could incur injury again. In these cases, a review is conducted (Article 15:3). However, since 1985, more than three-quarters of all measures have expired as scheduled. Of the sixteen Article 15 reviews terminated between January 1990 and June 1992, twelve resulted in new measures being taken by the Community (Table IV.4).

163. Reviews can also be held independently of such sunset situations.[50] Article 14:1 of Regulation No.2423/88 requires reviews to be held, subject to some additional qualifications, if an affected party submits sufficient evidence of changed circumstances. (While, in principle, the Commission or a member State may also take the initiative, such cases are relatively rare). As shown in Table IV.4, almost two-thirds of the Article 14 reviews between January 1990 and June 1992 - 30 out of a total of 46 cases - were initiated by affected exporters. In a large majority of cases, the reviews were either terminated by the Community's revoking or reducing the anti-dumping measures concerned.

(f) Anti-dumping, competition policy and Community interest

164. Commission Reports on Competition Policy recognise that anti-dumping measures may have a negative impact on competition. It is held that, while

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[48]The relevant provisions under Protocol 13 of the EEA Agreement also refer to circumvention of countervailing duties and measures against illicit commercial practices attributable to third countries.

[49]The sunset provision was introduced into EC law in 1984.

[50]This has been more frequently the case in practice.

the European industry has a legitimate right to protection against unfair and illicit practices, the intensity and duration of such protection should not put into question the competition rules of the Treaty.[51]

165. Competition policy aspects are also addressed in individual Council Regulations enacting anti-dumping measures. The Council and Commission tend to presuppose, as a rule, that protecting a viable domestic industry from unfair competition is consonant with Community and user interests; ensuing short-term price increases are considered likely to be offset in the longer run by the advantages, in terms of price, quality and product range, resulting from a more competitive environment.[52] For example, in the case of audio cassette tapes from Japan and the Republic of Korea, the Regulation imposing the provisional duties (No. 3262/90) holds, among other considerations, that "the elimination of unfair competition should eventually lead to the strengthening of competitive conditions and a decrease in prices". No further reasoning is, however, given to endorse this view. A more recent Commission publication indicates that the main aim of the Communities' action was "to create the conditions to allow the Community industry to increase its sale quantities, through which it could obtain economies of scale and reductions in cost, which in turn could be passed on to the consumer".[53]

166. Industrial policy considerations may come into play in sectors deemed strategically important. Pointing out the importance of "a viable Community DRAM industry" to a strong electronics industry overall, the Commission concluded price undertakings with all known Japanese exporters (January 1990).[54] The decision reflected the view that "DRAMs served as a

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[51]EC Commission (1991c).

[52]See, for example, Commission Regulation No. 313/92 imposing a provisional anti-dumping duty on car radios (radio-broadcast receivers of a kind used in motor-vehicles, originating in South Korea).

The above Regulation is also interesting in view of the definition used for "like products". While acknowledging that car radios are marketed with a wide range of technical features, the EC deemed it impossible to make a clear distinction between the various models. It expressly rejected the argument that the imports concerned were very cheap products, inferior in quality to EC production, and thus competed on different markets. Since the models possessed basic common physical and technical characteristics, it was held that they were to be treated as like products. Any quality differences should, if necessary, be taken into account when prices were compared. In addition, it was noted that certain components had been designed and produced on the basis of technologies similar to those used by EC producers.

[53]EC Commission (1992b).

[54]The undertakings are in the form of a minimum price system which is adjusted quarterly on the basis of cost of production data provided by the Japanese producers. According to the Commission, the reference price has in general been somewhat lower than market prices in the United States and Japan.

technology driver for other more complex semiconductors which are key components for the data processing, telecommunications and automotive industries".[55] According to the Commission, the interests of the complaining EC producers, who should be allowed to develop in a fair market environment, had been weighed against those of DRAM users, who should not be unnecessarily hindered. The outcome suggests that the EC considered it necessary to ensure a certain degree of self-sufficiency in the sector with a view to shielding the domestic industry from abusive supply and/or pricing practices abroad. The Commission noted that Japanese producers, which were generally vertically integrated, also manufactured end products which competed with EC production; the objective of reducing dependence was therefore considered an essential aspect.[56] In March 1993, further price undertakings were concluded with three Korean producers of DRAMs.[57]

167. In the context of lodging an anti-dumping complaint, detailed information must be provided by the interested companies (e.g. on prices, sales, costs of narrowly defined products) which would not normally be made known among competing firms. It has been argued this might pave the way for cartel-type forms of cooperation.[58] Such cooperation would be treated, however, like any other cartel. The Commission states that sufficient evidence of such practices could result in the opening of anti-trust proceedings under Article 85:1 of the EEC Treaty (Section IV.4(i)) and, moreover, in a review of the previous anti-dumping decision.[59] While administrative procedures in the anti-dumping and anti-cartel areas are independent, the Commission notes that the services involved are in close contact with a view to ensuring consistency of their actions; current

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[55]EC Commission (1991d).

[56]EC Commission (1991d).
The complaint had been lodged by Siemens, SGS-Thomson and the Scottish subsidiary of Motorola. Participants to the price undertaking are Fujitsu, Hitachi, NEC, Matsushita, Minebea, Sanyo, Sharp, OKI, Toshiba, and Texas Instruments Japan. In July 1992, IBM, Toshiba and Siemens agreed on an alliance to develop a new generation of advanced memory chips (Les Echos, 15 July 1992, and Section V.3(iii)(b)).

[57]Commission Decision No. 93/157.
Press reports suggest that the EC action on DRAMs from Japan has not least benefited Korean suppliers which managed to increase their share on the EC market for 4-megabit DRAMs from slightly below 5 per cent in 1990 to over 13 per cent in mid-1992. In September 1992, deliveries from three Korean suppliers (Samsung, Hyundai and Goldstar) were made subject to a provisional anti-dumping duty of 10.1 per cent which were later replaced by the price undertakings. (The weighted average dumping margins established for the three producers over the period 1 January to 31 December 1990 varied between 18.1 and 122.4 per cent; see Commission Regulation No. 2686/92.) The complaint had been lodged in 1990 by the European Electronic Component Manufacturers Association (EECA) on behalf of Motorola (UK) and Siemens.

[58]See for example Schmidt and Richard (1992).

[59]As noted above, such reviews may be held at the request of interested parties, of a member State or on the initiative of the Commission.

efforts aim at making these contacts more systematic, while maintaining the confidentiality requirements of both procedures.

168. An empirical study found that, during the 1980s, anti-dumping measures were particularly frequent in product areas prone to cartelization.[60] This observation might indicate business strategies aimed at defending cartel rents by recourse to anti-dumping protection (provided that the same companies were involved in related anti-dumping and anti-cartel actions).[61] The coincidence of such cases in mature industries, like basic chemicals or steel, could, however, also reflect a tendency of these industries to rely heavily on economies of scale, with a small number of large entities in the sector and relatively low information and coordination costs, including the costs of forming and operating cartels. Maturity, in turn, may be accompanied by a lower pace of technical innovation, stronger import pressure and increased vulnerability to price competition - including allegedly unfair pricing practices - from suppliers engaged in catch-up processes.

169. A ruling by the European Court of Justice in June 1992, is the first case in which the Court recognised that an injury determination and, concurrently, the imposition of anti-dumping measures might have been affected by restrictive business conduct.[62] The complainant, an importer and processor of calcium-metal, alleged that the sales losses suffered by the only EC producer of calcium-metal, Péchiney, which had initiated the case, resulted solely from its own restrictive marketing policy, since it

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[60] According to Messerlin (1990), nearly thirty of the EC anti-cartel cases initiated between 1980 and 1989 (some 25 per cent of the total) have dealt with products also involved in anti-dumping cases. However, according to the Commission, this observation ignores the time factor and the fact that, in some instances, the anti-dumping and competition cases were as far apart as ten years.

[61] This appears to have been the case in the EC soda-ash industry.
In several proceedings under Articles 85 and 86 of the EEC Treaty - concerning market sharing agreements and the abuse of a dominant market position - the Commission found, among various other factors, that anti-dumping measures had contributed to strengthening the market power of the convicted EC companies (ICI, Solvay and CFK (a member of the BASF group)). With regard to ICI, Commission Decision No. 91/300 held that the company had enjoyed a complete monopoly in the UK market for soda-ash until the late 1970s, shielded by a market-sharing arrangement with its major EC competitor (Solvay). Since 1980, ICI's list prices had been up to 20 per cent higher than in neighbouring markets. In the early 1980s, the company had suffered from emerging import competition, mainly from the United States, and a domestic market slump. Following the introduction of anti-dumping measures in 1984, ICI had succeeded, however, in regaining profitability. According to the company, perhaps half of its profits had been due to continued anti-dumping protection.
Under the above Commission Decision, ICI was imposed a fine of ECU 10 million for having abused its dominant position through a variety of measures (rebates, exclusivity contracts etc.) aimed at excluding or severely limiting competition. The anti-dumping measures had been repealed shortly before, in September 1990.

[62] Financial Times, 16 June 1992.

had refused to supply the product.[63] The Court of Justice annulled the Council Regulation imposing the duties (No. 2808/89), on the grounds that the Community institutions had failed to examine the question whether Péchiney itself had contributed to the injury and, more generally, that the injury determination had not been carried out correctly.

170. A Commission Decision of July 1992 maintained that private initiatives to counter perceived dumping practices, such as collusive price fixing, could not justify an infringement of EC competition law (Article 85:1 of the EEC Treaty; see Note IV.3 and Section IV.4(i)). The Decision related to an informal price arrangement between Scottish salmon farmers and their Norwegian competitors, concluded in parallel with the lodging of an anti-dumping complaint by the Scottish producers. The anti-dumping investigation was terminated by the Commission in March 1991 on the grounds of "Community interest" (see above); the private price arrangement expired in October 1991.[64]

(g) Proposed procedural changes to "commercial defence" procedures

171. Draft legislation, proposed by the Commission in June 1992, aims to harmonize and streamline the procedures for EC trade remedy actions, including anti-dumping and countervailing measures, safeguard protection, and actions taken under the New Commercial Policy Instrument.[65] The changes are intended to shorten and simplify EC procedures for these actions and to take account of the proposed extension of competence of the Court of First Instance.[66] The new procedures would also increase the

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[63]Case C-358/89, Extramet Industrie SA vs. Council.
Extramet's processing of calcium-metal is based on a self-developed and patented technology. Prior to the anti-dumping procedure, Extramet had already lodged a complaint with the French authorities about Péchiney's alleged abuse of a dominant market position. In the context of imposing the definitive anti-dumping duty (Council Regulation No. 2808/89), the EC authorities noted that the purpose of anti-dumping proceedings was not, and could not be, "to condone or encourage restrictive business practices". The companies involved were not deprived of their rights to initiate proceedings under Articles 85 or 86 of the EEC Treaty; the outcome of such proceedings could, however, not be prejudiced by an anti-dumping investigation.

[64]As noted in Section IV.4(i), arrangements affecting exports to the EC, whether prices or quantities, could be tolerated under EC competition law if government authorities had required companies to engage in such practices.

[65]Proposal for a Council Regulation (EEC) on the harmonization and streamlining of decision-making procedures for Community instruments of commercial defence and modification of the relevant Council Regulations (SEC(92) 1097 final) of 30 June 1992.

[66]The Court of First Instance was created in 1988 with a view to improving judicial protection through relieving the Court of Justice from cases which required the close examination of complex facts and, thus, enabling it to "concentrate its activities on its fundamental task of ensuring uniform interpretation of Community law" (Council Decision
(Footnote Continued)

power of the Commission vis-à-vis the Council of Ministers and the member States, by reversing the institutional balance in the decision-making process, including the Council.

172. In all areas of trade-remedy legislation, the decision on whether or not to apply a "commercial defence" measure would be taken by the Commission, and can be implemented immediately. Consultation is, at the same time, to be undertaken in a management committee, composed of member State representatives and chaired by the Commission. If a qualified majority of the Committee disapproves the Commission's action, the matter is referred to the Council, which needs to have a qualified majority against the action in order to overturn it. This reverses the present situation where the Council is required to approve Commission proposals by a qualified majority.[67]

173. Under the new procedures, the time period between the imposition of provisional and definitive duties is expected to be shortened by at least one month. This, in turn, would limit the possibility that administrative delays, including those resulting from the referral of provisional duties for legal scrutiny to the Court of First Instance and, eventually, to the Court of Justice, could lead to the expiry of measures (the validity of provisional duties is limited to four or, in certain circumstances, six months).

(vi) Countervailing actions

174. Countervailing measures by the EC are relatively rare. The only action since 1990 concerned polyester fibres and yarn from Turkey on which provisional duties were imposed in May 1991. The same products were also subject to anti-dumping duties. According to the Commission, these shipments had benefited from several export and domestic subsidies.[68] In September 1991, the Commission accepted an undertaking by the Turkish Government to terminate certain export subsidy schemes.

(Footnote Continued)

No. 88/591). The Council Decision setting up the Court of First Instance (No. 88/591) in 1988 held, among other things, that, in the light of experience and after two years of operation, the Council would re-examine a proposal made by the Court of Justice to give the Court of First Instance jurisdiction on measures of trade protection relating to dumping and subsidies. Reportedly, in late 1991, the Court of Justice reminded the Council of this provision.

[67]As noted below, similar decision-making mechanisms have recently been introduced in the banana, tobacco and fisheries sectors (Sections V.2(vii), (viii) and (x)).

[68]The Commission deemed the parallel application of anti-dumping and countervailing measures appropriate since the domestic subsidy schemes, including investment aid, had had an identical impact on both domestic and export prices and, thus, no effect on the established dumping margin.

(vii) Government Procurement

175. The Communities' overall framework of procurement rules for goods, works and services was completed in 1992 with the adoption of the last outstanding Directive (No. 90/531) concerning the award of services in the "excluded sectors" of water, energy, transport and telecommunications (Table IV.5). With the entry into force of this directive, the EC system of common procurement rules for goods was scheduled to become fully effective on 1 January 1993.[69]

176. As in the standards area, some member States have not yet fully implemented common procurement provisions into national law.[70] Recent initiatives by the Commission are aimed at accelerating implementation and, once in force, ensuring uniform application of the directives throughout the EC. Member States have been urged to use standard forms for tender notices and a uniform description of content (Commission Recommendation No. 91/561). The Commission carries out checks of contracts awarded in connection with EC structural funds and has launched a monitoring exercise for tender notices.[71]

177. Directive No. 90/531 is the only EC directive to stipulate reciprocity conditions for the procurement of goods. If the originating country is not legally committed to ensuring effective market access for EC companies, the directive allows procurement authorities to disregard bids with more than 50 per cent content from that country.[72] Any such bids must be rejected if their price advantage over equivalent tenders from other sources (EC member States or third countries ensuring access) is less than 3 per cent. The EC Council has stated that these provisions may be revised

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[69]As indicated in Table IV.5, a transitional period is, however, provided for Spain (1 January 1996), Greece and Portugal (1 July 1997). See also GATT (1991b) for details on EC procurement rules and practices affecting trade in goods.

[70]In December 1992, transposition in the areas of both supplies and works was not fully completed in Greece and Spain. Portugal had not taken all implementation measures in the public works domain.

[71]EC Commission (1991a).
Meanwhile, the French Ministry of Equipment is reported to have set up a review system to monitor intra-Community reciprocity in public works contracts. It apparently includes monitoring of the implementation of Directive No. 89/440 by other member States, preparing a list of works contracts won by French firms in other member States and vice versa, and setting up a list of EC call for bids, rejection of bids and rejection of applications. (European Report, 16 March 1991).

[72]Software used in the equipment of telecommunication networks is considered as products in this connection.
Contrary to the Directive on public supply contracts, which applies only to public entities, the "excluded sectors" Directive also covers private companies granted exclusive rights by member States' authorities.

GENERAL AGREEMENT ON

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COUNCIL

TRADE POLICY REVIEW MECHANISM

EUROPEAN COMMUNITIES

Report by the Secretariat

Corrigendum

Page 76, paragraph 175: Please replace first sentence by the following:

175. The Communities' overall framework of procurement rules for goods and works was completed in 1992 with the adoption of Directive No. 90/531 concerning supplies and works in the "excluded sectors" of water, energy, transport and telecommunications (Table IV.5).

in the light of the outcome of the negotiations on the Tokyo Round Agreement on Government Procurement.

178. The reciprocity clause of the "excluded sectors" Directive and the more general issue of preferential procurement rules and practices, including buy national requirements under U.S. legislation, has developed into a major trade irritant between the EC and the United States. At the time of writing, bilateral discussions were still underway.

179. The EC procurement directives, as part of the "acquis communautaire", will apply throughout the European Economic Area. Some technical adjustments have been made in view of institutional peculiarities (for example, to accommodate the system of turnover taxation in Liechtenstein), and longer implementation periods are foreseen for specified countries and sectors, but in no case beyond 1 January 1995. Since the EFTA countries are permitted, under the EEA Agreement (Annex VI, Procurement) to maintain their achieved levels of liberalization towards third countries, they would not be required to introduce or tighten reciprocity provisions in their "excluded sectors".

180. In early 1992, the Communities submitted lists of procurement entities for Greece, Spain and Portugal under the GATT Agreement on Government Procurement, with a view to extending the Code's coverage to these member States.[73] Greece and Spain have meanwhile been included; Portugal will be covered soon.

(viii) Standards and other technical requirements

181. Over the past two years, the EC has continued to introduce directives based on its "new approach" to technical harmonization (Table IV.6). The new approach, promulgated by a Council Resolution in May 1985 and incorporated later in the White Paper on Completing the Internal Market, confines EC legislation to laying down essential health and safety requirements. These are complemented by (voluntary) technical specifications to be developed by European standards-making bodies (Note IV.2). While non-compliance with such specifications does not automatically bar a product from free circulation, additional certification procedures may be required to prove its conformity with the essential elements of a directive.[74] In several cases, implementation by member

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[73]GATT documents GPR/63/Add. 1-3 (10 January, 6 February and 26 June 1992) and GPR/W/112, 13 May 1992.

[74]Compliance with the requirements laid down in "new approach" directives can be
(Footnote Continued)

States has proved difficult (see Section II.2(ii)). In mid-August 1992, the directive on toys was the only one for which all member States had notified the Commission of incorporation into national law; and even this was incomplete in two cases.[75]

182. Harmonization efforts have also been continued by way of comprehensive Council Directives setting out all relevant aspects of the products concerned (full mandatory harmonization); member States are required to incorporate the directives by specified target dates. This approach has been used, in particular, in areas considered sensitive for reasons of health and safety, such as pharmaceuticals, foodstuffs and motor vehicles. The latter sector is covered, with effect from 1 January 1993, by a complete set of 44 technical directives (Section V.3(ii)(a)).

183. Article 100b of the EEC Treaty may be viewed as a last stage in the harmonization process. The Article requires the Commission to establish during 1992, together with each member State, an inventory of legislative acts which have not been harmonized despite their impact on the establishment and functioning of the common market. The Council would then be authorized to decide, by qualified majority, that one member State's provisions must be recognised as equivalent to those applied by another member State. However, the Commission has not, to date, considered it necessary to take such an initiative.[76]

184. National requirements persist in many fields. As a general rule, the principle of mutual recognition is expected to ensure that regulatory differences within the EC do not impede intra-Community trade.[77] Whenever their national regulations are deemed equivalent, member States are required to accept imports (of EC and third country products) produced and marketed in compliance with the regulations valid in any other member

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(Footnote Continued)

indicated by a "CE" label. A draft regulation by the Commission (COM(91)145) aims to standardize the layout and the use of the label.

[75] EC Commission (1992d).

[76] Observers have expressed doubts whether the Article, whose scope and mechanics remained open to question, would prove workable in practice (Bohan, 1991). If the Council fails to pass a harmonization directives under Article 100a of the Treaty, it is in fact difficult to see how the procedure under 100b could work; both approaches would be based on qualified-majority voting. Article 100b may thus be viewed as a potential instrument for the Commission to collect information, rather than as an operational device to enforce harmonization.

[77] The European Court of Justice has developed the principle in a series of rulings since the early 1970s. It implies in essence, as determined in the landmark case of "Cassis de Dijon", that differences in national legislation are only allowed to impede intra-EC trade if their purpose "is in the general interest and such as to take precedence over the requirements of the free movement of goods".

State. Of more than 1,500 cases involving technical barriers between member States, which were examined by the Commission in 1991, several hundred are reported to have been resolved by applying the mutual recognition principle.[78]

185. The application of harmonized EC requirements, if fully implemented, and/or the mutual recognition principle are likely to facilitate access to the EC market and to improve the trading environment for both domestic producers and exporters to the Community. Mutual recognition may not, however, always suffice to enable a product to be used effectively. Difficulties may arise from interconnection into established national networks which incorporate different technical layouts (e.g. PAL and SECAM in colour television). Moreover, the question of equivalence of national requirements involving health and safety aspects may prove extremely sensitive. (Such problems, in turn, have prompted the harmonization efforts referred to above.)

186. A crucial element in making the "new approach" work is the development of common standards by the European standards-making institutions CEN, CENELEC and ETSI (see Note IV.2). Their activities are based on contributions made by national member organizations like DIN, AFNOR and BSI. Agreed European standards (EN) must be implemented in full by all EC bodies. Overall, some 1,800 European standards have so far been worked out by CEN and CENELEC (Table IV.7). In recent years, the Commission expressed concern that, while the standardization work had progressed satisfactorily for the "new approach directives" on toys, pressure vessels and personal protective equipment, progress had been less important in other areas, including machinery.[79] Observers have suggested that a tendency to shift decision-making problems from the legislative stage (development of the directive) to the standards-making institutions could create a "dustbin" for thorny political questions.[80]

187. Under the so-called Mutual Information Directive of 1983 (Directive No. 83/189), all new (mandatory) technical regulations by member States must be notified. During a standstill period of three months for comments and six months for detailed opinions if deemed necessary, the Commission

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[78] EC Commission (1992e).

[79] EC Commission (1991a and 1992d).

[80] Woolcock et.al. (1991).

and other member States may raise objections.[81] The Commission is entitled to freeze any national initiatives in the area of technical regulations for up to one year if an EC directive is envisaged.[82] CEN and CENELEC are informed of all national standardization activities in their fields, and the three main standards institutions in the EC - DIN, BSI and AFNOR - have established a tripartite framework for information exchange and comment.[83]

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[81] See also GATT (1991b).

[82] Table AIV.4 consolidates the notifications made under the Mutual Information Directive for the period 1 January 1990 to 31 June 1992. Apparently, notification activities have intensified considerably over time; the number of regulations notified by member States between January 1990 and June 1992 (1,008 cases) is almost as high as during the preceding 6½ years (1,075 cases between 1 January 1984 and 31 May 1990).

[83] Woolcock et.al. (1991).

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Note IV.2: European standardization bodies

The development of European standards is undertaken in three private-sector bodies: CEN (European Committee for Standardization), CENELEC (European Committee for Electro-technical Standardization) or ETSI (European Telecommunications Standardization Institute). CEN and CENELEC are common EC/EFTA bodies, ETSI is open to all interested parties located within the area of the European Conference of Posts and Telecommunications Administrations (CEPT; for more details see first TPRM report). The decision-making procedures are very similar to qualified-majority voting used by the EC Council in the relevant cases.

Membership in CEN and CENELEC is confined to the national standards organizations or electro-technical standardization committees. As a general policy, CEN/CENELEC holds expert meetings with non-EC or EFTA organizations if these are considered useful. In contrast, ETSI is also open to all interested parties within the CEPT territory and may also invite non-European organizations as observers.

In June 1991, CEN and the International Organization for Standardization (ISO) agreed on procedures to intensify cooperation. The accord includes specified reporting requirements, shared development of draft standards in order to avoid duplication of work, the setting up of of a Coordinating Group to monitor implementation, and provisions for parallel adoption in both fora. A similar arrangement exists between IEC and CENELEC (Haigh, 1992).

Comments received from interested parties on a 1990 Commission Green Paper on the development of European Standardization seem to suggest, in particular, that the efficiency of CEN needs to be enhanced and priority be given to working out standards directly related to the achievement of the Internal Market. In addition, it has been stressed that European-level associations should be entitled to make direct contributions to the work of CEN and CENELEC and that cooperation among the European standardization bodies, and between them and their international counterparts, should be improved (EC Commission, 1991e).

An EC Council Resolution of June 1992 reiterates, among other elements, the importance of developing cohesive European Standards ("based on transparency, openness, consensus, independence of vested interests and decision-taking on the basis of national representations") and confirms the Community's interest in "an international standardization system capable of producing standards that are actually used by all the partners in international trade and of meeting the requirements of Community policy" (92/C 173/01).

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188. The Community has not concluded, to date, any mutual recognition agreements with third countries on type approval and certification. In September 1992, the EC Council approved a Directive mandating the Commission to enter into such negotiations.[84] Under the Directive, the EC is prepared to conclude agreements with interested countries on the condition that the competence of the relevant technical bodies in these countries is, and remains, on a par with EC bodies, that the agreements are applied only to the specified bodies, and that they establish a balanced situation with regard to the advantages derived by the parties in all matters relating to conformity assessment for the products concerned. (According to Commission officials, this provision is to be interpreted in terms of equivalent access opportunities, rather than balanced trade flows.) Negotiations would be held only with signatories to the Tokyo Round Agreement on Technical Barriers to Trade. At the outset, such agreements would be applied on a bilateral basis (requiring a rules of origin clause) with the possibility of extending their coverage later to additional countries. In specified circumstances, the recognised foreign bodies would be allowed to subcontract to other bodies, including those in third countries, under their own responsibility. EC bodies would have the same right to delegate testing, including to entities domiciled in countries without a mutual recognition agreement.

189. In April 1990, the EC and the EFTA countries set up the European Organization for Testing and Certification (EOTC). The organization promotes the mutual recognition of conformity assessment in non-regulated product areas, including agreements with third countries, and encourages the use of equivalence criteria. EOTC is due to move from its current experimental stage to full operation by 1 January 1993.

190. On entry into force of the EEA Agreement, the "acquis communautaire" in the standards area will become legally effective throughout the EC/EFTA territory. This implies acceptance by the EFTA countries of the case law previously developed by the European Court of Justice, including the principle of mutual recognition. In certain areas, longer implementation periods are foreseen; with respect to motor vehicles, EFTA countries are entitled to apply their national legislation until 1 January 1995 (e.g. with a view to enforcing tighter national emission standards). While national legislation may be maintained beyond that date, free circulation must be admitted on the basis of the EC accord. From 1 January 1995, EFTA countries will be entitled to grant EC type approval for motor vehicles.

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[84]The first TPRM report provides an overview of the main provisions and principles governing type approval and certification under EC directives.

191. Under the Agreement, EFTA countries will not be allowed to initiate mutual recognition agreements with third countries when the use of a mark of conformity is provided for in EC legislation (i.e. in virtually all areas covered by EC harmonization directives). A Protocol to the EEA Agreement stipulates that such negotiations will be undertaken by the Communities, on the understanding that equivalent agreements will be concluded by EFTA States in parallel.

(ix) Countertrade

192. There are no EC guidelines, coordination or consultation activities in the area of countertrade, and no changes have been made since the first TPRM report with a view to defining a common or coordinated policy stance. However, while there are certain differences between the member States, most Governments seem to pursue a rather cautious approach, confining their involvement in countertrade deals mainly to military offsets. Recent press reports indicate that barter trade with CIS members (Commonwealth of Independent States) has gained in importance.[85]

(x) Rules of origin

193. No changes in substance have been made to the Communities' non-preferential rules of origin over the past two years.[86] A preferential agreement with the Faroe Islands, concluded in December 1991, contains similar rules of origin as those in the EC/EFTA Agreements.[87] However, contrary to EC/EFTA trade, only bilateral cumulation of origin is possible between the EC and the Faroe Islands (see also Table II.1).

(3) Measures Directly Affecting Exports

(i) Export promotion

194. Current export promotion activities at Community level are mainly directed to the participation in trade fairs, the contracting of studies and the organization of seminars and conferences. In 1991, some ECU 2.6 million were spent on these purposes. In contrast, Belgium alone used funds of over ECU 9 million per year to support its overseas Chambers

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[85] Le Figaro, 1 November 1991, Agra Europe, 6 March 1992, and Financial Times, 8 July 1992.

[86] For details see GATT (1991b), pp. 118-120.

[87] The Faroe Islands are a self-governing integral part of Denmark.

of Commerce, trade missions abroad and similar activities during the second half of the 1980s.[88]

(ii) Export finance and insurance

195. Article 112 of the Treaty of Rome requires member States progressively to harmonize their export aid schemes with a view to ensuring that they do not distort competition between EC companies. According to Article 113, their export policy should be governed by common principles. However, current commitments under EC law are confined mainly to mutual information and consultation, pursuant to a 1973 Council Decision (No. 73/391). By tradition, and in order to speed up the flow of information, this procedure also applies to the member States' external notification requirements in the OECD, although it is the EC as such which participates in the Arrangement on Guidelines for Officially Supported Export Credits.

196. The European Court of Justice has held on various occasions that, given the interdependence of markets, individual members' export support might distort intra-EC competition. The Court has thus not ruled out the possibility that the Commission should apply the general EEC rules on State aid in this area (Articles 92 to 94 of the EEC Treaty; see Section IV.4(ii)(a) below). As shown in Table IV.9, the share of domestic State aid devoted to trade or export promotion purposes varies considerably among the member States, from nil to more than 10 (France, Greece) or even 20 per cent (Ireland).

(iii) Export subsidies

197. Export subsidies ("refunds") remain a prominent feature of the Common Agricultural Policy. For details see Section V.2(i).

(iv) Export controls and restrictions

198. Under the Community's common rules for exports (Council Regulation No. 2603/69, as amended by Regulation No. 3918/91), Italy and France are authorized to restrict their exports of certain skins and furskins. In addition, all member States are free, in complying with commitments predating the Regulation, to participate in international emergency systems designed to allocate their exports of petroleum oils and gases. These measures are the only exemptions from the principle of

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[88]See GATT (1991b) for more details. No up-dated information on national policy developments in these areas was provided in the context of this report.

unrestricted trade underlying the common rules. However, member States may operate additional controls on such grounds as national security and the preservation of cultural heritage.

199. A Commission proposal, tabled in mid-July 1992, aims to establish a Community framework for the application of export controls to dual use goods for the post-1992 era. These goods, which have both military and civilian applications, are to be specified in a common list to be approved by all member States. The national authorities would be responsible for enforcement and the issuance of licences; they are free to restrict further products not figuring on the common list.[89]

200. The Commission has also tabled two proposals aimed at harmonizing current controls on exports of national treasures and introducing a system for the return of objects unlawfully dispatched to other member States. These are still under discussion.

201. In April 1992, the Community and the member States decided to lift the export embargo on oil products to South Africa.

202. The GATT Secretariat has not received any further information on changes in the Communities' system of export controls and restrictions, e.g. for environmental, health and national security reasons, since the first TPRM report.

(4) Measures Affecting Production and Trade

(i) Competition policy

(a) Principles

203. EEC competition policy, like all other areas of Community competence, is based directly on the Treaty of Rome. Its principal focus is on preventing private companies and associations, public enterprises and the national Governments from initiating or tolerating practices liable to distort markets and impede intra-EC trade. Competition policy is thus considered an instrument to advance and safeguard market integration by preserving effective competition within the Community.[90]

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[89] Wall Street Journal Europe, 16 July 1992.

[90] Ehlermann (1992a and 1992b).
The following Section focuses on restrictive private practices. Disciplines affecting the member States are treated separately; for State trading activities (involving public or privileged enterprises) see Section IV.4(i)(d) and for State aid Section IV.4(ii).

204. Article 85 of the EEC Treaty prohibits agreements and concerted practices between enterprises which may affect trade between the member States and which are aimed at, or result in, the prevention, restriction or distortion of competition. Article 86 prohibits, as incompatible with the common market, the abuse of a dominant market position in so far as it may affect trade between the member States.[91] Under the EEC Treaty, the Commission's Directorate General on Competition Policy (DG IV) deals exclusively with anti-competitive practices and abuses of dominance whose effects stretch beyond the borders of one member State. Arrangements such as price fixing and market sharing may result in high fines being levied by the Commission.[92]

205. Anti-competitive practices in the agricultural sphere have a special status under the EEC Treaty. Pursuant to Article 42, the competition rules apply to production and trade in farm products only to the extent determined by the Council within the Community's basic agricultural policy framework. A subsequent Council Regulation (No. 26/62 of April 1962) stipulates, however, that the EEC competition rules apply to the sector, subject to an exception clause (Article 2 of the Regulation) which provides cover for agreements that form an integral part of a national market organization or are necessary for the attainment of the objectives of the Common Agricultural Policy.[93] This clause was used for the first time in 1987, concerning potato marketing organizations in France. In the context of a recent proceeding relating to Atlantic salmon (see Note IV.3 below), the Commission decided that the exception clause was not applicable for

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[91]This contrasts with the competition rules of the ECSC Treaty, which impose a general ban on all agreements between undertakings "tending directly or indirectly to prevent, restrict or distort normal competition within the common market" (Article 65 (ECSC). Article 65 thus also applies to regional or local cartels between producers and suppliers of ECSC products. The term "normal competition" has been interpreted by the Commission to mean "competition unaffected by restrictive agreements" (Commission Decision No. 90/417/ECSC).

Concerted practices are prohibited sui generis under EC law, irrespective of the existence of any explicit accord among the participants. For example, the European Court of Justice has outlawed as contravening EC competition rules any sort of cooperation between enterprises with a view to defining a common line of action on prices and eliminating in advance any uncertainties concerning implementation (conclusions of the Advocate General in cases 89/85 et.al., 7 July 1992).

[92]Recent examples a total of ECU 48 million in fines for market sharing agreements concerning soda-ash and a ECU 75 million fine for the abuse of a dominant position (aseptic milk packaging/Tetrapack). Six major producers of stainless steel products were fined a total of ECU 425,000 for having cooperated in a voluntary system of delivery limitations between 1986 and 1988 (see also Section V.3(vi)).

[93]Regulation No. 26/62 confers on the Commission the exclusive competence to decide whether individual arrangements, decisions and practices meet these criteria (after consultations with member States and having heard the interested parties as well as any other natural or legal person considered competent). The Commission's decision may be referred to the European Court of Justice for legal review.

The exemption under Regulation No. 26/62 does not extend to practices banned under Article 86 of the EEC Treaty (abuse of a dominant market position; see below).

several reasons, including the existence of alternative remedies under EEC law (e.g. anti-dumping or safeguard actions).

206. The ban on agreements and concerted practices under Article 85 of the EEC Treaty is not unqualified. Exemptions are provided for agreements, decisions and practices which contribute to improving the production or distribution of goods or promoting technical or economic progress "while allowing consumers a fair share of the resulting benefit" (Article 85:3).[94] Under Council Regulation No. 17/62, the implementing legislation for Articles 85 and 86, the Commission is mandated to declare, on application, Article 85:1 inapplicable to individual agreements, decisions and practices for a specified period. Moreover, in "block exemptions", the Commission has defined general conditions under which certain forms of cooperation are deemed acceptable.

207. Block exemptions are granted, subject to certain qualifications, for agreements aimed at rationalizing and harmonizing production programmes (specialization agreements) or coordinating research activities and the exploitation of results.[95] A further series of block exemptions relates to a variety of vertical agreements, including distribution practices such as exclusive distribution agreements granting territorial exclusivity (without impeding cross-border sales), exclusive purchasing agreements, franchising agreements, agreements on the selective distribution of automobiles (Section V.3(ii)) as well as patent licence and know how licence agreements. A general exemption is provided for agreements of minor economic importance.[96]

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[94] In addition, Article 85:3 specifies that any such cooperation must (i) not go beyond what is indispensable to attain the objectives concerned and (ii) not afford participants the possibility of eliminating competition in respect of a substantial part of the products in question. For example, a recent exemption under Article 85:3 provides cover for a Volkswagen/Ford joint venture to build a multi-purpose vehicle in Setubal (Portugal). The exemption is subject to several conditions, including a prohibition on Ford to use VW engines in more than 25 per cent of its vehicles (Commission Decision No. 93/49; see also Section V.3(ii)(a)).

The scope for authorizations under Article 65 of the ECSC Treaty is defined in narrower terms than under the EEC Treaty (authorizations are to be granted for specialization agreements, joint buying or sales agreements, and other agreements considered to be strictly analoguous in nature).

[95] The block exemptions were intended to serve as guidelines for businesses and to spare them the need to notify types of agreements deemed to be covered by Article 85:3 (which, in turn, helped reduce the workload on the Commission's services).

[96] Agreements are exempt from the application of Article 85 if the aggregate annual turnover of the participants is less ECU 200 million and if the combined share of the goods and services covered does not exceed 5 per cent of the relevant EC market.

Block exemptions also exist or are currently being prepared in the areas of intellectual property rights (for patent licensing agreements and know-how licensing agreements); insurance contracts; merger control; and air transportation.

208. Specific EC legislation on mergers and acquisitions was introduced in 1989. (Such cases had previously been treated directly under the general provisions of Articles 85 and 86 of the EEC Treaty.) The new Merger Control Regulation (Council Regulation No. 4064/89) relates to concentrations with a combined worldwide turnover of more than ECU 5 billion and an EC-wide turnover of more than ECU 250 million of each of at least two of the enterprises concerned. Mergers between enterprises, each of which achieves two-thirds of its turnover within the same member State, continue to be subject to national competition laws. The Commission is mandated to assess in advance all cases above the thresholds and to judge their compatibility with the common market.[97]

209. An important feature of EC competition policy is its focus on inhibiting vertical restrictions aimed at insulating national markets by preventing cross-border sales. This reflects the Commission's concern not to allow private business practices to replace "official" trade barriers once these have been removed.[98] The motor vehicle sector and the steel quota arrangements imposed in the early 1980s may be considered exceptions (Section V.3(ii)(a) and (vi)). Referring to cartel practices at the time of the steel quota system, a Commission Decision (No. 90/417/ECSC) stressed that there "was a fundamental difference between agreements between (Community) companies made after consultation with the Commission and designed essentially to make measures taken by the Commission more effective and easier to supervise" and other agreements made on the companies own initiative and designed not to support existing measures (i.e. quota arrangements), but to create additional restrictions.

210. Given its basic legal commitment - to prevent trade restrictions among member States and distortions of competition within the common market

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[97] In assessing individual cases, the Commission is to take into account (i) the need to maintain and develop effective competition and (ii) the market position and the economic and financial power of the undertakings concerned. In the latter context, the Commission is required, among other things, to appraise the alternatives available to suppliers and users, their access to supplies and markets, and any legal or other barriers to entry (Article 2(1) of Council Regulation No. 4064/89).

[98] By contrast, the United States Department of Trade considers such restrictions on a case-by-case basis, applying a "rule of reason" to vertical agreements which may generate pro-competitive efficiencies. See GATT (1992a), p. 136.

In June 1991, the Commission imposed a fine of ECU2 million on Toshiba Europa GmbH (TEG) for having impeded parallel trade within the EC. In exclusive distribution agreements with independent importers in several member States, concluded between 1975 and 1981, TEG had included an export prohibition clause. The Commission found only a small number of cases where this clause had been put into effect. However, its Decision held that the export prohibitions per se had infringed Article 85:1 of the EEC Treaty; they would have not qualified for an exemption under Article 85:3 since they did not appear "to be indispensable to any improvement in distribution" and were "likely to be detrimental to consumers". (Commission Decision No. 91/532). See also Section V.3(iii)(c).

- EC competition law does not restrict practices which impinge solely on third countries. It applies, however, to export cartels if these have repercussions on the EC market.[99]

211. EC authorities also appear to have refrained from acting against export restraints imposed by third country authorities on shipments to the EC. Such restraints have been considered to go beyond the scope of Article 85. A Commission Decision dating from 1974, suggests that it is irrelevant in this connection whether or not any such restrictions are based on an agreement with the Community; Article 85 might, however, apply if additional measures or practices are used by the companies concerned or if foreign Government involvement is limited to authorising or encouraging rather than imposing the restraints.[100]

212. In 1985, the European Court of Justice ruled that sales at concerted prices within the EC by extra-Community suppliers were to be regarded as restricting competition within the meaning of Article 85. The Court held that such action fell within the Communities' jurisdiction because "the decisive factor is where the agreement, decision or concerted practice is implemented rather that where it is found". The companies involved were therefore made subject to EC competition law.[101]

213. This ruling does not, however, cover situations in which the Commission or a national government has initiated self-restraints in direct contacts with foreign industries (such as the Communities' current arrangement with Turkish textiles exporters; see Section V.3(vii)). The focus of Article 85 on arrangements between undertakings seems to imply that such cases would not infringe EC competition law.

214. As in most developed market economies, there is a constant tension in the EC between considerations of competition policy and those of industrial

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[99]Several national competition laws allow in general that such agreements may be exempt in view of competitiveness on external markets. As noted in the first TPRM report, under German competition law export cartels must be notified to the Federal Cartel Office. While they could be prohibited by the Federal Minister of Economics, there have been no such cases so far. Spanish competition law provides an exemption for export cartels in so far as they are compatible with international treaties. While export cartels are not covered by Greek legislation, provision is made to include them by further legislative action.

[100]According to Marques Mendes (1991) who, in turn, refers to a Commission Decision of 29 November 1974 (ball bearings).

[101]European Court of Justice, cases 85, 104, 114, 116, 117 and 125 to 129/85 (woodpulp).

development.[102] This tension is reflected in statements and legal texts which, on the one hand, emphasize the advantages of greater industrial integration for technological development or sectoral restructuring and, on the other, express competition policy concerns related to any ensuing structural rigidities or market distortions.[103] In this light, Commission reports on competition policy have repeatedly emphasized the need to set limits on economic restructuring ("for the sake of effective competition") and to assign competition policy "a leading rôle in safeguarding a market economy within the framework of the completion of the internal market".[104] Such considerations also seem to have guided a recent decision to block a proposed merger (Aerospatiale-Alenia/de Havilland), the only such prohibition so far in the EC.[105]

215. There is no independent "European Cartel Office" and no such blueprint appears currently under consideration.[106] The Commission's Directorate General IV continues to be one of the few competition authorities in the world which is not formally independent from the executive. Its functions range from developing rules and guidelines to policing, prosecuting and preparing the final decisions which are then taken by the Commission as a body. All draft decisions on individual cases, including exemptions under Article 85:3, are discussed with representatives of member States in an Advisory Committee on Restrictive Practices and Monopolies. The same applies to draft regulations concerning block exemptions.

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[102] Ehlermann (1992b).
According to Mr. Ehlermann, head of the Commission's Directorate on Competition Policy (DG IV), both approaches are complementary; competition policy is considered "one essential element of industrial policy vital to wider EC industrial competitiveness".

[103] See, for example, the presentation by Marques Mendes (1991).
Article 130f of the EEC Treaty stipulates that "the Community's aim shall be to strengthen the scientific and technological basis of European industry and to encourage it to become more competitive at international level" (para. 1). It further stipulates that "in the achievement of these aims, special account shall be taken of the connection between the common research and technological development effort, the establishment of the internal market and the implementation of common policies, particularly as regards competition and trade" (para. 3).

[104] EC Commission (1989).

[105] The Commission has made its approval of several other mergers subject to the abolition of certain structural links of the participants with other companies. The cases involved Alcatel/Telettra, Magneti Marelli/CEAC, Bosch/Varta, Accor/Wagon-Lits, Nestlé/Perrier and DuPont/ICI. In total, the Commission has been notified of 121 planned mergers since September 1990 of which it approved 92 without qualifications; 15 notifications were considered not to fall within the purview of EC legislation (situation in mid-October 1992). According to Handelsblatt, 15 October 1992.

[106] For more details see Ehlermann (1992a).

216. Commission officials have noted that the institutional links within a common body contribute to avoiding inconsistencies in the application of different policy instruments, for example, of anti-trust and anti-dumping measures.[107] On the other hand, given the economic and political sensitivity of many areas of competition policy, not least mergers, it has been questioned whether the present framework ensures adequate standards of transparency, political independence and public control.[108]

(b) Competition policy at national level

217. Articles 85 and 86 are directly applicable in the member States. Offended parties may lodge complaints before national courts with the aim of having declared null and void any infringements. However, this procedure appears to have played no substantial rôle so far.[109] The possibilities of national authorities to issue prohibitions under Articles 85 and 86 are limited to cases in which the Commission has not initiated the relevant proceedings.

218. Member States' own competition laws are applicable in parallel to EC law. Companies have thus to comply with both the EC and the national requirements. A ruling by the European Court of Justice has, however, specified that "this parallel application ... can only be allowed in so far as it does not prejudice the uniform application throughout the common market of the Community rules on cartels and of the full effects of the measures adopted in implementation of those rules".[110] This means, on the one hand, that cartels infringing Article 85:1 cannot be declared valid or otherwise legalized under member States' national law and, on the other hand, that cooperation agreements, once exempted by the Commission under Article 85:3, cannot be prohibited by member States' authorities.[111]

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[107]According to the Commission, it has recently intensified efforts to improve, as far as confidentiality requirements allow, cooperation between the anti-dumping and anti-trust units (see also Section IV.2(iv)(e)).

[108]The President of the German Federal Cartel Office, Mr. Wolf, sees an urgent need for a European Cartel Office in order to guarantee transparency of competition policy, in particular in the merger area. According to Mr. Wolf, "merger control is one of the most dirigiste instruments of competition policy. ... Controls must ensure that its use is legitimate. The rational behind a decision must be made public." (Handelsblatt, 16 September 1992; translation by GATT Secretariat.)

[109]According to Marques Mendes (1991).

[110]Case 14/68, 1969 (Wilhelm vs. Bundeskartellamt).
Since Article 65 of the ECSC Treaty also extends to regional or local arrangements (contrary to EEC legislation), there is much less scope for the application of national cartel law if the companies involved produce or supply ECSC products.

[111]The situation is different in the area of market control. Concentrations of a
(Footnote Continued)

219. The Commission takes the view that all practices liable to affect intra-EC trade are subject to Community rules. This position is based on the case law of the Court of Justice which uses a wide definition of "affecting intra-EC trade", covering actual or potential, direct or indirect trade effects of restrictive business behaviour. According to the Commission, moreover, the national régimes have tended over time to converge with EC law and practice without formal harmonization initiatives ("soft or voluntary harmonization").[112]

220. In recent years, several meetings have been held with national competition experts with a view to intensifying cooperation and encouraging the application of EC law by the member States. As indicated above, an Advisory Committee, comprising experts from member States, meets frequently to discuss preliminary draft decisions on individual cases and proposed legislation.

(c) International cooperation

221. In view of the increasing interdependence of national markets, the Commission has stressed the need to conduct and coordinate competition policy in an international context. While its stated first priority is to insist that existing competition laws are enforced effectively in the markets of trading partners, the Commission favours the adoption of adequate legislation, as necessary, and of international agreements to facilitate cooperation.[113] Remedial action in the event of frictions may include representations to the competition authorities of the relevant jurisdictions, initiatives under the bilateral anti-trust agreement with the United States, or, in the case of Japan, recourse to the mechanisms provided under the OECD Recommendation (see below). GATT Articles XXII and XXIII might be invoked if the neglect of competition rules results in nullification or impairment of benefits accruing under the General Agreement.

(Footnote Continued)

Community dimension are under sole EC jurisdiction; the competition rules of member States are not applicable ("one stop shop" principle).

[112]Cases in point, referred to by the Commission, are new competition laws in Belgium and Italy and proposals currently discussed in the United Kingdom.

[113]A recent Commission report on the electronics and information technology industry notes that "if abuses and unfair practices can be shown to exist (in this sector), pressure will be brought to bear on the relevant authorities. Identification of specific obstacles to fair competition, followed by pressure on the public authorities has brought positive results in other sectors... Partly as a reaction to international criticism, Japanese competition policy is being reformed and strengthened. The Japanese and U.S. authorities must be pressurised to go further in this direction so as to bring about a situation where the main international trading partners can operate under roughly equivalent competition rules". EC Commission (1991b).

222. The Commission considers the OECD Recommendation concerning co-operation on restrictive business practices, passed in 1986, a useful framework for action and seeks, as a rule, to conform with its provisions.[114] (Formally, the member States and not the EC as such are covered by the Recommendation.) Since 1990, the EC Commission also participates fully, but without voting rights, in the work of the UNCTAD Intergovernmental Group on Restrictive Business Practices.

223. In September 1991, a cooperation agreement on anti-trust issues was concluded with the United States. The agreement provides a framework for information exchange, notification, consultation and cooperation procedures. This includes cooperation between the EC Commission and the competent U.S. authorities (Antitrust Division of the Department of Justice and the Federal Trade Commission) in cases where both parties apply their competition rules to related situations. Under the terms of the agreement, either signatory shall seek to take into account the other's principal interests, while applying its own legislation and pursuing its own interests within its jurisdiction (the principle of "comity").[115] In addition, a "positive comity" provision allows a party to notify the other of anti-competitive activities on that party's territory which are adversely affecting its important interests. On receipt of such a notification, the competent authorities are then to consider whether or not to initiate enforcement activities or to expand ongoing activities to the case concerned.[116] Similar agreements are said to exist between the United States and Canada, Australia and Germany.

224. Competition rules are also important elements of the recently concluded EEA Agreement and the "Europe Agreements" with the Czech and Slovak Federal Republic, Hungary and Poland.

225. Competition policy under the EEA Agreement is founded on EC and EFTA pillars. All practices liable to impinge on trade between the EEA participants are subject to rules similar in substance to EC competition

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[114] EC Commission (1992a).

[115] Accordingly, authorities in one jurisdiction are expected to exercise restraint in the application of domestic laws and regulations if the positive aspects for its own interests are likely to be outweighed by negative effects on important interests of the other party.

[116] See also EC Commission (1992a).
The agreement was signed by the EC Commission on behalf of the Community. The Government of France, considering that the Commission has surpassed its competence, has brought the case before the European Court of Justice with the objective of annulment. The Commission gave the view that the complaint would not affect the application of the agreement; its conclusion was fully covered by the powers conferred on the Commission under Articles 85 and 86 of the EEC Treaty (according to Le Figaro, 11 January 1992).

law. Jurisdiction is based on the principle that cases will be dealt with by the Commission if trade between EC member States is affected and, if not, by the EFTA pillar.[117] If trade between one Community country and an EFTA participant is affected, the case will be treated by the Commission if two-thirds of the parties' turnover in the EEA is achieved on EC territory, otherwise by the EFTA pillar (the EFTA Surveillance Authority). By contrast, all merger cases covered by the relevant EC legislation will be dealt with, for the whole of the EEA, by the Commission.[118]

226. The competition rules contained in the Europe Agreements (Association Agreements with the Czech and Slovak Federal Republic, Hungary and Poland) extend to similar areas and practices, and are to be interpreted in the same way, as those under the EEC and the ECSC Treaties.[119] The Joint Committees under the Agreements are mandated to develop rules for implementation within three years. In the event of friction (e.g. the occurrence of serious prejudice to a party's interests or material injury to its industry) "appropriate measures" may be taken after consultations within the Joint Committee.

(d) State monopolies, Government-owned enterprises and regulated sectors

227. Article 37 of the EEC Treaty requires the member States to ensure that State trading monopolies, including monopolies delegated to third parties, do not discriminate in intra-EC trade. In addition, Article 90 specifies that the general competition rules of the Treaty apply to public or privileged enterprises (including undertakings which provide "services of general economic interest") if the application of competition rules does not contravene their tasks (see also Section V.3(v)). In this context, the Commission is entrusted to address directives or decisions to member States in order to ensure compliance.[120] Recent Commission reports have stressed

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[117]Procedures for information exchange, cooperation and consultation between both "pillars" are laid down in separate Protocols (No. 23 and 24) to the Agreement. In the event of disputes, the standard dispute settlement provisions under the Agreement would apply (Article 111).

[118]If the thresholds of the EC Merger Regulation are fulfilled within the EFTA area itself, the case concerned will be dealt with by the EFTA pillar and possibly also by the affected EC member States.

[119]In view of such provisions, which go far beyond the Community's "traditional" free trade agreements, the EC Commission has portrayed the Europe Agreements as an important step to integrate these countries "into the future architecture of Europe" (statement in the context of this TPRM report).

[120]A recent ruling by the European Court of Justice upheld a Commission Directive which had banned exclusive rights in the area of telecommunications terminal equipment (Directive No. 88/301). The Court based its decision on Article 90 in conjunction with Article 30 of
(Footnote Continued)

the need to open up markets where competition between member States is considered not fully developed, including areas such as gas, electricity, telecommunications, postal services, air and maritime transport, banking, insurance and the audiovisual sector.[121]

228. The United Kingdom is the only member State to have notified State trading activities under Article XVII of the GATT in recent years. The latest notification, of 1991, updates information previously supplied on British Coal (see first TPRM report) and provides a revised presentation of the activities of the Potato Marketing Board.[122]

229. State production monopolies play a dominant rôle in the tobacco sectors of France, Italy and Spain. Until recently, France maintained price controls on tobacco products; the highest French administrative court (Conseil d'Etat) considered this system to contravene EC law (see Sector V.2(viii)). Recent Commission Reports on Competition Policy indicate that certain headway has been made in dismantling import monopolies for petrol in Greece, Spain and Portugal.

230. Deregulation and privatization initiatives launched by member States since the initial TPRM review are reported to include:

(i) in Greece: public flotation of Government shares, via the National Bank, in a shipyard and various other companies (furniture, wine and spirits, steel, printing);[123] almost complete price liberalization, including the removal of all existing price and profit controls, in areas such as petrol, motor vehicles, car parts, soaps and detergents, gas, agricultural machinery, sanitary ware, electrical household equipment, toys, paper, sports wear, salt, animal feed, dairy products, pasta, sausages, beer, meat and non-alcoholic beverages (controls have, however, been continued on certain

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(Footnote Continued)

the Treaty (prohibition on quantitative restrictions and measures of equivalent effect) while the Commission had also referred to Articles 37, 59 (freedom to provide services) and 86. (For details see Common Market Law Review, Vol. 28 (1991), No. 4.) By a new decision of 17 November 1992 (cases 271/90, 281/90 and 289/90) the Court upheld another Commission Directive which had banned exclusive rights in the area of telecommunication services. The decision is based again on Article 90, this time in conjunction with Articles 59 and 86 of the Treaty.

[121] EC Commission (1992a).

[122] GATT document L/6797/Add. 4, 20 March 1991. (Notifications by other member States date back to the first half of the 1980s.)

[123] Nachrichten für Außenhandel, 9 April 1991.

varieties of white bread, infant food, pharmaceuticals, some fresh and frozen fruit and vegetables);[124]

(ii) in Italy: legislation with a view to transforming IRI (the main public sector holding), ENI (the State oil holding), ENEL (the national electricity concern), and INA (the national insurance company) into joint stock companies under public administration (IRI alone represents over 4.5 per cent of Italy's GDP);[125]

(iii) in Portugal: reprivatization of Petrogal (petrochemicals), Siderurgia Nacional (steel) and, possibly, privatization of companies in the chemical, pulp and paper, transport, financial and insurance sectors;[126]

(iv) in Germany: subsequent to unification, a large-scale transformation of the East German economy with a view to privatizing, dissolving and/or deregulating State holdings and industrial conglomerates; of the West German State-owned sector, Deutsche Lufthansa, Deutsche Bundesbahn (the German railway monopoly) and Deutsche Bundespost Telekom (the telecommunications branch of the federal postal service) have been named as candidates for full (Lufthansa) or partial privatization;[127] the Government's stake in Deutsche Airbus was abandoned four years earlier than originally scheduled (see also Section V.3(ii)(b)).

231. The above initiatives, most of which are still in an embryonic stage, appear not only driven by efficiency considerations and the aim of opening and revitalizing long-entrenched markets, but also by a need to reduce budget deficits or, in the case of Deutsche Airbus, to discard a serious trade irritant (Section V.3(ii)(b)).

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[124] Nachrichten für Außenhandel, 14 March 1992.

[125] Nachrichten für Außenhandel, 4 February and 3 August 1992.

[126] Nachrichten für Außenhandel, 13 February 1992.

[127] International Herald Tribune, 22 June 1992.

(ii) Subsidies

(a) The EC legal framework

232. The EC Commission considers its control over State aid, based on Articles 92 and 93 of the EEC Treaty, as an integral part of EC competition policy. Article 92 prohibits member States, subject to specified exceptions, from granting State aid which distorts competition and affects intra-EC trade.[128] Article 93 empowers the Commission to keep under constant review all aid systems within the Community and, as necessary, to issue decisions and initiate proceedings with the aim of terminating or altering any such systems. The Treaty on European Union leaves these provisions virtually unchanged.[129]

233. Member States are not allowed to put into effect aid programmes without EC approval. A ruling by the European Court of Justice, given in late 1991, confirms the direct applicability of the relevant Treaty provisions (Article 93:3). Accordingly, any affected party may request courts to declare illegal aid schemes implemented without EC permission. The Court also confirmed the exclusive competence of the Commission to decide on the compatibility of national aid programmes with the common market objectives.[130]

234. The EC rules on State aid have also been fully applicable to the territory of the former German Democratic Republic since German unification in October 1990. (Prior to formal unification, the Commission was kept informed by the German Government of State aid granted in east Germany). Some temporary exceptions are, however, provided under the sector-specific aid directives for shipbuilding and steel (Sections V.3(ii)(c) and V.3(vi)). The specific regional aid schemes for West Germany's former

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[128] For details see GATT (1991b).

[129] The list of exceptions - aid that may be considered compatible with the common market - has been prolonged to include the promotion of culture and heritage conservation to an extent that does not affect trading conditions and competition contrary to the common interest.

Article 92, as framed in the Maastricht Treaty, would continue to provide legal cover for aid destined for regions affected by the division of Germany "in so far as such aid is required in order to compensate for the economic disadvantages caused by that division".

[130] EC Commission (1992a).

A recent Commission Communication (91/C 273/02) specifies guidelines and reporting requirements for any financial benefits granted to government-owned companies (including capital injections, loans and guarantees). The Communication builds on Articles 92 and 93 of the EEC Treaty, a previous Commission Directive (No. 80/723) on the transparency of financial relations between member States and public undertakings, and the case law developed by the European Court of Justice.

eastern border areas were terminated in 1992; applications could be lodged until 30 September 1991.[131]

235. In 1991, member States informed the Commission of a total of 472 new subsidy projects (excluding agriculture, fisheries and transport). This is by far the highest number of proposals ever notified, up from less than 300 in 1989. More than four-fifths of all cases were approved without objections. In contrast, the Commission detected 145 cases where member States had failed to notify; of these, 29 were deemed to contravene the relevant Treaty provisions (Article 92) in substance.[132]

(b) Provisions in preferential agreements

236. The EEA Agreement (Article 61) extends the application of Article 92 of the EEC Treaty to the whole of the European Economic Area.[133] The review functions on the EC side are conferred on the Commission, as provided by Article 93 of the EEC Treaty, while the EFTA Surveillance Authority is to play this rôle for the EFTA pillar (Section II.5(ii)). An Annex to the Agreement enumerates the relevant pieces of EC legislation to be taken into account in this context (including, for example, the EC frameworks for sectoral and regional aid); and a Protocol to the Agreement specifies the procedures for providing information.[134] If an aid scheme is deemed to distort competition within the EEA, the Agreement foresees an exchange of views between both sides and, as necessary, consultations within the Joint Committee. In the absence of commonly acceptable solutions, the affected party would be entitled to take measures to offset the resulting distortions of competition.

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[131] Investments in some of the areas concerned continue to qualify for support, at significantly lower subsidy rates, under Germany's general regional support scheme which is operated jointly by the Federal and Länder Governments ("Improvement of Regional Economic Structures").

[132] The Commission notes that the increased number of non-notified projects reflects both an intensification of its monitoring activities and the granting of subsidies by regional and local governments out of non-notified budget appropriations made in previous years (EC Commission, 1992a).

[133] However, the Agreement does not contain the derogation clause of Article 92:2(c) of the EEC Treaty, under which aid "shall be considered compatible with the common market" in so far as it is required to compensate for the economic disadvantages caused by Germany's division. Any further recourse to this provision, e.g. in view of support programmes on the territory of the former GDR, could thus lead to a situation where State aid, granted under a mandatory exemption from EEC law, infringes on the EEA Agreement. However, the Commission has indicated in the context of this TPRM report, that it views Article 92:2(c) as no suitable legal basis for subsidies paid in eastern Germany. Until the issue is finally settled, such aid would be scrutinized by the Commission in accordance with the normal criteria for exemptions.

[134] The Commission considers its Surveys on State Aid (see below) an appropriate basis for information exchange under the Agreement.

237. The Europe Agreements provide that trade-distorting subsidies, like other anti-competitive practices, are to be interpreted in the light of the EC and ECSC rules (see above).[135] As long as the Joint Committees have not adopted rules for the implementation of the Agreements in this area, the relevant GATT Articles (VI, XVI and XXIII) apply. Furthermore, the parties are required to respect GATT procedures whenever they take action against injurious practices. Agriculture and fisheries are excluded from the provisions on State aid.

(c) Main areas of EC and national subsidization

238. Slightly more than half of the EC draft budget for 1993, amounting to ECU 65.7 billion (commitment appropriations), is reserved for agriculture. This share has declined by almost 30 percentage points since the late 1970s, reflecting mainly the expansion of other spending categories, rather than a reduced financial impact of EC farm policies (Charts IV.2 and IV.3). Structural funds and other structural measures account for about 30 per cent of the budget;[136] research spending amounts to a slightly over 3 per cent (ECU 2.1 billion). ECU 1.1 billion are destined for the PHARE programme of support for the economic restructuring of eastern and central European countries.

239. While financial support for agriculture is granted mainly out of the Communities' budget, subsidies for other sectors, including transport, mining and shipbuilding, are granted exclusively or predominantly by the member States. The same holds for a variety of "horizontal" aid schemes, such as export and trade promotion (see above), support for R&D and for small and medium-sized enterprises. On average, 13 per cent of national State aid is destined for agriculture, 40 per cent for the manufacturing sector, 29 per cent for transport and 18 per cent for coal mining (even though this sector is concentrated in very few regions).

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[135]For at least five years, aid granted in the Czech and Slovak Federal Republic, Hungary and Poland is to be assessed in the same way as aid programmes destined for Community regions with an abnormally low standard of living or serious unemployment.

[136]In 1988, the European Council decided to double, in real terms, the commitment appropriations for structural purposes - predominantly support for backward regions - by 1993. For more information see GATT (1991b).

Chart IV.2
Total EC budget and EC spending on agriculture, 1978-93
Billion ECUs

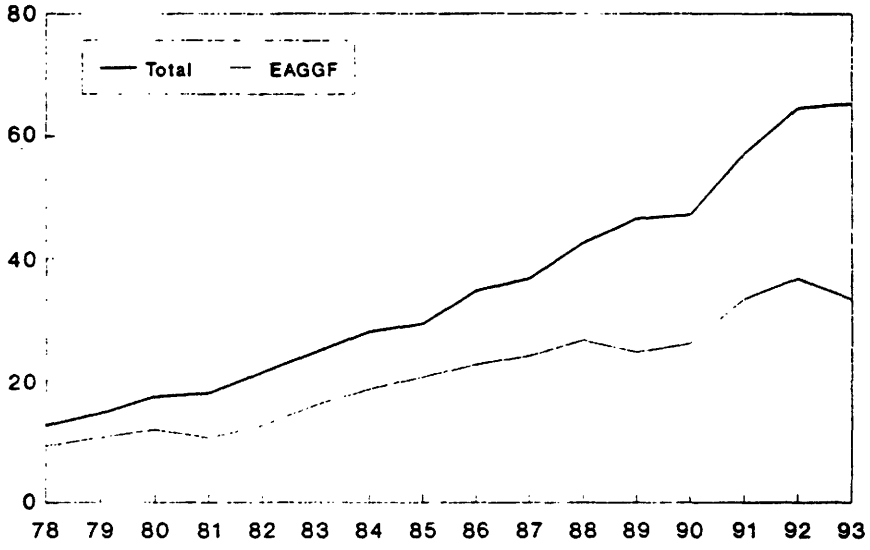
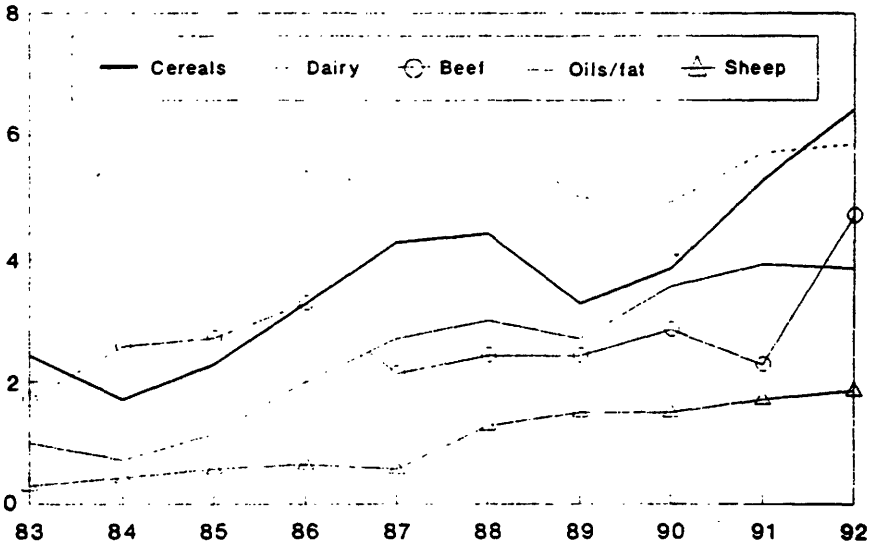


Chart IV.3
EC expenditure on agriculture by category, 1983-92
Billion ECUs



Source: Agra Europe, May 1992.

240. With the aim of providing information and increasing transparency, the Commission issues surveys on State aid in the EC, by member State and main economic activities. The third survey, covering the period 1988 to 1990, has recently been made public.[137] While indicating high continuing levels of national State aid - ECU 89 billion per year across all member States (2.2 per cent of Community GDP) - the report indicates a decline over time. In manufacturing, State aid came down from 4 per cent of value added in 1986-88 to 3½ per cent in 1988-90.

241. The Community average, however, masks wide disparities among the member States. For example, the support level in Italy (6 per cent of manufacturing value added) was found more than twice as high as in Germany and three times higher than in the United Kingdom.[138] Shipbuilding alone accounted for one-quarter of national subsidies extended to manufacturing industry in member States between 1988 and 1990. The level of support for the sector - some 34 per cent of value added - has remained virtually unchanged since 1986-88; in Italy, the support intensity exceeded 80 per cent (Tables IV.8 and IV.9).

(d) R&D initiatives

242. In the late 1980s, EC Governments and companies together accounted for some 28 per cent of R&D expenditure in the OECD area. Belgium and Germany displayed the highest ratio of business to Government financing (two to one or higher), while Spain, Italy, France, Portugal and Greece relied more heavily on public funding (less than one to one).[139] Within the public sphere, national Government expenditure continues to dwarf the Communities' contribution. For example, R&D expenditure by the German Länder alone is estimated to have reached DM 9.1 billion in 1989 (15 per cent of total R&D spending in Germany), which is almost four times higher than annual funding under the Third EC Framework Programme for Research and Development. Any national and regional initiatives must undergo the EC notification and approval procedures (see above). The concept of subsidiarity implies that Community research should be confined

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[137] EC Commission (1992c).

[138] The report indicates that the findings for certain member States are unreliable or distorted (Greece, Luxembourg and, possibly, Belgium).
The figures for Germany relate to the "old" Federal Republic prior to unification. A recent study suggests that federal government subsidies, including tax benefits, to industries in eastern Germany grew from DM 11.5 billion in 1990 to DM 49.2 billion (ECU 24.3 billion) in 1992 (budget commitments). Subsidies in the western part of the country are estimated to have risen from DM 80.9 billion (1990) to DM 86.5 billion (1992) which is about 3.1 per cent of west German GDP. DIW Wochenbericht, No. 46, 12 November 1992.

[139] OECD (1992).

to purposes where it is deemed more efficient than national or other international activities in the public or private sphere.

243. The EC Framework Programme is designed to serve as a catalyser for common projects. Community funding under the programme is in general limited to 50 per cent of project cost, contingent on the participation of at least two independent industrial partners from more that one member State. The programme is complemented by certain other Community R&D projects with a strong regional policy orientation (STRIDE, STAR) as well as by Europe-wide initiatives such as EUREKA and COST.[140] For an overview see Table IV.10.

244. Many of these initiatives are focused on information and communication technologies. These account for almost two-fifths of Community R&D funding. This has contributed to establishing a multi-layered system of research cooperation between European companies involved in the sector. For example, Siemens is reported to participate in more than 50 ESPRIT initiatives, allowing for research links in areas like (i) telecommunications (with CGE-Alcatel, Telettra, Rascal, British Telecom and Telefonica); (ii) machinery (with Bosch, Comau, Dornier, Krupp and Robotiker); (iii) computers (with Bull, ICL, Nixdorf, Digital and IBM);[141] (iv) automobiles (with BMW, Fiat, Peugeot, Renault, Volkswagen); and (v) chemicals-materials (with Akzo, Elf and Hoechst).[142]

(e) General considerations

245. Increased disciplines and transparency requirements with regard to national State aid may be considered a necessary element of the Internal Market programme. The removal of EC internal barriers may make national markets more vulnerable to policy distortions emanating from other member States; an argument for effective central control. The disciplines governing national State aid in the EC are in fact stricter than those

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[140] GATT (1991b).

[141] ICL has recently ceased to participate in several JESSI projects. (JESSI is aimed at developing advanced semi-conductors.) Commission officials have denied newspaper reports which suggested that it had been excluded on the grounds that a Japanese company, Fujitsu, had acquired a majority stake (Journal of Commerce, 12 May 1991). Rather, other project partners had decided, based on strategic, technological and similar considerations, no longer to cooperate with ICL in certain projects. The Commission has confirmed that Community support is not subject to ownership requirements. Pursuant to Article 58 of the EEC Treaty, the principle of national treatment applies to subsidiaries of any company established on the territory of the Community.

[142] OECD (1992), based on Mytelka (1990), "New modes of international competition: The case of strategic partnering in R&D", Science and Public Policy, October.

currently imposed, for example, on the Canadian provinces or the Swiss cantons.[143] This does not, however, imply that the level of support is lower in the EC.

246. Policy harmonization or centralization would not necessarily result in lower levels of government involvement overall. An additional layer may even contribute to boosting, rather than containing, total public spending. Administrations, whether in the public or private sector, are in general interested to expand their spheres of influence and to acquire new tasks and financial responsibilities. This tendency may be particularly pronounced at high levels of government and in the absence of direct feedback mechanisms between increased spending and taxation.

247. Yet there are countervailing forces. If Community control is considered to be credible and effective, national subsidy programmes would no longer afford a competitive edge over producers in other member States; one traditional motive behind such initiatives would thus lose its appeal. EC programmes, with their coordination requirements, cannot be expected to serve this purpose. Given the differences in economic structures and development levels among the member States, the framing of common schemes normally proves difficult and time-consuming which, in turn, tends to discourage ambitious new initiatives.[144] It may, however, also operate against swift reforms of long-established mechanisms.

(iii) Taxation policies

(a) Value added taxes

248. The removal of EC internal frontiers has made the harmonization of indirect taxes a central issue in the Internal Market programme. Existing VAT rates differ markedly between member States; for example, Denmark operated a value added tax at a standard rate of 25 per cent on all sales; Germany maintained two rates, 7 and 14 per cent; and Italy operated five rates, from 4 per cent on certain basic products, mainly food, up to

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[143] See GATT (1991a) and (1992c).

[144] In its first TPRM report (page 27/28 of Volume II), the EC Commission stressed that trade policy decisions must take into account the capacity of individual regions to adapt to the resulting structural changes. When the costs and benefits were divided between regions within the same member State, the adjustment process had the same implications as for any other GATT contracting party. In other cases, however, where the budgetary and economic balance within the Community was altered, this could bring about unintended social and political implications. The freedom of choice in the design of Community trade policy was therefore limited by considerations to offset such implications.

38 per cent on specified luxury goods (e.g. certain furs, large passenger cars and pleasure vessels).[145]

249. From 1993 onwards, there will be a harmonized system of value-added taxes based on minimum rates. A standard VAT rate of at least 15 per cent applies throughout the Community. In addition, member States may operate one or two reduced rates of at least 5 per cent on a specified range of goods and services, mainly agricultural and food products.[146] Existing rates below the 5 per cent threshold, including zero rates (for example, in the United Kingdom), may be maintained.[147]

250. VAT has so far been levied in accordance with the country-of-destination principle. This means that products destined for exportation, whether to other member States or third countries, are tax exempt in the originating member State. As from 1 January 1993, a transitional régime will make intra-EC trade subject to an accounting exercise, based on commercial records and additional reporting requirements, with a view to maintaining the essence of the principle. The arrangement applies (at least) until 31 December 1996. The Council is due to decide before that date on a definitive régime, including the minimum VAT rate(s). The decision is to be taken unanimously.

(b) Excise taxes

251. The general principles governing excise duties in the post-1992 era are laid down in a Council Directive of February 1992 (No. 92/12). Harmonized systems are foreseen for alcohol and alcoholic beverages, manufactured tobacco and mineral oils.[148] Agreement has also been reached on the minimum rates to be applied from 1 January 1993 or, in certain cases, after an additional two-year transition period (e.g. tobacco in Spain and mineral oils in Greece and Luxembourg).[149] Intra-EC commercial supplies are channelled through an interlinked system of bonded warehouses;

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[145] Situation in April 1992.

[146] The definitive product list is to de decided upon before year-end 1994.

[147] About 30 per cent of private consumption of goods and services in Ireland and the United Kingdom is estimated to be zero rated (Bovenberg and Horne, 1992).

[148] The minimum excise tax on wine was set at zero (in Germany, Italy, Spain, Portugal and Greece, wine is not currently subject to excise taxation).

[149] The Council is to review the minimum rates every two years (starting from 31 December 1994 at the latest) in the light, in particular, of the objective of the proper functioning of the Internal Market.

the taxes are due on delivery to the final customer. Denmark is allowed to continue certain restrictions and controls.

252. Other national excise taxes (e.g. on coffee, cocoa, tea, salt, matches, playing-cards, automobiles) are not scheduled for harmonization. Member States are free in principle to maintain or introduce taxes on all products not subject to a Community arrangement under the above Directive. However, this must not result in border formalities in intra-EC trade.

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Note IV.3: EC action on imports of Atlantic salmon since January 1990

Salmon imports into the EC are subject to a GATT bound tariff of 2 per cent. The Community's main, almost exclusive external supplier is Norway. Salmon, like all fishery products, is not covered by the current free trade agreement.

Following the collapse of the Norwegian minimum price support system in 1989, the world market was faced with a glut of Norwegian salmon at low prices as the fish farming industry contracted. Anti-dumping actions were taken in 1990 by the EC and the United States.

(i) Anti-dumping investigation, 2 February 1990-15 March 1991

In early 1990, the Commission launched an anti-dumping investigation, following a complaint by Scottish and Irish producer associations. According to the Notice of Initiation (90/C 25/05), the complainants claimed that imports from Norway had grown from some 21,000 tonnes in 1986 to an estimated 75,000 tonnes in 1989, an import share in an expanding EC market of 71 per cent (1986/89). EC producers were thus required to reduce their prices by nearly 20 per cent in the second half of 1989, with a significant impact on profitability.

The Commission's investigation resulted in a finding of dumping (at a margin of 11.3 per cent), injury and a causal link. However, the Commission found that no action was needed for two reasons: the Norwegian Government had adopted a series of measures aimed at restricting the volume of salmon supplied to the market, and the Norwegian industry had assumed the management of a freezing programme with a view to preventing market saturation by channelling supply; as a result, prices had appreciably increased from the beginning of 1990 (see GATT, 1992b). The Commission expected the situation to continue, "given the Norwegian Government's stated wish to contribute to the balanced development of fresh salmon exports to the Community while respecting traditional trade flows" (Commission Decision No. 91/142).

(ii) Private price fixing arrangement, 2 January 1990-2 October 1991

In the same period, from late December 1989, associations representing Scottish and Norwegian producers kept in direct contact with a view to exchanging information on minimum prices and coordinating their pricing strategy. The Norwegian producers restored minimum prices as from 2 January 1990. The Scottish Salmon Farmers' Marketing Board noted that this had "raised general market price levels throughout the world"; and

the Scottish Associations wrote to their members urging them to bring their prices into line with the new Norwegian prices. However, on 2 October 1991, the Board informed its members, as well as its Norwegian counterpart, that it was not its function to influence any price decisions; in addition, it withdrew earlier communications referring to Norwegian minimum prices.

A Commission Decision of July 1992 (No. 92/444) held that the activities of the two associations constituted an agreement within the meaning of Article 85:1 of the EEC Treaty (Section IV.4(i)). The agreement had as its object and effect the restriction or distortion of competition within the common market; it was likely to have an appreciable effect in particular on trade between the continental and the salmon producing EC member States. Though the infringement had ended, the Commission considered it necessary to issue the Decision to clarify the legal situation with regard to the relationship between anti-dumping and anti-trust procedures.

(iii) Retrospective Community surveillance, 1 July 1991-30 April 1993

Noting that the trend in imports of Atlantic salmon was liable to cause serious disturbances, the Commission introduced retrospective import surveillance on 1 July 1991. The action was prolonged by subsequent regulations (Commission Regulations No. 1658/91, 3629/91, 1561/92 and 3520/92).

(iv) Safeguard action under GATT Article XIX, 9 November 1991-31 May 1992

On 9 November 1991, the EC made imports of fresh and frozen Atlantic salmon from all origins subject to minimum import prices (modified on 21 November). Notified as safeguard action under Article XIX, the measure was deemed necessary by the EC in view of substantial imports in the second half of 1991, at abnormally low prices, which had caused the prices of commercially similar domestic products on the Community market to fall by up to 25 per cent. According to the Community's notification (GATT document L/6977 of 4 February 1992), the situation had "caused serious difficulties for Community production and would, if maintained, aggravate the injury caused to EC producers of directly competing products".

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V. TRADE POLICIES BY SECTOR

(1) Recent Policy Trends

253. Over the past two years, the Community has made major efforts to harmonize its sectoral policy framework by abolishing national derogations and strengthening common approaches. In addition, an ambitious farm reform package, focusing on cereals, beef and veal, is to be implemented from the 1993/94 crop year.

254. In most cases, harmonization appears to have improved access conditions to EC markets for industrial products. In important areas - such as telecommunications - technical trade barriers among member States have been removed or made permeable through mutual recognition; public supply monopolies have been reduced in scope; and EC-wide procurement markets are poised to replace national "fiefdoms". Although market unification, per se, should enhance trading opportunities for external and internal suppliers alike, new Community preferences based on reciprocity provisions have led to transatlantic frictions.

255. Community-wide controls on imports have replaced a variety of national régimes, ranging from liberal to restrictive, for bananas and canned tuna. Passenger cars imported from Japan are subject to a new system of market and supply forecasts which is ultimately aimed at complete liberalization, but currently involves a degree of trade management.

256. The recent evolution of the domestic and international economies has increased adjustment pressures on a number of sensitive sectors, including fisheries, steel and cars. Recent policy changes, not only in the Internal Market context but also in the framework of new association agreements, are about to undergo their first tough tests. Safeguard clauses under the Europe Agreements, which have already been used to introduce bilateral restrictions on certain steel products, are available in the event of increased inmports causing, or threatening to case, serious injury or serious sectoral and regional problems. Specific safeguard provisions under the new banana, fisheries and tobacco régimes may be used to guard against "serious market disturbances"; Commission initiatives under these provisions can be overturned only be a qualified majority vote in the Council.

(2) Developments in Agriculture, Fisheries and Food Production

CAP reform

257. In May 1992, the EC Council of Ministers agreed on significant changes to the operation of the Common Agricultural Policy. The decisions

focused on the structure and levels of support for cereals, beef and veal. Other sectors - including dairy, which is the most highly assisted sector in producer subsidy equivalent (PSE) terms - are relatively unaffected (Sections (i) - (iii) below).

258. The reforms resulted from a long period of political discussion and reflection regarding the domestic and international costs of EC farm support. In 1991, the Commission identified four deficiencies in the CAP system: (a) the stimulus to overproduction provided by price intervention and production aids, and the resulting costly buildup of stocks;[1] (b) the encouragement given by the system to intensive production techniques, leading to greater pollution and impoverishment of land; (c) the concentration of income support, through price guarantees, on larger and more intensive farms; and (d) the very small improvement in per capita purchasing power of farmers since 1975, despite a real increase of 250 per cent in the Community's farm support budget during the period.[2] From the external viewpoint, the most obvious impact of the CAP has been the contribution made by EC production surpluses to the distortion of world markets for major commodities and the frictions set up within the trading system by international competition, particularly between the EC and the United States, in subsidized exporting.

259. The reform package approved by the EC Council is to be applied over a three-year period from 1993-94 onward. With significant price cuts for the cereals and beef and veal sectors, it departs from the previous trend of EC farm support, while maintaining the traditional principles of "single prices, Community preference, responsibility and financial solidarity".[3] The income losses ensuing from the adjustments, including set aside requirements, are to be accompanied by "full and on-going compensation ... through compensatory amounts or premiums not related to the quantities produced".[4] Complementary initiatives are intended to stimulate a shift towards less intensive production methods, to encourage afforestation and early retirement of farmers. Product-specific aspects of the reform package are dealt with below.

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[1] In recent years, self-sufficiency ratios reached 136 per cent for common wheat (1989/90); 122 per cent for rye and barley (1989/90); 134 per cent for sugar (1990/91); 86 per cent for fresh fruit and 105 per cent for fresh vegetables (1989/90); 125 per cent for wine (1989/90); 100 per cent for potatoes (1989/90); 109 per cent for beef and veal (1990); 104 per cent for pigmeat (1990); 81 per cent for sheepmeat and goatmeat (1990); and 105 per cent for poultrymeat (1990). Butter stocks stood at 332,000 tonnes in July 1992 (public and private storage), which is about one-fifth of total annual consumption.

[2] EC Commission (1991g).

[3] EC Commission (1992i).

[4] EC Commission (1992i).

260. The Maastricht Treaty leaves the agricultural policy provisions of the EEC Treaty intact. Accordingly, the CAP would continue to be based on the five basic objectives written into Article 39 of the EEC Treaty: increasing agricultural productivity; ensuring a fair standard of living for the agricultural community; stabilizing markets; assuring the availability of supplies; and "reasonable" prices for consumers. As noted in the first TPRM report, these objectives are also to be seen in the context of the commercial policy aims set out in Article 110 ("to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers").[5]

Levels of assistance

261. In the period since 1990, up to the recent reform package, EC agricultural policies remained largely unchanged. Movements in farm support were roughly in line, though at a higher level, with general developments in the OECD area. After a temporary decline in 1989, partly reflecting the impact of drought on cereal prices, support regained its 1987 level in 1990 and 1991. Average net percentage PSEs for the sector as a whole of close to 50 per cent in 1990 and 1991 indicate that about one-half of EC farm revenue results from policy intervention, either through border restrictions or by financial assistance (Table V.1).

262. Price-based support remained, in the period under review, the centrepiece of the Common Agricultural Policy. OECD estimates for 1990 show that around 65 per cent of total EC farm support was borne by consumers through higher prices, shielded from international market developments through an intricate system of variable import levies and export refunds (Table V.3). The import threshold prices used as benchmarks for calculating and adjusting the levies are generally set above the internal market level, affording domestic producers a "Community preference".

263. In view of soaring production surpluses and budgetary strains, previously open-ended aid mechanisms have been curbed over time by a variety of non-price-related measures aimed at directly restricting production levels (e.g. a quota régime on milk) or the use of inputs (retirement schemes, set-aside) and encouraging a shift towards more

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[5] In addition, as noted in Section II.4, the Maastricht Treaty contains new provisions on "Development Cooperation" (Title XVII), requiring Community initiatives to complement national policies and to foster, among other things, "the smooth and gradual integration of the developing countries into the world economy" (Article 130u).

extensive farming and production alternatives, such as afforestation.[6] Price policy has also, in general, become more prudent; nominal producer prices for cereals fell by some 3 per cent between 1985 and 1990, implying a real decline of about one-quarter.

264. However, there are wide differences in the structure of support schemes between product areas. For example, the oilseeds régime, based on financial aid, accounted for 13 per cent of total EC expenditure on agriculture in 1991 (Table V.2). EC tobacco growers are also mainly supported through the budget, rather than by trade barriers (see below).

265. The highest proportion of direct financial support under the CAP, on a per capita employment basis, goes to the smaller northern member States. Belgium, Ireland, the Netherlands and Denmark each receive EC expenditure (per worker) considerably above the average (Table AV.1). However, this reflects national specializations in products for which budgetary expenditure is the main means of support, and gives no reliable indication of the overall impact of the CAP on different regions of the Community.[7]

266. In addition to general EC support mechanisms, member States may operate their own schemes, subject to Community approval. For example, in 1984, Germany was authorized, in the context of agri-monetary adjustments, to grant compensation to farmers through the value added tax system.[8] In

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[6]"Set-aside" programmes are mandatory on member States, but applied by farmers on an optional basis. In the 1991/92 marketing year, an additional set-aside programme was offered as a temporary supplement to the original five-year scheme (GATT (1991), page 177). Eligible producers were required to cease production on at least 15 per cent of the area used for crops in 1990/91. The Commission has noted that only 2 per cent of the cereals area had been set aside by 1991, generally low-yield land. While the stabilizer schemes for cereals and oilseeds may have halted the trend of steadily increasing production, the Commission has recognized that they "do not attack the underlying problem...that support through the EAGGF remains proportionate to the quantity produced" and that "this factor preserves a permanent incentive to greater production and further intensification." (EC Commission, 1991g). As noted in Section (iii) below, the recent farm reform package includes significant changes in the conditions for set-aside.

Direct production limits, e.g. the milk quota régime, are considered by the Commission to have in general achieved their objectives, reflecting the obligatory nature of the schemes and the penalties imposed on excess production.

[7]A comprehensive analysis would have to include the distributional impact of border restrictions (via higher prices) and to consider whether support for a small part of the population may be treated as if it had benefited a region as a whole. Moreover, in a longer-term perspective, the question arises whether the resources devoted to agriculture could have been used more effectively, for example for promoting alternative economic activities in the areas concerned.

[8]The income loss to be compensated was estimated, in 1984, to amount to 5 per cent of net production value. The scheme was originally scheduled to be phased out in two steps: two percentage points should be cut by end-1988 and the remaining three points in 1991. However following a revaluation of the Deutsche mark in 1989, the former component was continued in a modified form ("socio-structural compensation"). Payments are acreage-related, with a minimum and maximum threshold level per farm.

1991, such income support comprised two elements: "VAT compensation" of some DM 1.6 billion (ECU 790 million) and an additional DM 1.1 billion of "socio-structural compensation". In 1992, in view of perceived hardships resulting from the scheduled phasing-out of the VAT component, Germany was allowed to continue providing a similar value of compensation on a transitional basis. In the "old" German Länder, the scheme amounts in practice to an extension of the "socio-structural" component; transfers per holding may vary within a range of DM 1,500 and 16,000.[9] They may be complemented by other payments, for example for environmental reasons.

Trade in farm products

267. While EC farm exports have grown in parallel with total exports in recent years, the share of agricultural products (including tropical products) in imports has fallen from close to 16 per cent in 1986 to slightly over 12 per cent in 1990.[10] This does not reflect changes in competitive strength. Many EC markets for temperate-zone agricultural products are virtually impossible for third countries to penetrate (with the exception of oilseeds; see, however, Section (iv) below), and EC exports of the same products have continuously been supported through subsidies. In the cereals sector, the EC has increased its world market share by some 5 percentage points since the early 1980s, despite higher domestic production cost and producer prices (Charts V.1 and V.2). EC exports currently represent about one-fifth of world wheat trade.

268. Chart V.3 traces the evolution of EC export refunds for major product categories in recent years. In the 1992 budget, total refunds reached ECU 9.7 billion, as compared with ECU 7.7 and 10.1 billion in 1990 and 1991, respectively.

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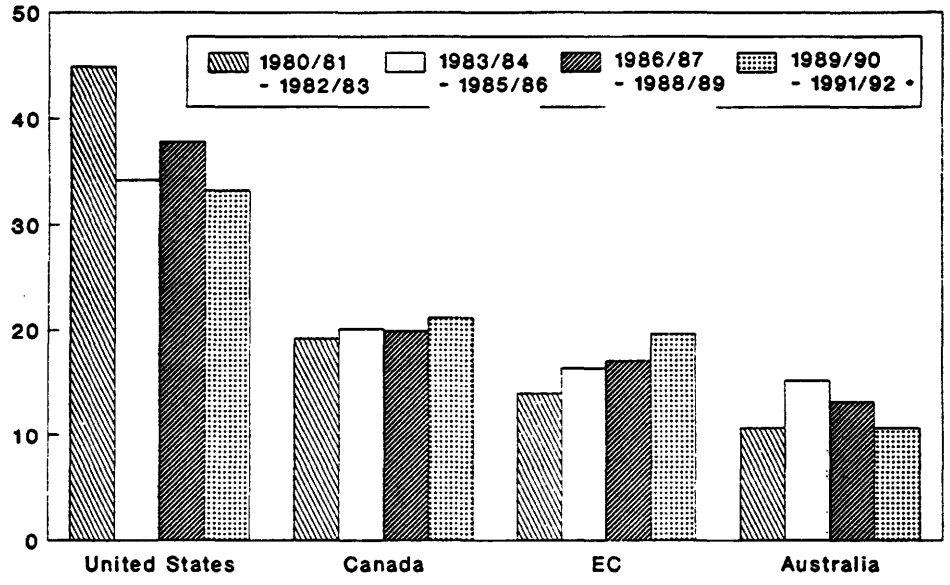
[9] In east Germany (former GDR), payments are based on labour-input and not subject to ceilings. In order for the scheme to be continued beyond 1992, new legislation would have to be passed and authorized.

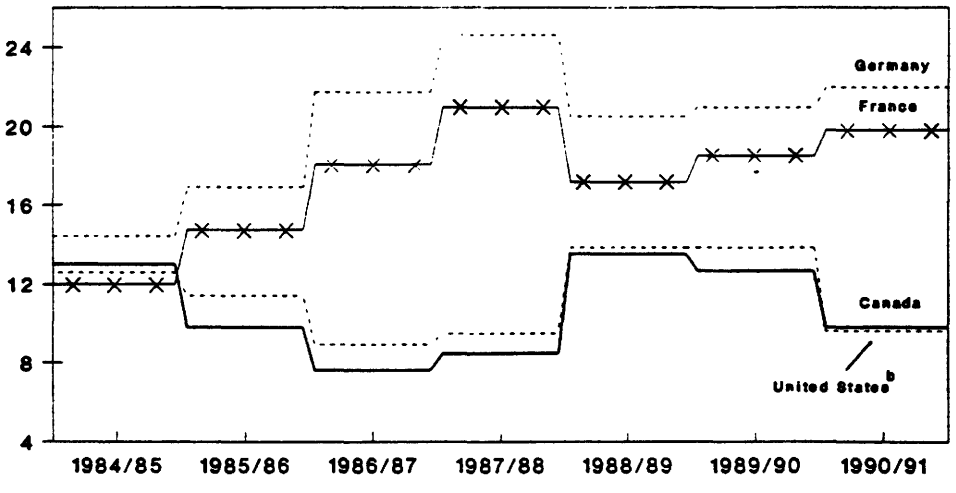
[10] Between 1986 and 1990, the share of agricultural products in total EC exports fluctuated between 8.4 and 8.7 per cent (8.5 per cent in 1990). The declining share of farm products among EC external imports may be attributed partly to adverse price trends, for example, for coffee and cocoa (Table AV.2).

Chart V.1
World exports of wheat and wheat flour, 1980-92
Market shares (per cent)



• Including estimates and forecasts.
Source: International Wheat Council.

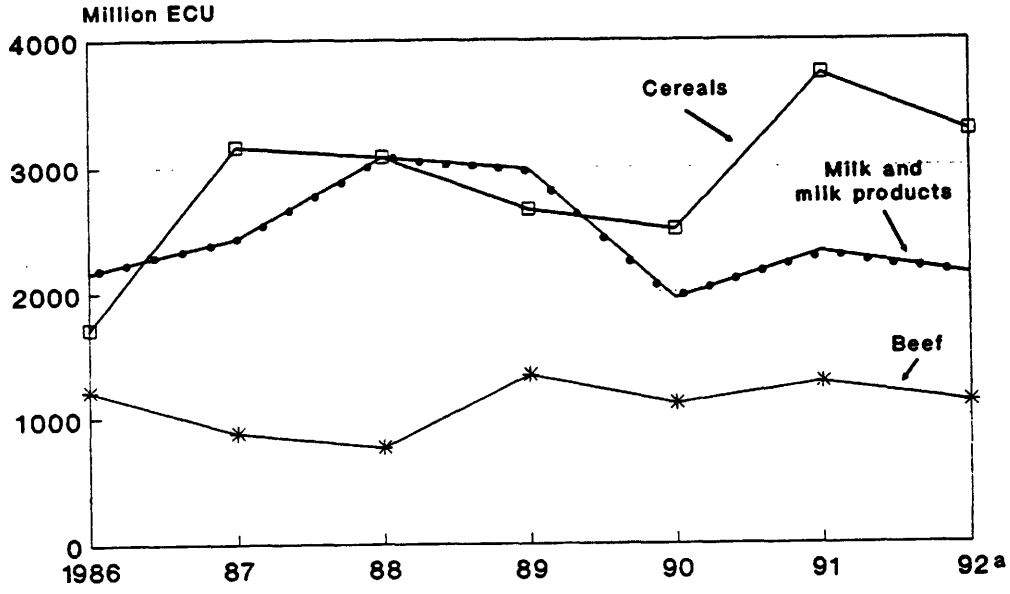
Chart V.2
Wheat prices in France, Germany, Canada and the United States, 1984/85 - 1990/91[a]
US$ per 100kg



a Weighted average prices received by farmers for all types and all sales.
b Excluding deficiency payments.

Source: Annual ECE/FAO Price Reviews.

Chart V.3
Export refunds for cereals, milk and milk products and beef, 1986-92



a Budget appropriations.
Source: EC Commission (1992f).

Agriculture in trade agreements

269. The preferential trade agreements concluded by the Community do not cover agricultural products fully (or, in some cases, at all). As a result, their share in trade with preferential regions with similar conditions is far lower than in intra-EC trade. For example, while temperate-zone agricultural products represented 8.8 per cent of total intra-Community shipments in 1990, they accounted for no more than 1.2 per cent of the EC imports from, and 3.1 per cent of its exports to, the EFTA area (excluding fish).[11]

270. Under the EEA Agreement (Section II.5(ii)), the signatories undertake "to continue their efforts" towards progressive trade liberalization and regularly to review trade conditions in the sector.[12] The reviews may serve as a basis for decisions on the abolition of trade barriers "within

[11] In 1990, intra-EC deliveries of agricultural products worth ECU 105.4 billion compared with imports worth ECU 1.25 billion from EFTA countries (SITC, Rev.2, Section 0 with the exception of 03 (fish) and 07 (coffee, cocoa, tea, etc.)).

[12] The fisheries sector is included in principle (subject to product-specific exemptions and phasing-in periods).

the framework of ... (the existing) agricultural policies and taking into account the results of the Uruguay Round". The parties remain free to operate compensation mechanisms on processed agricultural products with a view to offsetting higher input prices resulting from farm policy measures. In parallel with the EEA Agreement, existing bilateral arrangements between the EC and individual EFTA countries on certain agricultural products (cheese, pigmeat, beef and horticultural products) were extended.

271. Under the Europe Agreements with the then Czech and Slovak Federal Republic, Hungary and Poland, the EC and member States are required to eliminate all specific quantitative restrictions and to gradually reduce tariffs or levies on a specified range of farm products, subject to quantitative ceilings (Section II.5(iii)).

Initiatives with an environmental background

272. A number of initiatives by the Community have been aimed at promoting more environmentally-friendly production methods. Under the current EC framework, provided by Articles 21 to 24 of Council Regulation No. 2328/91, premiums of up to ECU 150 per hectare may be granted with a view to offsetting the cost or revenue effects resulting from environmental constraints. While implementation is not obligatory for the member States, France (16 programmes), Italy (nine programmes), Germany (four), Ireland (two), the United Kingdom (two), the Netherlands, Denmark and Luxembourg operated such programmes under the framework in 1990 and 1991. In Germany, over 2.5 million hectares, more than one-fifth of the country's utilized agricultural area, are covered. The other member States combined account for an additional 1.7 million hectares.[13]

273. A new Community aid scheme has recently been set up with a view to promoting less polluting farming practices, more extensive farm production and the protection of the countryside. The relevant Council Regulation (No. 2078/92) circumscribes agricultural activities deemed to have positive external effects and mandates member States to implement multi-annual zonal programmes for this purpose.[14] The new programme covers the whole EC

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[13] A recent Council Directive (No. 91/676) requires member States to designate vulnerable areas where pollution levels (nitrogen) exceed a specified EC threshold level, and to take remedial action. Compliance with the Community threshold must be ensured within four years after notification.

[14] Aid is to be granted, as an example, to farmers who undertake (i) to reduce substantially the use of fertilizers; (ii) to change to more extensive forms of crop, (iii) to reduce the proportion of sheep and cattle per forage area; (iv) to use other farming practices compatible with the protection of the environment; (v) to ensure the upkeep of abandoned farmland; (vi) to set aside land for at least 20 years with a view to using it for environment-related purposes; and (vii) to manage land for public access or
(Footnote Continued)

territory, unlike the present Community framework which is offered only on environmentally-sensitive areas.

274. Additional aid schemes with an environmental background have been implemented in recent years at the national and sub-national levels. According to the Commission, in approving such schemes it has taken into account whether existing EC or national legislation already imposed restrictions on the activities concerned. Also, in view of the Article 130r:2 of the EEC Treaty ("polluter-should-pay principle"), the Commission has reserved the right to re-examine programmes without a sunset provision.[15]

Trade disputes

275. Agricultural issues have generated a variety of trade disputes involving the European Communities (Chapter VI). Some major disputes - for example, that on oilseeds - revolve around the GATT conformity of established support mechanisms; others result from the interpretation and application of sanitary and phytosanitary rules.[16] Certain sanitary problems have also impinged on intra-EC trade.[17]

(i) Dairy products

276. Dairying is one of the most highly protected agricultural sectors in the Communities. It accounts for about one-fifth of current EC farm

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(Footnote Continued)

leisure activities. Maximum annual premiums for farmers giving one or more of such undertakings, which are not further specified in the Regulation, vary between ECU 100 for each livestock unit of an endangered breed reared and ECU 1,000 per hectare of citrus fruit set aside (ECU 250 for undertakings concerning annual crops not qualifying for per hectare premiums under a common market organization). The Community contributes, depending on the region, between 50 and 75 per cent to these premiums. Draft general frameworks are to be communicated to the Commission by 30 July 1993. The member States are not, in principle, prevented from operating additional aid programmes.

[15] EC Commission (1992f).
The Commission has also emphasized, in the context of this TPRM report, that all EC programmes are fully compatible with Article 130r:2 of the EEC Treaty. The Article stipulates that Community action relating to the environment "shall be based on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay".

[16] In mid-1992, France made all food imports from Japan subject to controls for radio-activity. The move is apparently intended to match the control requirements imposed by Japan in the aftermath of the Tchernobyl nuclear accident and maintained since (the controls by Japan are applied on an m.f.n. basis). The French Ministry of Industry and Commerce was quoted as saying that the checks were of a purely technical and preventive nature, based on the same threshold levels as those used by Japan (according to Agra Europe, 7 August 1992).

[17] For example, in late 1991, France ordered its customs services to "check systematically" all meat imports into France (including intra-EC deliveries). According to the French Budget Minister, M. Charasse, the measures were necessary since meat deliveries had been found treated with hormones (International Herald Tribune, 20 September 1991).

spending, and the PSE is significantly above the average (69 per cent as against 49 per cent for all "PSE products" in 1991).[18]

277. Since 1984, milk production has been subject to member State- and farm-specific quotas. The sector is heavily dependent on small farms: overall, in 1989, one-half of dairy holdings in the Communities had less than ten cows. This average, however, conceals substantial variations among member States, from under 8 per cent in the United Kingdom to over 90 per cent in Portugal. France is the Community's largest milk producer, representing slightly less than one-quarter of total deliveries, followed by Germany (22 per cent) and the United Kingdom (15 per cent). The EC is a major exporter of dairy products; in 1991, its shares in world exports of butter, skimmed milk powder, whole milk powder and cheese varied between 30 and over 60 per cent.[19]

278. The recent farm reform package provides for a cut of 2 per cent in overall quotas over marketing years 1993/4 and 1994/5. The guaranteed quantities for Spain and Italy are to be adjusted.[20] Butter prices will be reduced by 5 per cent in the period. Overall, the reform package is thus unlikely to have a profound impact on EC milk production and the Communities' rôle in world trade. OECD estimates prior to the passage of the package expected EC production to fall from some 109 million tonnes in 1990 to 105.6 million tonnes in 1992 and the following years.

279. The EC has not, to date, taken a final decision on the approval of yield-enhancing hormones in milk production. EC approval procedures for Bovine Somatotrophin (BST) are suspended until December 1993 in order to allow for an assessment of the hormone's impact on health, milk quality and the socio-economic structures of farming.[21] (BST, a biotechnology-based hormone, is reputed to boost a cow's milk output by up to one-quarter). A recent report by the Commission indicates that the hormone responds well to

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[18] EC expenditure per dairy cow amounted to some US$330 and total support, in PSE terms, to US$1,340.

[19] In quantity terms (source: GATT, 1992e). Between 1990 and 1991, the EC share in world butter trade jumped from 15 to 35 per cent, mainly reflecting increased sales to the CIS Republics. EC butter production fell from 1.605 million tonnes in 1990 to 1.515 million tonnes in 1991; milk deliveries shrank by 1.9 per cent over the same period.

[20] No substantial changes are envisaged to facilitate intra-Community quota transfers in the light of the Internal Market objectives ("an area without internal frontiers in which the free movement of goods, persons and capital is ensured").
Farmers who are changing holdings will, in future, be able to transfer all or part of their reference quantity.

[21] The Community moratorium concerning the admission of BST was originally due to expire on 31 December 1991. It was prolonged by Council Regulation No. 92/98 for an additional two years. The Regulation requires the Commission to present the European Parliament and the Council a situation report and proposals for future arrangements by 1 July 1993.

approval requirements for veterinary medicines (safety, quality and efficacy) while further clarification would be needed to assess its compatibility with the desired evolution of the CAP. Given the hostility of consumer organizations, the Commission felt that the introduction of BST could cause a major drop in milk consumption.

(ii) Meat

280. The EC was the world's largest exporter of beef and pigmeat in 1991. Beef exports reached 1.244 million tonnes, some 460,000 tonnes more than in 1990, while exports of pigmeat were 595,000 tonnes, a fall of 10 per cent from 1990.[22] The OECD Secretariat has attributed the increase in EC beef exports mainly to slackening domestic demand in the wake of "mad cow disease" (BSE) in the United Kingdom and general consumer concern about the illegal use of hormones as growth promoters;[23] a genuine shift of consumer preferences towards lower-priced competing meats (poultry) and uncertainties resulting from the recession may have also played a rôle. Export estimates for 1992 and forecasts for 1993 are, however, significantly below the 1991 results, mirroring in particular a sharp drop in import demand in the CIS Republics.

281. Despite a recent decline in EC production (Chart V.4), EC stocks of beef and veal are estimated to have reached 1 million tonnes in 1992.[24] France, Germany, Italy and the United Kingdom are the largest member State producers in the sector.

282. Under the Europe Agreements, Poland, Hungary, and the Czech and Slovak Republics are entitled to export to the EC, at reduced levies, bovine and certain other meat categories. The relevant quotas ceilings are to be expanded over five years (Section II.5(iii)); meat exports of the three countries to the CIS Republics, if financed by the EC, are to be deducted from the agreed quantities. In addition, the Community has opened a reduced-levy quota of 16,500 head of cattle from the above countries. These commitments add to various other tariff quotas the EC has undertaken to operate within its variable levy system in the sector.[25]

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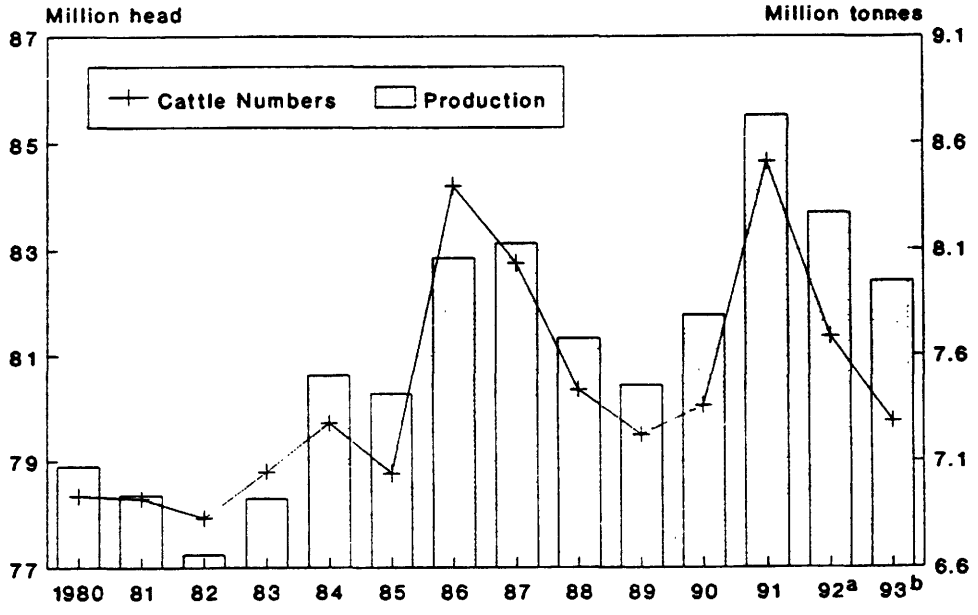
[22] GATT (1993a).

[23] OECD (1992a).

[24] GATT (1993a).

[25] Tariff quotas are granted, for example, for 53,000 tonnes of frozen beef ("GATT quota"), 34,300 tonnes of high-quality beef ("Hilton quota"), and 49,000 tonnes of beef and veal from ACP countries. In total, the EC imported some 455,000 tonnes of beef and veal in 1992 (see GATT, 1993a).

Chart V.4
Cattle numbers and beef production, 1980-93



a Estimate.
b Forecast.

Source: GATT (1993a).

283. Health issues continue to affect trade relations. In 1991, the EC refused to admit offal from Argentina which was considered not adequately tested for residues. Argentina, in turn, banned cattle, sheep and goat deliveries from the United Kingdom with a view to avoiding the spread of BSE.[26] Shipments of beef and pigmeat from the United States halted after the Commission had decided, in 1990, to de-list all US pig and beef plants, under the Third Country Meat Directive, for non-compliance with EC health legislation.[27] This dispute appears to have been resolved. In contrast, the trans-Atlantic dispute over the EC Hormone Directive has lingered on.[28]

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[26] According to OECD (1992a).
Exports of pigs from the Netherlands and the United Kingdom suffered as a result of "blue ear disease" (1991).

[27] The parties agreed that both the Community's Third Country Meat Directive and corresponding U.S. requirements provided basically equivalent safeguards. A bilateral agreement, signed in October 1992, specifies areas of common interpretation, necessary modifications in existing schemes and procedures to be used for solving open issues.

[28] GATT (1991a), page 171, and Section VI.3. Since January 1989, the EC has maintained a complete ban on hormonal growth promoters which also extends to third country deliveries. The United States, considering the ban as scientifically unfounded and, thus, amounting to an unjustifiable trade barrier, has imposed retaliatory tariffs of 100 per cent which, although reduced in scope, still apply. While the EC has adopted a list of counter-retaliations, it has not taken action.

284. While the EEA Agreement provides, in principle, for the extension of the Community's body of sanitary and phytosanitary legislation throughout the EFTA area, the EFTA countries are not obliged to harmonize their legislation with regard to third country imports.

285. The farm reform package includes a 15 per cent reduction in the intervention price for beef, to be phased in over three years starting in July 1993. The economic impact on the sector may be mitigated to the extent that the agreed cuts in cereal prices (see below) lead to lower feed costs. Total intervention purchases of beef are[29] to be reduced from 750,000 tonnes in 1993 to 350,000 tonnes in 1997. Producer premiums continue[30] to be related to farm and herd size based, however, on historical yields. The maximum density of livestock per hectare of forage area is due to be scaled down between 1993 and 1996.

286. The EC is a net importer of sheepmeat (260,000 tonnes in 1991 and 1992). Self-sufficiency has increased from 79 per cent in 1986 to some 83 per cent in 1991. Voluntary restraint arrangements exist with Australia and New Zealand, the major world exporters, as well as with Argentina, Bulgaria[31], the former Czech and Slovak Federal Republic, Hungary, Poland and Uruguay. Shipments from these countries are exempt from duties, within the agreed quantities. The Agreement with New Zealand, covering an export volume of 205,000 tonnes per year, was due to expire at year-end 1992; it has been extended for one year pending the conclusion and implementation of the Uruguay Round.

287. In the sheepmeat sector, reforms aim to restrict premiums to a producer's reference flock (limited to 500 or, in disadvantaged areas, 1000 animals per farm). The transfer of premium rights between producers and regions is subject to limitations.

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[29] If market prices in a member State fall below 60 per cent of the intervention price, purchases are not counted against these maximum quantities (safety net). Intervention will be restricted to good quality meat.

[30] For example, a special beef premium has been set at ECU 90, to be paid twice in an animal's lifetime, and a suckler cow premium at ECU 70, ECU 95 and ECU 120 for the years 1993, 1994 and 1995, respectively. The premiums are higher for small and extensive holdings, with a view to supporting farmers who cannot be expected to profit from decreasing cereal prices.
Total payments are subject to regional ceilings (the number of premiums paid in one of the years 1990 - 1992); if exceeded, the number of animals eligible per producer is reduced proportionately.

[31] In addition, the EC concluded import arrangements with Poland, Hungary and Romania during the Tokyo Round, providing limited exemptions from the EC tariff/levy-system for imports of live bovine animals for slaughter and beef for processing.

(iii) Cereals

288. Favourable weather conditions in 1991 boosted total EC cereal production by some 6 per cent over 1990; durum wheat production rose by 32 per cent. Maximum Guaranteed Quantities (MGQs) for cereals and oilseeds were exceeded and triggered the imposition of co-responsibility levies.[32] A deterioration of world market conditions in the same period, despite falling supplies from other major producer regions, was attributed by the Commission mainly to conditions in eastern Europe, where excess quantities in certain markets coincided with severe solvency problems elsewhere.[33] In mid-1992, EC intervention stocks reached some 27 million tonnes, their highest level ever.

289. France is by far the Community's largest cereals producer, with a share of more than one-third of EC output. Forty-five per cent of French production of 60 million tonnes in 1991 was exported, 25 per cent to other member States and the remainder outside the Community. While a volume of 60 million tonnes, valued at world market prices, would have sold at about FF 38.4 billion (ECU 5.5 billion), actual revenue is estimated to have reached some FF 63 billion (ECU 9 billion). Restitutions paid on France's third-country exports amounted to FF 10.8 billion, which is about 175 per cent of the value of these shipments at world market prices, while price guarantees on domestic and intra-EC deliveries contributed some FF 14 billion.[34]

290. A surplus of cereal feed in the EC is combined with entry of cheaper substitutes, such as manioc, corn-gluten feed, molasses and processing revenues, under zero-bound tariffs. Reflecting these market conditions, the share of cereals in animal feed declined from 42 per cent in 1980 to some 30 per cent in 1989 and 1990. In this connection, the EC has concluded several bilateral arrangements with suppliers of cereal substitutes; for details see Table AV.3.

291. Price cuts for cereals agreed in the recent farm reform package may reduce the EC export surplus and make cereal feeds more attractive. Simulations by the Commission point to an increase in cereal demand for feeding purposes in the order of 8 to 12 million tonnes per year. However, these estimates are subject to considerable uncertainties, for example with

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[32]For cereals, the MGQ is currently set at 160 million tonnes.

[33]EC Commission (1992f).

[34]According to Tribune de l'Expansion, 15 October 1992. World market prices themselves are artificially depressed by subsidized exports, not only from the EC but also from other sources, including the United States and Canada (GATT, 1992a and 1992b).

regard to future price developments of cereal substitutes and of EC cereals not qualifying under the new intervention rules, as well as international market developments.

292. The reform package provides for price cuts of 29 per cent over three years. Income compensatory payments are contingent on set-aside of 15 per cent of arable land on a rotational basis (the same field no more than once in six years), with an exemption for small holdings producing less than 92 tonnes of cereals per year (equivalent on average to some 20 hectares). Production in large-scale production areas (e.g. Normandy, East Anglia, Schleswig-Holstein) should therefore be more heavily affected than in areas with a basis of small-scale farming.[35]

293. While the immediate set-aside effect on the area under cultivation may remain well below 15 per cent, the reform package could weaken the trend towards higher farm productivity. Medium-sized and larger farms, which are subject to set-aside, tend to be more productive than smaller entities. The rotational application of set-aside, though contributing to improving the productivity of the area actually used, should also help to avoid only low-yield land being taken out of production. (Pending the results of an EC-wide study by the Commission, the Council has yet to decide (by a qualified majority) on a higher set-aside ratio for farmers opting for non-rotational application.) Moreover, parallel measures[36] are designed to encourage permanent set-aside for environmental reasons.

294. Income compensation is granted both with regard to the effects of the the price cuts[37] and the set-side obligation (based on historic average yields). In the former case, the payments are due to increase progressively from ECU 25 per tonne in 1993/94 to ECU 45 from 1995/96 onwards. A premium of ECU 45 will also be granted, from 1993/94, to compensate for set-aside. The size of this premium suggests that the income effects resulting from the decline in production are not fully offset (with a possible impact on the profitability of cereal farming). However, the alternative uses foreseen for set-aside land may provide new sources of farm income (see below).

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[35]It has been estimated, for example, that in the German Land of Schleswig-Holstein set-aside would be in the order of 14 per cent of the agricultural area as against 5 per cent in Baden-Württemberg and Bavaria (Koester and Cramon-Taubadel, 1992).

[36]The current five-year set-aside programme (see GATT, 1991a) will no longer be offered and no co-responsibility levies will be raised during the period 1992/93 and 1995/96.

[37]The payments are on a per hectare basis, taking into account previous yields in a region (1986/87-1990/91). The eligible areas are defined by member States, based on the average areas sown to cereals, oilseeds and protein plants between 1989 and 1991 plus the land set aside under a publicly funded scheme during that period. Member States are free to specify the reference areas either on a regional basis or producer-specific.

295. The Council Directive establishing the new support mechanism (No. 1765/92) provides for the possibility of changing the compensatory payments for the price cuts and for set-aside as well as the set-aside ratio itself "in the light of developments in production, productivity and the markets". Such a decision would be taken by a qualified majority of the Council.

296. The EC Court of Auditors is reported recently to have expressed serious doubts about whether set-aside and other limits on farm inputs (premiums related to herd size etc.) could be controlled effectively. The Court is quoted as stating that techniques such as aerial surveillance could not compensate for the lack of a reliable land register and "there can be no effective safeguards against overclaims, double payments and similar irregularities".[38]

297. Set-aside land may be used for growing a variety of non-food crops, including short rotation forest trees as well as potatoes, certain oilseeds and cereals not destined for human or animal consumption, which may be used for processing into ethanol and other fuels. Views on the possible production effects differ - for example, fuel substitutes may remain uneconomic in the absence of further subsidies[39] - and uncertainties persist with regard to the use of production residues such as oilcake. The Commission Regulation providing for the production alternatives (No. 2296/92), acknowledges the need for a further regulation to establish details of valuation of by-products, the methods of control and transfer of set-aside obligations.

298. Some member States are reported to have taken measures to curb intensive forms of farming. For example, Belgium has imposed new limits on the use of organic and chemical fertilizers,[40] and in 1992, the German Land of Baden-Württemberg enacted a programme ("MEKA") designed to promote the use of more extensive and environmentally friendly production methods and the preservation of rare species of cows and horses. The incentives granted under this programme may reach a maximum of DM 550 (ECU 270) per hectare of farm land. Support under MEKA, which is open-ended and non-degressive, is additional to other subsidies offered to German farmers

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[38] The report had been requested by the EC Council with a view to assessing the Commission proposals. Core findings are reproduced in The Times, 30 May 1992, Sunday Times, 24 May 1992, and Europe, 9/10 June 1992.

[39] Agra Europe, 24 July 1992.

[40] OECD (1992a).

through national or Community mechanisms, including the 1992 "socio-structural income compensation" (see above).[41]

(iv) Oilseeds

299. Contrary to most other mainstays of EC agriculture, aid for the oilseeds sector relies almost exclusively on financial assistance. Border protection is negligible; the EC has zero tariffs, bound in GATT, on almost all categories of oilseeds and oilcakes (Table AIV.1).

300. Between 1985 and 1990, EC producers increased the area destined for oilseeds by three-fifths. In 1990, their output of rapeseed, sunflower seed and soybeans totalled 12 million tonnes, up from 6.8 million tonnes in 1985. France (38 per cent of EC production) and Italy (18 per cent) ranked first among the member States in 1990, posting increases of more than 130 per cent and 200 per cent, respectively, over their output in 1985. The Communities self-sufficiency in vegetable oils and fats increased from 56 per cent in 1985 to 65 per cent in 1989.[42]

301. Under the "traditional" EC oilseeds régime, subsidies were channelled to processors to offset the price disadvantage of domestic inputs; production in excess of MGQs for the sector led to price reductions during the same marketing year. The subsidy mechanism was challenged by the United States as contravening the national treatment obligation under Article III:4 of the GATT and impairing the benefits accruing from zero-bound tariffs. A GATT Panel, established in 1988, upheld the U.S. complaint (Section VI.1(i)). In 1991, the EC adopted a transitional system of direct payments to producers, related to the land sown, within the limits of Maximum Guaranteed Areas.[43] Despite these changes, the

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[41] MEKA premiums are granted for (i) using green land in sensitive areas with a view to preventing erosion, protecting groundwater or preserving the traditional landscape; (ii) maintaining and using green land under unfavourable topographical conditions or for growing region-specific, endangered species of cows and horses; (iii) not using chemical-synthetical pesticides and fertilizers for crop production; (iv) not using growth-accelerators for wheat and rye; (v) maintaining a distance of at least 17 cm between plant lines in cereal production; (vi) replacing feed maize with other feed crops.
The premiums under (iv) and (vi) each amount to DM 200 (ECU 98) per hectare; maintaining the minimum distance set under (v) qualifies for subsidies of DM 120 per hectare.
The continuation of traditional production methods in protected moist or dry areas (Feuchtbiotop/Trockenbiotop) is supported, respectively, with DM 300 and 200 per hectare.

[42] EC Commission (1992f).

[43] The payments are specified on a regional basis, depending on yields per hectare in 1986-90 and linked to average world prices for rape, sunflower and soya. The average premium was set by the Council at ECU 359 per hectare for 1993/94. As for cereals, payments are contingent on set-aside of 15 per cent of eligible arable land from 1993/94 onwards.

reconvened panel found that the new system had retained essential features of the former régime and, thus, continued to impair the tariff bindings.[44]

302. The Commission and the U.S. authorities agreed, in late November 1992, on a solution to the oilseeds dispute.[45] At the time of completion of this report, the draft agreement was still before the EC Council for approval. Discussions with interested contracting parties were under way.

(v) Potatoes

303. The potato sector contributes some 2½ per cent to EC final agricultural output. Currently, there is no common market organization for the sector; support is limited to compensatory aid for starch producers, aimed at offsetting the price gap with regard to alternative inputs, in particular maize. Total annual payments have remained below ECU 180 million.

304. As part of the completion of the Internal Market, the Commission has proposed the introduction of a market organization for potatoes.[46] The Council has not yet decided on the draft Regulation.

305. Observers have noted that the most tangible import barriers currently result from phytosanitary requirements;[47] these would not be affected by the new régime.

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[44]The panel noted that the new mechanism, too, involved a systematic offsetting of the effects of import price changes on production levels (GATT document, DS28/R, 31 March 1992).

[45]Among the main elements of the draft agreement are prescribed limits on the area planted to oilseeds in the Community. As from 1995/96, it must not exceed the average achieved between 1989 and 1991 (5,128,000 hectares) less 10 per cent or, whenever higher, the set aside ratio applied under the new cereals régime. Otherwise, penalties would be applied. In addition, the EC undertook to take corrective action should the output of by-products resulting from the cultivation of oilseeds for industrial purposes exceed 1 million tonnes of soyameal equivalents (there are no restrictions on the area used for the production of oilseeds for industrial purposes). (Inside U.S. Trade - Special Report, 4 December 1992, and European Report, 5 December 1992.)

[46]One objective of the creation of such an organization could be to prevent grain farmers from evading price cuts and set-aside obligations through switching to potatoes, thus depressing the market. The Commission has noted, in the context of this TPRM report, that its reflections were motivated by the need to replace current EC legislation, which allows member States to operate quantitative import restrictions on potatoes, by a common régime compatible with the Internal Market. In late 1992, Germany, Denmark, France, Greece and Ireland maintained import quotas under Regulation No. 288/82 on potatoes and related products. External protection at the EC level is currently based on unbound ad valorem duties, varying between 9 and 21 per cent according to use or season.

[47]Agra Europe, 8 May 1992.

(vi) Sugar

306. The basic regulatory framework governing EC sugar production has remained unchanged since the introduction of the first quota scheme in the late 1960s. Its operation is based on the tenet of "fiscal neutrality", implying that the funds used for the disposal of EC production surpluses on world markets are sourced via producer levies imposed under a multi-layered system of delivery quotas, rather than the EC budget. Community producers are able to pass these costs on to consumers, since the EC market is shielded from external competition through a variable levy mechanism.[48] Production quotas, which are not tradable, are largely concentrated on a few enterprises; some 40 per cent is in the hands of four companies, Ferruzzi, Tate & Lyle, British Sugar, and Südzucker.[49] Each national market within the EC is dominated by one or two companies.

307. The EC Court of Auditors has criticized the sugar support system as an "extremely expensive mechanism ... far from the principle of economy". Internal prices are about twice the world market level. The system was categorized as an instrument designed for satisfying industrial and national interests, rather than as a means for guiding production. According to the Court, various adjustments and extensions over time had resulted in the preservation and maintenance of vested interests, whether production was efficient or not.[50] Surplus disposal has been made through subsidized ("producer financed") and non-subsidized exports: the EC is an exporting member of the International Sugar Agreement (Chart V.4).[51]

308. While intervention prices in ECU have not been changed since price cuts of 2 and 0.17 per cent in 1989/90 and 1990/91, respectively, national price levels have increased slightly (0.3 per cent in 1991/92). The Commission has acknowledged the need to review and, possibly, adjust the

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[48] Imports, under quota, from ACP countries (some 1.3 million tonnes) and India are exempted from the variable levy.

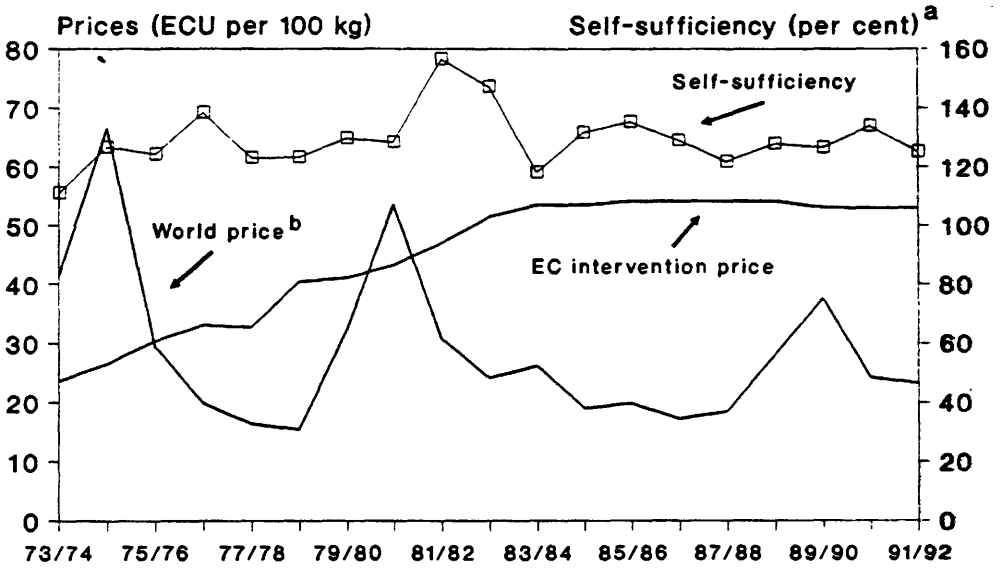
[49] Noble (1990).

[50] The Commission, endorsed by the Council, responded that it failed to see how the present system could depart from the principle of economy, since the existing self-financing arrangements ensured that producers bore the full cost of surplus disposal (EC Court of Auditors, 1991).

[51] Chart V.4 needs to be interpreted with care. As noted by the Court of Auditors, given the residual nature of the world market for many producers, price movements are highly volatile and bear very little relationship to production costs. Only few exporters, such as Australia, deliberately produce for the world market. The Court estimated that, in 1988/89, the EC intervention price of ECU 530 per tonne of white sugar compared with production costs of the most efficient international suppliers of between ECU 185 and 215 per tonne.

current framework before the end of the 1992/93 marketing year.[52] At the end of 1992, the Commission proposed a one-year extension of the current régime.

Chart V.5
Sugar prices and self-sufficiency, 1973/74-1991/92



a Ratio between EC production and total internal use (excluding ACP supplies under the Sugar Protocol).
b Paris stock exchange (white sugar, loaded fob European ports).

Source: GATT Secretariat based on EC Commission (1992f).

(vii) Bananas

309. Agreement on a common banana régime has proved one of the most difficult and contentious sector-related issues in the Internal Market context, both among the member States and with affected trading partners.

310. Total EC banana consumption amounted to 3.68 million tonnes in 1991. Of this, 19 per cent was domestically sourced, 16 per cent came from ACP countries and 65 per cent from Latin American suppliers (Chart V.6). In six member States (France, Greece, Italy, Portugal, Spain and the United Kingdom), market access in the sector has traditionally been

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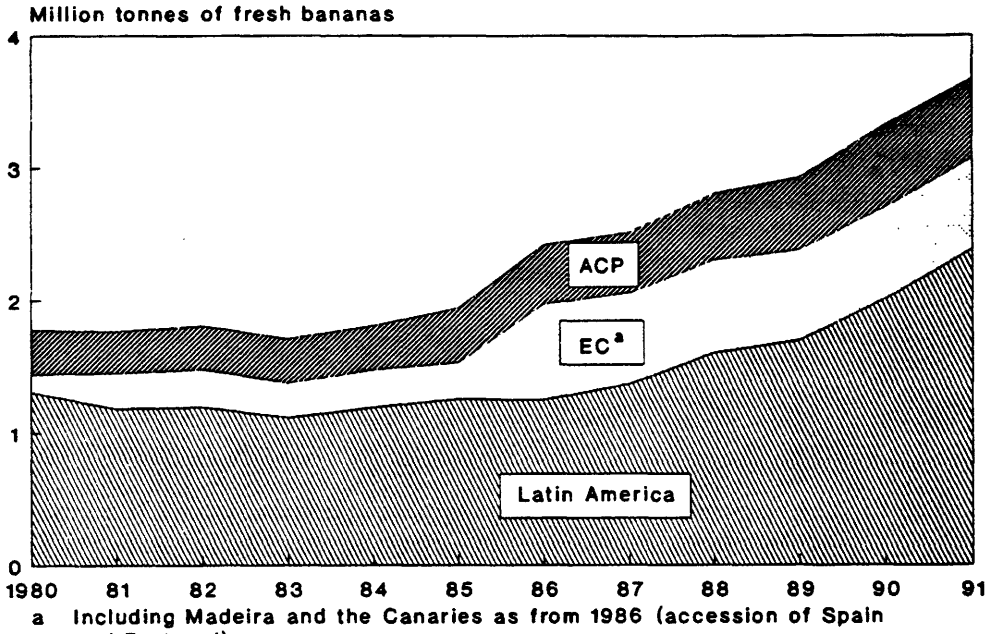
[52] EC Commission (1992f).
Press reports indicate that the Commission might seek to maintain as much of the current system as possible, including, for example, the national division of quotas. However, the forthcoming proposal is expected to allow some flexibility for quota transfers within member States and to provide for price cuts in view of developments in the cereals sector (Agra Europe, 24 July 1992).

determined by national quota régimes rather than by the Communities' GATT bound tariff of 20 per cent or, as in Germany, by a zero-tariff quota.[53]

Chart V.6
The EC banana market by main supplier regions, 1980-91



a Including Madeira and the Canaries as from 1986 (accession of Spain and Portugal).

Source: EC Commission / Eurostat.

311. France, Italy and the United Kingdom operated quantitative restrictions on "dollar-zone bananas" giving additional protection to preferential imports from overseas territories and traditional ACP suppliers.[54] In a Protocol to the Lomé Conventions, the EC assured the ACP countries of such preferential treatment and, under Lomé IV, of its continuation in the Internal Market context (Section II.5(iv)). Greece, Portugal and Spain also used quantitative restrictions to protect domestic producers, e.g. in Crete, Madeira and the Canary Islands. Apparently, a 20 per cent tariff preference over Latin American producers has not been sufficient to enable EC and ACP suppliers to gain a foothold on the

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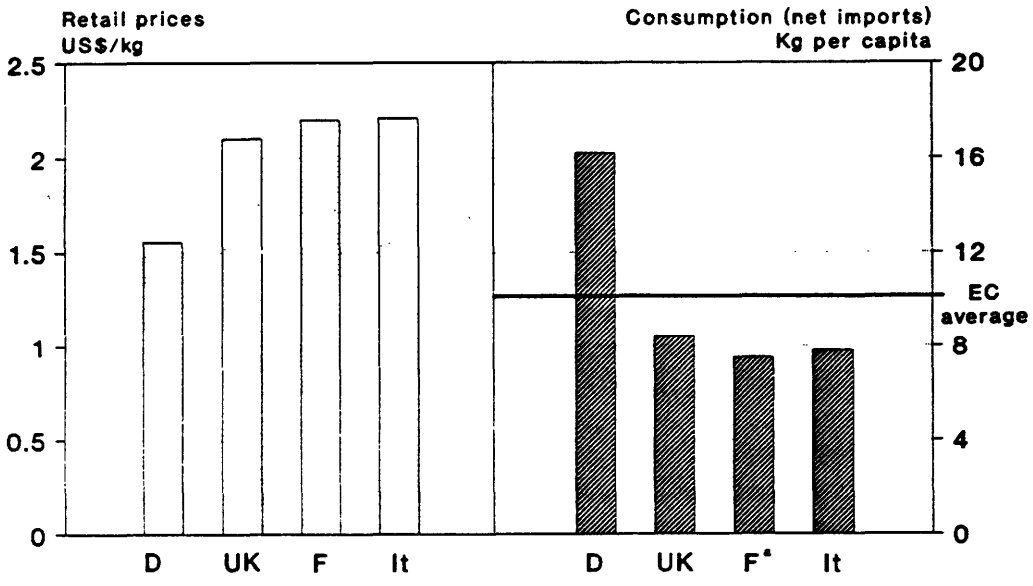
[53] Under a Protocol to the EEC Treaty, banana imports entered the German market duty-free under a tariff quota which was adjusted annually (982,000 tonnes in 1991).

[54] For more details see GATT (1991a).
Two-thirds of the French market have traditionally been reserved for shipments from the French Overseas Departments and Territories, one-third for ACP bananas. In early December 1992, France was authorized by the Commission to limit, until end-1992, its imports from Cameroon and Côte d'Ivoire to their traditional levels. The measures were based on the Lomé Convention, Article 177 and 179. European Report, 5 December 1992.

remaining non-restricted markets; their shipments to the Benelux countries, Denmark and Ireland have remained close to nil.

Chart V.7
Banana prices and consumption in Germany, the United Kingdom, France and Italy, 1991



a Including shipments from overseas territories.
Source: FAO, Committee on Commodity Problems (CCP:BA 92/7), September 1992.

312. An EC Council Regulation of 13 February 1993 aims to replace the variety of national arrangements "with a balanced and flexible common organization of the market for the banana sector" (Regulation No. 404/93). Main elements of the new import régime, scheduled to be implemented on 1 July 1993, are duty-free access for traditional ACP deliveries and a tariff quota of 2 million tonnes[55] on third-country shipments and non-traditional ACP supplies combined. In-quota imports from ACP sources are duty-free, while other external supplies are assessed a levy of ECU 100 per tonne. Additional shipments of ACP and third country bananas[56] are subject to levies of 750 and 850 ECU per tonne, respectively. The quota

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[55]This corresponds approximately to the Community's average annual banana imports from Latin American countries during the period 1989 to 1991. In 1991, the EC imported some 2.38 million tonnes from these countries.

[56]In 1991, the average import price of bananas reportedly amounted to 503 ECU per tonne in Germany and 424 ECU per tonne in the Benelux countries (European Report, 20 February 1993). The ad valorem equivalent of a levy of 850 ECU per tonne would thus have varied between 170 and 200 per cent.

volume is to be expanded should the Community's annual market forecast point to an increase in demand.[57] Import licences are allotted mainly among established importers of third country or non-traditional ACP bananas (66.5 per cent) and companies hitherto engaged in marketing Community production or traditional ACP supplies (30 per cent).[58]

313. While the new Regulation specifies the total volume of traditional ACP deliveries (857,700 tonnes per year) and its distribution among the individual supplying countries, no production quotas are set for EC bananas. However, a newly established income compensation scheme for Community producers is limited to a production total of 854,000 tonnes which, in turn, is broken down by main producer regions.[59] The scheme is designed to offset a fall in annual market revenues (average production income) below the level achieved in a reference period; supplementary aid will be offered in regions with particularly low levels of production income. Growers who undertake to cease production for at least 20 years qualify for a premium of ECU 1,000 per hectare.[60]

314. An emergency clause provides for "appropriate measures" in the event that, "by reason of imports or exports, the Community market ... experiences or is threatened with serious disturbance which may endanger the objectives set out in Article 39 of the Treaty" (i.e. the five basic objectives of the CAP). No reference is made in this context to relevant GATT provisions, in particular Article XIX.[61]

315. The Commission is empowered to implement emergency measures immediately. In order to amend or repeal them, the Council, which is

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[57]The relevant decision is to be taken by the Commission. The Council must be involved if so demanded by a qualified majority of member States meeting in a newly established Management Committee for Bananas. In that event, the Commission "may" defer application of its decision for up to one month. During that period, the Council may take a different decision by qualified majority.

[58]The remaining 3.5 per cent is made available to operators who started marketing third country or non-traditional ACP bananas from 1992.

[59]Under the new régime, producers' associations are mandated to control supply and regulate prices at the production stage and provide technical assistance to their members. Member States are required to grant temporary support to encourage the setting up and assist the administrative operation of such organizations.

[60]The premium may be adjusted in view of regional production conditions. The Commission may authorize member States not to grant the premium in regions where the disappearance of bananas would have negative consequences, for example on the environment.

[61]Article XIX makes an emergency action conditional on imports entering "in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competing products".

involved at the request of any member State, would need to achieve a qualified majority against the Commission.[62]

316. Pending implementation of the common régime, the Commission has authorized France and the United Kingdom, under Article 115 of the EEC Treaty, to exempt Latin American bananas from Community treatment until 30 June 1993.[63] Portugal and Spain are allowed to maintain restrictions under their Acts of Accession.[64]

317. As noted in Chapter VI, five Latin American contracting parties (Colombia, Costa Rica, Guatemala, Nicaragua, Venezuela) have taken various initiatives under the GATT, since June 1992, challenging certain member States' national banana policies and the forthcoming EC régime. In February, 1993, the GATT Council established a Panel to examine the current national import régimes.[65]

(viii) Tobacco

318. In 1991, EC production of leaf tobacco - mainly in less developed regions of Italy, Spain and Greece - totalled 430,540 tonnes, up from 395,000 in 1988.[66] The Maximum Guaranteed Quantity was exceeded by 12 per cent. The excess for the sector as a whole masks much larger overruns in individual categories. For example, the production of two oriental varieties (Badischer Geudertheimer and Forchheimer Havanna) exceeded the guaranteed quantities by more than twice (deliveries of 70,600 tonnes in 1990 compared with no more than 4,000 tonnes in 1986). The support level for these tobaccos, not much demanded in the EC, has apparently proved more attractive than the levies imposed on excess production.[67]

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[62]The same decision-making procedure has recently been introduced in the tobacco and fisheries sectors; a similar mechanism is also foreseen in the Commission proposal of June 1992 for changes to the main EC trade remedy regulations (Section IV.2(v)(g)). However, under this proposal, the Council is to be involved only if so requested by a Management Committee made up of member State representatives (qualified majority).

[63]Commission Decisions C(92) 3381 and C(92) 3382 of 28 December 1992.

[64]According to Agence Europe, 5 January 1993.

[65]GATT document C/M/261, 12 March 1993.

[66]The EC is a net importer of raw tobacco, with a self-sufficiency ratio of some 50 per cent overall, and a net exporter of manufactured products.

[67]The current EC support scheme is based on producer premiums, paid to processors. The premiums are specified for 34 varieties, but not for different quality grades. Intervention purchases are triggered if the EC market price falls more than 15 per cent below a prescribed target price. Production in excess of the stabilizer levels, fixed for the different varieties, triggers price and premium reductions. They are related to the production
(Footnote Continued)

319. Main export destinations were eastern Europe and the Middle East. With total EC exports of raw tobacco increasing by 50 per cent between 1988 and 1990, shipments of dark air-cured varieties grew by over 110 per cent. In 1990, total EC exports of raw tobacco reached 223,500 tonnes (including 70,900 tonnes of dark air-cured) as against imports of 463,200 tonnes. The import/export-ratio declined from 2.85 in 1988 to 2.07 in 1990.

320. Export refunds are granted, with considerable variations between varieties (from 0.2 to 0.44 ECU/kg).[68] Total EC expenditure (EAGGF guarantee) in the sector amounted to some ECU 1.3 billion in 1992. It coincided with an EC-internal debate about additional restrictions on sales promotion for tobacco products, possibly including a complete ban on any advertisements.

321. In the context of its farm reform package, the EC decided to overhaul the regulatory framework governing the sector (Council Regulation No. 2075/92). Tobacco production will be subject to a maximum global guarantee threshold of 350,000 tonnes (370,000 tonnes in 1993), which is 19 per cent (14 per cent) less than the 1991 harvest. Intervention and export refunds are to be abolished. Main elements of the new system, to be implemented with the 1993 harvest, are (i) a Community-mandated system of processing quotas which are allocated to individual processors based on their past performance (similar to the sugar régime); (ii) supply contracts, within the quota limits, between the tobacco growers and the processors; (iii) cultivation premiums[69] for the growers to be channelled through these contracts; and (iv) flanking measures with a view to re-orienting current production patterns.

(Footnote Continued)

overrun, up to a maximum price reduction of 23 per cent for the 1992 harvest (15 per cent in 1991).

According to the Commission, the aid levels set for Badischer Geudertheimer and Forchheimer Havanna reflected production cost and marketing conditions prevailing in their traditional production areas in Germany and Northern France. However, they were subsequently introduced into Italy and produced there at lower cost, with high yields but and a rather low average quality. The stabilizer mechanism proved insufficient to prevent a production boom.

[68] At present, export refunds are provided for the 1988 to 1991 harvests, varying from ECU 0.20 per kg of Greek and Spanish Virginia to ECU 0.44 per kg for some specialities of which, according to the Commission, only very small quantities are exported (e.g. Round tip, Scafati, Sumatra I). The Commission has noted that the refunds have been reduced considerably since 1990, in particular for varieties which did not correspond to market demand. Refunds for Hybrids of Geudertheimer and Forchheimer Havanna produced in Italy were scaled down from ECU 0.34 to ECU 0.21 per kg at present.

[69] The system is established for the period between the 1993 and the 1997 harvests. In order for tobacco deliveries to qualify for the premiums, they must (i) come from the production areas designated for the variety concerned; (ii) meet specified quality requirements; (iii) be brought from the producer to the processor under a cultivation contract.

The premiums for most varieties have been set at ECU 1.818 per kg, with certain exceptions (e.g. ECU 2.00 for fired-cured and ECU 2.273 for flue-cured tobaccos and ECU 3.00 for Basmas (per kg)).

322. The imposition of quantitative restrictions or charges equivalent to customs duties is prohibited under the new scheme, subject to a safeguard clause. It corresponds to the provisions foreseen in the banana sector under Council Regulation No. 404/93 (see above).

323. Under the Common Customs Tariff, unmanufactured tobaccos bear alternate tariffs (ad valorem tariffs apply within a range specified in terms of specific rates). All rates are GATT bound. In 1988, tariffs on unmanufactured tobacco averaged 13 per cent, as against 66 per cent on manufactured products (simple averages; see first TPRM report). Cigarettes are subject to m.f.n. tariffs of 90 per cent or a GSP rate of 60 per cent. National excise taxes differ significantly.

324. Market structures in tobacco manufacturing and distribution vary widely among member States.[70] Publicly owned monopolies in Italy, Portugal, Spain and France coexist with a privately-structured industry elsewhere in the EC. France controls tobacco prices for perceived social and economic policy reasons; the national price level is said to be some 30 per cent below the EC average. Several foreign-owned tobacco producers have, however, referred this practice to the highest national administrative court (Conseil d'Etat), alleging that the Act permitting it contravened an EEC Council Regulation of 1972. Based on this Regulation, as well as Articles 30 and 37 of the EEC Treaty (see Chapter IV) and previous decisions by the European Court of Justice, the Conseil d'Etat annulled the Ministerial Decree prohibiting the companies from increasing prices (28 February 1992). The ruling is considered as a landmark decision, expressly allowing an EEC Regulation, and not only EEC Treaty provisions, to take precedence over French national law.

(ix) Coffee, cocoa and tea

325. Coffee is by far the Communities' leading food import (at five-digit SITC), accounting for about 6 per cent of total imports of food products (ECU 2,422 million) in 1990.[71] Cocoa ranked seventh, with imports worth ECU 937 million.

326. Coffee, cocoa and tea are subject to excise taxes in several member States. Tax structures and rates differ considerably; all rates are specific (Table V.4). The products have been excluded from tax harmonization in the Internal Market context, as distinct from tobacco,

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[70] EC Commission (1991a).

[71] Reflecting international price developments, this is considerably less than in previous years (12 per cent in 1979); Table AV.2.

fuels and alcoholic beverages for which minimum rates have been set (with effect from 1 January 1993). However, tax evasion through purchases in other member States can no longer be limited through border controls.

327. Following recent price declines, the incidences of internal taxes have increased strongly. For example, the ad valorem equivalent of the German excise tax on coffee climbed from 70 per cent in 1988 to over 110 per cent in 1991. The incidence of the Danish tax on cocoa butter rose from one-third to over one-half over the same period. Revenues from the German coffee tax totalled DM 1,928 million in 1990; the tea tax yielded DM 61 million (ECU 945 million and ECU 30 million, respectively).[72] The taxes are on top of customs duties in the order of 13½ per cent (coffee), 2 per cent (tea), and 17 per cent (coffee and tea extracts).[73]

328. In January 1991, Italy nearly quadrupled its consumption taxes on coffee and coffee products. In the same move, taxes on cocoa beans and cocoa products were increased sevenfold. The tax incidences reached 100 per cent for raw coffee and between 40 and 60 per cent for other coffee products. Opinions on the effects of these taxes on consumption and, thus, on production and trade differ. The EC gave the view that the Italian tax increases had remained far below the rise in living costs since the last adjustment and that it was almost inconceivable that they could have affected coffee consumption.[74]

329. Current consumption patterns within the EC (Chart V.8) seem to suggest that price and tax differentials have no decisive impact. Other determinants, such as income effects or national consumer preferences, appear to prevail. However, this does not necessarily imply that prices (and price changes) do not matter at all.

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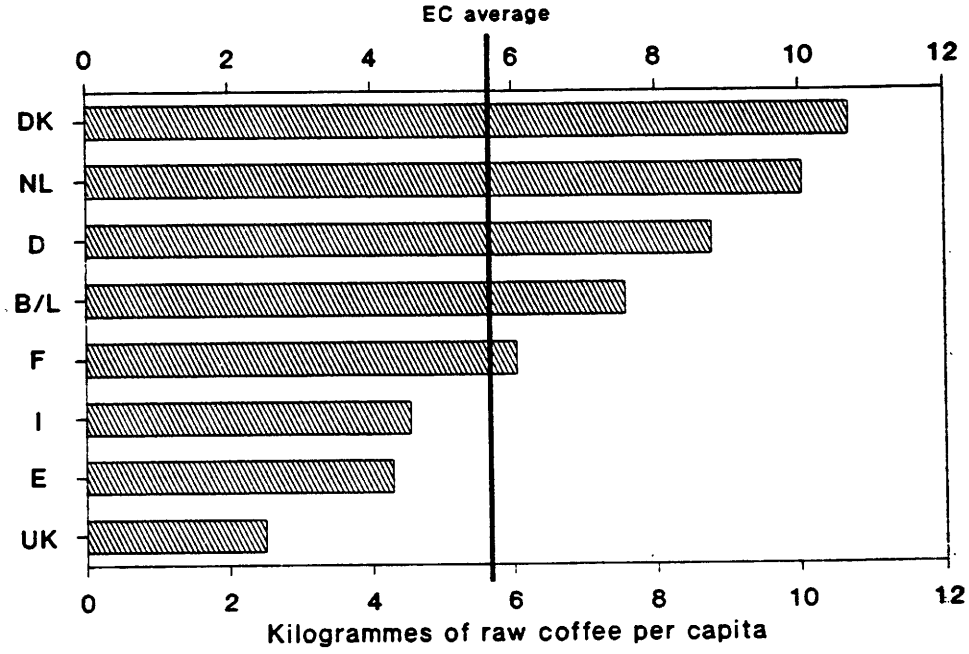
[72]In contrast, Germany has no consumption tax on wine, except for sparkling wine (revenue in 1990: DM 966 million (ECU 470 million)). East Germany is not included in these figures.

[73]Simple tariff averages (Table AIV.1).

[74]GATT document MTN.SB/17, 19 November 1991.

Chart V.8
Coffee consumption of selected member States, 1991



Source: F.O. Licht, International Coffee Yearbook, 1992.

330. Empirical studies for the OECD area and the EC as a whole have established a significant negative correlation between price movements and consumption of coffee, cocoa and tea. However, the demand response was found to be highly inelastic, with long-term elasticities[75] between -0.11 and -0.33 for raw coffee, and -0.33 and -0.44 for cocoa. Accordingly, on average for the EC, a change in coffee prices would cause an opposite change in the quantities demanded of up to one-third of the percentage price change. (The range of findings may be attributed to changes in income and lifestyle over time, the influence of substitute products, and differences in the econometric approaches.[76]) The median of the available estimates for tea is -0.07 per cent.

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[75]For raw coffee see Akiyama and Duncan (1982) and Behrman and Tinakorn-Ramangkura (1978). For cocoa see Adams and Behrmann (1978) and UNCTAD (1990). The OECD, in the context of its RUNS Model, uses elasticities of -0.33 per cent for coffee and -0.44 per cent for cocoa.

[76]OECD (1992c), and Behrman and Tinakorn-Ramangkura (1978).

(x) Fisheries

331. Article 38 of the EEC Treaty defines agriculture as including the products of fisheries and first-stage processing. A common market organization for fisheries was set up in 1970 (Council Regulation No. 2142/70) and access to and management of fishery resources are regulated at Community level. On the basis of Commission proposals, the "Fisheries Council" decides annually on Total Allowable Catches, the allocation among member States, and conditions of resource access. With a view to developing and extending fishing opportunities, the EC has concluded 23 bilateral fishing agreements to date (Table AV.4).

332. While the CAP and the CFP are committed to the same objectives and principles - i.e. market unification, Community preference, financial solidarity - there are significant differences in the range of trade policy instruments available. Almost all EC tariffs on fish are bound in GATT; m.f.n. rates on fresh products average some 11 per cent as compared with 20 per cent for prepared and preserved fish.[77] In a variety of cases, entry under bound tariffs is, under the bindings, subject to a supplier's compliance with Community reference prices or other limits and conditions "to be determined by the competent authorities". In certain areas, including tuna and bonito, disregard of the reference price may result in the imposition of countervailing charges. At the time of the initial report, Community tariff protection was supplemented by national quotas on canned tuna and sardines (France and Spain), and on cod and various other species (Spain);[78] canned tuna and sardines have recently been made subject to Community quotas (see below).

333. The GATT element in the Community's external fisheries régime helps explain, according to the Commission, "why the market organization has not gone so far off course as certain agricultural policies".[79] Contrary to the situation for many farm products, the EC is a net importer of fish. Its trade deficit in the sector has widened from ECU 2.66 billion (1.26 million tonnes) in 1985 to ECU 6.11 billion (2.33 million tonnes)[80] in 1991. Total EC catches in 1990 amounted to 6.62 million tonnes.

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[77]Tariffs are not consolidated on Atlantic halibut, dried; Atlantic halibut, salted and not dried; rock lobster (tails); and prepared or preserved anchovies.

[78]The Spanish quotas were covered, under EC law, by the Act of Accession.

[79]EC Commission (1991f).

[80]Spain and Denmark are the dominant EC fish producers, each accounting for close to 20 per cent of total Community catches, followed by France and the United Kingdom with about 12 per cent each.

334. Community support is currently provided for measures aimed at improving processing and marketing in the sector. EC funds of ECU 156.3 million have been earmarked under the framework programme for 1991-93;[81] total Community spending in the "structures sector" amounted to ECU 360 million in 1992.[82] These funds complement initiatives taken by member States. According to a recent Commission report, 45 new national aid régimes in the fisheries and aquaculture sectors were notified in 1991 (first 10 months). Of these, 18 were approved without objections. The Commission notes further six projects which member States had either failed to notify or which had been notified only after adoption.[83]

335. In late 1991, the Commission tabled its first extensive report on the Common Fisheries Policy, tracing policy developments since the introduction of a Community system for resource conservation and management in 1983 and suggesting guidelines for the period until 2003.[84] The report gives a bleak picture of the current situation, pointing to depletion of most EC commercial stocks, in particular of round and flat fish; large excess fleet capacities; deficiencies in mechanisms for resource management; and social and economic vulnerability of the sector. Following the report, and in view of overfishing and dwindling catches, the Council adopted in December 1992 a new framework regulation governing resource access and the management and monitoring of exploitation activities. Under Regulation No. 3760/92, the Council is required to set, until 1 January 1994, objectives and detailed rules for restructuring the sector "with a view to achieving a balance on a sustainable basis between resources and their exploitation".

336. A Commission report on policy monitoring in the sector focuses in particular on two problems considered to hamper effective action against overfishing: (i) insufficient means of control and (ii) the lack of dissuasive sanctions at Community level.[85] At present, member States have the sole competence for supervising fishing activities; the Commission is allowed only to check correct application. The report calls for increased inspection powers for EC agents; an integrated control policy, covering all aspects of the CFP; use of modern technologies (satellite

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[81] Excluding expenditure under international fisheries agreements.

[82] This includes measures concerning fishing fleets, processing and marketing measures, and special actions in remote and insular regions. Expenditure in the processing and marketing sector was about ECU 81 million in 1992.

[83] EC Commission (1992d).

[84] EC Commission (1991f).

[85] EC Commission (1992g).

surveillance, electronic data interchange, computer data bases); harmonization of sanctions within the Community, at a dissuasive level; and more effective surveillance of fishing activities in EC, third-country and international waters.[86] Recent infringement proceedings concerned Spain (failure to check landing declarations against the data recorded when the fish were sold; refusal to cooperate with Commission inspectors), France (failure to penalize breaches of the Community rules concerning logbooks; failure to observe deadlines for the notification of catches subject to TACs or quotas) and Denmark (national legislation contrary to the Community rules concerning logbooks).[87]

337. In late 1992, the EC revised its common market organization in the sector. Basic regulatory provisions - on marketing standards, intervention principles, State aid, market access, and competition - are contained in Council Regulation No. 3759/92.

338. Producers' associations play a central rôle in implementing Community internal measures. They are to buy and market their members' output, apply production and quality standards, and ensure the proper management of authorized catch quotas. Member States may require independent producers to respect the marketing and production rules of organizations considered to be representative. National assistance may be granted, subject to specified ceilings and time limits, to stimulate their formation and operation.

339. For most varieties of fish, the associations may fix minimum prices ("withdrawal prices") below which they do not sell their members' production. Any withdrawals, and the granting of indemnities to producers, are to be financed out of an intervention fund to be sourced from sales revenues or through a price equalization system. In addition, member States are held to support the organizations; assistance is related to

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[86]The depletion of cod stocks in the North Atlantic, close to the Canadian 200-mile fishing zone, has recently caused tensions between Canada and the EC (GATT (1992b), p. 119).

The EC Commission has chartered an inspection vessel. In the framework of the NAFO International Inspection and Control Scheme, the vessel is directed to be continuously present in the area concerned. Canada and other NAFO contracting parties participate in this mutual inspection exercise; the findings are complemented by dockside inspections within the EC. The data collected on the basis of the Community scheme are being checked jointly with the EC Commission and the Canadian authorities. These checks, according to the Commission, do not point to substantial discrepancies between the EC data and certain Canadian estimates, bearing in mind differences in the methodological approaches used on both sides.

In December 1992, the EC and Canada initialled an agreement committing both sides to complying with all conservation and management decisions, including quotas, taken by NAFO and to ensuring that the quotas are respected. Agreement was also reached on the use and allocation of the cod stocks off Newfoundland. (According to European Report, 23 December 1992.)

[87]EC Commission (1992h).

their sales and conditional on their compliance with a Community-wide withdrawal price which, in turn, is linked to a "guide price" to be fixed annually by the Council (qualified majority).[88] The products withdrawn must be used for non-consumptive or other purposes which do not to interfere with normal marketing. In addition, member States may grant "carry-over aid" in order to support essential stabilization and storage operations if catches are not sold at a specified Community selling price.[89] Certain frozen products may qualify for storage aid, up to three months, in the event of their market prices dropping significantly below the guide price.

340. A separate regulatory system applies to tuna for canning for which the Council is to fix each year uniform EC producer prices.[90] Producers qualify for compensatory allowances, subject to various ceilings, if the average EC selling price and the free-at-frontier price fall below a specified threshold level (93 per cent of the producer price).

341. Regulation No. 3759/92 is based on the principle that tariffs are the sole means of external protection. However, for the next four years, imports of certain canned sardine and tuna varieties have been made subject to Community quotas. Imports must not exceed the volumes recorded in 1991 plus a growth factor of at least 6 per cent.[91] The restrictions imposed do not apply to countries linked to the EC by a preferential agreement (e.g. Lomé suppliers) or by an agreement covering these products. According to the Regulation, temporary restrictions are deemed necessary "to enable the Community processing industry to adjust its production conditions in such a

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[88]The Community withdrawal price for individual products must not exceed 90 per cent of the quide price. The Council is required to base its price decision on (i) the average market price during the preceding three years and (ii) an assessment of production and demand prospects. Account must also be taken of the need to (i) stabilize markets and avoid surpluses, (ii) help support producers' income and (iii) consider consumers' interests.

[89]Selling prices are fixed under the same conditions as withdrawal prices. Carry-over aid must not be granted for more than 6 per cent of the annual quantity put up for sale.

[90]The decision is to be based on similar economic criteria and social considerations ("to help support producers' incomes") as that on the guide price for other varieties. However, the Council is not obliged, in this case, to take account "of the need to consider consumers' interests".

[91]Alternatively, whenever higher, the quota volume is to increase by the growth rate recorded for EC consumption.

A supplementary Commission Regulation (No. 3900/92) sets an import limit of 2,250 tonnes for preserved sardines and of 74,100 tonnes for preserved tuna in 1993 (both categories are specified on the basis of several ex-positions at eight-digit tariff line level). Of the total import volume, 85 per cent is allocated to established importers, the rest to other companies. The quota applications for preserved tuna, lodged by the second group on 4 and 5 January 1993, exceeded by far its 15 per cent share in the 1993 quota. This prompted the Commission on 8 January 1993 to limit the import authorizations to 3.61 per cent of the quantities applied for during the above two days and to suspend the processing of any further applications (Commission Regulation No. 25/93).

way as to improve its competitive position with regard to imports from certain third countries". (The Communities' m.f.n. tariffs on the products concerned vary between 24 and 25 per cent; GSP preferences are confined to shipments from least developed countries which enter duty-free.)

342. Reference prices are designed to prevent imports from causing market disturbances.[92] If significant quantities enter the EC market at prices below the reference price, the EC may, depending on the products concerned, either (i) revoke autonomous tariff suspensions; (ii) make importation subject to compliance with the reference price; or (iii) introduce countervailing charges if these are compatible with existing GATT bindings.

343. The Regulation allows for emergency measures under conditions similar to those applicable in the banana and tobacco sectors (see above). As in these areas, the Commission is authorized to take the measures immediately; in order to amend or repeal them, the Council would need to achieve a qualified majority against the Commission.

344. Faced with a glut of cheap imports, in early 1993, the EC made the release for free circulation of various fish categories subject to the importers' compliance with specified reference prices (fresh, chilled or frozen cod, coalfish, haddock, a certain species of hake, monkfish, and Alaska pollack frozen fillets). The measures, notified in March 1993 under Article XIX, are due to expire on 30 June 1993.[93]

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[92]Regulation No. 3759/92 provides that the reference prices are to be fixed annually, subject to the consulation procedures resulting from the Community's commitments within the GATT framework.

Varying among product categories, the reference price corresponds either to the EC withdrawal price; selling price; a specified percentage of the guide price; the free-at-frontier price in previous years; or the average reference price for fresh products, processing costs taken into account.

[93]The relevant Commission Regulations (Nos. 420/93 and 529/93) are based on the reference price provisions (Article 22) of Council Regulation No. 3759/92.

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Note V.1: Main features of the EC canned tuna market

345. The EC is the world's largest importer and consumer of canned tuna. France, Germany and the United Kingdom combined account for about 80 per cent of total Community imports (110,000 tonnes in 1990). The German and U.K. markets are served mainly by Asian suppliers, in particular Thailand, the Philippines and Indonesia. France, by contrast, gets three-fifths of its imports from West African countries (Côte d'Ivoire and Senegal) whose production is largely in the hands of French-owned companies (Pêche et Froid, Pêcheurs de France, and Saupiquet). Shipments from these ACP sources enter unrestricted and duty-free.

346. EC canned tuna production is concentrated in Italy (40 per cent), Spain (30) and France (23). Portugal accounts for the rest. The industry relies heavily on imports of raw fish.

347. The Italian canneries hold a strong position on their home market; imports of canned tuna, predominantly from Spain and Portugal, cater for no more than 10 per cent of domestic consumption. The industry is dominated by six companies which represent three-quarters of total domestic production. Overall, the Italian producers are considered technically more efficient than, for example, their counterparts in Spain. Most Spanish canneries are small-sized family firms; there has been almost no import competition to date. The French industry, made up mainly of three companies (see above), supplies about half of the national market.

Source: GLOBEFISH Highlights No. 4/92; Josupeit (1991a and b).

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(xi) Beverages and spirits

348. Many EC markets for food and drinks have traditionally been compartmentalized, reflecting the impact of technical trade barriers as well as national consumer preferences and loyalties (e.g. in areas such as beer and wine). This has allowed domestic companies to occupy significant shares of their individual member States' home markets.[94] Expansion strategies in the industry have thus tended to rely on the acquisition of established "champions", as exemplified by the recent Nestlé/Perrier deal, rather than on penetrating markets from abroad.

349. Adverse trade effects may result from recycling requirements designed to combat packaging waste and, implicitly, environmental degradation.[95] Access to existing recycling chains appears to be difficult in certain cases and the need for importers to set up own systems could prove costly. (For example, a large number of German producers of mineral water operates a common system of standardized, refillable bottles. The system, administered by an association under private law, is not open to foreign producers and, hence, apparently constitutes some form of "closed shop".) In mid-1992, the Commission presented a draft Council directive aimed at defining essential requirements for renewable and recoverable packaging in order to avoid obstacles to trade and distortions of competition (92/C 263/01). The proposal specifies recycling targets for packaging waste and obliges member States, within five years after implementation of the Directive, to set up systems for returning and reusing or recovering all used packaging. Imported products are to be included on non-discriminatory terms.

350. Excise taxes on alcoholic beverages vary extremely among the member States. In January 1992, the relevant rates on spirits ranged from some ECU 170 in Greece to over ECU 2,600 in Ireland and the United Kingdom (per hectolitre of pure alcohol).[96] Harmonization in the Internal Market context centres on the setting of minimum rates (Section IV.4(iii)(b)).

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[94] See EC Commission (1991c) and (1992d).
While EC breweries account for 95 per cent of world trade in beer, intra-Community shipments represent no more than 4 per cent of total EC beer consumption.

[95] Reflecting differences in national regulations, the importance of refillable glass containers varies widely among the member States; refillable bottles are currently used for 96 per cent of all soft drinks in Denmark and some 90 per cent in the Netherlands, as against 14 per cent in the United Kingdom (EC Commission, 1991a).

[96] In Denmark, taxation comprised a basic excise tax of some ECU 1,800 per hectolitre, supplemented by an ad valorem component of 37½ per cent of the wholesale price and 25 per cent VAT.

(3) Developments in Main Industrial Sectors

(i) Basic policy principles

351. With the removal of internal trade barriers, the debate within the EC on the need for common or harmonized industrial policies has intensified. It reflects concerns that market opening may tend to increase the vulnerability of industries in one member State to policy developments and distortions in others. Various attempts have thus been made to draw up guidelines for common or harmonized policies towards industry alongside the Internal Market process of intra-Community trade liberalization.

352. A Communication by the Commission, issued in November 1990, underlined that the enterprise sector had the main responsibility for ensuring industrial competitiveness.[1] An open market environment, applied to all activities on the same basis, was viewed "as the best guarantee for a strong and competitive industry". Within such an environment, public authorities are expected to act mainly as catalysts and pathbreakers for innovation and help industries to adjust to structural change.

353. The Maastricht Treaty (Article 3) extends the range of Community activities, as originally outlined in the Treaty of Rome, by explicit reference to the strengthening of economic and social cohesion, the strengthening of the competitiveness of the Community's industry, and the promotion of research and technological development. Common policies and activities in these areas are to be devised and conducted in accordance with the principle of "an open market economy with free competition" (Article 3a) and, whenever the EC has no exclusive jurisdiction, with the principle of "subsidiarity" (Article 3b). The latter term is further specified as meaning that Community-level action should be taken only if, in view of the scale or effects, the relevant objectives can be better achieved at EC level than by the member States. EC initiatives are therefore to be implemented "in support of" (Article 130:3) or "complementing" (Article 130g) actions taken by member States in pursuit of the Treaty's objectives with regard to industry (Article 130) and research and technology (Article 130g).

354. The specific industrial policy provisions of the Maastricht Treaty require the Community and member States to ensure that "the conditions for the competitiveness of the Community's industry exist" (Article 130). Policy action at the EC and national levels, based on "open and competitive markets", shall aim to speed up structural adjustment; to encourage a

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[1] EC Commission (1990) and GATT (1991).

favourable business environment, in particular for small and medium-sized undertakings; to encourage an environment favourable to business cooperation; and to foster better industrial exploitation of R&D and innovation policies. These provisions are not, however, to be used as a basis for introducing measures "which could lead to a distortion of competition".

355. The Treaty does not specify the relationship between industrial policy initiatives and competition policy. It leaves open, for example, whether distortion of competition is to be judged from an international or EC internal perspective and whether structural adjustment initiatives, necessarily involving policy interference in markets, would be acceptable in sectors previously free of such intervention (at national, EC or international levels).[2]

356. Any common industrial policy initiative would have to be decided upon unanimously by the Council, on the basis of a Commission proposal. The European Parliament and the Economic and Social Committee are to be consulted.[3] In the sphere of R&D, the Commission would be empowered, in "close cooperation with the Council", to take "any useful initiatives"[4] to promote the coordination between national and EC policy actions. The EC framework programmes, in which all EC activities to promote R&D are set out, would be subject to unanimous approval by the Council and to Parliamentary co-decision; the Parliament[5] may reject the common position reached by the Council and the Commission.

357. Recent Communications by the Commission on sectoral policy issues have built on the November 1990 guidelines as well as on Article 130 of the

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[2]Article 130f of the Maastricht Treaty sets the objectives of strengthening the scientific and technological bases of EC industry and of encouraging it to become more internationally competitive. The Article does not include a competition policy clause similar to the industrial-policy provisions of Article 130 of the Maastricht Treaty or to the current Article 130f, which requires that "special account shall be taken of the connection between the common research and technological development effort, the establishment of the internal market and the implementation of common policies, particularly as regards competition and trade" (emphasis added). See also Section IV.4(i)(a).

[3]The Economic and Social Committee is an advisory body (GATT, 1991a, page 42/43). Its members, expected to represent the private sector and the general public, are appointed by the Council in their personal capacity. For the rôle of the European Parliament under the Maastricht Treaty see also Section II.4.

[4]Article 130h, as foreseen in the Maastricht Treaty, implies a certain shift of powers towards the Commission (and the Council). Under current provisions member States, in liaison with the Commission, are "to coordinate among themselves the policies and programmes carried out at national level" while the Commission, "in close contacts with the member States", is to take additional initiatives to promote such coordination (emphasis added).

[5]In this case, the majority of the Parliament's component members would have to cast a negative vote.

Maastricht Treaty. For example, the Communication on the motor vehicle industry stresses the need for an EC-wide approach by referring to the intensity of intra-EC trade, the consequent need for Community coordination in order to avoid trade-distorting national initiatives, and the Community's responsibility for external trade policy, which could have an impact on the sector as a whole.[6]

(ii) Transport equipment

(a) Motor vehicles

358. The EC member States account jointly for close to 40 per cent of the world's motor vehicle production and consumption. In 1990, about 1.8 million people were directly employed in the sector (Table AV.5(i)). Taking into account intersectoral links, vehicle production is estimated to provide for some 10 per cent of all industrial employment in the Community.

359. In the early 1990s, Community member States could be broadly categorized into non-producers with no particular stake in the sector (Denmark, Ireland, Luxembourg); producers and assemblers for which no significant protection beyond the common external tariff was reported (Belgium, Germany, the Netherlands); and protected markets (France, Italy, Portugal, Spain, the United Kingdom).

Patterns of border protection

360. The common external tariff shows escalation; it is set at 10 per cent for passenger cars, including station wagons, and 4.9 per cent for parts for assembly operations. In contrast to other "sensitive" or "strategic" industries, the EC has never taken anti-dumping measures in the motor vehicle sector. Conditions of market access to a number of member States have, however, been determined by a variety of formal or informal trade-related measures, such as unilateral quotas, trade restraint arrangements, and restrictive standardization and car registration procedures (Table AV.6). These have been focused on supplies from Japan and, to some extent, from the Republic of Korea.[7] Restrictions under Article 115 of the EEC Treaty (Section II.3(i)) or informal substitutes,

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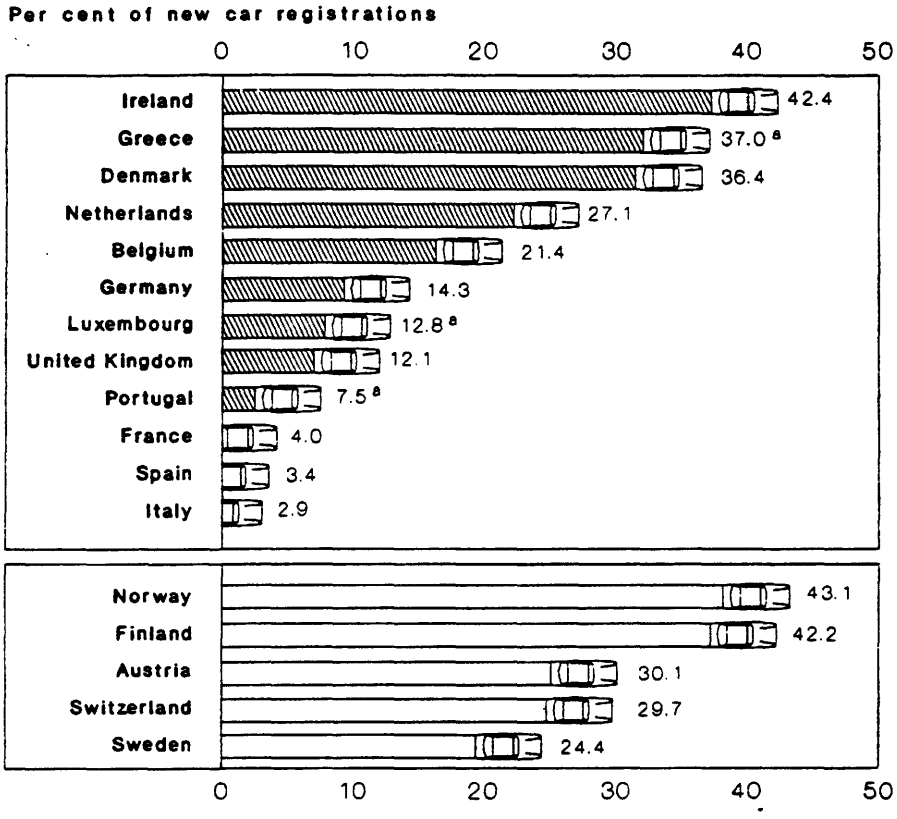
[6] EC Commission (1992c).

[7] In early 1992, the Government of France announced that it would accept imports of Korean cars as from mid-year (Hyundai, Kia, Daewoo). Newspaper reports indicated that this move was made in connection with a forthcoming Korean procurement decision on high-speed trains. The Hyundai importer, Sonauto, reportedly intended to exercise prudence and not to import more than about 5,000 cars in 1993. (Le Figaro, 19 June 1992, and Le Monde, 22 December 1992.)

such as industry-to industry agreements, have served to prevent these measures from being frustrated through indirect deliveries via other member States. Chart V.9 provides an overview of the market shares held by Japanese suppliers in individual member States and EFTA countries.[8]

Chart V.9
Market share of passenger cars imported from Japan in EC member States and EFTA countries, 1992



a 1990 data.

Source: Marketing Systems/Handelsblatt, 6 January 1993; Tribune de l'expansion.

[8]The picture presented in the Chart is also reflected in the import penetration ratios shown in Tables AV.5(i)-(xii). Accordingly, the share in domestic consumption of external motor vehicle supplies (all categories from all sources) is lowest in Spain with slightly above 2 per cent, followed by France and Italy with between 3 and 4 per cent.

361. National trade measures against third countries, while aimed at protecting domestic producers, also benefit other manufacturers in the EC/EFTA area which have free access to the shielded markets. Not surprisingly, intra-EC imports have significantly higher market shares in France, Italy and Spain than in Germany (Tables AV.4(i)-(xii)). Rents accruing from protection to domestic producers are thus likely to have been eroded by internal free trade in EC/EFTA products, particularly in models which are close substitutes for third country deliveries.

362. In July 1991, the EC and Japan reached a consensus on conditions for imports of Japanese motor vehicles (cars, off-road vehicles and light commercial vehicles) from 1993 onward, with the expressed aim of "the progressive and full liberalization of the EC import régime on motor vehicles with avoidance of market disruption and, through an appropriate transitional period, to facilitate structural adjustments that may be required of EC manufacturers to achieve adequate levels of international competitiveness".[9] Under the consensus, the EC undertook to abolish all national import restrictions, and not to apply Article 115 to vehicles imported from Japan, from January 1993. Japan, in turn, agreed to monitor the growth of exports of vehicles to the EC as a whole and to the five more restricted markets, on the assumption that its shipment would reach 1.23 million units in 1999 in a total EC market forecast at 15.1 million units.[10] According to the Commission, no reciprocal commitments, undertakings or forecasts have been fixed with a view to promoting EC shipments of cars, car parts or any other specified products to Japan.

363. Twice-yearly bilateral consultations between the EC Commission and the Japanese authorities are to be held concerning current export trends and forecasts for the following year. Apparently, it is for the Japanese side to ensure that the forecasts are allocated among individual producers and vehicle categories. On the EC side, an internal declaration by the Commission is said to ascribe to EC suppliers at least one-third of the

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[9] GATT document L/6922, 16 October 1991. Germany separately communicated its reservations to the consensus, noting that its approval was on condition that (i) all restrictive measures would expire on 31 December 1999; (ii) EC-wide monitoring would take only the form of a statistical record with regard to those member States not currently subject to restrictions; (iii) Japanese investment in the relevant areas would not be discriminated against; and (iv) car imports from third countries would remain unaffected (GATT document L/6924, 22 October 1991).

[10] Estimated 1999 export levels to the five "restricted" markets are: France, 150,000 units (5.3 per cent of the market); Italy, 138,000 (5.3 per cent); Spain, 79,000 (5.4 per cent); Portugal, 23,000 (8.4 per cent),; and the United Kingdom, 190,000 (7 per cent - less than the current estimated share as quoted in Monopolies and Mergers Commission, 1992). The share of the remaining Communities' markets allotted to exports from Japan would be 12.5 per cent.

The consensus covers assembled vehicles and sets of car parts (ckd-sets) containing more than 60 per cent of the value of the components of a car.

growth of the market and to expect Japanese exporters, in the event of unexpected reductions in demand, to reduce their shipments by two-thirds of the shortfall.[11]

364. Press reports appearing at the time suggested that, in view of the arrangement, the EC Commission and the Government of Japan agreed on demand and supply forecasts for 1992, under which exports would be reduced to less than their level in 1991 (1.26 million units) on account of slackening EC demand and adjustment problems of the EC industry.[12]

365. The consensus explicitly excludes any restrictions on Japanese investment or any trade restrictions on vehicles produced in Japanese brand-name plants within the Communities. The Commission's "working assumption" is said to have been that, by 1999, such plants would be producing almost as many vehicles as would be imported from Japan.[13]

366. The consensus also includes an undertaking by the EC to provide for a Community-wide type approval procedure by 1 January 1993 (see below). This implies that national Governments may no longer use standardization and approval procedures as instruments of market segmentation.

367. The consensus is intended to supersede existing arrangements at the national level. According to the Commission, it gives no room for individual interpretations or parallel initiatives by member States.[14] The Commission has also confirmed that no other measures exist at EC level with

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[11]Monopolies and Mergers Commission (1992).
The treatment under the consensus of countries acceding to the EC before 1999 appears open.

[12]Reuters, 24 April 1992. Some observers note that the EC and Japan have, in the greatest discretion, negotiated annual supply targets since 1986; in this view, the consensus thus merely formalizes existing practice (Costello and Pelkmans, 1991).

[13]Monopolies and Mergers Commission (1992).

[14]Nissan and Toyota were reported to have given certain assurances with regard to their future shipments into France of cars produced by their subsidiaries in other member States. In exchange, the companies have reportedly been allowed by the French authorities to acquire the established networks for their cars. (Tribune de l'Expansion, 24 January 1992, Le Monde, 25 January 1992, and Les Echos, 26 January 1992.)
Both the restrictions operated by France prior to the EC/Japan consensus and the forecasts for the French market under the consensus have been challenged by a group of importers of "small makes" before the European Court of Justice and the Court of First Instance. The plaintiffs claimed that their access to France has been restricted under a self-limitation arrangement between the large Japanese producers, supported by the French administration. They criticize, among other things, that the Commission has failed to give legal reasons for an earlier refusal to condemn such practices under Article 85 of the EEC Treaty. Furthermore, it is argued that the informal restrictions on intra-EC trade, not covered by Article 115 of the EEC Treaty, run counter to the ban under Article 30 on maintaining quantitative restrictions and measures with equivalent effects between member States (Europe, 6 March 1992). No ruling has been given by year-end 1992.

a view to limiting or otherwise influencing third country imports, investments or R&D activities within the Internal Market.[15]

368. In September 1992, the Commission proposed to amend Council Regulation No. 288/82 to the effect that all other restrictions under this Regulation on imports of motor vehicles, including motorbikes and trucks, be phased out by end 1992. In the case of delay, the member States concerned have been asked to take unilateral action in order not to apply national restrictions on Japanese cars and light commercial vehicles beyond January 1993.

Industrial support measures

369. Subsidies, including soft loans from State-owned banks and Government capital injections, have long been used by member States for promoting domestic vehicle production.[16] However, the EC framework on State aid for the motor vehicle sector, adopted in 1989, obliges member States to notify in advance programme-related subsidies of more than ECU 12 million and all subsidies to the industry that are not granted in the framework of an aid régime authorized by the Commission. In this connection, the EC Commission has ordered repayments of subsidies on various occasions, with a view to preventing internal market distortions.[17] The only Community-level subsidies extended to the sector result from the operation of EC horizontal support instruments, such as regional and social funds or R&D programmes, which are equally applicable to other industries.[18]

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[15]According to the Commission, the EC approach towards foreign direct investment is fundamentally liberal and the EC "is anxious to encourage better integration of such production into its economy, while abiding by its international commitments and without resorting to compulsory local content formulae and - a fortiori - national content formulae" (statement in the context of this TPRM report).

[16]Various such initiatives (FIAT/Alfa Romeo, Renault, Rover) were enumerated in the initial TPRM report (GATT, 1991a).

[17]In March 1991, the Court of Justice upheld a Commission decision which required capital injections into Alfa Romeo, dating back to 1985 and 1986, to be refunded. The Italian Government is reported to have indicated, however, that the refunds would be made to the State-owned IRI conglomerate rather than to the Italian State. The issue was referred by the Commission to the Court of Justice in July 1992 (Europe, 5 August 1992).

[18]A Council Resolution on the motor vehicle sector, issued in June 1992 (No. 92/C 178/03), emphasizes the need for policy initiatives "with due respect for the principle of competition and subsidiarity". Actions deemed necessary by the Council include (i) the collection of information on trade flows and market access with a view to preventing unfair trade practices, in accordance with GATT rules; (ii) a thorough examination of the system of selective distribution in the light of the Treaty, of the interests at stake (manufacturers, distributors and consumers) and of the various EC policies; (iii) regular reporting by the Commission on improvements in competitiveness and the other objectives identified by the Council; and (iv) the continuation of strict aid controls in the industry and, possibly, their extension to the component sector.

Distribution practices: the "block exemption"

370. Certain distribution practices in the motor vehicle sector are excluded from the application of Article 85:1 of the EEC Treaty (Section IV.4(i)(a)). Under a block exemption, enacted in 1985 for a ten-year period, car manufacturers and importers may operate exclusive supply contracts with their dealers and protect them in their contract territory from competing agents.[19] The exemption, while permitting restraints on intra-brand competition, is intended to encourage competition between manufacturers and to ensure a reliable network of repair and service facilities.[20] Similar systems are said to be used in the United States and Japan.

371. A Commission Notice interpreting the block exemption specifies that manufacturers selling similar mass-produced cars in more than one member State are expected to supply, on request, cars to their dealers in one member State with technical specifications that allow registration in another member State; not to hinder cross-border sales through measures such as refusal of warranty services or excessive delivery time; and to sell to intermediaries acting on behalf of identified customers. The Commission may withdraw the exemption in the event of substantial, continuing price differences between member States (i.e. short-term differences of more than 18 per cent or differences of more than 12 per cent for at least one year). The Commission considers it a substantial breach of the exemption for a manufacturer to enforce any discipline aimed at deterring parallel imports through refusals of, or obstacles to, guarantee and free after sale services.[21] Should guarantee and/or maintenance not be made fully available on equal conditions to any European purchaser of such a car, the block exemption would cease to apply for the products of the manufacturer concerned.

Price differentials within the EC

372. In view of the importance of the motor vehicle sector from both trade and industrial policy perspectives, several recent studies have focused on regional price differentials, which are considered[22] to be indicators of barriers to trade, within the EC and internationally.

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[19]Commission Regulation No. 123/85.

[20]Monopolies and Mergers Commission (1992).

[21]Confirmed in discussion with the Secretariat.

[22]Such comparisons may, however, be affected by a variety of factors, including exchange rate fluctuations, technical constraints and differences in sales or income taxes
(Footnote Continued)

373. A survey by the U.K. Monopolies and Mergers Commission (MMC) found that, in 1990, price levels in Belgium and the Netherlands, adjusted for tax differences, were generally lower than in the United Kingdom, Germany and France. No significant price differences were discernible between the three large markets, even for cars imported from Japan.[23] The report indicates that this might reflect the operation of the price equalization mechanism within a customs union, based on the free flow of intra-area production, investment and technology. The restrictions maintained by certain member States appear, however, to have translated into considerable price differentials for Japanese cars between the EC as a whole and third country markets. The MMC found a specified range of model variants to be 28 per cent cheaper in Japan and 16 per cent in the United States than in the Community (United Kingdom).[24] This would imply that EC car producers as a group benefited from protection and consumers throughout the EC were required to foot the bill.

374. A separate report by the EC Commission, covering seven member States, showed significant regional price disparities.[25] As a general feature, dealers in the United Kingdom and Spain charged the highest prices, contrasting with their Belgian counterparts who were most frequently found at the bottom of the price league (Table AV.7). Contrary to the MMC report, the Commission study points to marked price variations for certain Japanese cars, with peaks in Italy and Spain, which were not surveyed by the MMC. On the whole, the study suggests that sale prices before tax tended to be highest in markets characterized by high or variable tax rates and import restrictions, with Spain and Italy as leading examples. In a number of cases, involving many of the large EC car producers, differentials continuously exceeded the limits set under the block exemption. The Commission gave the view that, while market partitioning under selective distribution systems might have been a contributing factor,

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(Footnote Continued)

(including, for example, more or less generous depreciation allowances for company cars). Also, while continued significant price differentials may be indicative of barriers to price arbitrage, not all such barriers are easily amenable to remedial policy action.

[23] Monopolies and Mergers Commission (1992). The findings were based on actual sales prices, including estimated discounts. The MMC noted that its results might have been affected by the absence of major indigenous car producers in the two smaller member States and the existence of a price control system in Belgium. Observations for individual car types varied considerably.

[24] This comparison was based on list prices, adjusted for transport cost, differences in taxation etc. Some of the companies involved have disputed the accuracy of the data, arguing that the models chosen were not closely comparable and that no adequate allowance had been made made for transport cost. The MMC considers these points not likely to have had a significant impact on the results.

[25] EC Commission (1992c). The comparison was based on list prices, net of taxes, import duties, delivery and preparation costs. Adjustments were made for major differences in equipment, discounts to consumers and other financial benefits.

there was not sufficient evidence that it had played a decisive rôle.[26] Commissioner Sir Leon Brittan is reported to have announced a firm stance by the Commission against dealers or manufacturers that deliberately sought to obstruct cross-border sales as well as national Governments which might encourage such practices.[27]

Technical barriers to trade

375. In March 1992, the EC Internal Market Council agreed on a final set of three EC Directives on technical specifications for motor vehicles, which had been on hold for some years.[28] While the new regulatory framework provides for a uniform EC type approval system as of 1 January 1993, manufacturers may continue to opt for national approval for new models until 31 December 1995; national approval for existing models is valid until December 1997. Under the EEA Agreement, the EFTA countries are not entitled to grant EC type approval before 1 January 1995 (Section IV.2(viii)). "Unofficial" imports from, or through, EFTA countries into the EC will thus continue to prove difficult for some time.

376. While technical barriers are intended to disappear, the block exemption continues to apply until June 1995. In connection with the EC-Japan consensus, the Commission has indicated that selective distribution under the exemption, provided it works in "a satisfactory and efficient way", would help in the management of the transitional period.[29]

377. A Commission Notice of December 1991 (91/C 329/06), intended to supplement the Notice published in conjunction with Regulation No. 123/85

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[26]EC Commission (1992b) and information provided in the context of this report. The European car producers' association, ACEA, has stated that the Commission's report failed to establish a causal link between the observed price pattern and selective car distribution and complained about alleged shortcomings of the study, including its limited country coverage (European Report, 9 May 1992).

[27]In order to encourage market forces to close the gap between car prices, the Commission launched an initiative in May 1992 requesting manufacturers to ensure that their distributors were aware of, and acted in accordance with, the terms of the block exemption. Furthermore, they were asked to publish price comparisons between member States and to conduct regular price analyses for the Commission. In December 1992, the major EC and Japanese car manufacturers agreed to reassure their dealers of their rights concerning the sale of cars across EC borders. They also agreed to publish detailed six-monthly pricing data enabling customers to make a genuine comparison of prices among member States.

[28]The three outstanding directives, the only missing elements in a system of 44 harmonization directives, concerned windscreens, tyres, and masses and dimensions of motor vehicles of category M1. See also GATT (1991a).

[29]EC Commission (1992c).
According to press reports, France, Italy and Spain have made their approval to the outstanding three "Harmonization Directives" contingent on the possibility of imposing constraints on the activities of parallel importers (see e.g. Les Echos, 8 November 1991, and European Report, 30 October 1991).

(see above), specifies the scope of admissible activities of motor vehicle intermediaries. In addition, certain transparency criteria are set with a view to ensuring that consumers do not confuse intermediaries (parallel traders) with resellers (official agents) and that they are fully informed of the services provided. The Notice also prohibits official dealers from granting any agent a privileged relationship, for example in the form of unusual discounts. Annual sales to an intermediary of more than 10 per cent of a dealer's total sales would create the presumption that their relationship is privileged.[30]

Industrial and regional change

378. Expectations and concerns surrounding the implementation of a common market régime appear to have contributed to a series of structural, financial and locational adjustments within the EC and its adjacent free trade areas, involving EFTA members, Hungary, Poland and the Czech and Slovak Republics. These include:

(i) the arrival of new producers with new plants (Toyota, Honda and Nissan in the United Kingdom, Chrysler in Austria and Suzuki in Hungary);[31]

(ii) new alliances and cooperations (Renault and Volvo; Volvo and Mitsubishi; Daihatsu and Piaggio; GM, Mercedes-Benz, Peugeot and Volkswagen with Polish companies (FSO, WZM, FSC and FSR));

(iii) takeovers or majority participations (GM/Saab, Fiat/FSM (Poland) and Volkswagen/Skoda);

(iv) a shift in investments to low-wage regions in the Community (Volkswagen in liaison with Ford in Setubal (Portugal) and with Suzuki in Spain; Ford and Nissan in Spain);[32] and

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[30]The Commission has stressed that the above Notice was considered necessary for reasons of competition policy and consumer protection, irrespective of the arrangement with Japan.

[31]While the Nissan plants in the United Kingdom are currently producing over 175,000 cars a year (expected to climb to 270,000 in 1993), a Honda car plant started operation in October 1992 and a Toyota engine plant in September 1992. Further projects in the UK are still under construction. The MMC expects the output of Japanese-owned plants in the United Kingdom to reach at least 550,000 units by 1995. Honda also holds a 20 per cent stake in Rover.

[32]Ford recently announced to invest over US$1 billion in Valencia with a view to launching a new generation of engines designed and developed for Ford by Yamaha of Japan (Financial Times, 7 September 1992).

(v) the setting up new plants in eastern and central Europe to source existing production facilities within the EC (Ford and General Motors in Hungary (Szekesfehervar and Szentgotthard); Ford and, possibly, Chrysler in Poland).[33]

379. Locational advantages resulting from relatively low labour costs and favourable access to EC markets appear to have been complemented by financial benefits in certain cases. For example, the Ford plant in Hungary is reported to have been granted a ten-year tax exemption.[34] With regard to the new Chrysler plant in Austria, the EC Commission noted that it had "informed Austria that it believed the size of the subsidy granted ... was unjustifiably high and could distort trade and competition". The subsidies are reported to amount to one-third of investment cost.[35] According to the Commission, the Chrysler project would not have been subsidized were it located in an EC region with a similar level of development. In November 1992, confronted with the possibility of the invocation of the safeguard provision of the EC/Austria Free Trade Agreement and the restoration of m.f.n. tariffs, Austria undertook to limit subsidies to 14.4 per cent of total investment cost.[36]

380. International comparisons indicate that, in terms of production costs and efficiency, large segments of the EC car industry are trailing behind their main competitors abroad (Table AV.8).[37] The perceived need to give the industry some breathing space in order to catch up and adopt new production techniques was one important rationale behind the EC-Japan consensus.[38] Given the objective of full liberalization by the turn of

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[33]The Polish Government is reported to have envisaged dividing the tariff quota under the Europe Agreement (30,000 units; see Section II.5(iii) equally between Fiat, General Motors and Volkswagen provided they invest at least US$50 million in Poland. However, following protests by other EC car producers (and their Governments), the application of the relevant parts of the Agreement was suspended temporarily (Wall Street Journal, 28 February 1992, and Le Monde, 29 February 1992). Agreement was finally reached that quota entitlements would be distributed on a first-come-first-served basis (European Report, 7 November 1992).

[34]Bureau of National Affairs, Eastern Europe Reporter, No. 12, 8 June 1992.

[35]EC Commission (1992a), Europe, 16 July 1992, and Reuters, 30 July 1992.

[36]Nachrichten für Außenhandel, 26 November 1992. The Community market for multi-purpose vehicles is dominated by the Renault 'Espace', so far the only EC produce in this segment, with a market share of close to 55 per cent in 1990.

[37]The individual observations behind the estimates presented in Table AV.8 vary widely. The productivity gap between the best and the worst performer was found to exceed 140 per cent, as against 96 per cent in Japan.

[38]The Joint Communication from the European Communities and Japan (GATT document L/6922 of 16 October 1991) mentions as an objective of the arrangement "to facilitate structural adjustments that may be required of EC manufacturers to achieve adequate levels of
(Footnote Continued)

century, the Commission has called upon the industry to invest more in modernization and to increase efforts in the areas of R&D, training and retraining. While the completion of the Internal Market is seen as the best policy for positive adjustment, the Commission calls for additional impetus "to help the industry in its efforts to make itself more competitive".[39] Reference is made, in this context, to the harmonization of technical standards and the future tightening of environmental regulations; the approximation of indirect taxation; the importance of fostering business cooperation; a reorientation of R&D policy with a view, among other things, to promoting a more rapid transfer of research findings into production; and a reformulation of the EC approach towards training and retraining of the industry's workforce.

(b) Shipbuilding

381. Ship production in western Europe, considered as one region, ranks second worldwide. Members of the Association of West European Shipbuilders (AWES) currently represent more than one-quarter of world ship completions (27½ per cent in 1991). Trends in orders point, however, to continued adjustment pressure on the industry. After four years of decline, the share of western European shipbuilders in new orders reached just over 20 per cent in 1991, while Japanese and Korean producers accounted for 37 and 19 per cent, respectively.[40]

382. Shipbuilding is one of the most heavily-supported segments of EC manufacturing industry. Tariff protection is negligible (nominal tariffs average under 2 per cent, Table AIV.1) but subsidization - including, in Spain and Portugal, restructuring aid authorized by the EC Commission - is extensive; in the period 1988-90, subsidies exceeded 33 per cent of value added. Most heavily-subsidized were the yards in Portugal and Italy, with support ratios in the vicinity of 80 per cent and above (Table IV.8).[41] Spain and France, moreover, completely restrict imports of a variety of

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(Footnote Continued)

international competitiveness". The EC Commission, in its recent Communication on the European motor vehicle industry, has acknowledged the existence of an "enormous overall gap" (EC Commission, 1992c).

[39] EC Commission (1992c).

[40] AWES (1992). The comparison is based on cubic gross tonnage completed. "Western Europe" includes the EC member States, Finland, Norway and Sweden. Among the EC member States, Germany ranked first (4.7 per cent), followed by Italy (3.2 per cent).

[41] The value of assistance increased in Denmark, Germany, Italy and the Netherlands in the period 1989-91 (EC Commission, 1992j).

ship categories (sea-going cruise ships, tankers, refrigerated vessels and fishing vessels) under Council Regulation No. 288/82.[42]

383. In November 1990, the EC Council approved the seventh Directive on aid to shipbuilding, extending a specific subsidy régime to the sector until 31 December 1993.[43] The Council considered that complete abolition of aid was impossible in view of the market situation and the need to encourage the restructuring of many yards. The Directive holds that a competitive shipbuilding sector is of "vital interest to the Community and contributes to its economic and social development".

384. As under the previous directives, the Commission is empowered, after consultations with member States, to set annual ceilings for operating assistance. For 1992 and 1993, the general ceiling for subsidies on new ships was set at 9 per cent of the contract value (4.5 per cent for small vessels and ship conversions), down from 20 per cent in 1990.[44] Subject to this ceiling, member States may operate a wide variety of schemes, including direct aid, concessional credits, credit guarantees and capital injections.[45] Investment aid may be granted if it does not contribute to increasing a yard's capacity or if it is directly linked to capacity reductions of other yards. Member States are also allowed to grant support for specified types of R&D and irreversible plant closures.

385. In the OECD context, the EC is participating in negotiations on an international agreement to reduce subsidies and other trade distortions in the sector. An EC proposal envisages the complete elimination of subsidies for shipbuilders, on condition that all parties involved agree to remove obstacles to "normal competition" and that an effective instrument is agreed which would allow participants to combat unfair pricing.[46] The proposal would imply, for example, the abolition of the "home-built" requirement of the U.S. Jones Act, as well as Japan's Home Credit Schemes,

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[42] Situation in October 1992.

[43] Council Directive No. 90/684.

[44] See GATT (1991a). However, various exceptions to this rule exist. In 1991, Spain and Portugal were exempted from the aid ceiling of the seventh Directive. The need for additional measures for East German shipyards was also acknowledged by the Council and the Commission in passing the Directive. A restructuring plan for the shipyards in the Land of Mecklenburg-Vorpommern (eastern Germany), presented by the German Government in October 1991, was alleged not to involve subsidies beyond the ceilings allowed under the Directive at that date. In July 1992, the Council adopted a special aid scheme for east German yards, setting an aid ceiling of 36 per cent, subject to a capacity reduction of 40 per cent (Council Directive No. 92/68).

[45] An overview of the situation in mid-1988 is provided in GATT (1991a), Table V.25.

[46] EC Commission (1992d).

which are considered by the Commission to contain elements of indirect subsidization to shipyards.

(c) Aircraft

386. Government support for the development, production and sale of civil aircraft has continued to prove a contentious issue over the past two years. In this connection, two complaints were raised by the United States under the Subsidies Code concerning, respectively, exchange rate guarantees granted by the German Government within its privatization programme for MBB-Deutsche Airbus, and the more general issue of Airbus production subsidies (Section VI.(2)(i)).

387. In the first case, the German Government and Daimler-Benz (the parent company concerned) recently negotiated a package deal including the termination of the exchange rate guarantee scheme and the full privatization of MBB-Deutsche Airbus in July 1992, four years ahead of schedule. Daimler-Benz,[47] which already held 80 per cent, assumed the remainder free of charge.

388. The second case was resolved when, in July 1992, the EC and the United States signed a bilateral agreement limiting public support for "large" (over 100-seat) civil aircraft programmes.[48] Under the programme, future production support is are banned; disciplines are placed on the granting of development support and indirect Government support;[49] and transparency requirements are established covering all forms of public support for commercial aircraft manufacturers. Equity injections must not be allowed to undermine the agreement. Neither signatory will assume liability for loans granted by aircraft manufacturers to airlines, except in the context of official export credit financing under the relevant OECD understanding. A derogation clause allows for the temporary suspension of all obligations, except for the limits on development support, should a significant proportion of the civil aircraft industry of the United States or the EC member States be in jeopardy. The signatories agreed to work towards a progressive, worldwide reduction of the rôle of Government

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[47]The exchange rate guarantee had cost the German government DM 580 million in 1990 (Financial Times, 13 July 1992).

[48]The agreement, as it stands now, covers Boeing and McDonnell Douglas on the U.S. side and Airbus in the EC.

[49]With respect to direct support, the maximum government share of total development cost has been limited to 33 per cent, to be repaid within 17 years from first disbursement. Indirect support, including benefits accruing through preferential access to military R&D contracts and the NASA's civilian research programmes, are limited to 3 per cent of the industry's commercial sales overall and to 4 per cent of an individual company's commercial sales, net of recoupment.

support, and to seek to negotiate a multilateral agreement containing similar disciplines with all major producer countries.

389. A recent Commission Communication notes that, despite adjustment, European aircraft producers still suffer from excessive sub-divisions of industry structures, including research facilities.[50] This is seen as hampering adjustment to a changed political and economic environment with greater competitive pressures. The communication also points to cost disadvantages associated with dollar-exchange rate risks and fragmented and costly standardization and certification procedures and calls for more efficient and targeted use of policies in such areas as standardization, infrastructure development, Community research, and competition policy. A feasibility study is being made on an industry-financed insurance or guarantee fund, to hedge against excessive exchange rate fluctuations.

(iii) Electrical and electronic products

(a) Overview

390. Trade policy trends, adjustment pressures and challenges facing the EC electronics sector appear similar to those in the high-volume car industry. Common features include strong import pressure, mainly from Asian producers; gradual disappearance of medium-sized companies and the increasing rôle of multinationals; and recourse to "informal" trade measures such as export monitoring by Japan and Korea on a range of consumer products (Section IV.2(iv)(c) and Table IV.2). In telecommunications (Section (c) below), member State markets for equipment and services are being opened progressively to competition from EC and external sources in the context of the Internal Market, reducing the scope for preserving outlets for national "champions", and diminishing market segmentation. However, aspects of procurement rules for telecommunications equipment in the EC and the United States are the subject of contention between the two entities (Chapter IV.2(vii)).

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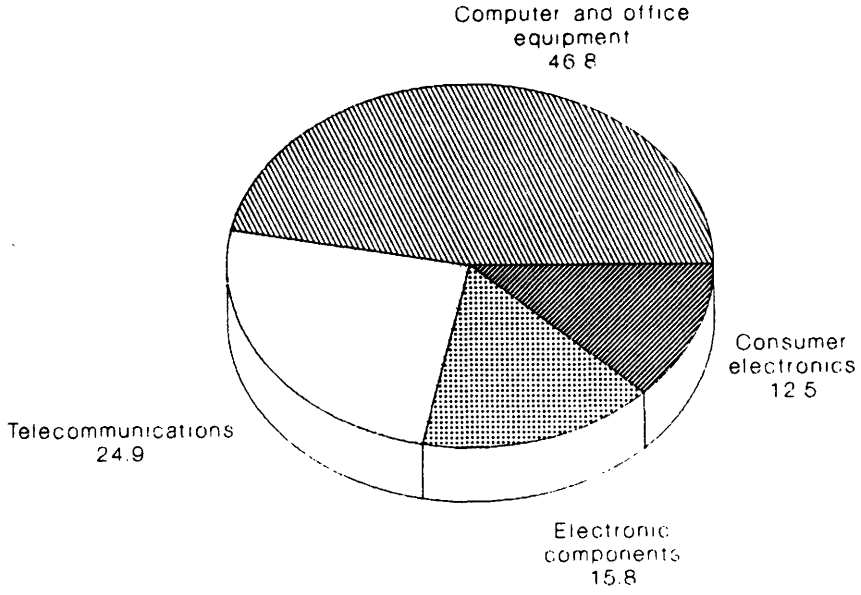
[50] For example, while NASA concentrates most civilian R&D in three research centres, the EC has seven main centres. The corresponding cost disadvantage is estimated to reach at least at 20 per cent (EC Commission, 1992e).

Chart V.10
The EC electronic industry by sub-sector, 1989
Per cent



Source: EC Commission.

391. Strategic initiatives in the electronics industry have long been taken on a European, or even larger, scale. Common European research projects include a variety of EUREKA initiatives (Section IV.4(ii)(d)), while takeovers and mergers have occurred at a European or world level. The impact of national trade restrictions has not been as pervasive as on motor vehicles; for example, external supplies occupy some 43 per cent of the EC market for office and computing machinery (Table AIV.5(i)).[51]

392. The EC has taken a number of anti-dumping actions in the electronics sector over time. Products affected range from compact disc players to small TV sets, from DRAMs to EPROMs (Section IV.2(v)(e)).

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[51] There are significant differences in the import penetration ratios between the member States (Tables AV.5(ii)-(xii)). However, these cannot be interpreted in terms of comparative market openness. Such elements as differences in demand patterns and in the strength of national suppliers may have had a much more important impact.

(b) Electronic components

393. Semiconductor production in the EC trails well behind Japan and the United States, which represent jointly nine-tenths of the world market.[52] Imports cater for more than 70 per cent of EC consumption in the sector. Most categories are subject to an m.f.n. tariff of 14 per cent; however, as noted in Section IV.2(i)(b), tariff suspensions on industrial inputs are relatively frequent. At the same time, imports of dynamic random access chips (DRAMs) from Korean and Japanese producers are currently subject to anti-dumping measures in the form of price undertakings or definitive duties.[53]

394. In the context of this report, the EC Commission has expressed concern about the U.S.-Japan semiconductor arrangement of 1991.[54] While the arrangement does not discriminate formally against third countries, the Commission's misgivings hinge in particular on its apparent lack of transparency and the implicit trend towards bilateral policy-making in an industrial sector of strategic technical and economic importance. According to the Commission, both parties have refused so far to give written assurances that, in connection with the arrangement, prices and supplies on third-country markets are not being monitored.[55]

395. It has been suggested that the "European business culture" may discourage small companies and innovative newcomers in the sector.[56] The EC industry is largely dominated by long-established companies like Philips, Siemens or the publicly-owned SGS-Thomson and Bull, which have also been in the forefront of Community developments in chip technologies, such as the JESSI (Joint European Submicron Silicon Initiative) project. The Commission has noted that, while European firms spend on average as much on R&D as Japanese or U.S. firms (some 9½ per cent of their turnover), they are slower to launch products. A recent Commission report ascribes the "precarious situation" of the European computers, peripherals and components industry to such factors as the heritage of fragmented national markets, a shortage of high-technology users, unfavourable financing

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[52]According to Commission estimates, the electronics and information technology industry currently accounts for some 5 per cent of European GDP, as compared with 5½ per cent in Japan and over 6 per cent in the United States (EC Commission, 1991d).

[53]Section IV.2(v)(f).

[54]See GATT (1993b).

[55]Under the arrangement, the United States and Japan reserve their right to take action against "injurious dumping" in third country markets (GATT, 1993).

[56]Financial Times, 29 April 1991 ("National champions become laggards").

conditions, insufficient cooperation among European industries and users, and a lack of strategic market planning.[57]

(c) Consumer electronics

396. Duties on consumer electronics remain relatively high within the framework of the Common Customs Tariff, at 14 per cent in most cases, with significant escalation between parts and assemblies and finished articles. Retrospective Community surveillance of imports has long been maintained vis-à-vis Japan and the Republic of Korea on televisions and videotape recorders (Table IV.2). Anti-dumping measures (in the form of provisional or final duties or of price undertakings) were, at mid-September 1992, in force against China and Hong Kong (small screen colour televisions and video cassettes), Japan (CD players and video cassette recorders) and the Republic of Korea (car radios, CD players, small screen colour televisions, video cassettes and recorders).

397. Recent retail price comparisons point to a high degree of price dispersion among national consumer electronics markets within the EC.[58] Such findings may reflect not only differences in retail structures, tax rates and distribution costs, but barriers to price arbitrage, such as restrictions by manufacturers on re-exports from one EC member State to another.[59] A study published by the Commission in 1991 suggested that

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[57]EC Commission (1991d). The Community's trade policy approach towards the industry, as presented in the above document, centres on a satisfactory conclusion of the Uruguay Round and an effort to ensure "fair conditions of competition and access to third-country markets". Where necessary, the EC would need to resort to bilateral measures and fall back on its customs regulations and trade policy instruments. International cooperation would be sought in particular with the EFTA countries, central and eastern Europe, the United States and Japan.

[58]Financial Times, 3 August 1992. A survey conducted in March 1992 found prices of identical portable TVs and video cassette recorders 30 to 40 per cent higher in Italy and Spain than in Germany and the Netherlands; Camcorders in Italy were up to 45 per cent more expensive in Italy than in Germany; and the price gap for identical tabletop TVs between Germany and Italy exceeded 110 per cent.

[59]As noted in Section IV.4(i)(a), Toshiba Europe GmbH was fined ECU 2 million, in 1991, for having required independent importers in several member States not to re-export to other parts of the EC.

In the article noted above, a Philips spokesman was quoted as saying that if an authorized Philips dealer in Italy asked the company to sell him products from the Netherlands, he would be referred to the distributor in Italy. Philips could not see the relevance of unified prices to the Internal Market. The EC Commission has indicated that it is aware of this situation, and has noted that, since Philips operates, at least partially, through 100 per cent-owned subsidiaries, such practices raise the question of "intra enterprise conspiracy". The European Court of Justice has ruled that Article 85 of the EEC Treaty (EEC competition rules applying to undertakings) is not applicable to agreements or concerted practices between a parent company and its subsidiary if "the undertakings form an economic unit within which the subsidiary has no real freedom to determine its course of action on the market, and if the agreements or practices are concerned merely with the internal allocation of tasks as between the undertakings" (case 15/74; Centrafarm vs.

(Footnote Continued)

market segmentation had contributed, in the past, to shielding EC producers from their Japanese competitors[60] which preferred to focus on the "homogeneous and open" U.S. market.

398. The development of high definition TV (HDTV) in Europe is considered by the Commission as crucial to core parts of the EC consumer electronics industry. An advanced system has been under development in the EUREKA framework. Participants include Philips, Thomson, NOKIA and Bosch (Blaupunkt). The second stage of the project (1990-93) is supported by Community funds of more than ECU 400 million.

399. A recent Council Directive has established D2-MAC - a system not compatible with standards for HDTV being developed in the United States and Japan, but compatible with existing PAL and SECAM systems used in Europe[61] as an intermediate standard until the introduction of full HDTV (HD-MAC). All new programmes and new satellites launched after 1 January 1995 will be required to use D2-MAC (16/9 screen format) in parallel to the existing PAL and SECAM systems. While the EC Commission has reportedly sought to complement the Directive by a binding commitment of equipment producers, broadcasters and satellite operators to promote D2-MAC and, subsequently, HD-MAC, they finally agreed on a declaration of intent. It was endorsed by some 40 companies and associations in June 1992 and presupposes the provision of ECU 850 million through a five-year HDTV action plan.[62] However, during the period under review, no such plan was agreed upon by the member States. The Commission considered it an open question[63] whether D2-MAC would "enable Europe to impose its own technology".

(Footnote Continued)

Sterling Drug). The Commission's view is that use of Article 85 cannot be excluded to the extent that conduct goes beyond what may be considered as "internal allocation of tasks" between the companies in question.

[60] EC Commission (1991d).

[61] D2-Mac has been developed by Philips and Thomson which own all rights. Both companies are reported to have agreed, in July 1990, to spent US$3.2 billion on joint research into HDTV. Thomson has been granted US$500 million of Government aid for these purposes (Herald Tribune, 8/9 June 1991).

[62] Financial Times, 5 and 16 June 1992.

[63] EC Commission (1991a).
The French Deputy Minister of Postal Services and Telecommunications, M. Jean-Marie Rausch, was quoted as saying that "it is imperative to impose D2-MAC in Europe, even if it proves expensive, since this is the only means of safeguarding employment in the communications branch" (Tribune de l'Expansion, 30 August 1991; translation by GATT Secretariat).

(d) Telecommunications

400. Telecommunications equipment is one the few sub-segments of the electronics industry in which the EC continues to register a trade surplus. EC companies, including Alcatel, Siemens/GEC, Bosch and Philips, represent close to one-third of total world production in the sector. Some elements of the EC market are highly competitive, while public procurement remains an important aspect in other areas.[64]

401. Tariff protection averages some 7 per cent (simple average). However, market developments in the sector are still - although to a declining extent - heavily influenced by the monopoly status of public carriers in most member States. National telecommunications administrations are estimated to be responsible for more than half of all equipment purchases in the EC.[65]

402. The extent of deregulation in the public carrier sector varies greatly among member States. In the United Kingdom, the public network was opened to (initially duopolistic) competition in 1984, subject to regulation by an independent regulatory authority (Oftel). The Netherlands' PTT, formally independent since early 1988, is about to face a competing consortium in mobile communications. In Germany, a reform package introduced in 1989 provided for full liberalization of the terminal equipment market, free entry into the value-added services sector, and the institutional separation of operational and regulatory functions. The reforms did not affect public network ownership, which is based on the German Constitution, or the monopoly status of simple voice transmission. Following German unification, however, the voice-telephone monopoly of Deutsche Bundespost Telekom was suspended for three years to allow private satellite operators to establish links between old and new Länder. France created a separate body for regulatory and long-term strategic tasks in 1991. In early January 1993, France approved the establishment of an independent satellite telecommunications network.[66]

403. The monopoly position of national carriers and, concurrently, of "court suppliers" appears bound to diminish over time. One determining factor has been the pace of technical change, notably the advent of new services and techniques (mobile communications etc.) beyond the regulatory

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[64] 15 suppliers account for 90 per cent of all sales within the Community. Of these, five are not located within the Community; two (Motorola and IBM) are non-European companies with major productive capacity within the EC. See EC Commission (1991a).

[65] EC Commission (1991a).

[66] Financial Times, 25 January 1993.

competence and, perhaps even more important, the financial possibilities of public administrations. A second element has been mounting public concern about the capacity of public monopolies to respond swiftly to a dynamic, increasingly sophisticated technical environment, to install new equipment and allow access for new services at reasonable cost, and to ensure continued compatibility and inter-operability of their systems. And, thirdly, national regulators have come under pressure from the Commission - and, in certain cases, from trading partners - to do away with long-entrenched access barriers, over-regulation, discriminations and exclusivity rights.[67] Such pressures, in turn, have been fuelled by the need to recoup soaring development costs for equipment through larger production runs, and by the growth prospects of advanced technologies and new services within an open market environment.

404. At Community level, a Commission Directive on competition in the markets for telecommunications services (No. 90/388) provides for the removal of all special or exclusive rights for the provision of telecommunications services, other than simple voice transmission and the operation of the network infrastructure.[68] With regard to satellite communications, a Commission Green Paper of November 1990, confirmed by a Council resolution in November 1991, envisages four major changes in the regulatory environment: (i) full liberalization of the earth segment,

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[67]The EC Commission has taken a leading rôle in the process of reducing technical barriers and obstacles to mutual recognition, removing national procurement preferences (see, however, Section IV.2(vi) and opening hitherto sheltered markets for advanced services. Major initiatives in this context were the Commission's 1987 "Green paper on the development of the common market for telecommunication services and equipment" (COM(87)290 final) and a subsequent Commission document "Implementing the Green Paper" (COM/88/48). The Green Paper proposed the progressive liberalization of all terminal and equipment markets; unrestricted supplies of value-added services; the complete separation of regulatory and operational functions; the acceptance of the principle that tariffs should be responsive to cost trends; and a balanced approach towards developing new services which include remote regions (for an overview see, for example, Ungerer (1988)).

The United States has launched various fact-finding missions over recent years with a view to exploring market access opportunities at national and Community level and, apparently, to influencing the pace and direction of reforms. In April 1991, the U.S. and German authorities agreed on twice-yearly meetings to discuss regulations and questions of modernization in the telecom sector, satellite policy, technical standards and networks, radio communications and issues related to HDTV (Journal of Commerce, 14 April 1991).

[68]The Directive opens all value-added services to competition and provides for the progressive liberalization of communication services. The resale of non-voice services is allowed from 1 January 1993, with a transition period until 1 January 1996 for member States with undeveloped public data networks. The Directive does not cover telex, mobile radio telephony, paging and satellite services; and member States are allowed to operate licensing or declaration procedures in order to ensure compliance with certain "essential requirements" (e.g. security of the network, maintenance of network integrity and inter-operability of services and data protection).

A Framework Directive on Open Network Provisions of June 1990 is designed to lay the ground for harmonized access conditions to the network infrastructure and certain services. Priority has since been given to develop implementation Directives for leased lines, packet- and circuit-switched data services, ISDN, voice telephone service, telex service and mobile services.

including the abolition of all special rights; (ii) free access to the space segment on a non-discriminatory, cost-oriented basis; (iii) full commercial freedom for space segment providers, including direct marketing of satellite capacity; (iv) harmonization measures in order to allow for the provision and use of services Europe-wide.

405. In March 1991, the European Court of Justice upheld the competence of the Commission to issue Directives under Article 90:3 of the EEC Treaty, aimed at abolishing the special or exclusive rights of national agencies to import, market, install, or operate goods and services (Section IV.4(i)(d)). The ruling covers telecommunications terminal equipment, but may have much wider implications for further initiatives to terminate monopoly rights in utilities sectors, such as mobile and satellites,[69] equipment and services, postal services, energy, and transport. Directives concerning the satellite equipment sector are currently being prepared. In the sphere of mobile communication, the Commission is in the process of examining current trends in member States' regulatory framework and the impact of technical constraints resulting, for example, from overlapping technologies and frequencies. The existing EC regulatory system, as well as any future changes, would cover the whole EC/EFTA area under the EEA Agreement.

406. A variety of additional regulatory and institutional changes is likely to affect access to EC and national equipment markets. These include full mutual recognition of type approvals for terminal equipment among the member States (Directive No. 91/263); the creation of a European Telecommunications Standards Institute in 1988 (ETSI);[70] and, on 1 January 1993, the entry into force of the procurement Directive on the "excluded sectors" (water, energy, transport and telecommunications; Section IV.2(vii)).

(iv) Pharmaceuticals

- General features

407. The pharmaceuticals industry is one of the mainstays of EC manufacturing, with a strong position on international markets. Pharmaceuticals production in the Communities ranks first worldwide, with total output of ECU 52 billion in 1990. Trade has continuously been in

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[69]Carpentier (1992). Michel Carpentier is Director-General for Telecommunications, Information Industry and Innovation in the EC Commission.

[70]ETSI was intended to speed up the establishment of common specifications; however, the standardization process continues to advance only slowly (Carpentier, 1992; see also Section IV.2(viii)).

surplus; net exports were close to ECU 5 billion in 1991. Nominal tariff protection is in the order of 6 per cent (simple average).

408. The trade performance of the sector may be attributed to its innovative strength. The industry ranks top in terms of research intensity; more than 10 per cent of the workforce (450,000 in 1990) is involved in R&D activities. A recent Commission publication nevertheless describes the current situation as difficult, pointing to a diverse regulatory environment, including patent law, within the EC and to stiffening international competition, mainly from U.S. and Japanese companies.[71] As shown in Table AV.5(i), there are only few sectors in which the share of intra-EC trade in domestic consumption is lower (14.7 per cent in 1990).

Market segmentation

409. The market for pharmaceuticals is considered to be one of the most fragmented and regulated in the EC.[72] For a variety of reasons, including social and health policy objectives, market imperfections and budgetary constraints, an intricate regulatory framework (including approval requirements, price controls, expenditure controls, positive and negative lists for prescriptions, restrictions on distribution and dispensing) influences supply and demand.[73] The measures are mostly applied at national rather than at EC level.

410. At least seven member States operate direct price controls.[74] Since their focus is on patented drugs, market disparities are likely to be

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[71] EC Commission (1991a).
Of the 12 largest EC producers of pharmaceuticals, nine are located in member States with more "liberal" price régimes in the sector: four in both the United Kingdom and Germany, and one in the Netherlands. The three leading companies are Glaxo (UK), Hoechst and Bayer (Germany).

[72] G. Klepper (1992).

[73] A Council Directive of December 1988 (No. 89/105) establishes a set of common rules and transparency requirements for member States that operate price approval schemes, profit controls, or positive or negative lists for purposes of the national health insurance systems. While respecting the diversity of the regulatory systems, the Directive establishes timeframes for decision-making, provides for the publication of decisions, and requires the institution of appeals procedures. A Consultative Committee is to provide the Commission with detailed information on the functioning of the national systems. The Commission has indicated that, based on the experience gained in this context, it might eventually suggest new measures aimed at eliminating the negative effects these controls could have on the functioning of the Internal Market.
The Commission is in the process of setting up an EC-wide data base on pharmaceuticals (ECPHIN), comprising product characteristics and prices. It is intended to be opened to the public after 1995.

[74] A study by the European Consumers' Association (BEUC, 1989) considered the German
(Footnote Continued)

particularly pronounced in this segment. Out of patent, drugs may be copied by generic manufacturers which are subject to "normal" price and market disciplines (including the entry of new competitors).

411. A price survey by the European Consumers' Association (BEUC), conducted in 1988, found drug prices in Portugal, Greece and Spain significantly below the EC average, while those in Germany, the Netherlands and Denmark were the highest, with an average differential of 2½ times.[75] While such price differentials can normally be expected to encourage arbitrage by independent agents, available studies suggest that parallel deliveries represent no more than 2 per cent of the EC market for prescription drugs (1 per cent in Germany, 8 per cent in the United Kingdom, and 5 to 10 per cent in the Netherlands).[76] Not surprisingly, the trade flows originated mainly in "low-price" EC member States, such as Belgium, France, Italy, Greece and Spain.

412. According to a 1976 ruling of the European Court of Justice and a 1982 Commission communication on parallel imports of proprietary medicinal products for which marketing authorizations have already been granted, parallel imports from other member States do not require separate admission procedures.[77] While this appears to have facilitated market access, a variety of other technical barriers has continued to hamper intra-EC trade.[78] In addition, pharmacists in some member States are reportedly

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(Footnote Continued)

rules on drug pricing to be the most liberal in the EC. However, the German authorities have progressively introduced, since 1989, limits on reimbursements by sickness insurances. Drugs are grouped according to their active ingredients, and reference prices are set for each group. Patients are required to pay the difference between reference and actual prices. The range of affected products has been extended over time and is expected finally to cover 50 to 60 per cent of the market (REMIT, 1991).

Price formation in the United Kingdom is free as long as maximum profit margins are not exceeded. The system is reported to be applied liberally, with a view not to discouraging innovation (Bundesvereinigung Deutscher Apothekerverbände, 1991). Price policies in Denmark, Ireland and the Netherlands are also considered as relatively liberal.

[75] BEUC (1989). A sample of 125 drugs was taken; prices were weighted according to turnover. The Federation of German Pharmacists (Bundesvereinigung Deutscher Apothekerverbände) has disputed the above results for several reasons, including data inaccuracies and failure to take into account discounts for health insurances and differences in value-added taxation. The Federation also stressed the impact of price-containing measures, progressively introduced in Germany since 1989 (see footnote above). In early 1991, the BEUC "drug basket" was estimated to be no more than 10 per cent more expensive in Germany than on average in the EC (Diener and Sitzius-Zehender, 1991).

[76] REMIT (1991).

[77] Case 104-75 (Collection 1976, p. 613) and Official Journal C115 of 6 May 1982.

[78] The Netherlands operates a simplified registration procedure for imports of drugs with the same chemical components and dosage. The United Kingdom's "Product Licence - Parallel Import" procedure is reported to facilitate registration of parallel imports from other member States (but not from third countries) if their therapeutic quality is identical to a product already registered in the U.K. (Klepper, 1992). However, the issuance of the

(Footnote Continued)

reluctant to dispense parallel imports, possibly because of the structure of incentives provided under medical reimbursement schemes (such as the fixed percentage mark-ups applied in Germany). Further impediments to parallel trade result from the need to change packings, labels and/or product information. In certain cases, wholesalers have been pressured by their own associations, competitors or manufacturers not to purchase from parallel importers.[79]

413. Recent initiatives by member States may assist in encouraging parallel trade. For example, Germany has laid down official requirements compelling pharmacies in certain circumstances to dispense cheaper imports if a range of conditions is met. Urged by the Commission, Germany is also reported recently to have removed administrative import barriers. Since December 1992, importers of products already cleared for sale in Germany no longer have to produce a document confirming anew that the legal requirements for marketing are actually met.[80] The Netherlands has made dispensing of parallel imports more attractive through modifying the sales margin.[81] These measures appear to improve access conditions for both EC and third country products which are in free circulation in a member State.

414. Attempts have been made since the mid-1960s to ensure coordination of national registration of pharmaceuticals among the member States. A European Committee for Proprietary Medical Products (CPMP) and for Veterinary Medicinal Products (CVMP) have been established with a view to narrowing divergencies in national admission procedures.[82] The Committees may be requested by any member State or the Commission to give an advisory opinion on individual cases (the final decision lies, however, with the member States). In the fields of biotechnological and other high-technology products, national authorities must consult systematically in the

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(Footnote Continued)

licence is said to take 19 months in general, as against three months in the Netherlands (REMIT, 1991). In 1989, Germany's Federal Administrative Court (Bundesverwaltungsgericht) ruled that products can be considered as identical only if they carry identical names; "Methotrexat" (Germany) and "Methotrexate" (Italy) were therefore viewed as dissimilar and the latter was required to undergo the full licensing procedure.

[79] REMIT (1991).
In August 1992, Germany's Federal Cartel Office (Bundeskartellamt) prohibited the three leading wholesalers in the sector from further denying Eurim-Pharm, the country's largest parallel importer of drugs, access to pharmacies (Neue Zürcher Zeitung, 24 August 1992).

[80] European Report, 9 January 1993, and Nachrichten für Außenhandel, 12 January 1993.

[81] REMIT (1991).

[82] Both Committees are expected to act as scientific bodies. They are composed of experts from the national health administrations and the Commission. Contrary to the CPMP, the CVMP may grant observer status to industry and user representatives.

Committees before granting, refusing or withdrawing access to the market.[83] In other areas, a multi-country registration procedure entitles a supplier which has obtained access to one member State, to request an extension to others. These[84] are required "to take due account" of the initial registration. However, this approach, which may be considered a soft (voluntary) variant of the[85] mutual recognition principle, has apparently not proved very effective. About 360 pharmaceuticals, including 55 bio-technological products, have so far undergone these procedures.

415. Member States are required to process applications within a period of 120 days. In exceptional cases, this may be extended by 90 days (not including delays caused by additional requests for information). Charges for processing applications are set at the national level. New applications from third country suppliers for product admission are treated like any application from EC producers. Tests conducted abroad that comply with EC requirements are acceptable to the Community. Any subsequent imports are required to conform to the same criteria as EC products (with regard to manufacturing practices, production controls etc.).

The post-1992 framework

416. New legislation, approved in principle by the Council in November 1992, is designed to provide for harmonized and partly centralized EC admission procedures. As from 1995, three different avenues to product registration will be available: (i) a centralized Community procedure for certain new products, valid in all 12 member States; (ii) decentralized national authorization for the majority of products, with the obligation of mutual recognition; and (iii) national registration valid only in the issuing member State. The EC-wide approach would be compulsory for biotechnology-based medicines and for veterinary medicines used to increase productivity. Other innovative products and active ingredients may be submitted either to centralized or decentralized procedure.

417. Requests for product admission would in future be lodged directly with a European Agency for Assessing Medicines, building on the CPMP and

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[83]Council Directive No. 87/22.

[84]Council Directives Nos. 65/65 (medicines for human use) and 81/852 (veterinary use). If a new product is essentially similar to a drug authorized and marketed for a certain period (six or ten years), the applicant may be exempt from the need to provide the results of pharmacological, toxical or clinical tests.

[85]Reportedly, the system has been plagued by long delays and the fact that national regulatory agencies have rejected most applications they received from importers (Belgium, Italy, Germany, the Netherlands and the United Kingdom are said to have objected to more than 85 per cent of the applications. Financial Times, 11 March 1991).

CVMP. The Agency's decisions would subsequently become binding through Commission Decisions, if no objections are raised within 30 days.[86] Whenever an application concerns more than one member State, the new rules provide for bilateral conciliation and, ultimately, binding arbitration in the event of disputes. The European Agency would also coordinate national surveillance activities on product safety, inspections and laboratory controls. Like its predecessors, the agency would focus exclusively on the three traditional admission criteria of quality, efficacy and safety; any further considerations - for example, the impact of veterinary medicines on agricultural structures - would be brought to bear by the Commission or, finally, the Council.

418. Basic regulatory issues in the sector (approval criteria and procedures, procedures for marketing authorization and manufacturing controls, recognition of tests[87]) have been addressed by way of harmonization regulations and directives. They are complemented by guidelines for good manufacturing and laboratory testing.[88] Medicines for both human and veterinary use are subject to similar criteria and requirements. The preference for mandatory harmonization in this sector reflects the view that, given the health and safety problems involved, "new approach" directives, let alone the mutual recognition principle, would not prove a reliable basis for market integration (Section IV.3(viii)).

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[86] In the event of major objections, the Commission would decide in consultations with an regulatory Committee, made up of representatives of member States. The decision could be referred to the Council.

[87] These texts have been published by the Office for Official Publications of the European Communities under the title "The Rules governing Medicinal Products in the European Community" (Luxembourg, 1991).

[88] See, for example, N. Bohan (1991).
As stated by the Commission, analytical, pharma-toxical tests and clinical tests carried out within a member State in conformity with EC rules are to be accepted by all other member States. The same applies to product controls. Mandated by the Council to up-date the EC technical testing requirements, the Commission has issued a variety of Directives in recent years, for example, with a view (i) establishing principles and guidelines for good manufacturing practices; (ii) up-dating and extending the requirements for analytical, toxical and clinical tests of medicines, vaccines, blood derivatives and radio-pharmaceuticals; (iii) establishing comparable criteria for veterinary medicines and vaccines; and (iv) specifying maximum residue levels for veterinary medicines in food products.
A further set of four Council Directives, issued in 1992, is aimed at (i) imposing controls on distribution channels with a view, in particular, to facilitating the withdrawal of defective products; (ii) harmonizing prescription requirements; (iii) stipulating common rules for product information (concerning labels and product descriptions); and (iv) regulating advertisement destined for the public and, separately, the health profession.

International cooperation

419. The EC, Japan and the United States have agreed to exchange for comment all new regulatory proposals and technical guidelines. In the framework of harmonization conferences called ICH (International Conference for Harmonization), the three regions have agreed on conducting a five-year programme of international harmonization of their respective testing requirements. Third countries are informed, and invited to comment, via the World Health Organisation. (According to the Commission, contacts and conferences involving experts from the EC, Japan and the United States are open in principle to third country inputs via the WHO). Pursuant to the EEA Agreement, the "acquis communautaire" in this area is due to be extended to all EFTA countries. In view of the present degree of harmonization, the Commission expects that the Agreement will not result in major changes.

(v) Coal

Developments in production and trade

420. The contribution of coal to the Community's energy consumption has declined slowly over time, from 23 per cent in 1980 to 20.3 per cent in 1992 (EC 12)[89] EC production and, in particular, employment in the sector have shrunk. Total EC hard coal output stood at some 200 million tonnes in 1992, as against about 190 million tonnes of lignite and peat; this compares with some 260 million tonnes of hard coal ten years previously (see Chart V.11 below).[90] The only member States with significant hard coal production are the United Kingdom, Germany, Spain and France.[91] Lignite production is concentrated in Germany, Greece and Spain.

421. The decline in output has been accompanied by increased imports over time. Total Community hard coal imports are estimated at some 130 million tonnes in 1992, as against slightly over 100 million tonnes in 1989. The United States was the most important supplier of hard coal in 1992 (40 per cent), followed by South Africa (20 per cent), Australia

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[89]The members of underground mine staff in the Community (EC 12) was halved from 1.1 million to some 550,000 during the 1960s. By the end of the 1980s, it had fallen to about 200,000. The decline was particularly pronounced in the United Kingdom.

[90]Excluding east Germany.

[91]Production in the United Kingdom is due to decline rapidly under a programme announced in October 1992.

(16 per cent) and Colombia (8 per cent).[92] Imports of lignite are insignificant.

422. Germany is the only member State to impose tariffs on external hard coal imports, based on a derogation granted in 1958.[93] However, the level of protection - specific duties of DM 6 per tonne - is insignificant when compared with other forms of national support, including direct subsidization and exclusive supply contracts between domestic producers and major user industries.

- The EC regulatory environment

423. Government involvement has had a long tradition in the coal sector, which once was considered one of the pillars of western Europe's economy. This is reflected in the specific legal framework created for the coal and steel industry in the early 1950s under the ECSC Treaty. However, though the Treaty prohibits the extension of State aid to the sector (see below), this has not prevented the establishment, in some member States, of generous support programmes with a view to cushioning mounting adjustment pressures.[94] Overall, the Commission authorized member States to extend more than ECU 70 billion of subsidies to coal production between 1965 and 1990. In recent years, the Commission has placed increasing emphasis on effective subsidy disciplines; not least with a view to reducing distortions between member States and spill-over effects on the market for electricity.

424. The current regulatory framework for State aid to the EC coal industry stipulates that, to be considered compatible with the proper functioning of the common market, support must be devoted to at least one of the following objectives: (i) improving the competitiveness of the industry and, thus, helping to ensure greater security of supply; (ii) creating new capacity, provided that this is economically viable; and

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[92] Lignite is generally used for direct consumption in nearby power plants.

[93] Italy operates tariffs on coke and, along with Greece and France, on lignite; the rates do not exceed 5 per cent.

[94] Article 4(c) of the ECSC Treaty imposes an unqualified ban on "subsidies or aids granted by States, or special charges imposed by States, in any form whatsoever" for ECSC coal and steel products. However, as noted by the Commission, "the need to grant such aid has been recognized and the granting of aid has been made possible by the adoption of ECSC Decisions giving the Commission the right to authorize aid and subsidies designed to bring the level of production into line with the scope for restructuring the mining industry while avoiding social problems" (EC Commission, 1991e). The Decisions were taken, with the unanimous assent of the Council, pursuant to Article 95 of the ECSC Treaty. The Article refers to "all cases not provided for in this Treaty where it becomes apparent that a decision or recommendation of the High Authority is necessary to obtain ... one of the objectives of the Community ...".

(iii) solving social and regional problems stemming from developments in the sector.[95] The Decision is applicable until year-end 1993.

National coal policies

425. Reflecting its continued high level of subsidized production, Germany accounted for nine-tenths of the coal subsidies extended in the EC in 1991 (Table V.6). The current cost of production in the Saar region (DM 280 per tonne) is reported to be some 75 per cent higher than in the adjacent Lorraine mines in France.[96] Estimates by the International Energy Agency suggest that total support to Germany's uneconomic hard coal mines, in PSE terms, rose by some 60 per cent between 1986 and 1988 to reach its current level of some US$100 per tonne.[97] The IEA considered a continuation of this trend difficult to justify in view of the need to rationalize lignite production in east Germany. In contrast, west German lignite production (110 million tonnes in 1992) is considered by the IEA to be fully competitive without public support.[98]

426. Lignite was the former GDR's only indigenous energy source. Its domestic market shrank from 250 million tonnes in 1990 to 168 million tonnes in 1991, reflecting the impact of price liberalization and market opening, privatization of the energy sector, introduction of stricter environmental standards and the collapse of the coal-chemical industry. In July 1992, the Commission approved subsidies of DM 600 million (ECU 290 million) for the construction of a large lignite-fuelled power station (total project cost amounts to DM 2.7 billion). The aid is destined to cover some of the additional cost incurred by using lignite rather than hard coal. It was deemed justified by the Commission in view of the demand effects, which would facilitate reclamation work in East

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[95] Commission Decision No. 2064/86/ECSC. The Commission has noted that, over the past three years, its decisions on State aid have stressed the temporary nature of all such aid; the decisions have also expressed the greatest reservation about measures which hampered the return to long term viability of the industry, jeopardized progress towards the completion of the Internal Market for energy, or ran counter to a more efficient allocation of resources and the degressivity of cost and aid. Recognizing the strategic rôle of EC coal within a Community policy for security of supplies, the Commission considers it as economically justifiable, within reasonable limits, that this contribution be remunerated.

[96] Süddeutsche Zeitung, 29 September 1992. See also Chart V.12.

[97] The IEA estimates are in constant 1990 U.S. dollars. The PSE approach used for coal is similar to that applied to agriculture (Section V.2(i)); attempts have been made to exclude assistance not destined for current production. The German Government has disputed the accuracy of the estimates.

[98] IEA (1991).
The German Minister of Economics was quoted as saying that East German lignite would have to compete without subsidization with imported hard coal and nuclear energy. At the same time, he rejected any plans to impose additional charges, for example an energy or carbon tax, on the use of lignite. See Frankfurter Allgemeine Zeitung, 12 June 1992.

Germany's old lignite mines, and the technological spin-offs.[99] In return, the German Government is reported to have undertaken not to promote further, directly or indirectly, the use of lignite for electricity generation in preference to alternative fuels.[100] The east German market is free from import barriers on hard coal and of substitute mechanisms like the "coal penny" scheme.[101]

427. The "coal penny", a general levy on electricity bills in western Germany, is designed to source a compensation fund for electricity producers, offsetting part of the cost disadvantage resulting from the use of domestic hard coal.[102] The levy , at a rate of 7.75 per cent, generated funds of some DM 5.3 billion (ECU 2.6 billion) in 1992. In addition, under the "Hüttenvertrag", German steel mills are required to rely exclusively on domestic coal, supplied at subsidized prices which are fixed somewhat above the world market level, but far below German production cost. The Federal Republic has invoked Article XIX of the GATT since 1958 to provide legal cover for a complex quota system designed to flank the coal régime.[103]

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[99]The decision was based on Article 92 of the EEC Treaty (lignite is not covered by the ECSC Treaty).

[100]Europe, 5 August 1992.

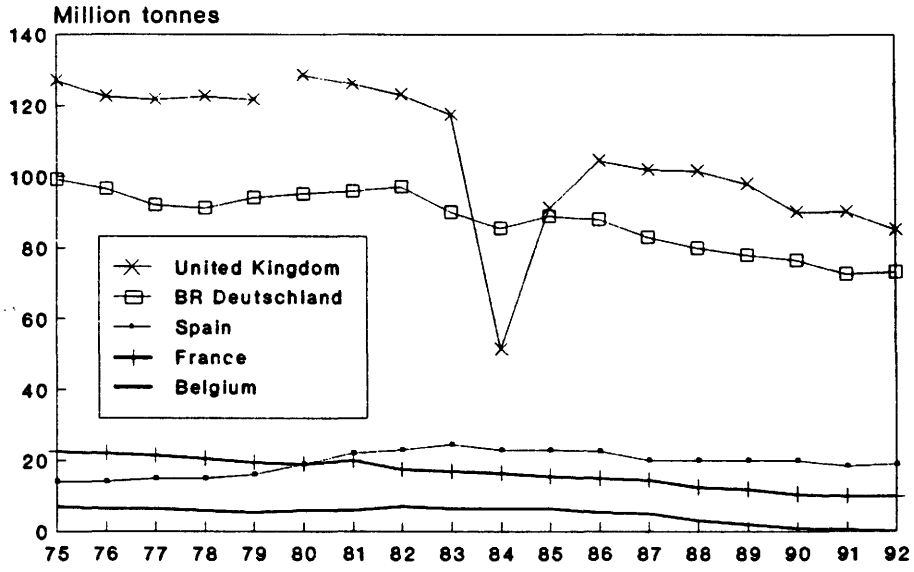
[101]IEA (1992).

[102]Of Germany's total hard coal production of 72.5 million tonnes in 1992, some 40 million tonnes were used for electricity generation. The compensation fund covers a volume of 34½ million tonnes of EC coal. The contractual framework with the electricity producers is due to expire in 1995.

Observers have discussed whether the member States' energy sectors, encompassing coal producers and electricity plants, might be exempted from Community disciplines. This could be the case if energy production fell within the meaning of Article 90:2 of the EEC Treaty. (The Article stipulates that companies entrusted with the operation of services of general economic interest would be subject to EEC competition rules only insofar as their application does "not obstruct the performance, in law or in fact, of the particular tasks assigned to (the companies)".) However, the case law hitherto established by the European Court of Justice suggested that reference to such "particular tasks" in pursuit of energy policy objectives would be deemed insufficient to protect national State aid for coal producers, whether granted directly or via levy mechanisms, from the strict ban under Article 4(c) of the ECSC Treaty. In addition, Article 90:2 would cease to apply in any case once agreement has been reached on a comprehensive EC approach towards energy, which included security aspects. Social or regional policy considerations would also fail to provide cover for uncoordinated subsidization and similar measures at national level, despite a long history of government interference in the sector (Leisner, 1990).

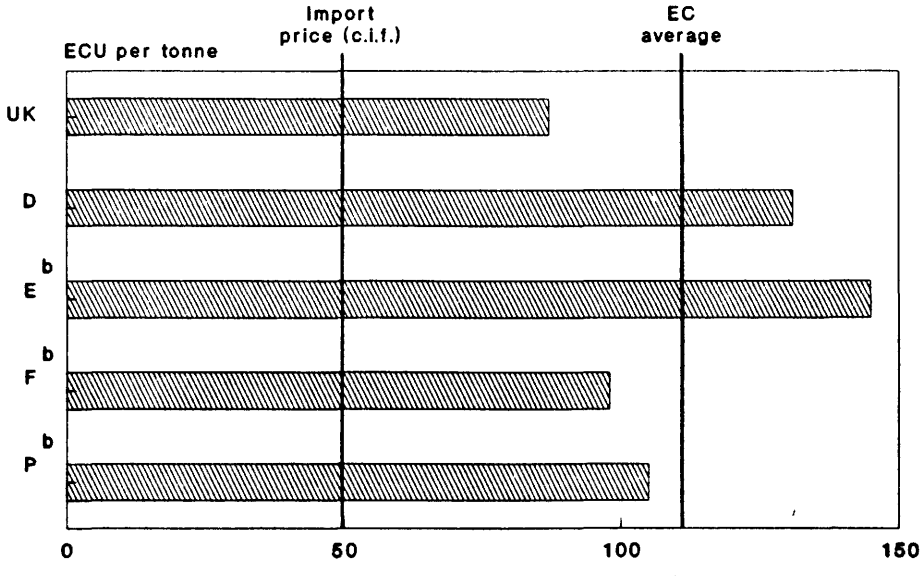
[103]GATT documents L/855, 18 September 1958, and L/920, 19 November 1958. The quotas apply to non-ECSC and non-EFTA deliveries. Direct shipments from the "Europe Agreement" countries are currently covered (see below).

Chart V.11
Hard coal production in EC member States, 1975-92



Source: EC Commission (1991e).

Chart V.12
Average cost of coal production in EC member States, 1989[a]



a Member States are ranked in descending order of total production.
b Including opencast mines.

Source: EC Commission (1991e)

428. In March 1989, the Commission authorized the continuation of aid under the "coal penny" mechanism, in view of social and regional problems seen as likely to result from immediate termination of support. However, the Commission Decision held that "the automatic granting of aid to the volumes of coal produced ... has the effect of stimulating investment to maintain capacities with no guarantee of economic viability in the long term". Germany was required to submit a plan for the restructuring, modernization and streamlining of its industry before 30 September 1989.[104] No final agreement has been reached to date, since the German proposals, which relied exclusively on the tightening of existing production limits rather than on the introduction of subsidy ceilings, were deemed as not addressing the issue by the Commission. However, in late November 1992, the Commission authorized the granting of more than DM 11 billion of assistance to German mines under the "coal penny" mechanism in 1991 and 1992.[105] In December 1992, the granting of some DM 5 billion was authorized for 1993.

429. While the United Kingdom operates no formal support schemes, Government contracts between British Coal (BCC) and the electricity generators (in England, National Power and PowerGen) ensure a premium price for domestic coal production.[106] The contracts, covering over three-quarters of BCC's output, are due to expire in March 1993. The power generators would then be free to use coal from any source, or other fuels such as gas, for power generation. Imported coal currently caters for slightly more than one-tenth of domestic consumption. Sharp fluctuations

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[104] Commission Decision No. 89/296/ECSC.
As a result of the coal round discussion (Kohlerunde 1991), the German Government and the domestic coal industry agreed to scale down German hard coal production from its current level of over 70 million tonnes to 50 million tonnes by 2000.

[105] The relevant Commission Decision (No. 93/66/ECSC) held that this did not prejudge the compatibility of the basic contract ("Jahrhundertvertrag") with the EEC and the ECSC Treaties. The Commission also reiterated its view that the relevant German legislation did not further the objective of improving competitiveness or creating new capacities that are economically viable (laid down in Decision No. 2064/86/ECSC) and, moreover, that it was not primarily aimed at resolving social and regional problems connected with changes in the coal industry.

[106] In 1991, following a complaint by associations representing small mines and opencast operators in the U.K., the EC Commission issued a Decision maintaining that National Power and PowerGen combined had a dominant position as coal users for electricity production. The Decision recalled the prohibition, under Articles 63 of the ECSC Treaty and 86 of the EEC Treaty, to exploit dominant market positions and to discriminate between suppliers. It held that the proposed contracts between the electricity generators and the two groups of suppliers - BCC on the one hand, and small and opencast mines on the other hand - constituted an illegal discrimination.
The U.K. authorities subsequently proposed new conditions, including price increases (20 per cent) and an undertaking by the electricity generators to purchase specified quantities from the small and opencast mines. While the Commission considered this proposal, applicable as of 1 March 1990, as sufficient, the National Association of Opencast Operators brought the case before the European Court of Justice (EC Commission, 1992d).

in PSE levels between 1989 (US$92 per tonne), 1990 (US$24) and 1991 (US$22) are said to reflect grants extended to cover write-downs of assets and pension obligations.[107] Following the financial restructuring of British Coal in 1990, the United Kingdom is reported to have since granted no aid in favour of current production.

430. Under Spain's "New Contract System for Thermal Coal" (Nueva Sistema de Contratacion de Carbón Térmico; NSCCT), members of the national association of electricity producers (UNESA) are contractually committed to purchasing their coal input from domestic mines. Compensatory payments, collected through a levy on electricity tariffs, are designed to offset the ensuing cost disadvantage. Under the contracting system, the eligible coal companies are to submit regular reviews of their strategy plans, aimed at adjusting production capacities to anticipated demand and demonstrating continued economic viability. Additional protection is provided through long-term agreements between the Government and the publicly-owned coal company (HUNOSA).[108]

431. A multi-stage restructuring plan for the private hard coal industry, issued in late 1990, includes the partial or complete closure of mines classified as non-viable and the reorganization of the system of compensatory payments. The State-owned mines are to be restructured in parallel.[109] The IEA estimates that implementation of the restructuring plans has led to an increase in PSEs from US$33 per tonne in 1990 to US$52 in 1991.[110]

432. France and Belgium have implemented in recent years far-reaching restructuring, rationalization or modernization programmes with a view to reducing production and support; the last Belgian mine was closed in September 1992.[111] Portugal launched a restructuring plan in 1991,

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[107] IEA (1991).

[108] State-owned mines account for slightly more than two-fifths of total workforce in the sector (41,700 in 1990).

[109] IEA (1991 and 1992). The IEA has complimented the Spanish authorities for their "necessary and courageous decision" to start a basic restructuring of the industry.

[110] IEA (1992).

[111] France operates no restrictions or taxes on coal imports which, overall, cater for two-thirds of total domestic consumption. French coal has, however, a guaranteed market in electricity generation. The national electricity producer (EDF) is contractually committed to using 2 million tonnes of domestic production per annum (1987-1992), which is about one-quarter of its total requirements. The supplies are at market prices. In addition, a heating facility in the Paris region provides a contractually guaranteed outlet for coal from the Lorraine bassin. According to IEA (1992).

providing for the gradual phasing out of assistance. The last mine is scheduled for closure in 1995.

433. Under the Europe Agreement, the three central and east European countries are required, upon entry into force of the Agreement, to terminate any quantitative restrictions and measures with equivalent effect operating on their coal imports from the EC. The Community, in contrast, is obliged to abolish existing quantitative restrictions within one year, except for Germany and Spain, which are given four years. There are no obligations on the EC member States to terminate "measures having equivalent effect" and, thus, to do away with the subsidies and exclusivity contracts that determine access to large segments of the market.

434. The EEA Agreement with the EFTA counties would allow both parties to continue their existing non-tariff barriers on imports.[112]

- Proposed changes

435. Current discussions within the Commission appear to revolve around the development of a common policy approach towards the sector, with the objectives of securing a reliable supply basis, reducing EC internal market distortions without creating social disruptions, and limiting the environmental impact of the use of fossil fuels. A recent Commission report stressed that "only production which is competitive in the long term is desirable" and that security of supply also involved the diversification of energy sources; producing coal, irrespective of economic viability, could not be considered an end in itself.[113] The Commission also noted that world market prices were subject to various distortions and did not reflect security aspects. A future aid system for coal could be based on a common ECU reference price incorporating a security premium. Support under such a system would cover the difference between current import prices and the reference price (with additional adjustment aid paid during a transitional period).[114] The new system would have to be approved unanimously by the member States.

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[112] A separate Protocol to the Agreement provides for the phasing out of export restrictions and measures having equivalent effect, and of customs duties and charges (rather than "measures") having equivalent effect.

[113] EC Commission (1991e).

[114] Press reports suggest that the Commission proposes taking the average EC cost of production in 1992 as a benchmark for support. Aid to mines producing at higher cost would be linked to restructuring measures. In 1998, the reference price would be adjusted to the new average level of production costs, and any additional support would be conditioned on closures. The system as proposed would expire in 2002. (European Report, 11 November 1992 and Frankfurter Allgemeine Zeitung, 16 November 1992).

436. Given the current pattern of production and support within the EC and worldwide, any liberalization of the national coal régimes is likely to benefit third country suppliers.

(vi) Steel

437. The situation in the EC steel industry has changed markedly since the initial TPRM report. The recovery of the late 1980s evaporated and the EC steel market has become increasingly oversupplied.[115] This reflects, in particular, the world-wide recession and the intensification of competition, including from central and eastern European sources seeking new markets.

438. A Commission Communication of 1992 gave a muted assessment of the current situation of the sector and its medium-term prospects. Further significant restructuring was seen as inevitable; industry estimates of the possible employment effects are in the order of 50,000.[116] Referring to its Communication on Industrial Policy in an Open and Competitive Environment[117], the Commission has reiterated that the companies concerned had the primary rôle in taking decisions, in respect of competition rules, on capacity reductions. Any support extended would be placed firmly in this context.

439. In July 1992, all iron and steel products covered by the ECSC Treaty were made subject to retrospective Community surveillance, with "the purpose of monitoring trends in current imports and swiftly identifying any adverse effects on the Community industry concerned" (Commission Decision No. 1856/92/ECSC). The Decision, which exempts imports from EFTA countries, was extended in December 1992 for one year. A range of primary and semi-manufactured products from non-EFTA sources is subject to prior surveillance.[118] In August 1992, at the request of Germany, France and Italy, the EC imposed unilateral quotas on certain imports from the CSFR (steel pipes and bars and rods into Germany; cold-rolled sheets into

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[115]EC crude steel production was some 132.5 million tonnes in 1992, down by 3.6 per cent from 1991 (-5.7 per cent in Germany which represents some 30 per cent of total EC output). The decline has accelerated significantly since early 1992. (Source: Europe, 23 January 1993.)

[116]EC Commission (1992k). In this context, the Commission also expressed its readiness "to take all necessary steps to persuade the countries liable to cause commercial exports to refrain from destabilizing trade by charging abnormal prices or increasing exports excessively at a time when the Community industry is confronted with serious difficulties".

[117]EC Commission (1990).

[118]Commission Recommendation No. 3772/92/ECSC. Before December 1991, prior surveillance was coupled with price monitoring on imports from specified sources.

France; hot-rolled coils into Germany, Italy and France).[119] In the Internal Market context, various national restrictions affecting imports from the CIS Regulations were replaced by Community quotas.[120] According to the Commission, no steel imports (ECSC products) were, in late 1992, subject to voluntary restraint arrangements or similar bilateral understandings.[121]

440. On 25 February 1993, the EC Council approved new conclusions for the restructuring of the Communities' steel industry. These involve a programme of "definitive capacity reductions" to be formulated by the industry by September 1993, phased until the end of 1994 "or, if justified grounds exist, until the end of 1995". Additional financial support from the Community budget for displaced workers is envisaged to soften the impact of unemployment resulting from plant closures; funds may also be provided for industrial conversion. Such measures must respect the Community's steel aid régime (see below) and are conditional on the timely definition of the capacity reduction programme. (The programme is to be based on quarterly "indications" by the Commission, on a product basis, of production and deliveries in the Community.)

441. Measures relating to imports introduced in support of the steel plan include the extension of prior and ex post surveillance on imports; the updating of basic import prices at regular intervals; negotiations on shipments of sensitive products with central and eastern European countries, if warranted by the export conditions during the period in question, "whereby gradual access may be gained to the Community market by fixing appropriate tariff quotas for the period 1993 to 1995"; and proposed extension to 1994 and 1995 of the quota system established for imports from the CIS Republics.

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[119] Apparently the Czech and Slovak authorities had resisted appeals to cease alleged "under-pricing" and to moderate or redirect their exports (see also Section IV.2(iv)(b)). The measures were taken under the general safeguard provision of the Europe Agreement; the Commission has stated it would review the situation at their expiration on 31 December 1992.
Between January and April 1992, imports into the EC market from the then Czech and Slovak Federal Republic were 126 per cent higher than a year previously (according to Eurofer).

[120] For many years, certain supplies from Bulgaria, Romania and the former Soviet Union entered five member States (Germany, Italy and the Benelux countries) under autonomous quotas. The EC-wide restrictions, as from 1 January 1993, are based on the 1991 trade levels plus a certain growth factor. The measures applicable to Bulgaria and Romania are due to end with the entry into force of interim association agreements (Europe Agreements).

[121] While the Republic of Korea has continued to moderate its exports towards the EC (Table IV.2), the GATT Secretariat has no information pointing to any involvement of the EC authorities.

442. According to the Commission, State aid to the sector was virtually phased out by the end of the 1980s.[122] A new sectoral support régime, introduced in 1991, continued the granting of aid in the period 1992-96 to four broad subject areas: research and development, environmental protection, partial or total cessation of production, and investments in certain EC regions (Greece, Portugal and east Germany).[123] All other forms of aid were prohibited. Provisions relating to research and development were brought into line with those of the general EEC framework in this field. The EEA Agreement is due to extend these rules, like the ECSC competition rules, to the EFTA area.[124]

443. The Commission has emphasized that, following the restructuring of the industry in the 1980s[125], infringements of ECSC competition rules would no longer be tolerated; any cases would be treated under EEC law. In June 1990, six major producers of stainless steel products were fined a total of ECU 425,000 for having participated in a voluntary system of delivery limitations between 1986 and 1988.[126] Within the new plan for industry restructuring, the Council has agreed that the Commission will examine, rapidly and in accordance with the EC competition rules, any agreements on specialization, concentrations or certain joint ventures making for the rationalization of production. The agreements, to be submitted by the companies, should facilitate a lasting reorganization of the industrial structures of the sector.

444. Steel plants in Denmark and the Netherlands have been partially exempted, in conformity with ECSC rules, from the impact of national carbon taxes. The taxes are intended to protect the environment by reducing carbon dioxide emissions and improving energy efficiency.[127] According to

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[122]EC Commission (1992j).

[123]Commission Decision No. 3855/91/ECSC. Aid for the Portuguese industry is limited to small- and medium-sized enterprises. Like for Greece, the Decision stipulates that support must not result in capacity expansions. Support for east German plants must be accompanied by a reduction in the overall production capacity on the territory of the former GDR. Regional investment aid is confined to aid granted under generally available schemes and may be granted only until end-1994.

[124]See also Section IV.4(i)(c).

[125]The anti-crisis régime introduced in the early 1980s was based on the Commission's fixing of production targets for individual product categories on a quarterly basis. Each undertaking was allotted a compulsory quota for its intra-EC deliveries.

[126]EC Commission (1991c).

[127]The tax was introduced in the Netherlands on 1 July 1992 and is scheduled for introduction in Denmark. The Commission decided to consider the relief measures, which are not confined to the steel industry, as compatible with the common market with a view to
(Footnote Continued)

the Commission, the firms concerned would otherwise be handicapped vis-à-vis external competitors not facing such taxes, while the relief provided would make it easier for other member States to adopt similar measures.

445. The Communities' export restraint agreement with the United States, limiting EC exports to 7 per cent of U.S. consumption, expired in March 1992. According to the Commission, there are currently no understandings, arrangements or restrictions on EC steel shipments. Negotiations on a Multilateral Steel Agreement under the auspices of the GATT came to a halt in March 1992, but have since been resumed.[128]

446. New anti-dumping initiatives, affecting both imports into and exports from the EC, are additional indicators of increasing market tensions.[129] EC imports of seamless steel tubes from the Czech and Slovak Federal Republic, Poland, Hungary and Croatia are currently subject to provisional anti-dumping duties of between 10.8 and 30.4 per cent.[130] A further recent Community action concerns ferrosilicon from Poland (price undertaking) and Egypt (definitive duty of 32 per cent).[131]

447. In mid-1992, U.S. producers filed 84 anti-dumping and anti-subsidy complaints against exporters of certain carbon steel products in 21 countries, including seven EC member States. The complaints resulted in the imposition of provisional countervailing duties of up to 59 per cent

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(Footnote Continued)

limiting the tax burden on heavy energy consumers. Both countries have been requested to notify any amendment to the relief measure which is likely to have effects on the steel industry. Such notifications would be examined under Decision No. 3855/91/ECSC.

[128]The proposed Agreement is intended to eliminate tariffs and non-tariff barriers and to discipline the use of subsidies and countervailing measures, after the expiry of the United States' system of bilateral restraint arrangements in the sector. Disagreement in the following areas was reported to have caused major problems: (i) treatment of, and possible safeguards against support for R&D, plant closure, environmental protection, and worker assistance; (ii) admissible countervailing measures until full implementation of the agreement; (iii) stricter disciplines on the use of anti-dumping and anti-subsidy measures. (See also U.S. Mission Daily Bulletin, Geneva, 26 March 1992.)

[129]The measures are in addition to the common external tariff which averages 3½ per cent on unworked steel and 5½ per cent on semi-manufactures (Table IV.1).

[130]Section IV.2(v)(c). The duties on shipments from the single Croatian producer have been suspended in view of present supply problems.

[131]Both the price undertaking and the duties entered into force in mid-December 1992 (Commission Decision No. 92/572 and Council Regulation No. 3642/92).

In September 1992, producers of wire-rod in five countries (Argentina, Egypt, Yugoslavia, Trinidad and Tobago and Turkey) were reported to have agreed with the European steel industry to exercise stricter market and price discipline (Eurofer, cited in Nachrichten für Außenhandel, 3 September 1992). The industry association subsequently withdrew an anti-dumping complaint, prompting the Commission to terminate the outstanding investigation (Section IV.2(iv)(c)).

(30 November 1992) and provisional anti-dumping duties of up to 109 per cent (27 January 1993) on shipments from EC plants. The measures are estimated to cover 50 per cent of the Communities' total steel exports to the United States (4.29 million tonnes in 1991).[132] In January 1993, EC producers were further affected when Canada assessed preliminary anti-dumping duties on certain carbon steel supplies.[133] The Council of Ministers, in adopting the new steel plan in February 1993, stated that it would "use its best endeavours in the appropriate bodies, including on a bilateral basis, to avoid definitive adoption of the excessive and unjustified trade measures recently taken by the United States".

(vii) Textiles and clothing

448. Over the period 1980-1991, the U.S. dollar value of the Communities' external imports of clothing grew at an annual rate of close to 12 per cent. This was considerably more rapidly than the expansion of intra EC trade (8 per cent). By contrast, extra- and intra- supplies of textiles increased almost in parallel, at about 6 per cent per annum. Import developments between 1989 and 1991 were spectacular, in particular in clothing where external imports grew at a rate of 26½ per cent and internal trade at 19 per cent.[134]

449. As in most industrial countries, EC border protection for the textile and clothing sector continues to combine relatively high tariffs (compared to other sectors) with bilateral restrictive agreements with developing countries. The simple average tariff on textiles and clothing taken together is 10 per cent (Table AIV.1). For textiles, m.f.n. rates vary between 3 per cent (fibre and waste) and 11 per cent (fabrics); for clothing, the average is 13 per cent, with a range of 0 to 14 per cent. In addition, various anti-dumping actions are in force affecting imports of cotton and polyester yarns and polyester fibres.[135]

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[132] European Report, 30 January 1993.

[133] The Canadian measures focus on U.S. supplies. They are estimated to cover shipments of some 90,000 tonnes (1991) from other sources, including France, Germany, Italy and the United Kingdon (Nachrichten für Außenhandel, 3 February 1993).

[134] The corresponding rates for textiles are 11 per cent (external imports) and 9 per cent (internal shipments).

[135] The EC is currently applying anti-dumping duties on cotton yarn from Brazil and Turkey; polyester yarn from China, India, Indonesia, Taiwan and Turkey; and polyester synthetic fibres from India and the Republic of Korea.

450. Agreements concluded by the EC under the Multifibre Arrangement (MFA) are complemented by export restraint arrangements with Egypt, Malta, Morocco, Tunisia and Turkey.[136] Supplies under the MFA agreements, from China and from non-MFA developing countries represented two-thirds of the Communities' textiles and three-quarters of its clothing imports in 1991.[137] In the case of Hong Kong, the single most important supplier of clothing (Chart V.13), the restrictiveness of the restraints in a number of member States has been equated with tariffs of some 13 to 15 per cent (1980-89).[138]

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[136]The EC has concluded bilateral restraint agreements under MFA IV with Argentina, Bangladesh, Brazil, China, the Czech and Slovak Federal Republic, Hong Kong, Hungary, India, Indonesia, the Republic of Korea, Macao, Malaysia, Pakistan, Peru, Philippines, Poland, Romania, Singapore, Sri Kanka, and Thailand. (Supplies from Bangladesh have never been made subject to restrictions.) Textile agreements with Uruguay and an exchange of letters, in the MFA context, with Colombia, Guatemala and Mexico are without restraint levels. Deliveries from certain non-MFA participants are governed by an exchange of letters (Bolivia, Chile, Costa Rica, Cuba, Ecuador, El Salvador, Honduras, Nicaragua, Paraguay, Venezuela).

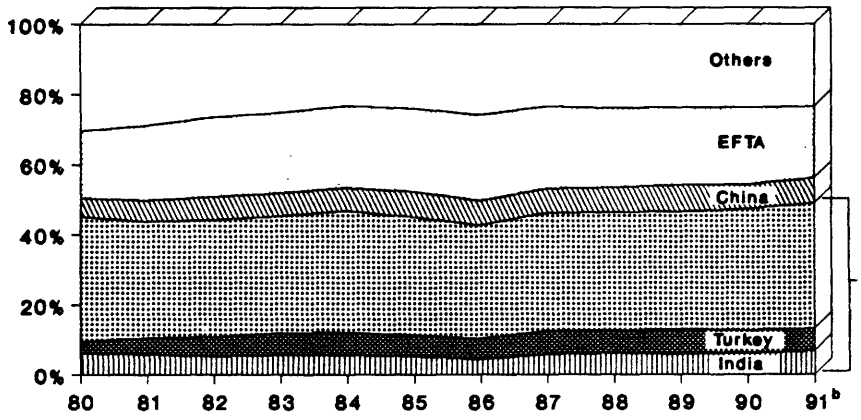
[137]Main elements of the Communities bilateral MFA agreements are presented in GATT (1991a).

[138]The estimates for four member States (Denmark, France, Germany, and the United Kingdom) are based on quota prices in Hong Kong for the six largest MFA commodity categories. The tariff equivalents were found to vary significantly between the member States and over time. The combined effect of quantitiative restrictions and tariffs is estimated to have reached 33 per cent on average between 1980 to 1989 (Hamilton, 1990).

Chart V.13
EC imports of textiles and clothing (EC12), 1980-91[a]

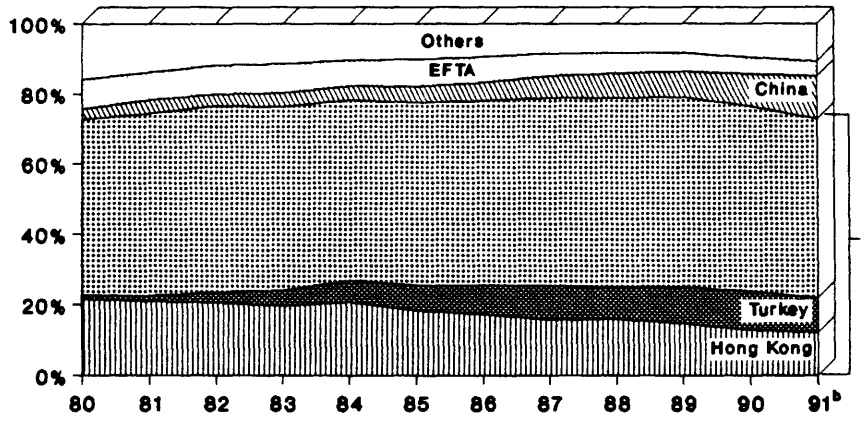
Per cent and US$ million

Textiles



	1980	1991[b]
Total imports (US$ million):	**8,223**	**15,240**
Of which:		
Developing countries	3,724	7,462
China	425	1,100
EFTA	1,583	3,119
Others	2,491	3,559
Memorandum:		
EC internal trade	16,023	30,809

Clothing



	1980	1991[b]
Total imports (US$ million):	**9,569**	**32,902**
Of which:		
Developing countries	6,979	23,998
China	277	4,033
EFTA	807	1,382
Others	1,506	3,489
Memorandum:		
EC internal trade	10,861	25,455

a SITC, Rev.2, Divisions 65 (textiles) and 84 (clothing). The definition is slightly wider than that used by the GATT Textiles Committee.
b Including the former GDR.
Source: UNSO COMTRADE data base.

451. The perceived vulnerability of the sectors, and the general level of trade barriers to "low cost" suppliers, is also reflected in their treatment under some of the EC preferential trade agreements. As noted above (Section II.5(iii)), the Europe Agreements provide a considerably longer implementation period for these areas than for almost all other manufacturing industries.[139] In the context of the association agreements with Mediterranean countries, sensitive textiles and clothing products are closely monitored and moderated on a voluntary basis; alternatively, if import surges lead to market disruption, the EC may invoke the safeguard provisions of the agreements.[140]

452. The Communities' current trade relations with the 12 CIS members are based de facto on the former agreement with the Soviet Union (see first TPRM report); imports of all significant products are restricted.[141] Imports from the three Baltic Republics and direct shipments from Albania are currently free of quantitative limits, although some categories supplied from the Baltic republics are under surveillance.[142]

453. GSP imports may enter duty-free under tariff quotas or under duty-free ceilings (Section II.5(iv)). While m.f.n. rates apply

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[139] In 1991, the three Europe Agreement countries combined accounted for some 3 per cent of the Communities' imports of textiles and clothing. Phasing-in of the Agreements is due to start on 1 January 1993. Until then, shipments from these countries, as well as from Bulgaria and Romania, are governed by MFA bilateral agreements (Bulgaria: MFA-type agreement), while a range of non-MFA products is subject to quantitative restrictions under Regulation No. 288/82.

Outward processing traffic may qualify for the tariff concessions under the Europe Agreements if the products concerned originate in the three participating countries. This means that no provision is made for the cumulation of origin status with the EFTA countries or any other preferential trading partners. Products processed in Hungary from textiles originating in the EFTA area would thus not normally qualify for duty-free entry into the EC. Under certain conditions, diagonal cumulation of origin is possible among the Europe Agreement countries and the EC.

[140] See Section IV.2(iv)(c) and GATT (1991a).

According to the EC Commission, in the case of Turkey, two separate arrangements have been agreed with the exporters' associations; the Turkish Government ensures administrative cooperation. On the EC side, the relevant products are subject to import surveillance. A regional breakdown (by member State) was, up to 1992, communicated by the EC Commission to the authorities of the supplying countries. Since 1 January 1993, no such regional breakdown exists.

Following the suspension of the cooperation agreement with Yugoslavia, imports from eligible ex-Yugoslavian territories enter under autonomous régimes which, overall, provide for the same quantitative framework as the suspended agreement.

[141] The Community intends to replace the bilateral textile agreement with the former USSR by new agreements with all relevant Republics exporting textiles and clothing.

[142] The Communities' trade régimes with China, the Democratic People's Republic of Korea, Mongolia and Vietnam have remained unchanged since the initial TPRM report: shipments from the latter three countries are subject to autonomous quotas under Regulation No. 3420/83 (established on an annual basis); most imports from China (textile categories 1 to 114) are covered by a bilateral agreement, the remaining categories are under unilateral restrictions. Autonomous restrictions are also imposed on all supplies from Taiwan.

automatically once a tariff quota is exhausted, the Commission may take such a decision in the case of duty-free ceilings. (GSP preferences are available to all least developed countries and to countries that have signed bilateral arrangements under the MFA or assumed equivalent obligations vis-à-vis the EC.)

454. Import quotas under the MFA have in general been negotiated for the EC as a whole. Their division among the member States was subsequently arranged under a specific allocation mechanism whose restrictiveness has been relaxed over time following a ruling by the European Court of Justice.[143] The share of regional quotas or ceilings which can be transferred automatically to other member States was increased from 16 to 40 per cent in 1992, with additional transfers available on the approval of the Commission. In parallel, the application of Article 115 to textiles and clothing declined from 48 authorizations in 1990 to 32 in 1991.[144] No further Article 115 restrictions on textiles and clothing were authorized in 1992.

455. As of 1 January 1993, each member State is entitled to issue import authorizations valid for the entire EC market, and all regional quotas or ceilings have been eliminated. Community surveillance will be ensured through a computer link between the Commission and the competent national bodies. While, in the event of regional disturbances, the EC might seek to negotiate certain supply patterns with third countries, it can no longer operate internal border controls to ensure compliance (Section II.3(i)).[145]

456. In recent reports on the textiles and clothing sectors, the Commission has voiced serious concern about continued disparities between the member States, in terms of productivity, creativity, and growth and trade performance in the industry. Overall, the volume of EC textile production shrank by close to 5 per cent between 1989 and 1991; and output in the clothing sector declined by 2.2 per cent. Employment tended to

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[143]GATT (1991a), p. 194.

[144]The restrictions were used by France (22 cases in 1990 as against 3 in 1991), Spain (11/17), Italy (10/10), Ireland (5/1) and the United Kingdom (0/1).

[145]The textile agreement envisaged under the Draft Final Act of the Uruguay Round provides for "transitional safeguards" which, in the case of a customs union, could be invoked either for the whole of the territory or on behalf of a member State (Article 6, p. 0.11). In the latter event, all requirements for the determination of serious damage, or actual threat thereof, are to be based on the conditions existing in that member State.

Recent amendments to the Community's MFA bilateral agreements stipulate that the quantitative limits under the agreements will not be broken into regional shares. The signatories undertake to cooperate in order to prevent sudden and prejudicial changes in traditional trade flows resulting in regional concentration of direct imports. In the event of such changes, the Community is entitled to request consultations in order to find a satisfactory solution.

decrease even faster, reflecting rationalization efforts in the industry and the disappearance of low-productivity companies and workplaces. While noting that companies themselves must take the "prime initiative and responsibility" in the adjustment process, the Commission gave the view that solutions would involve government intervention and heavy public expenditure.[146]

457. A new joint Community/member States aid programme (RETEX) is intended to promote sectoral and regional adjustment in disadvantaged "textile regions" (e.g. in Greece, Portugal and Spain). The programme, endowed with EC funds of ECU 500 million for the period 1993 to 1997, provides support for know-how transfer, commercial information, training, audit, and anti-pollution measures. It is not targeted at specific industrial activities. An additional national aid scheme for "problem regions" in Spain was approved in July 1992. According to the Commission, no sector-specific initiatives are currently in force or under consideration.

458. Since 1977, the synthetic fibres sector has been subject to a specific aid control system, banning all types of subsidies which result in capacity expansion. Following several prolongations, the system was strengthened and extended in late 1992 for an additional two years.

(viii) Leather and footwear

459. The EC leather and footwear industry displays considerable regional concentration, with Italy accounting for close to 38 per cent of total EC shoe production in 1991, followed by Spain (19 per cent) and France (16 per cent). Like textiles and clothing, the industry has long been under strong import pressure. Imports into the EC as a whole grew by 25 per cent in 1991 and EC producers suffered a drop in market share from 63 to 54 per cent (in quantity terms). Employment declined in all member States except Portugal from 1989 to 1991, with variations between some 8 per cent in France and Italy to over 24 per cent in the United Kingdom.[147]

460. The common external tariff on footwear varies between 4.6 and 20 per cent, with a simple m.f.n. average of 11.7 per cent. Beach slippers from China enter under anti-dumping duties. Imports from the Republic of

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[146] EC Commission (1991b).

[147] Overall, Italian producers appear to have fared best over longer periods in the past: a decline in Italian production of some 11 per cent, in volume terms, between 1980 and 1991 compares with a reduction of 17 per cent in France, 19½ per cent in the United Kingdom, and 39 per cent in Germany. However, since 1985 production has shrunk more rapidly in Italy (23 per cent) than in most other regions. Portugal was the only country to expand production (by more than half between 1986 and 1991).

Korea and Taiwan were, until end-1992, subject to an EC-wide restraint arrangement[148] complemented by prior import surveillance introduced in July 1990. All other footwear imports into the EC were under retrospective surveillance. Member States with significant own shoe production operated a variety of additional measures, such as restrictions against imports from former State trading countries; bilateral quotas (Ireland on rubber footwear); and export restraints both at government level (Chinese exports of slippers and sandals to France) and by industry associations (exports from the Czech and Slovak Federal Republic and Romania to the United Kingdom, Korean shipments to Ireland).

461. Trade initiatives in the sector since 1990 have focused on harmonizing and liberalizing the import régime for east and central European suppliers. Quotas on imports from the Soviet Union were removed in August 1991, and this treatment has been extended to the successor States. As from 1 January 1992, all specific (selective) restrictions on shoe exports from Albania and the Baltic Republics were lifted and specific restrictions suspended. (Imports from Bulgaria, the Czech and Slovak Federal Republic, Hungary, Poland and Romania were liberalized in 1990 and 1991.) Shipments from remaining State trading countries - China, the Democratic People's Republic of Korea, Mongolia and Vietnam - continue to be subject to a variety of national restrictions. Between 1990 and 1991, China, the Communities' most important supplier, nevertheless managed to increase its market share from 11 to 15 per cent overall.

462. On 23 March 1992, France informed the Commission of its decision to impose quotas on shoe imports from China for one year. Reportedly, the Commission has warned the French authorities that the move - a safeguard action under Council Regulation No. 3420/83 - was liable to affect the proper functioning of the common market.[149] In August 1992, the EC made slippers and other indoor footwear from China subject to prior Community surveillance (Commission Regulation No. 2327/92). During the second half of 1992, the EC embarked on a general re-evaluation of all expiring surveillance measures in conjunction with a review of national restrictions which would be incompatible with the Internal Market. In this context, given the strong import pressure from China which was considered a matter of urgency, the Commission proposed imposing quantitative restrictions on selected Chinese shoe products. At the time of completion of this report, the final decision was not available.

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[148]The EC-wide arrangement replaced an arrangement, negotiated by the EC in 1988, which was limited to the French and Italian market.

[149]According to Les Echos (15 June 1992). The restrictions announced by France concerned leather shoes (3.146 million pairs), sports shoes (23.310 million), and slippers (24.730 million).

VI. TRADE DISPUTES AND CONSULTATIONS

(1) Dispute Settlement under the General Agreement

463. From 1980 to 1992, the EC was the target of 30 complaints and the initiator of 25 complaints raised under Article XXIII of GATT.[1] The United States launched 11 of the complaints brought against the Communities and was the object of 14 of the EC initiatives during that period. Between January 1991 and December 1992, six of the nine Article XXIII cases involving the EC were either raised by or directed against the United States. As in previous years, a majority of the disputes revolved around agricultural or food products.

(i) Disputes concerning EC policies

(a) Requests for Panels under Article XXIII:2

464. Over the past two years, until December 1992, four complaints were made under Article XXIII:2[2] with a view to referring EC policies to a panel (Table VI.1). In three of these cases, panel proceedings were not initiated. In the fourth case, a previously established panel met to reconsider the application of its recommendations.

EC payments and subsidies to processors and producers of oilseeds and related animal-feed proteins

465. Upholding the U.S. complaint, the reconvened panel recommended that the Community act expeditiously to eliminate the continued impairment of tariff concessions, either by modifying its new support scheme[3] or by renegotiating its concessions under Article XXVIII. In the event of no action being taken expeditiously, the panel concluded that the CONTRACTING

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[1]Complaints under Article XXIII:1 subsequently submitted to a panel under Article XXIII:2 are only counted once. In certain cases, the same subject matter has prompted two or more contracting parties to raise each a complaint (e.g. EC import restrictions on apples were challenged separately by New Zealand, Chile and the United States in 1988). In one case, Article XXIII:1 consultations involved recourse to arbitration (exports of Canadian grains; see GATT, 1991).

[2]Article XXIII of the General Agreement provides procedures for bilateral consultations (para. 1) and for dispute settlement through panels, working parties etc. (para. 2) whenever a contracting party considers that benefits accruing to it under the Agreement are being nullified or impaired as a result of (a) the failure of another contracting party to carry out its GATT obligations, (b) the application by another party of any measure, whether or not in conflict with the Agreement, or (c) the existence of any other situation.

[3]The original panel, whose report was adopted in January 1990, found that the Community's support scheme for oilseeds (Section V.2(iv)) impaired the benefits which would be expected to accrue to the United States from zero tariff bindings and recommended that the measures be brought into conformity with the General Agreement (see GATT, 1991). At the GATT

Footnote Continued

PARTIES, if so requested by the United States, should consider further action under Article XXIII:2. In June 1992, the GATT Council authorized the EC to enter into negotiations with its principal suppliers under Article XXVIII:4. As no agreement was reached on the amount of the damages caused by the EC support régime, the United States subsequently requested the establishment of an arbitral body, while the EC proposed referring the issue to the CONTRACTING PARTIES, possibly assisted by a small independent group (September 1992). Neither action was agreed. At the Council meeting of 4 and 5 November 1992, the United States requested authorization to suspend concessions. However, no consensus emerged and the United States subsequently announced the unilateral suspension of concessions, should no solution be found by 5 December 1992.

466. On 3 December 1992, the delegation of the European Communities informed the CONTRACTING PARTIES that both parties had agreed on a compromise which enabled the EC to[4] put an end to the Article XXVIII:4 negotiations with the United States. In the light of these developments, the EC intended to pursue the consultations and negotiations under Article XXVIII with other contracting parties; they should be concluded as far as possible before mid-December.

Restrictions on imports of pork and beef under Third-Country Meat Directive

467. In July 1991, the United States informed the GATT Council that, due to the operation of the Communities' Third Country Meat Directive, its exports to the EC of beef, pork and lamb had come to a halt (Section V.2(ii)). While the United States called for the establishment of a new Panel to look into the issue, the EC gave the view that ongoing bilateral[5] consultations were likely to produce a mutually satisfactory solution. The issue has not been raised again in subsequent Council meetings.

Footnote Continued

Council meeting in January 1990, the EC stated that it would engage in the process for complying with the panel recommendations in the context of implementation of the results of the Uruguay Round. A new EC support scheme for the oilseeds sector, introduced in mid-1991, substituted direct payments to farmers, on a per hectare basis, for the subsidies previously granted via the processors (Section V.2(iv)).

[4]GATT document SR.48/2, 5 January 1992.

[5]A Panel had already been established in December 1987 to examine the United States' concern about the Directive. It never met because a bilateral agreement between the parties had allowed for the continuation of trade.

Trade measures taken for non-economic reasons

468. In March 1992, the GATT Council established a Panel to examine the effects of economic sanctions by the Communities against Yugoslavia. However, in June 1992, the Council agreed that the representative of the Federal Republic of Yugoslavia should refrain from participating in the Council's work.[6]

Negotiating rights of Argentina in connection with the renegotiation of the EC concessions on oilseeds

469. Subsequent to Argentina's request for a Panel (September 1992), the EC agreed to accept Argentina's status as a principal supplier.

(b) Consultations

470. In September 1991, the United States called for consultations under Article XXIII:1 with regard to trade restrictions considered to result from the Communities' unilateral redefinition of corn gluten feed. In June 1992, five Latin American countries (Colombia, Costa Rica, Guatemala, Nicaragua, Venezuela) requested consultations under Article XXII[7] concerning policies of certain EC member States on banana imports and the proposed unified EC banana régime (see Section V.2(vii)). Noting that the consultations had not led to a mutually acceptable solution, the five countries requested the GATT Director General, in September 1992, to offer his good offices with a view to solving the dispute over the measures maintained by some member States.[8] However, no solution was reached in this context either.

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[6]The decision was taken with a view to allowing the Council to consider what entity should succeed the former Socialist Federal Republic of Yugoslavia in the GATT (GATT document C/M/257, 10 July 1992).

[7]GATT Article XXII enables a contracting party to request consultations with other contracting parties with respect to any matter affecting the operation of the General Agreement, whether or not it is in conformity with the Agreement.

[8]The request for good offices was made pursuant to the 1966 Decision on the procedures under Article XXIII (BISD, 14th Supplement, p. 18 ff). The Decision provides that, if consultations between a less-developed and a developed contracting party fail, the former party may refer the matter to the Director General who, acting ex officio, may use his good offices with a view to facilitating a solution. See also GATT document DS32/6, 16 February 1993, with the Director General's report on the outcome of the procedure.

Pursuant to paragraph 5 of the 1966 Decision, which requires the GATT Council to proceed to establish a Panel upon receipt of the report, a Panel was set up, in principle, in February 1993 (GATT document C/M/261, 12 March 1993).

In early 1993, the five Latin American countries also requested consultations with the EC under Article XXII:1 concerning the decision of the EC Council on a common market organization for bananas (GATT document DS38/1, 8 February 1993) and, subsequently, the Council Regulation establishing the market organization (DS38/5, 12 March 1993).

(c) Further issues

471. In some cases, Council members have voiced concern about EC policies without invoking GATT dispute settlement provisions. In March 1991, Brazil raised the question of the modification of the Communities' tariff concessions on baler twine and other sisal processed products; it considered that the changes did not conform to the procedures established under GATT Articles II and XXVIII. At the July 1991 meeting, the Philippines requested consultations in view of adverse trade effects it considered to result from an EC Directive (No. 90/612) which had changed the purity criterion for carrageenan. In September 1992, in a Communication to the Council, Australia complained about the adverse consequences for the multilateral trading system of the wheat export subsidies granted by the United States and the EC; Australia's view, reiterated at the meeting of the CONTRACTING PARTIES in December 1992, was shared by several delegations.[9]

472. A Panel report examining the EC anti-dumping policy with regard to parts and components was adopted by the GATT Council in May 1990.[10] In this context, the Community made changes to its legislation contingent on a satisfactory result of the Uruguay Round which would allow it to combat circumvention (see Section IV.a(v)(a) and GATT, 1991). The EC confirmed its position at the November 1991 Council session, in response to a demand by Japan to implement the report quickly.[11]

(ii) Initiatives by the EC

(a) Request for Panel under Article XXIII:2

473. During the period January 1991 to December 1992, the EC and the Netherlands on behalf of the Netherlands Antilles pursued one case under Article XXIII which resulted in the establishment of a Panel. It concerned:

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[9] GATT documents L/7076, 16 September 1992, C/M/259, 27 October 1992, SR.48/2, 5 January 1993.

[10] GATT document L/6657, 22 March 1990.

[11] GATT document C/M/253, 28 November 1991.

U.S. restrictions on imports of tuna

474. The subject matter of the case, import restrictions under the U.S. Marine Mammal Protection Act, was examined by a previous Panel requested by Mexico.[12] The panel report has since been discussed at several GATT Council sessions, but has not been adopted as the United States has not agreed. In view of this, the complainants pointed to continued nullification or impairment of trade resulting from a secondary import embargo operated by the United States on "intermediary countries" such as France, Italy, Spain, the United Kingdom and the Netherlands Antilles. After consultations had failed, the GATT Council set up a panel in July 1992.[13]

(b) Consultations

475. Recent EC requests for consultations under Article XXIII:1 relate to U.S. harbour maintenance fees (February 1992), certain U.S. taxes on automobiles (May 1992) and a countervailing duty action by Argentina on EC dairy products (December 1992). The EC considered the harbour maintenance fees, based on the value and not volume or weight of goods, to be similar to the U.S. Customs user fee which a previous Panel had found inconsistent with Article VIII of the GATT.[14] As to the automobile taxes, the Community complained about discriminations considered to contravene Article III:2 of the GATT.[15] The investigation prompting Argentina's recent introduction of countervailing duties on EC dairy products is considered by the Community not to have been carried out in conformity with GATT Article VI; for example, the relevant Argentinian Resolution had given no evidence of material injury being caused or threatened to the domestic industry.[16]

(2) Issues Raised under Tokyo Round Agreements

476. From January 1991 to December 1992, the EC was involved in nine cases (panels and requests for conciliation or consultation) brought under the Tokyo Round Agreements. Of these, five concerned the Subsidies Code, three the Anti-Dumping Code and one the Code on Government Procurement (Table VI.2).

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[12] GATT document DS21/R, 3 September 1991. See also GATT (1992a), p. 235.

[13] GATT document C/M/258, 4 August 1992.

[14] GATT (1991).

[15] In March 1993, the EC requested the establishment of a Panel (DS31/2, 12 March 1993).

[16] GATT document DS35/1, 7 December 1992.

(i) Subsidies Code

477. A complaint by the United States about the German exchange rate guarantee scheme for Deutsche Airbus resulted in a lengthy debate, in 1991, about the appropriate forum. While the EC wished to have the dispute considered under the Civil Aircraft Agreement, the United States chose to submit this complaint under the dispute settlement provisions of the Subsidies Code; the issue of "forum shopping" was also raised in the GATT Council (April 1991).[17] A Panel, finally established under the Subsidies Code, submitted its report in April 1992. However, the EC disagreed with the panel's reasoning, in particular its view on the applicability of Code provisions to trade between the member States, and did not concur in the adoption of the report.[18] The German Government nevertheless suspended its guarantee scheme retroactively from 15 January 1992 and, in mid-July, announced its abolition. Deutsche Airbus has since been fully privatized (Section IV.3(ii)(b)).

478. A second, broader complaint by the United States, also raised in 1991, related to subsidies for the production of new models of Airbus aircraft. Consultations under the Code, carried out over several months, finally resulted, in April 1992, in a bilateral agreement specifying limits on public support for large civil aircraft (Section V.3(ii)(c)).

479. In November 1992, the EC requested the establishment of a panel to examine the imposition by Australia of countervailing duties on glacé cherries from France and Italy. The finding of injury which gave rise to the duties, under the Australian Customs Amendment Act 1991, is considered by the EC to be based on a definition of like products not consistent with the Code. Australia's Customs Amendment Act had already been the object of conciliation, at the request of the EC, in July 1992.

480. In July and October 1992, the EC requested conciliation with regard to a countervailing duty proceeding by Brazil on milk powder. According to the EC, Brazil had failed to notify it of the opening of the proceeding, to

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[17] From the Communities' point of view, the Subsidies Code provided an inadequate and incomplete legal basis. According to the EC, the scheme in question was not a subsidy since it entailed no cost for the government; any intervention in the event of exchange rate losses not being offset by the industry would be temporary and partial. In contrast, the United States considered the Subsidies Code the appropriate forum to deal with the massive level of export subsidies at issue; there was no sectoral exemption from the Code, and it was not for the defending party to choose a forum considered more convenient (GATT documents SCM/M/45, 11 April 1990 and C/M/249, 22 May 1991).

[18] The panel considered the inputs delivered by Deutsche Airbus (Germany) to Airbus Industrie (France) as exports and concluded that the guarantee scheme constituted an export subsidy, covered by the illustrative list of prohibited subsidies annexed to the Subsidies Code. The report recommended that the scheme be brought into conformity with the relevant provisions (Article 9) of the Code.

carry out an investigation prior to the imposition of provisional duties, and to provide evidence that the Code requirements for taking provisional measures were met.[19]

481. Four Panel reports under the Code involving the EC have been awaiting adoption for several years.[20] No headway has been made since the initial TPRM report.

(ii) Anti-Dumping Code

482. Since January 1991, EC measures have drawn two requests for consultations and one request for a Panel under the Anti-Dumping Code. Japan has challenged various aspects underlying an action against audio tapes and cassettes, on which definitive duties were applied by the EC in May 1991. Issues at stake are the Community's practice of calculating dumping margins and the approaches used to determine the causation of injury and to define the relevant market segment. A panel was set up in October 1992.

483. Consultations were requested by Brazil, in September 1991, with regard to the Community's initiation of an anti-dumping proceeding against cotton yarn and by Japan, in April 1992, concerning the treatment of anti-dumping duties as a cost in refund procedures.[21]

(iii) Government Procurement Code

484. In mid-1991, the EC called for consultations, and subsequently for the establishment of a Panel, concerning the procurement of a multibeam sonar mapping system by the U.S. National Science Foundation. The panel report was considered by the Committee in May and October 1992; it is still pending as the United States has not concurred in its adoption.

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[19]The EC has meanwhile made a request for a Panel under Article 17:2 of the Code (SCM/155, 5 January 1993).

[20]Two panels examining EC export subsidies (on wheat flour and on pasta products) had been initiated by the United States; the reports were completed in 1983. The Community had raised two complaints concerning the definition of affected industries used by the United States (panel report of March 1986) and Canada (October 1987). See GATT (1991).

[21]Article 16 of Council Regulation No. 2423/88 entitles an importer to duty refunds when he can show that the duty collected exceeded the actual dumping margin. Japan disputed the practice, in this context, to deduct the anti-dumping duties paid as a cost when constructed export prices were taken (this is the case whenever no actual prices are available or when those available are deemed unreliable, for example, because exporter and importer are related). See GATT document ADP/78, 21 April 1992.

(3) Dispute Settlement in the Context of Preferential Trade Agreements

485. While dispute settlement provisions form an integral part of the Communities' various trade and cooperation agreements, the EC and its preferential trading partners have, in general, preferred political, negotiated solutions in the event of frictions. Recourse to the formal consultation, dispute settlement and safeguard mechanisms under the agreements, let alone to the GATT, has been relatively rare. The EC has raised only two cases under Article XXIII of GATT involving preferential trading partners, and it has never been the target of such initiatives.[22] (Yugoslavia invoked Article XXIII in March 1992 only after the EC had suspended the Association Agreement and imposed an embargo.) This contrasts with the approach taken by the United States and Canada which, despite their Free Trade Agreement, have continued to resort to GATT dispute settlement mechanisms.[23]

486. The Preamble to the Europe Agreements between the EC and the Czech and Slovak Federal Republic, Hungary and Poland expressly confirms the commitment of the parties "to free trade and, in particular, to compliance with the rights and obligations arising out of the General Agreement on Tariffs and Trade". In the area of dumping and subsidization, the Agreements specify that remedial actions must comply with the relevant GATT rules; this seems to imply that disputes in this area can be brought to the GATT. In contrast, no such provision exists for safeguards cases. The safeguard measures recently taken on steel imports from the CSFR suggest that, in the Community's view, the Agreements not only allow for the suspension of trade preferences but also of obligations under the GATT.

487. Disputes over the interpretation and application of the Europe Agreements may be referred to the Joint Committees established under the Agreements which "may settle the dispute by means of a decision". If no solution has been reached in the Committees, either party may invoke an arbitration procedure. In this event, three arbitrators - one appointed by

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[22] In 1982, a Panel under Article XXIII:2 was established at the request of the EC to examine measures alleged to affect imports of parts of footwear into Finland. Also in 1982, the EC requested Article XXIII:1 consultations with Switzerland concerning a safeguard action on table grapes. Both issues have not been pursued further.

In 1989, Austria requested consultations under Article XXII concerning restrictions which Germany had imposed on the circulation of Austrian lorries. Apparently, a solution could be found in this context. (Unlike the GATT, the EC/Austria free trade agreement does not contain provisions concerning freedom of transit.)

[23] The general dispute settlement provisions under Chapter 18 of the Canada-US Free Trade agreement allow the complaining party to choose the forum whenever a dispute arises under both the FTA and the GATT and related agreements. Once the decision has been taken, the procedure initiated is to be pursued to the exclusion of possible alternatives. Disputes revolving around anti-dumping or countervailing measures are to be referred to an independent binational panel under Chapter 19 of the FTA. For more details see GATT (1992a and 1992b).

each party and one by the Joint Committee - are to decide by majority vote. The decision must be implemented.

488. The Preamble to the current EC/EFTA Free Trade Agreements specifies that no provision of the Agreements "may be interpreted as exempting the contracting parties from the obligations ... under other international agreements". The prospective successor Agreement on the European Economic Area does not contain a similar clause. This may be viewed as a reflection of the specific legal and institutional structure of the EEA, in particular the extension, in the areas covered, of "the acquis communautaire" to the EFTA countries (Section II.5(ii)).

489. The EEA Agreement provides for dispute settlement within its own institutional framework and, by agreement, within the EC judicial system. The signatories may refer a case to the European Court of Justice if no solution has been found in the EEA Joint Committee. This possibility exists in all areas where the Agreement is identical in substance to EEC or ECSC Treaty provisions and to secondary EC legislation.[24] If the Joint Committee has failed to settle a dispute within six months or if, within this period, the parties have not decided to involve the ECJ, the affected party may take safeguard measures in order to remedy possible imbalances within the EEA.[25] Alternatively, as noted in Section II.5(ii), the Joint Committee may examine further possibilities, including a decision on the equivalence of legislation or, after an additional time limit, the relevant parts of the Agreement may be regarded as suspended.

490. Disputes over the scope or duration of safeguard measures or over the proportionality of rebalancing measures can be referred to binding arbitration if the Joint Committee has not found a solution.[26]

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[24]The Agreement, as originally negotiated, foresaw the creation of a common judicial body, composed of representatives of EC and EFTA countries. However, in a Declaratory Opinion, the European Court of Justice gave the view that the existence of such a parallel body would undermine its authority in carrying out its mandate. The relevant provisions of the Agreement were subsequently renegotiated.

While the Agreement provides for the creation of an EFTA Court, it limits the competence of the Court, in particular to (i) EFTA surveillance actions; (ii) appeals against decisions initiated by the EFTA Surveillance Authority in the area of competition; and (iii) dispute settlement among the EFTA States.

[25]A similar safeguard provision in the EC/EFTA free trade agreements has never been used. A recent dispute over minivans from Austria was finally solved without the EC taking measures. The action would have been based on Article 27:3 of the Agreement, which allows a contracting party, subject to certain procedural requirements, to take any safeguard measure considered necessary to deal with "serious difficulties" resulting from a practice by the other party. Particular reference is made in this context to the withdrawal of tariff concessions. (Section V:3(ii)(a)).

[26]In this case, each party is entitled to appoint one arbitrator. The two arbitrators are then to nominate an umpire by consensus. In the event of disagreement, the umpire is to be chosen from a list of seven persons established by the EEA Joint Committee.

(4) Other Approaches

(i) Unilateral actions against the EC

491. In response to the Community's implementation of its Animal Hormone Directive, the United States has maintained, since early 1989, retaliatory measures under Section 301 of the Trade Act of 1974.[27] The measures, which are intended to match the trade losses experienced by U.S. meat exporters as a result of the Hormone Directive, were imposed after the parties had failed to agree on the appropriate GATT forum for dispute settlement.[28] The EC Council has approved, but not yet implemented, a list of countermeasures.

492. In addition, the United States has threatened to take sanctions in response to the reciprocity provisions contained in an EC procurement directive (Section V.3(iii)(d)) and, more recently, in the context of the oilseeds dispute (see above).

(ii) EC actions under the "New Commercial Policy Instrument"

493. Observers have suggested that the creation of the "New Commercial Policy Instrument" of 1984 (Council Regulation No. 2641/84) was motivated by unilateral U.S. actions against the EC and the perceived need to have a mechanism for counteraction.[29] However, before taking measures under the NCPI, the Community is obliged to await the termination of any relevant consultation and dispute settlement procedures under international obligations (including the GATT) and to take the results into account. Disagreement over the setting up of a GATT panel or the adoption of panel reports would not, thus, allow the EC to act unilaterally under this instrument.[30]

494. The NCPI has been used sparingly since its inception in 1984. Of the six complaints officially lodged, four resulted in an investigation. The focus was on issues involving intellectual property aspects. Cases

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[27] This is the only current case of retaliation under Section 301.

[28] See GATT (1991).

[29] Schonefeld (1992).
As noted in the first TPRM report, the NCPI establishes a procedural framework allowing the EC (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 by a member State. After consultations with representatives of member States in an Advisory Committee, the Commission decides on the opening of an investigation. The decision is published in the Official Journal.

[30] However, the EEC Treaty does not, in principle, prevent the Council from enacting unilateral measures against GATT contracting parties in areas covered by the GATT.

accepted for investigation since the initial TPRM report concern port charges in Japan on cargoes and shipping companies[31] (February 1991) and pirated sound recordings in Thailand (July 1991). According to a Commission Decision of March 1992 (No. 92/169), Japan has given formal assurances, in the context of bilateral consultations, that the port charges would be discontinued after 31 March 1992. The procedure under the NCPI was subsequently suspended. In contrast, no decision has yet been taken in the context of the allegedly pirated sound recordings in Thailand.

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[31] The first case accepted under the NCPI (1986) revolved around a patent dispute in the area of aramid fibres, involving a European company which was affected by actions on patent infringement under Section 337 of the U.S. Tariff Act of 1930. The Commission's examination confirmed the company's complaint that Section 337 resulted in a denial of national treatment contrary to Article III of the GATT. Accordingly, there was "sufficient evidence of an illicit commercial practice and resultant threat of injury to warrant a request for a consultation and dispute settlement procedure pursuant to GATT Article XXIII". A subsequent GATT Panel found the U.S. measures inconsistent with Article III.4; the report was adopted in November 1989. The United States has linked the implementation to the outcome of the Uruguay Round in the relevant area. The EC raised this issue several times in the GATT Council, reiterating its interest in speedy implementation of the Panel's recommendations (see, e.g., GATT document C/M/249, 22 May 1991).

The second investigation under the Instrument concerned unauthorized sound recordings in Indonesia (1987); it was terminated following a change in intellectual property protection in Indonesia.

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