Trade Relations Between the European Community and the United States: An Overview of Current Issues and Trade Policy Institutions

*Randy E. Miller**
*Jessica A. Wasserman***

INTRODUCTION

The economic relationship between the European Community (EC or Community) and the United States faced a number of significant challenges during 1991 and early 1992. Historic events such as the Persian Gulf War and relations with eastern Europe and the former Soviet Union played a particularly important role in bilateral dealings. Nonetheless, a continuing series of trade negotiations and disputes also played out in Washington, Brussels, and Geneva.

This Article describes international trade relations between the United States and the EC during 1991 and early 1992. Part I of the Article summarizes the current state of the trade relationship. Part II offers a detailed description of the most important trade issues which have occupied the attention of U.S. and EC government officials during 1991 and early 1992. Part III outlines the institutions and mechanisms of the two governments for addressing trade issues. This Article concludes that the United States and the EC—the two most important forces in liberalizing world trade—face a period of increasing trade friction. The Article attempts to present a balanced discussion of both U.S. and EC trade concerns. It places somewhat more emphasis, however, on U.S. issues and arguments to reflect the interests of U.S. readers.

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* Partner, Hogan & Hartson, Washington, D.C.; Managing Partner of Brussels, Belgium office, specializing in international trade law; J.D. 1982, Georgetown University; B.A. 1976, Yale University.

** Associate, Hogan & Hartson, Washington, D.C., practicing international trade law; J.D. 1984, University of Michigan Law School; B.A., 1981, St. John's College (Annapolis, Maryland).

I. CURRENT STATE OF EC-U.S. TRADE RELATIONSHIP

The overall trading relationship between the United States and the EC—each other's largest single trading partner and the two largest trading entities in the world[1]—has been characterized by an unprecedented growth in trade over the past five years and a general balance in trade since 1989. In 1991, the United States exported $103.2 billion in merchandise to the EC, which accounted for approximately 25 percent of all U.S. exports and an increase of almost 100 percent since 1986.[2] Europe has been the fastest growing market for U.S. exports over the past two years.[3] U.S. imports from the EC equaled $86.5 billion in 1991, or approximately 20 percent of all U.S. imports, resulting in a moderate U.S. surplus of $16.7 billion in the bilateral trade balance.[4]

Despite this growing and balanced exchange of goods and services, a more confrontational edge has entered the relationship in recent months as the Community and the United States grapple with a variety of difficult issues in the Uruguay Round negotiations of the General Agreement on Tariffs and Trade[5] (GATT) and pursue their own increasingly separate trade agendas.[6] This tension also comes at a time when economic relations increasingly will define the EC-U.S. bilateral relationship. The dissolution of the Soviet Union and the dramatic changes in eastern and central Europe have reduced the well-defined threat that motivated close cooperation between western Europe and the United States over the past forty-five years. As the importance

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[1] *See* Glennon J. Harrison, *European Community Trade and Investment with the United States*, at 1 (Congressional Research Service Report for Congress, Mar. 7, 1990).

[2] *See* U.S. Department of Commerce News, U.S. Merchandise Trade, FT-900, at 12 (Dec. 1991) [hereinafter U.S. Merchandise Trade].

[3] *Id.* at 12–13.

[4] *Id.* These numbers reflect the absence of a structural imbalance in EC-U.S. trade. If a trade gap develops, it is the result of changes in exchange rates or the relative rates of growth of the two economies. *See* Stephen Woolcock, *Market Access Issues in EC-U.S. Relations*, at 7–8 (Chatham House Papers, Royal Institute of International Affairs, 1991). Over the past 12 years, the United States has enjoyed a trade surplus with the EC six times and the EC has had a bilateral surplus six times. *See* BUS. AMER., Feb. 24, 1992, at 5 (U.S. Department of Commerce Publication).

[5] The General Agreement on Tariffs and Trade (GATT) is a multilateral agreement and a forum for negotiating trade problems. The fundamental principles of GATT are the most favored nation rule—that a country provide the same treatment to all GATT members—and the national treatment principle—that imports receive the same treatment as domestic products. *See generally* JACKSON, WORLD TRADE AND THE LAW OF GATT (1969).

[6] For a discussion of the contrast between EC-U.S. interdependence and the increasingly fractioned political relations, see Woolcock, *supra* note 4, at 7.

of security and defense matters declines, the importance of economic issues will grow. As one U.S. Congressional leader stated in January, "the Cold War is over, and the focus is on economic issues."[7]

This change of focus does not play into current U.S. strengths. The recession in the United States which began in 1991 weakened the U.S. position in world trade negotiations. Moreover, the diminishing U.S. military role in Europe removes an important motivation for European cooperation on trade and economic matters.[8]

For its part, the EC has been preoccupied with an intimidating economic and trade agenda, much of which does not directly involve the United States. The Single Market Plan[9] to eliminate internal market barriers is approaching its January 1, 1993 deadline and has dominated European political dialogue for most of the past five years. The new treaty on European Union[10] approved in December 1991—which many consider to be the most important landmark in the development of the EC since the Treaty Establishing the European Economic Community (EEC Treaty)—diverted the Community's attention from GATT negotiations and other trade matters during much of 1991.

Several important regional trade matters also occupied EC trade officials. The Community pursued negotiations with the seven nations of the European Free Trade Association (EFTA)[11] to bring EFTA rules in line with EC law and to create a single market of nineteen nations. These negotiations resulted in an agreement in late 1991, but a European Court of Justice (ECJ) ruling in December struck down the judicial aspects of the accord

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[7] Guy Gugliotta, *Democrats Seek Broader Trade Policy Debate*, WASH. POST, Jan. 26, 1992, at A22.

[8] *See* Ann Devroy & Glenn Frankel, *Troops, Trade Pact Not Linked, Bush Says*, WASH. POST, Feb. 12, 1992, at A25.

[9] *See generally* Completing the Internal Market, White Paper from the Commission to the European Council, COM(85) 310 final.

[10] The treaty lays the basis for the Community to implement its plan for a single currency in some EC states by 1999 at the latest. It also includes provisions intended to initiate a common foreign and defense policy, and makes other changes in the treaties creating the Community. An official text has yet to be released.

[11] Austria, Finland, Iceland, Norway, Sweden, Switzerland, and Liechtenstein are the members of the seven-nation European Free Trade Association (EFTA). Most of these countries have not, until recently, sought membership in the Community. EFTA accounts for nearly 25 percent of the Community's trade. *See* Harrison, *supra* note 1, at 1.

and forced intense efforts in early 1992 to devise a judicial alternative to save the agreement.[12]

The Community spent much of 1991 looking east rather than west, as relations with central Europe and the Republics of the former Soviet Union took on increased importance. The Community negotiated Association Accords with Poland, Czechoslovakia, and Hungary. These trade-liberalizing agreements involved many difficult issues.[13] Some U.S. officials expressed concern that the agreements could harm U.S. interests. They alleged that the Community was urging the three countries to raise tariffs on non-EC imports in return for increased access to the EC market and that the Community might encourage the countries to adopt EC rather than international product standards. As 1992 began, the Community also began to consider negotiation of new bilateral trade agreements with each of the Republics of the former Soviet Union to replace the single agreement which had governed trade relations.[14]

The United States also pursued an important regional trade agreement during 1991 and early 1992, which some argued weakened its commitment or ability to complete the Uruguay Round negotiations. In 1991, President Bush announced his intention to negotiate a North American Free Trade Agreement (NAFTA) with Mexico and Canada to remove barriers to trade among the three countries.[15] Despite significant obstacles, U.S. officials were predicting in early 1992 that the NAFTA agreement might be signed by the end of that year.[16]

When Europe and the United States addressed trade issues beyond their own region, Japan was most frequently the target of attention. Japan is the primary source of both governments' trade deficits, accounting for $43.3 billion of the U.S. deficit and

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[12] *See* Janet McEvoy, *EC Meets to Save Market Plans After Court Finding*, Reuters, Dec. 15, 1991, *available in* LEXIS, Nexis Library, Reuter File.

[13] The objective of these agreements is to establish a free trade zone between the Community and the three east European countries over the next 10 years. Official texts had not been released as of early 1992. Similar agreements will be negotiated with Bulgaria and Romania in the near future. *See Europe 1992*, Int'l Division U.S. Chamber of Commerce, 1991, 55–56.

[14] Council Decision 90/116, 1990 O.J. (L 68) 1.

[15] Joint Statement Announcing Canada-Mexico-United States Trilateral Free Trade Negotiations, 27 WEEKLY COMP. PRES. DOC. 133 (Feb. 5, 1991); Notice of a North American Free Trade Agreement, 56 Fed. Reg. 32,454 (1991).

[16] *See Prospects for Concluding NAFTA Talks in Near Future Are Good, Bolten Says*, 8 Int'l Trade Rep. (BNA) No. 42, at 1542 (Oct. 23, 1991).

$29.8 billion of the EC deficit.[17] United States relations with Japan deteriorated throughout 1991, and a series of controversies in early 1992 raised the most serious threat in decades that Congress would enact trade-restricting legislation aimed at Japan. President Bush's controversial trip to Japan in January 1992 resulted in a Japanese commitment to attempt to increase purchases of U.S. autos, auto parts, and other products which have contributed to the bilateral trade deficit.[18] This prompted EC officials, including External Affairs Commissioner Frans Andriessen, to protest that the agreement represented an attempt to manage U.S.-Japanese bilateral trade to the detriment of the EC. EC officials stated that the agreement particularly discriminated against EC automakers and threatened an appeal to GATT.[19]

EC relations with Japan did not reach such a low level. Nonetheless, the Community's concern about Japanese imports continued to grow, as exemplified by the automobile voluntary restraint agreement with Japan in July 1991. The United States watched that agreement closely, gaining assurances from the Community that European imports of automobiles produced in the United States by Japanese companies would not be limited.

In this environment, the United States and the EC made less progress than both sides would have liked in pursuing their multilateral and bilateral trade agendas. The most important enterprise—the Uruguay Round negotiations of GATT—managed to get back on track during 1991 after breaking down at the disastrous Ministerial meeting in Brussels in December 1990. After negotiators made significant progress during the final months of 1991, they agreed to work through April 1992 to reach a final package. Nonetheless, in early March 1992 the future of the Uruguay Round remained uncertain, primarily because of a split between the United States and the Community on reducing EC agricultural subsidies. EC-U.S. disagreement also was a potential

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[17] U.S. Merchandise Trade, *supra* note 2, at 12.

[18] *See Hills Says Japanese Automotive Commitments Are Not Government Agreements*, 10 Inside U.S. Trade No. 4, at 16 (Jan. 24, 1992).

[19] *See EC Notebook*, WALL ST. J. EUR., Jan. 16, 1992, at 1; *see also EC Warns U.S.-Japan Deal Will Fan Trade Tensions*, INT'L HERALD TRIB., Jan. 17, 1992, at 1 [hereinafter *EC Warns*]; Terence Roth, *Europe is Growing Uneasy Over U.S.-Japan Trade Pacts*, WALL ST. J. EUR., Mar. 9, 1992, at 2. EC officials have expressed similar concerns about U.S.-China agreements on shipping practices and intellectual property protection. *See* David Buchan, FIN. TIMES, Feb. 18, 1992, at 7.

obstacle to GATT agreements in other areas, such as tariff reductions and the general reduction of subsidies.

Nor was significant progress made in resolving EC-U.S. bilateral disputes, despite the involvement of senior level political figures from both governments. The long-standing controversies regarding European subsidies to the Airbus consortium and U.S. complaints about EC oilseed subsidies remained unresolved in March 1992 despite decisions of GATT dispute settlement panels. The U.S. and EC efforts to develop a new Multilateral Steel Agreement made modest headway during 1991 but faced difficult obstacles in early 1992.[20] EC opposition to U.S. unilateral trade measures, particularly Section 301 of the Trade Act of 1974 (Section 301)[21] and EC concern about U.S. restrictions on foreign investment resulted in no changes.

The two governments had more success in resolving trade disputes based on differing technical standards and divergent regulatory policies.[22] The U.S. and EC reached an agreement in September ending their dispute about EC meat processing requirements which had disqualified many U.S. meat processors. They also concluded an agreement regarding residue permitted in U.S. corn gluten feed which had kept U.S. products out of the EC market during part of 1991. A similar agreement was reached concerning EC testing requirements for wine which would have restricted imports of U.S. wine.

The United States and EC also began new cooperative efforts in other fields. On September 23, 1991, the two governments signed an agreement to promote cooperation and coordination in the enforcement of antitrust law.[23] On November 4, 1991, they held the first of ongoing bilateral meetings designed to discuss recent cases and implementation issues.[24] The EC-U.S. Joint Con-

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[20] *See* Virginia Gannon, *Subsidies are bane of MSA*, AMER. METALS MKT., Feb. 3, 1992, at 3, 9.

[21] Trade Act of 1974, § 301, 19 U.S.C.A. § 2411 (West Supp. 1991).

[22] Issues resulting from divergent regulatory policies have become an increasingly important source of bilateral tension. These policies may intentionally or unintentionally have a trade distorting effect. *See* Woolcock, *supra* note 4, at 2.

[23] Agreement Between the Government of the United States of America and the Commission of the European Communities Regarding the Application of their Competition Laws, Sept. 23, 1991, BULL. EC 9–1991, point 1.2.14.

[24] *See EC, U.S. Officials Hold First Talks Under Bilateral Cooperation Agreement*, Daily Rep. for Executives (BNA) No. 215, at A-1 (Nov. 6, 1991).

sultative Group on Science and Technology met several times during 1991 to discuss areas of scientific cooperation.[25] An agreement was reached in September 1991 between the Semiconductor Manufacturing Project (SEMATECH) in the United States and the Joint European Submicron Silicon Initiative (JESSI) in the Community to cooperate in developing new semiconductor technologies.[26]

The two governments entered 1992 with much at stake. It is not inevitable that the multilateral trading system will be seriously threatened or that a bilateral trade war will result from a breakdown in the Uruguay Round or the inability to resolve ongoing disagreements such as the Airbus dispute. In March 1992, there remained reason to believe that negotiators could find a way to salvage the GATT negotiations during the remainder of 1992, or even 1993.

Nevertheless, the United States and the EC—the major driving forces in liberalizing world trade for the past forty-five years—unquestionably face a period of increasing trade friction. If the Uruguay Round fails, the United States and Europe will be forced to address in bilateral negotiations, and in an environment of accusation and frustration, a range of complicated and difficult matters which had been the subject of the multilateral GATT talks. If the Uruguay Round succeeds, the United States and the EC will suffer from a strained relationship as they attempt to resolve a series of pending and new disputes.[27]

Each government is concerned that the other is drifting from its commitment to an open multilateral trading system. The EC fears that the United States increasingly is turning toward a preference for managed trade, and toward bilateral solutions for trade problems in which it uses the threat of U.S. retaliation to win concessions.[28] The United States is fearful that the EC is focusing excessively on its European trading partners and is un-

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[25] *See EC/United States/Science: Results of the Second Meeting of the Joint Consultative Group on Science and Technology*, Europe (Agence Europe) No. 5618, at 9 (Nov. 28, 1991).

[26] Peter Nielsen, *JESSI and SEMATECH Sign Formal Cooperation Pact*, Reuters, Sept. 21, 1991, *available in* LEXIS, Nexis Library, Reuter File. The success of the cooperation has been limited. *See also* Yuko Inoue, *SEMATECH Turns to Japan for Chip Insight*, NIKKEI WKLY., Jan. 25, 1992, at 1.

[27] *See 'Hour of Truth' for GATT, Dutch Official Says*, INT'L HERALD TRIB., Feb. 17, 1992, at 2.

[28] *See EC Warns*, *supra* note 19, at 1.

willing to make changes in its agricultural program and other policies to accommodate U.S. interests.[29]

The temperature of the EC-U.S. trade debate unquestionably has increased. In January, President Bush accused the EC of building an "iron curtain of protectionism" for European agricultural products.[30] The same week, EC Competition Commissioner Leon Brittan complained of "mounting evidence that the United States is drifting toward a preference for managed trade."[31] In mid-February, a controversy erupted over comments by U.S. officials linking U.S. military commitments in Europe to the Community's willingness to reach a Uruguay Round agreement.[32] In this environment, a successful conclusion of the Uruguay Round will be necessary if U.S. and Community officials are to prevent these tensions and potential problems from expanding further.[33]

II. EC-U.S. TRADE DEVELOPMENTS IN 1991 AND EARLY 1992

A. *Uruguay Round Negotiations*

The ongoing Uruguay Round negotiations under the auspices of GATT are multilateral negotiations involving numerous countries, both developed and developing. Nonetheless, the United States and the EC have dominated the talks. In part, the GATT Round has become the forum for the EC and the United States to address issues which also could have been resolved in a bilateral context.

The Uruguay Round was launched in 1986 and was scheduled to be completed prior to the end of 1990, but completion was extended until April 1992, with the possibility of further extension.[34] The success of the talks remained in jeopardy in early 1992, however, due largely to unresolved disagreements between

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[29] *See* Leonard Silk, *What Price a Breakdown Of the Uruguay Round?*, INT'L HERALD TRIB., Feb. 29, 1992, at 9.

[30] *See President Bush Says EC Holding Up Progress in GATT Trade Negotiations*, 9 Int'l Trade Rep. (BNA) No. 3, at 99 (Jan. 15, 1992).

[31] *See EC Warns*, *supra* note 19, at 2.

[32] *See* Tim Carrington, *Quayle Says U.S. Isolationists Lack Broad Support*, WALL ST. J. EUR., Feb. 12, 1992, at 2; *see also* GATT: Strong Reaction But No Official Statement On Quayle's Comments, Eur. Rep. (European Information Service) No. 1743, at 7 (Feb. 12, 1992).

[33] *See President Bush Denies Any Link Between GATT Talks, European Security*, 9 Int'l Trade Rep. (BNA) No. 8, at 296 (Feb. 19, 1992) (comments of Foreign Minister Hans van den Broek of the Netherlands).

[34] *See So Close, and Yet So Far*, ECONOMIST, Jan. 4, 1992, at 62.

the United States and the EC. The fact that the relationship between the United States and the Community has been the driving force behind the GATT negotiations—commonly recognized as the most important undertaking in world trade regulation—shows the significance of this relationship for the world trading system.

Unfortunately, over the past year the EC-U.S. trade relationship, as played out in the GATT negotiations, has been difficult and frustrating. Even the overall importance of a successful round recently has been the source of disagreement, with an EC official claiming that the negative consequences for the world economy would not be as grave as the U.S. portrayal would indicate.[35] Following is a brief description of the major areas of EC-U.S. dispute, and several areas of agreement, in the Uruguay Round.

1. Dispute on Agricultural Subsidies

Observers generally have viewed the disagreement between the United States and the EC over agricultural subsidies as the most important deal-breaking issue of the entire Uruguay Round. The GATT Round broke down following the GATT Ministerial meetings in December 1990 in Brussels, largely as a consequence of the parties' inability to agree on the level of reduction in agricultural subsidies.[36] The fourteen large agricultural producing countries, known as the Cairns Group, favored reduction of subsidies world-wide, while the EC, Korea, and Japan were unable to make such a commitment.[37]

The Community and the United States have agreed that reform in the area of farm subsidies is needed. The percent of farm income accounted for by subsidies in 1990 was 48 percent for the Community and 30 percent for the United States, costing the governments of each billions of dollars.[38] The difficulty has come in negotiating the extent, manner, and timing of reductions in subsidies.

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[35] *See EC Commissioner Andriessen Downplays Consequences of Possible GATT Failure*, 9 Int'l Trade Rep. (BNA) No. 4, at 159 (Jan. 22, 1992).

[36] *See Katz Insists EC Must Agree to Agricultural Framework to Jumpstart GATT Talks*, 8 Inside U.S. Trade No. 51, at 1, 11 (Dec. 21, 1990).

[37] *See Cairns Group Says It Will Not Accept a "Cosmetic" Agricultural Agreement*, 8 Int'l Trade Rep. (BNA) No. 49, at 1807 (Dec. 11, 1991).

[38] OECD, AGRICULTURAL POLICIES, MARKETS, AND TRADE: MONITORING AND OUTLOOK 17, 26 (1991).

Historical incongruities between the subsidy systems in the two countries account for some of the problems. The U.S. subsidy system consists largely of domestic price maintenance, quotas on imports, and export subsidies. The basis of the EC system, the Common Agricultural Policy (CAP),[39] is based on a complex mechanism of variable import levies and restitution payments. As a consequence, the parties have had difficulty in arriving at a threshold consensus on what constitutes equivalent reduction and how to measure the level of existing subsidization.[40]

The United States has taken the position that its entire system is the subject of negotiation. As a method for reducing some types of subsidies, the United States has proposed replacing trade barriers with tariffs—known as "tariffication." For other types of subsidies, it has proposed quantification and commitments to eliminate subsidies over ten years.[41] The Community has been willing to agree to progressive reduction but has not committed to an actual timetable for reduction. The EC also has not committed to the ultimate goal of tariffication: the eventual complete elimination of subsidies. Instead, the EC advocates that reductions in barriers for one product be offset by an increase in restrictions on another product, as long as the overall level of protection declines.

On the eve of completion of the single market, the Community has found it fundamentally difficult to dismantle the CAP as a result of years of political compromise within the Community. The EC has been placed in an essentially defensive position, and its goal has been to maintain the CAP with some modification.[42] The negotiating text considered in March and April 1992—the so-called Dunkel text[43]—called for a 36 percent reduction in export subsidies and a 20 percent reduction in domestic support. This represented a balance between the United States and the

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[39] *See* OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITY, EUROPEAN UNIFICATION—THE ORIGINS AND GROWTH OF THE EUROPEAN COMMUNITY 45 (Jan. 1990).

[40] *See U.S.-EC Differences Over Farm Trade Seen Continuing to Threaten GATT Talks*, 8 Int'l Trade Rep. (BNA) No. 46, at 1680 (Nov. 20, 1991).

[41] *See* COMPLETING THE URUGUAY ROUND 54 (Jeffrey J. Schott, ed. 1990).

[42] *See* Karen E. Donfried & Julie Kim, *European-U.S. Relations: Current Issues* (Congressional Research Service Issue Brief, Jan. 23, 1992), at 9–10.

[43] On December 20, 1991, Arthur Dunkel, GATT's director-general, handed down a 500-page draft final agreement. The Dunkel text represents a unification of 30 separate agreements, including controversial finishing touches. *See* ECONOMIST, Dec. 21, 1991, at 83.

Cairns Group, which favored further reductions, and the Community and Japan, among others, which preferred less.[44] The EC objected to the Dunkel text, mainly on the ground that it did not categorize payments to farmers for price and production cuts as permissible subsidies.[45] The Community has planned to use such payments in its reform of the CAP.[46]

2. Tariff Reductions Increasing Market Access

Other than the disagreement over agricultural subsidies, the crucial issue requiring resolution before completion of the Uruguay Round was tariff reduction.[47] From the outset, the negotiations on tariff barriers were marked by disagreement between the EC and the United States. The United States advocated negotiation on a product-by-product, request-offer basis while the EC advocated a formula approach, with greater reductions applying to higher tariffs.[48]

Accordingly, the United States has promoted a "zero-for-zero" initiative. This would result in a complete reduction of tariffs on certain products, such as aluminum, appliances, beer, computers, medical devices, construction equipment, semiconductors, and wood products.[49] On the other hand, the EC approach has focused on overall reduction of tariffs with higher tariffs targeted for the greatest reductions.[50] The EC position reflected the fact that the U.S. tariffs are high by world standards on certain sensitive products such as textiles, footwear, and glass. Thus, the Community has aimed to reduce the so-called U.S. "tariff peaks."[51]

United States industry and Congress have viewed these market access issues as crucial to the conclusion of a successful Uruguay Round package. The most intensive activity on these negotiations

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[44] *See GATT's Trade Talks: Final Sprint—or Stumble*, ECONOMIST, Jan. 18, 1992, at 73.

[45] *Id.*

[46] *Id.*

[47] *See U.S., EC Market Access Dispute Holds Up Uruguay Round Negotiations*, 10 Inside U.S. Trade No. 7, at 1 (Feb. 14, 1992) [hereinafter *Market Access Dispute*].

[48] *See Ways & Means Staff Warns of State Dept. Pressure for Minimal GATT Deal*, 9 Inside U.S. Trade No. 47, at 3 (Nov. 22, 1991) [hereinafter *Ways & Means Staff Warns*].

[49] *Id. See* Uruguay Round Market Access Negotiations, U.S. Views (June 10, 1991) (unpublished U.S. negotiating document) (on file with authors).

[50] See *Ways & Means Staff Warns, supra* note 48, at 3.

[51] *See U.S., EC Square Off Over Market Access on Top of Agriculture Fight*, 10 Inside U.S. Trade No. 6, at 1 (Feb. 7, 1992).

had yet to occur in early 1992. It appeared, however, that the EC would accept the U.S. zero tariff proposal for some items, that the United States would accept restrictions in some peak tariffs, and that an agreement in the market access negotiations could be reached. As of February 1992, the United States and the EC had agreed to the goal of zero tariffs in the pharmaceutical and steel sectors, and possibly in the construction and medical equipment sectors.[52] For other sectors, however, there was no agreement.[53]

3. Reductions in Subsidies

The negotiating positions of the United States and the Community in the subsidies area have broadly reflected their positions in the agricultural subsidies negotiations: the United States has aimed to limit subsidies as much as possible, whereas the Community has had less ambitious objectives. The approach taken by the subsidies negotiating group was to employ a "traffic-light" method. It designated certain types of subsidies as red-, yellow-, or green-light depending on an economic analysis of trade-distorting potential.[54]

The EC proposed to "green-light," that is designate as *per se* allowable, subsidies for regional development and for research and development. Under U.S. countervailing duty law, regional subsidies and subsidies for research and development—if the result of the research is not made widely available—are deemed impermissible, actionable subsidies.[55] In early 1992, the United States indicated that it might be flexible with respect to regional subsidies, as long as industry-specific regional subsidies are countervailable.[56]

4. Intellectual Property Protection

The negotiations on Trade-Related Aspects of Intellectual Property (TRIPs) began with the developed countries, including

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[52] *Market Access Dispute*, *supra* note 47, at 1.

[53] *Id.*

[54] *See* Schott, *supra* note 41, at 96.

[55] *See Senior U.S. Trade Official Acknowledges Easing of U.S. Subsidies Stance*, 9 Inside U.S. Trade No. 49, at 1 (Dec. 6, 1991).

[56] *Id.*

the United States and the EC. These negotiations attempted to raise the level of protection afforded in the developing countries,[57] but quickly became contentious between the United States and the EC. The original, primary goal of the talks, to some extent, has been lost.

In the copyright area, the United States and the EC debated the issue of so-called "moral rights." Under the EC system, an author's right to be known as the author and to prevent deforming changes to his or her work survive any sale of the work.[58] Recent legislation changed U.S. common law, providing limited protection for moral rights for the first time. In 1990, Congress enacted the Visual Artists Rights Act, establishing the right of artists, photographers, sculptors, and printmakers to protect their work from unauthorized mutilation or change.[59] Powerful industries such as the U.S. motion picture and publishing industries strongly opposed moral rights legislation in the United States.[60] They viewed the continuing interference by authors after sale of their work as potentially disruptive to the established structure of their industries.

In the patent area, the U.S. and EC systems differ as well. The U.S. system awards the patent to the first individual to invent the product,[61] whereas the EC system awards the patent to the first individual to file a legal record of the invention.[62] The Community has maintained that the United States applies its rules in a discriminatory manner because it applies its first-to-invent rule to domestic inventors only.[63] The Community's position is that the United States, which is the only remaining country with the first-to-invent system, should conform its laws.[64] The United

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[57] *See* U.S. GENERAL ACCOUNTING OFFICE, GAO/NSIAD-87-65, STRENGTHENING WORLDWIDE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS, (Apr. 1987) [hereinafter STRENGTHENING WORLDWIDE PROTECTION].

[58] This concept is included in the multilateral copyright treaty, the Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, art. 6 bis, *revised* Paris, July 24, 1971, 25 U.S.T. 1341, 828 U.N.T.S. 221, 235. The United States has been a signatory since only 1989.

[59] *See* Pub. L. No. 101-650, 104 Stat. 5128 (codified as amended at 17 U.S.C.A. §§ 101, 106A (West Supp. 1991)).

[60] *See* David J. Fox, *Directors Tackle Studios, Media Giants Over Creative Rights*, L.A. TIMES, July 3, 1990, at 3, pt. F.

[61] 35 U.S.C. § 102(g) (1988).

[62] *See* STRENGTHENING WORLDWIDE PROTECTION, *supra* note 57.

[63] *Id.*

[64] *Id.*

States has indicated that it would consider changing its system, but only in another multilateral forum outside the GATT.[65]

In the trademark area, the EC seeks protection for "appellations of origin" as trademarks subject to protection.[66] Such appellations include "champagne," "burgundy," and "chablis." The U.S. wine industry contends that it would be harmed by rules requiring it to cease using these names. The United States maintains that it is unwilling to roll back the use of these terms, which it considers to be generic.[67]

5. Free Trade in Services

The services negotiations between the EC and the United States have been marked less by disagreement than by a common endeavor to define the scope and goals of the negotiations. Services, including such areas as financial services, insurance, tourism, and telecommunications, were included for the first time in the Uruguay Round. This was done largely as a result of pressure by the United States, with somewhat less interest on the part of the EC.

The main areas of negotiation have been threshold matters, such as defining the scope and structure of any agreement. An additional major area of difficulty has been how to include cross-border movement of labor, which is essential to free trade in services. A relatively minor disagreement between the EC and the United States occurred in the negotiations on audio-visual services. The EC advocated a general exception to free trade in services for protection of "cultural values."[68] The United States opposed such an exception on the grounds that cultural identity is not capable of definition given multinational television and movie distribution.

More recently, the U.S. financial services industry sought to include a provision in the services agreement allowing for a derogation from application of the agreement on a most-favored-

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[65] There are existing international agreements outside GATT administered by the World Intellectual Property Organization. *See* Convention Establishing the World Intellectual Property Organization, July 19, 1967, 21 U.S.T. 1749, T.I.A.S. No. 6932, 828 U.N.T.S. 3.

[66] Draft Agreement on Trade-Related Aspects of Intellectual Property Rights, Group of Negotiations on Goods (GATT), Mar. 29, 1990, art. 20(2) (on file with authors).

[67] *See* 55 Fed. Reg. 17,961 (1990) (making it possible to obtain generic status).

[68] *See Ways & Means Staff Warns*, *supra* note 48, at 3.

nation basis. This derogation would apply to countries that fail to follow through on commitments to ease market access restrictions on a sectoral basis. Countries that do not remove market access restrictions would not continue to benefit from the multilateral services agreement, according to the U.S. industry proposal.[69] The EC position has been similar to that of the United States but would allow for an interim period for compliance.[70]

6. Restrictions on Foreign Direct Investment

The Trade-Related Investment Measures (TRIMs) negotiations are also a new issue in GATT. These negotiations are intended to reduce the restrictions on direct foreign investment maintained largely by the developing countries.[71] The issue has come to the fore as a consequence of dramatic changes in the international investment picture, resulting from such factors as the developing country debt crisis, the growth of practices linking investment to trade, the globalization of production, and the new-found investment potential in Russia and eastern Europe.

The United States set out a list of fourteen investment restrictions for negotiation, including local content requirements, export performance requirements, and technology transfer requirements.[72] The EC, for the most part, agreed that these measures should be the subject of negotiation.[73] In the TRIMs talks, the EC-U.S. relationship is primarily one of agreement, because both are capital exporting parties with similar interests.

B. *Bilateral Issues*

While the Uruguay Round has been the most important forum for discussing EC-U.S. trade issues during the past eighteen months, the two governments also have attempted to resolve dozens of bilateral trade disputes and trade issues raised by both sides. In some cases, discussion of these bilateral issues has been related to the GATT negotiations, such as efforts to reduce avia-

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[69] *See Financial Services Industry Pressing for More U.S. Leverage in GATT Talks*, 10 Inside U.S. Trade No. 4, at 1 (Jan. 24, 1992).

[70] *Id.*

[71] *See generally* William Dullforce, *Splits remain on an end to investment flow curbs*, FIN. TIMES, Nov. 6, 1990, at 8.

[72] See Schott, *supra* note 41, at 152.

[73] *See Trims Negotiating Group Completes Report to Present to Trade Negotiations Committee*, 7 Int'l Trade Rep. (BNA) No. 29, at 1112 (July 18, 1990).

tion and steel subsidies and to open public procurement in the telecommunications sector. Many of the disputes have involved allegations that regulatory requirements which ostensibly apply equally to domestic and imported products in fact have a discriminatory impact on imports. This section describes some of the most significant bilateral issues considered in 1991 and early 1992.

1. Bilateral Issues Pursued by the United States

Several of the most important bilateral issues the United States has pursued have involved aspects of the European Community's Single Market Program launched in 1986.[74] Only a few years ago this effort to create a single economic market by developing Community-wide regulatory requirements represented the major target of U.S. government and business complaints about EC trade policies.[75] United States concerns about the creation of a "Fortress Europe" in which newly unified rules would favor European companies over U.S. interests were an important element in bilateral discussions.[76] This concern led the Department of Commerce to create an active "EC 1992 Division" within the Office of European Community Affairs which continues to coordinate a number of task forces and provides information on Single Market Program developments.

Concern in the United States about the program has eased substantially over the past two years. During that time, U.S. companies began to understand more clearly the aims of European integration and watched the implementation of new rules, which only infrequently posed a threat to their operations. Most importantly, the fears of U.S. companies have been eased by their success in the European market. Since the Single Market Program was launched, U.S. exports to the EC have nearly doubled.[77] Since late 1989, the Single Market increasingly has been perceived in

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[74] Single European Act, 1987 O.J. (L 169) 1. For a discussion of the provisions of the SEA, see generally Aaron Schildhaus, *1992 and the Single European Market*, 27 INT'L LAW. 549 (1989).

[75] *See generally* Blanca Reimer et al., *Laying the Foundation for a Great Wall of Europe*, BUS. WK., Aug. 1, 1988, at 40; *Reshaping Europe: 1992 and Beyond*, BUS. WK., Dec. 12, 1988, at 48.

[76] Robert D. Hormats, *A 'Fortress Europe' in 1992?*, N.Y. TIMES, Aug. 27, 1988, at 19.

[77] *See Secretary Mosbacher Reports to Business on EC 1992*, BUS. AMER., Feb. 25, 1991, at 3 (U.S. Department of Commerce Publication).

the United States as providing new opportunities to do business in Europe. Despite this perception, however, some U.S. business interests have concluded that it will be years before U.S. companies derive the full benefits of EC unification.[78]

Nonetheless, Single Market initiatives continue to be of significant interest to the U.S. government and business community because of their potential to restrict U.S. exports and business operations in Europe. As discussed below, the broadcasting directive, the auto import arrangement with Japan, the development of new product standards, regulation of the distilled spirits and wine industries, and public procurement in the telecommunications sector illustrate the nature of U.S. concern.

In addition to those EC-U.S. issues arising out of the Single Market Program, numerous other issues were addressed through bilateral negotiations during 1991 and the beginning of 1992. Efforts to reduce Community subsidies provided several of the highest profile issues, including the Airbus, steel, and oilseeds negotiations. United States concern about the discriminatory impact of EC technical standards prompted the meat plant certification and corn gluten feed disputes. Finally, the ongoing issue of U.S. corn and sorghum imports into the Community, resulting from the accession of Spain and Portugal, continued to receive attention.

a. *EC Broadcasting Directive*

The most publicized dispute concerning the Single Market Plan has involved the EC's "broadcasting directive," intended to create a single European broadcasting market. The directive, approved in October 1989, established a target under which European broadcasters must attempt to reserve over 50 percent of their broadcasting time for productions of European origin.[79] Member States were required to translate the directive into national law by October 1991, although some countries have not met the deadline.[80]

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[78] *See U.S., EC Trade Friction Likely to Rise Even As 'EC 1992' Creates Opportunities*, Daily Rep. for Executives (BNA) No. 243, at A-7, A-8 (Dec. 18, 1991) [hereinafter *Trade Friction Likely to Rise*].

[79] Council Directive 89/552, 1989 O.J. (L 298) 23.

[80] OFFICE OF THE U.S. TRADE REPRESENTATIVE, 1991 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 69 (1991) [hereinafter 1991 FOREIGN TRADE BARRIERS REPORT].

At the urging of the U.S. television and film industry, the U.S. government repeatedly has expressed its strong opposition to the proposal. It contends that the directive represents a local content rule in violation of the GATT.[81] The EC argues that broadcasting, as a service, is not covered by GATT obligations, and that preferences based on cultural objectives are widely accepted under international agreements.

Despite dozens of discussions since 1989 involving senior U.S. and EC officials, this dispute has not been resolved. Two rounds of consultations were conducted in Geneva in December 1989 and July 1990. In April 1991, the Office of the U.S. Trade Representative (USTR) placed the Community on the priority watch list under the Special 301 intellectual property provisions of the 1988 Trade Act.[82]

b. *Restrictions on Japanese Automobile Imports*

As part of its Single Market Program the EC has committed to eliminating, after 1992, quotas on automobile imports imposed by several Member States.[83] Concerned, however, that Japanese producers would quickly dominate the European market, the Commission of the European Communities (Commission), the EC's executive branch,[84] sought a "voluntary" transitional arrangement with Japan. Specifically, the EC sought to limit the sale in Europe of Japanese nameplate automobiles for several years to give European producers time to become more competitive. Throughout 1990 and 1991, the Community and Japan engaged in secret negotiations, and on July 31, 1991 finally agreed to limit Japanese automobiles to 16 percent of the market through 1999.[85] This agreement has not been made public. While

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[81] *Id.*

[82] *See* Office of the United States Trade Representative, *Fact Sheet—"Special 301" On Intellectual Property*, Apr. 26, 1991, at 3 (on file with authors) [hereinafter *Fact Sheet*].

[83] *See Cars: Consensus on External Trade, Hesitation on Internal Aspects*, Eur. Rep. (European Information Service) No. 1668, at 5 (Apr. 13, 1991).

[84] *See infra* note 121 and accompanying text.

[85] *See* Statement by Frans Andriessen, Vice President of the Commission of the European Communities and Statement by Eiichi Nakao, Minister of International Trade and Industry, Tokyo (reprinted in *EC-Japan/Cars: The Agreement on the Transitional Period Has Been Formally Accepted by Both Parties*, Europe (Agence Europe) No. 5547, at 6 (Aug. 2, 1991); *see also Cars: EEC-Japan Deal in Retrospect*, Eur. Rep. (European Information Service) No. 1700, at 4–5 (Sept. 4, 1991); *Cars: Official Versus Unofficial Quotas*, Eur. Rep. (European Information Service) No. 1738, at 8 (Jan. 25, 1992) (discussing "unofficial quotas"); *Cars:*

the EC's arrangement with Japan did not directly involve the United States, U.S. officials repeatedly sought assurances that autos produced in the United States by Japanese companies would not be affected. The final EC-Japan agreement reportedly does not limit the sale of such automobiles. In mid-February 1992, a senior Community official asked that the auto agreement be reviewed to clarify the treatment of autos made in Japanese assembly plants located in the Community. It appeared unlikely, however, that any review would result in changed treatment of autos produced in the United States.[86]

c. *Product Standards*

European product standards and certification rules which the Community is developing have generated concerns in the United States that the new European rules could become an obstacle to U.S. sales.[87] As part of its Single Market Plan, the Community is creating harmonized European-wide standards to replace the differing national standards of the twelve Member States in a number of areas.[88] This harmonization is focusing primarily on the health and safety aspects of products. Eleven directives have been approved covering such items as machinery, construction products, protective equipment, medical devices, and toys.[89] Plans are being made for ten additional directives covering such fields as recreational craft and used machinery. These directives list the "essential requirements" for products and contract the task of writing specific standards to three European standards organizations. The organizations and the Commission have stated their intention to adopt international standards when possible.[90] In addition to these specific directives, the Commission has issued

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Renewed Controversy Around EEC/Japan Agreement, Eur. Rep. (European Information Service) No. 1742, at 8 (Feb. 8, 1992) (describing new threats to auto accord).

[86] *See Cars: Portugal Wants EEC/Japan Agreement Reviewed*, Eur. Rep. (European Information Service) No. 1746, at 13 (Feb. 22, 1992).

[87] *See Trade Friction Likely to Rise*, *supra* note 78, at A-7–A-8.

[88] *See* Sara E. Hagigh, *Hundreds of New Product Standards Will Apply to Sales in EC After 1992*, BUS. AMER., Jan. 13, 1992, at 16 (U.S. Department of Commerce Publication).

[89] *Europe 1992*, *supra* note 13, at 29 (lists product, date implemented, and current status); *see* Hagigh, *supra* note 88, at 16.

[90] *See* Glennon J. Harrison, *European Community: 1992 Plan for Economic Integration* (Congressional Research Service Issue Brief, Nov. 6, 1991); Hagigh, *supra* note 88, at 18.

broader framework directives on product safety,[91] worker safety,[92] and product liability.[93]

United States manufacturers generally believe that the standards changes will make it easier for them to sell in Europe. United States companies and the U.S. government, however, repeatedly have raised concerns that access to the standards-setting process is necessary to ensure that new standards do not inadvertently limit the availability of U.S. products.[94] The U.S. government and some U.S. industries have requested observer status in the standards organizations, but these requests have been rejected.[95]

The EC-U.S. dialogue on standards issues has been reinforced at the political level. A roundtable between European and U.S. standards bodies chaired by Vice President Bangemann and U.S. Secretary of Commerce Robert Mosbacher on June 21, 1991 resulted in an agreement to take measures to promote the use of international standards, and launched negotiations on mutual recognition agreements for testing and certification.[96] This responded both to U.S. concerns and EC complaints that the United States often uses its own national standards instead of international standards. By February 1992, little progress had been made in subsequent talks because of a split within the U.S. standards community and opposition from European standards organizations.

d. *Distilled Spirits*

An EC regulation implemented on March 31, 1991 created potential obstacles for the continued marketing of U.S. Bourbon, Tennessee and Blended Whiskeys, and other distilled spirits in the Community.[97] The regulation, which was fully implemented on March 31, 1991, established minimum alcohol strengths, stipulations regarding quality, rules on geographic designations, and

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[91] Amended Proposal for a Council Directive, 1990 O.J. (C 156) 8.

[92] Council Directive 89/391, 1989 O.J. (L 183) 1.

[93] Council Directive 85/374, 1985 O.J. (L 210) 34.

[94] *See* The Effects of Greater Economic Integration Within the European Community on the United States, USITC Pub. 2204, at 6–7 (July 1989).

[95] Hagigh, *supra* note 88, at 18.

[96] *See* News Conference with Martin Bangemann, Vice President of the Commission of the European Community, Reuter Transcript Rep. (June 21, 1991).

[97] *See* Council Regulation 1576/89, 1989 O.J. (L 160) 1.

a system to verify authenticity.[98] The regulation primarily affirmed the standards that individual Member States had long required. The U.S. industry, however, was concerned that U.S. products would no longer be permitted on the EC market, affecting about $40 million in U.S. distilled spirits.[99] The EC contends that the three brands of U.S. whiskey may still be sold on the EC market, but may not carry their generic name "whiskey." The U.S. government is now seeking an exception from the rules for blended whiskey produced in the United States.

e. *Wine*

Similar problems arose for the U.S. wine industry in 1990 when the EC adopted a regulation harmonizing the twelve existing national standards for procedures permitted in the laboratory testing of wine.[100] Because these requirements are different than U.S. regulations, the U.S. government is trying to extend a prior EC-U.S. Wine Accord which has the effect of exempting U.S. wines from certain European rules.[101] An extension through April 30, 1992 was reached, but the U.S. government was pressing for a long-term solution.[102]

Problems also have arisen for the EC wine industry following the U.S. Food and Drug Administration's (FDA) adoption of a standard for lead content in imported wine on September 11, 1991.[103] The FDA rule would limit lead in wine to 300 parts per billion of wine.[104] Although that level currently poses no threat to European producers, U.S. officials have stated that they intend to propose a stiffer limit of as little as 150 parts per billion, which would impact European wines.[105]

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[98] *Id.*

[99] *See New EC Liquor Definition Regulations Will Halt U.S. Blended Whiskey Exports*, 8 Int'l Trade Rep. (BNA) No. 11, at 391 (Mar. 13, 1991).

[100] Commission Regulation 2676/90, 1990 O.J. (L 272) 1.

[101] *See* Council Decision 80/272, 1980 O.J. (L 71) 129.

[102] *See EEC/US: Council Extends Wine Trade Derogation*, Eur. Rep. (European Information Service) No. 1748, at 4 (Feb. 29, 1992).

[103] *See U.S. Restrictions on Lead Content in Wine Could Cause Negotiating Problems for EC*, 8 Int'l Trade Rep. (BNA) No. 36, at 1328 (Sept. 11, 1991).

[104] E.S. Browning, *Europeans Troubled by U.S. Plan to Limit Amount of Lead Allowed in Imported Wines*, WALL ST. J. EUR., Sept. 11, 1991, at 3.

[105] *Id.*

f. *Public Procurement in Telecommunications*

Both the United States and the EC have raised complaints about access to the other's market for telecommunications network equipment, such as switching and transmission equipment and cables. The United States contends that telecommunications administrations in most EC countries procure all network equipment from domestic national suppliers and that an EC government procurement directive scheduled to take effect in January 1993 will discriminate against U.S. suppliers.[106] The Community responds that the new directive will liberalize European procurement of telecommunications equipment. The major EC complaints are that the U.S. market is closed to European suppliers because AT&T purchases all of its equipment from its own manufacturing arm and sales to Bell Operating Companies are limited for foreign suppliers.[107]

Since 1986, USTR and the Commission have conducted a series of bilateral "fact finding" discussions on the telecommunications issues. In 1989, USTR identified the EC as a "priority country" under Section 1374(a) of the 1988 Trade Act, which requires the United States to negotiate with the objective of reaching a bilateral telecommunications trade agreement.[108] The EC initially refused to negotiate bilaterally, arguing that telecommunications issues should be addressed multilaterally as part of the Uruguay Round. Nevertheless, the EC did finally agree to enter into informal talks on the subject.[109] Although these talks have not resolved the dispute, on February 21, 1992, the United States, under the 1988 Trade Act, extended the negotiating period until January 1, 1993, in order to postpone retaliation required by the Act.[110]

In late February, U.S. officials nonetheless threatened to apply unilateral retaliatory measures if the EC did not meet U.S. demands.[111] EC officials dismissed the U.S. statements as attempts

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[106] Council Directive 90/531, 1990 O.J. (L 297) 1; *see U.S., EC Divided Over Procurement, Seek Progress on Telecom*, 9 Inside U.S. Trade No. 20, at 9–10 (May 17, 1991) [hereinafter *U.S., EC Divided Over Public Procurement*].

[107] *U.S., EC Divided Over Public Procurement, supra* note 106, at 9–10.

[108] Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 1374(a), 102 Stat. 1107, 1217–1218 (codified at 19 U.S.C. § 3103 (West Supp. 1991)).

[109] *See U.S., EC Divided Over Public Procurement, supra* note 106, at 9.

[110] *See U.S. Floats Proposal to Break Deadlock in Telecom Talks with EC*, 10 Inside U.S. Trade No. 9, at 1 (Feb. 28, 1992) [hereinafter *U.S. Floats Proposal*].

[111] *South Korea Agrees to Open Telephone Market to U.S.*, WALL ST. J. EUR., Feb. 24, 1992, at 2.

to gain negotiating leverage.[112] In March, the negotiations were scheduled to continue, with the hope of reaching agreement during 1992.[113]

g. *Airbus*

Aside from the agricultural issues being considered in the GATT talks, the EC-U.S. trade dispute with the highest profile has been the controversy over alleged subsidies provided to the Airbus consortium by four Member States. The United States has long alleged that the Community has unfairly assisted Airbus in competing with U.S. aircraft producers by a variety of subsidies for aircraft development.[114] In 1990, complaints about an exchange rate guarantee provided by the German government compounded these allegations.[115] In response, the EC argues that the U.S. aircraft industry is equally subsidized through government contracts with the Departments of Defense and Transportation and the National Aeronautics and Space Administration.[116] During negotiations, the Community has proposed to curb such indirect subsidies.[117]

Discussions in 1987, 1988, and 1990 under the auspices of the GATT Aircraft Code and additional bilateral negotiations failed to resolve the issue. This led the United States to request the creation of a panel under the GATT Subsidies Code in February 1991.[118] The U.S. request was targeted solely at the German exchange rate guarantee, and did not address the broader developmental subsidies. Despite EC complaints that the case should be considered under the GATT Code on Trade in Civil Aircraft, which would have made an affirmative finding less likely, the

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[112] *U.S. Threat of Sanctions Draws Angry EC Reaction*, WALL ST. J. EUR., Feb. 25, 1992, at 3.

[113] *U.S. Floats Proposal*, *supra* note 110, at 1, 15.

[114] *See, e.g.*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, 1989 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 64 (1989).

[115] *U.S., EC Exchange Draft Agreements to Advance Airbus Subsidy Talks*, 8 Inside U.S. Trade No. 26, at 1, 12 (June 29, 1990).

[116] *See EC Alleges "Amazing" U.S. Support Benefits Civil Aircraft Sector*, 8 Int'l Trade Rep. (BNA) No. 49, at 1808 (Dec. 11, 1991).

[117] *Farren Warns U.S. Will Fight Airbus Subsidies in GATT After a March 31 Deadline*, 10 Inside U.S. Trade No. 9, at 10 (Feb. 28, 1992) [hereinafter *Farren Warns*].

[118] *See U.S. Files Formal Complaint with GATT Over German Subsidies for Airbus Industries*, 8 Int'l Trade Rep. (BNA) No. 8, at 263 (Feb. 20, 1991).

panel ruled in favor of the United States in January 1992.[119] This decision nonetheless leaves the broader dispute unresolved. Serious efforts began in February to reach a more comprehensive solution, with the U.S. industry threatening to initiate a Section 301 or a countervailing duty case if substantial progress was not made by March 31, 1992.[120]

h. *Steel Subsidies and Import Restrictions*

While the issue of reforming the world steel import and subsidy regime is, strictly speaking, not a bilateral issue, the United States and the EC have been the dominant participants in the two-year effort to replace the complex network of bilateral steel agreements between all the significant steel-producing nations with a single international steel code. Negotiations to create a Multilateral Steel Agreement (MSA)[121] began in 1990 after the United States committed to end its system of bilateral voluntary restraint agreements (VRAs) after April 1992. The EC also agreed to eliminate its remaining quotas on imports from third countries in 1992.[122]

While these issues are related to the GATT subsidy negotiations, consideration of an MSA has proceeded independently of the Uruguay Round talks. Several negotiating sessions were conducted in 1991 and early 1992, and in late February 1992, negotiators hoped to present a new draft MSA at a March negotiating session. It remained unclear, however, whether an agreement would be reached. Among the most important issues under discussion were whether the agreement would limit the ability of producers to file antidumping cases against low-priced imports, whether countervailing duty cases could be filed against past subsidies, and what types of subsidy programs would be permitted to continue under the new regime.[123]

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[119] *See Panel Decides German Payments to Airbus Consortium Contravene GATT, Sources Say*, 9 Int'l Trade Rep. (BNA) No. 12, at 1 (Jan. 17, 1992).

[120] *See Farren Warns, supra* note 117, at 1; *see also U.S. EC Set Deadline in Airbus Subsidy Row Talks*, FIN. TIMES, Feb. 20, 1992, at 7; *U.S., EC Seek to Bridge Gap Over Subsidies for Civil Aviation*, 10 Inside U.S. Trade No. 5, at 21 (Jan. 31, 1992).

[121] *See* Multilateral Agreement on Steel Trade Liberalization, Sixth Revision, July 27, 1991 (on file with authors).

[122] *See Steel: Slow Progress Towards Multilateral Trade Pact*, Eur. Rep. (European Information Service) No. 1739, at 3 (Jan. 29, 1992).

[123] *Id.*; *see also Specialty Steel Industry Launches Drive for Three-Year Extension of VRAs*, 10 Inside U.S. Trade No. 8, at 1 (Feb. 21, 1992); *Quadrilateral Negotiations to Work Out Final Deal on Steel Accord*, 10 Inside U.S. Trade No. 9, at S-1 (Feb. 28, 1992).

i. *Meat Plant Inspection and Certification*

Legislation the Community enacted in 1972—known as the third country meat directive[124]—permits fresh meat to be imported into the EC only when livestock have been slaughtered and packed in plants meeting strict EC hygiene standards. Using this authority, the EC decertified U.S. meat plants, prohibiting meat processed in those plants from being imported into the EC.[125] The United States complained that this legislation discriminated against U.S. exporters because the inspection requirements for U.S. meat exports are not the same as those for meat produced and consumed in individual Member States. United States meat producers also alleged that the ban was not based on legitimate food safety concerns, but rather was "an artificial trade barrier."[126] The EC responded that U.S. authorities had not shown a commitment to addressing Community concerns about U.S. meat processing procedures and that action was necessary to protect the health of European consumers.[127]

After bilateral negotiations failed in November 1990, the United States initiated a Section 301 investigation in January 1991.[128] The dispute appeared to have been settled in May 1991 when U.S. Secretary of Agriculture Edward Madigan and EC Agriculture Commissioner Ray MacSharry agreed to a two-phase plan to establish equivalent sanitary rules by the end of 1991.[129] The United States, however, again became concerned when difficulties were reported in the application of EC inspection procedures in U.S. meat plants meeting EC standards. Thus, on July 11, 1991, the United States requested the establishment of a

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[124] Council Directive 72/462, 1987 O.J. (L 34) 52.

[125] *See Two Industry Groups File Section 301 Case Over EC Ban of Pork, Beef Products*, 8 Inside U.S. Trade No. 48, at 5 (Nov. 30, 1990); *see also* 1991 FOREIGN TRADE BARRIERS REPORT, *supra* note 80, at 75.

[126] *See EC Bans Imports of U.S. Pork Products Citing Unsatisfactory 'Slaughter Hygiene,'* Daily Rep. for Executives (BNA) No. 212, at A-11 (Nov. 1, 1990); *see also* Initiation of Section 302 Investigation and Request for Public Comment: European Community Third Country Meat Directive, 56 Fed. Reg. 1663 (1991).

[127] *See* Letter from Ray MacSharry, EC Agriculture Minister, to Clayton Yeutter, U.S. Secretary of Agriculture (reprinted in 8 Inside U.S. Trade No. 43, at 6 (Oct. 26, 1990)).

[128] Initiation of Section 302 Investigation and Request for Public Comment: European Community Third Country Meat Directive, 56 Fed. Reg. 1663 (1991); *see Hills Accepts Section 301 Case on EC Pork, Beef Ban, But Seeks Informal Solution*, 9 Inside U.S. Trade No. 2, at 4 (Jan. 11, 1991).

[129] *See EEC/U.S.: EEC Lifts Ban on Horsemeat*, Eur. Rep. (European Information Service) No. 1674, at 7 (May 4, 1991).

GATT dispute settlement panel.[130] The EC responded on September 24, 1991 with a compromise proposal which appears to have settled the dispute. Fourteen of the twenty-five U.S. plants originally decertified were approved[131] and the United States received assurances regarding future certification activities.[132]

j. *Oilseeds*

The ongoing dispute over Community subsidies to its oilseeds industry remained unresolved in February 1992. United States producers of oilseeds—which include soybeans, sunflower seeds, and rape-seeds—have claimed that the subsidies cost them an estimated $2 billion in worldwide sales[133] and violate the GATT for two reasons. First, U.S. producers argue that the subsidies make U.S. oilseeds uncompetitive in European markets despite the EC's zero-bound tariffs on oilseeds. As a result, the benefits of the zero-bound duty are nullified, in contravention of the GATT. Second, the United States alleges that the subsidies violate the GATT's "national treatment" provision, because subsidies are provided only to EC oilseed processors.[134]

Although the oilseed issue could be discussed in the Uruguay Round negotiations on agricultural subsidies, the EC has agreed to settle the dispute bilaterally because it affects primarily U.S. farmers. In January 1990, a GATT panel which had been established at the request of the United States ruled that the oilseeds regime was inconsistent with the GATT on both grounds the United States had argued.[135] In response to the ruling, EC Ex-

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[130] *See EEC/GATT: US Lodges Complaint Against EEC Meat Plant Directive*, Eur. Rep. (European Information Service) No. 1693, at 8 (July 13, 1991).

[131] Council Decision 91/522, 1991 O.J. (L 283) 14; *see also EEC/US: Meat Plant Dispute Defused*, Eur. Rep. (European Information Service) No. 1708, at 1–2 (Oct. 2, 1991).

[132] *See EC Farm Ministers Relist Three U.S. Slaughterhouses*, 8 Int'l Trade Rep. (BNA) No. 38, at 1394 (Sept. 25, 1991); *see also EEC/US: Meat Plant Dispute Defused, supra* note 131, at 1–2.

[133] *See EC Commissioner Andriessen Sends Mixed Signals on Oilseeds Dispute*, 9 Inside U.S. Trade No. 29, at 10 (July 19, 1991).

[134] *See* Office of the U.S. Trade Representative, Determinations Under Section 304 of the Trade Act of 1974—European Community's Policies and Practices with Respect to Inter Alia, Production and Processing Subsidies on Oilseeds and Determination Under Section 305 to Delay Implementation of Any Action Taken Pursuant to Section 301 (Jan. 30, 1990); *see also* USTR Release, *Determinations Under Section 304 of the Trade Act of 1974, as amended*; Petition filed on behalf of U.S. oilseed producers (available at USTR Public Records Room).

[135] GATT, Basic Instruments and Selected Documents, Supp. No. 37, at 86 (Jan. 25, 1990).

ternal Affairs Commissioner Frans Andriessen and Agriculture Commissioner MacSharry indicated that the EC would adopt a new oilseeds regime by the end of October 1991 which would bring Community legislation into conformity with the conclusions of the GATT panel.[136]

On July 31, 1991, the Commission proposed a new support scheme intended to meet this commitment beginning with the 1992 harvest.[137] Neither the United States nor the EC Member States, however, were satisfied with the proposals; the United States believed they were insufficient and the EC believed they went too far. Thus, the United States requested the convening of a GATT panel.[138] The Community rejected this request, which led the United States to threaten unilateral retaliation measures.[139] At the end of 1991 the Commission produced an amended oilseeds proposal which both the Council of Ministers and the European Parliament accepted.[140] United States officials argued, however, that while the proposal resolved the national treatment issue, it continued to maintain excessively high subsidy levels.[141] In January 1992, the United States again requested that a new GATT dispute panel be convened to rule on the new oilseeds regime.[142]

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[136] *See* Letter from Frans Andriessen, Vice President of the Commission of the European Communities and Ray MacSharry, EC Agriculture Minister, to Carla Hills, U.S. Trade Representative and Edward R. Madigan, U.S. Secretary of Agriculture (June 27, 1991) (reprinted in 9 Inside U.S. Trade No. 29, at 11 (July 19, 1991)).

[137] *See EC/Agriculture: The Commission Adopts its Proposal of a New Subsidy System to Producers of Oilseeds Compatible with GATT Regulations*, Europe (Agence Europe) No. 5547, at 5 (Aug. 2, 1991).

[138] *See* Letter from Carla Hills, U.S. Trade Representative and Edward R. Madigan, U.S. Secretary of Agriculture, to Frans Andriessen, Vice President of the Commission of the European Communities and Ray MacSharry, EC Agriculture Minister (Sept. 9, 1991) (reprinted in 9 Inside U.S. Trade 37, at 10 (Sept. 13, 1991)); *see also EC/Agriculture: The United States Criticises the EC Plan to Revise the Subsidy System to Producers of Oil-Producing Plants and Calls for the GATT Soya Panel to be Convened Once More*, Europe (Agence Europe) No. 5585, at 10 (Oct. 10, 1991).

[139] *See U.S. Preparing to Retaliate Against EC Over Subsidies for Oilseed Production*, 8 Int'l Trade Rep. (BNA) No. 6, at 562 (Apr. 17, 1992).

[140] *See European Parliament Okays Commission Proposal to Reform Oilseed Subsidies*, 8 Int'l Trade Rep. (BNA) No. 49, at 1815 (Dec. 11, 1991).

[141] *See GATT: US Complains to Council About EEC Oilseeds Reform Plan*, Eur. Rep. (European Information Service) No. 1721, at 3 (Nov. 16, 1991); *see also U.S. Warns EC on Failure to Implement Oilseeds Ruling*, 8 Int'l Trade Rep. (BNA) No. 45, at 1656 (Nov. 13, 1991).

[142] *See GATT Investigative Panel to Reopen Hearings on EC Oilseed Subsidies*, 9 Int'l Trade Rep. (BNA) No. 5, at 191 (Jan. 29, 1992) [hereinafter *GATT Investigative Panel*]. To further complicate the dispute, the Community has proposed raising the zero-level tariff

k. *Corn Gluten Feed*

In 1991, the United States and the EC successfully resolved a technical dispute which had blocked imports of U.S. corn gluten feed, an animal feed, into the Community. This long-standing problem dating back to the 1970s came to the fore again in May 1991. Dutch customs officials blocked a 200,000 ton shipment from the United States, claiming that more than 20 percent of the feed consisted of other residue—in this case corn germ meal, a by-product in the processing of corn gluten feed.[143] Though both products can enter duty-free into the EC if imported separately, the Community charges a $200 per ton fee for the mixture, which has the effect of a 600 percent duty.[144]

Negotiations, some at the ministerial level, continued throughout the summer of 1991 within the Community, bilaterally between the EC and the United States, and under the auspices of the GATT. On September 25, 1991, the EC agreed to a U.S. proposal to take effect on January 1, 1992 which ensured the duty free entry into the EC of U.S. corn gluten containing no more than 4.5 percent extractable fat.[145] The agreement also provides for the repayment of duties levied since January 1, 1991 on corn gluten meeting the new definition and establishes a certification program.

l. *Corn and Sorghum*

In 1987, the EC reached an agreement with the United States setting specific levels for imports of U.S. maize and sorghum into Spain through 1990 and reducing Spanish tariffs on imports of

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on imported oilseeds to offset reductions in other agricultural tariffs in the Uruguay Round market access negotiations. Virtually all other GATT members opposed this "rebalancing" proposal. *See* Barbara Casassus, *US Is 'Playing With Fire' On Oilseeds, EC Official Says*, J. COM., Jan. 31, 1992, at 6A; *see also GATT Investigative Panel to Reopen Hearings on EC Oilseeds Subsidies*, Daily Rep. for Executives (BNA) No. 18, at A-6 (Jan. 28, 1992).

[143] *See EEC/US: Corn Gluten Feed Shipments Refused at Dutch Port*, Eur. Rep. (European Information Service) No. 1768, at 3 (May 23, 1991); *see also EEC/US: Corn Gluten Feed Dispute Causes Outrage in France*, Eur. Rep. (European Information Service) No. 1697, at 7 (July 27, 1991).

[144] *See EC Commission Sources Say 200,000 Tons of U.S. Corn Gluten Blocked in Rotterdam*, 8 Int'l Trade Rep. (BNA) No. 22, at 824 (May 29, 1991); *EEC/US: Corn Gluten Feed Shipments Refused at Dutch Port, supra* note 143, at 3–4.

[145] *See EC, U.S. Settle Corn Dispute, Move on to Short-Term Accord on Meat Ban*, 9 Inside U.S. Trade No. 39, at 1 (Sept. 27, 1991).

approximately twenty-five U.S. products.[146] This agreement was adopted in the context of the accession of Spain and Portugal into the Community in 1986 to compensate the United States for the elimination of other trade concessions which Spain and Portugal previously had granted to the United States. Following negotiations between Commissioner MacSharry and Secretary of Agriculture Clayton Yeutter in December 1990, the EC agreed to extend the agreement for one year until December 31, 1991, and agreed to seek a permanent solution by September 1991.[147] While such a long-term resolution was not reached in 1991, the EC again extended the agreement into 1992.[148]

m. *Shipbuilding Subsidies*

The U.S. shipbuilding industry has long complained about subsidies the Community allegedly provides to its shipbuilding and repair industries. These include subsidized export credits, direct subsidies, restricted procurement practices, tax benefits, and infusions of equity.[149] In 1989, the Shipbuilders Council of America filed a Section 301 petition seeking elimination of these practices, but withdrew the petition later in the year based on U.S. and EC commitments to conduct multilateral negotiations under the auspices of the Organization for Economic Cooperation and Development (OECD).[150] These talks began in October 1989.

Two years of negotiations have thus far failed to result in a multilateral resolution, primarily because of Japanese opposition. In early 1992, the chairman of the OECD working group was attempting to prepare a draft agreement which could overcome these obstacles. The United States and the Community, however, appeared to be making progress toward a bilateral understanding on shipbuilding subsidies.[151] During those talks, the EC raised

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[146] OFFICE OF THE U.S. TRADE REPRESENTATIVE, 1987 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 95 (1987).

[147] *Yeutter 'More Optimistic' on Uruguay Round Following Meeting with EC's Farm Minister*, 7 Int'l Trade Rep. (BNA) No. 50, at 1913 (Dec. 19, 1990).

[148] *See EC Council of Ministers Approves Extension of Corn Export Accord Under U.S. Through 1991*, 8 Int'l Trade Rep. (BNA) No. 1, at 5 (Jan. 2, 1991).

[149] 1991 FOREIGN TRADE BARRIERS REPORT, *supra* note 80, at 79.

[150] *Id.*

[151] *New Shipbuilding Draft Agreement Aims at Resurrecting Stalled Talks*, 10 Inside U.S. Trade No. 5, at 5 (Jan. 31, 1992).

concerns about the U.S. Jones Act, which prohibits foreign-built vessels from engaging in U.S. coastwise trade.[152]

2. Bilateral Issues Pursued by the European Community

While U.S. bilateral trade complaints predictably have received more attention in the United States, the Community has pursued a number of trade complaints against the United States over the past eighteen months. As discussed below, several of the most notable disputes have involved U.S. trade procedures and fees, such as Section 301, U.S. regulation of foreign direct investment, and the U.S. customs user and harbor maintenance fees. The EC also has raised concerns about U.S. regulatory laws which allegedly have a discriminatory effect on EC producers, such as the "gas guzzler" tax, the corporate average fuel economy law for automobiles, the U.S. ban on certain tuna imports, limits on EC wine imports containing the fungicide procymidone, and beer and wine excise taxes.

a. *Unilateral U.S. Action Under Section 301*

The EC has objected strongly to U.S. unilateral retaliatory action and the recent expansion of this authority under U.S. law. In 1974, Congress enacted Section 301, authorizing U.S. unilateral retaliation against unfair trade practices, defined very broadly.[153] An example of the use of Section 301 was the U.S. retaliation against the EC after it refused to allow U.S. beef into its market pursuant to an EC directive prohibiting the use of certain hormones in livestock farming.[154] The United States retaliated by raising tariffs to 100 percent on certain EC food products.[155]

The EC views U.S. action under Section 301 as illegal under GATT, which requires that measures taken against other GATT parties must be sanctioned by the GATT parties. In addition, the Community is critical of the increased scope of Section 301 re-

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[152] *Id.*; 46 U.S.C. § 883 (1920).

[153] Trade Act of 1974, Pub. L. No. 93-618, Title III, § 301, 88 Stat. 1978, 2041 (codified as amended at 19 U.S.C.A. § 2411 (West Supp. 1991)).

[154] Council Directive 146/88, 1988 O.J. (L 70) 16.

[155] *See* REPORT ON UNITED STATES TRADE BARRIERS AND UNFAIR PRACTICES 1991, SERVICES OF THE COMMISSION OF THE EUROPEAN COMMUNITIES 9 [hereinafter EC TRADE BARRIERS REPORT].

sulting from amendments to the law in 1988.[156] The 1988 amendments decreased the discretion of the administering authority to decide not to retaliate.[157] In addition, the amendments provided for identification of "priority foreign countries" and "priority unfair trade practices"—so-called Super 301—with the possibility of U.S. retaliation as an incentive for changing the practices.[158]

In bilateral negotiations with the United States, the Community has emphasized the danger of unilateral action for the multilateral trading system as a whole.[159] Elimination of Section 301 authority has been an important EC objective in the Uruguay Round, but U.S. negotiators have expressed strong reluctance to make concessions.[160] A significant obstacle to change is the strong support for Section 301 in Congress.

b. *U.S. Barriers to Foreign Direct Investment*

Increased U.S. restrictions on direct foreign investment have been the subject of ongoing bilateral negotiations between the United States and the Community. In response, largely to several high-profile purchases of U.S. real estate and businesses by Japanese investors, Congress enacted legislation placing restrictions on foreign investment. The so-called "Exon-Florio" bill enacted in 1988 provides for review of foreign purchases of U.S. companies and the possibility of forced divestiture if the investment is deemed to threaten "national security."[161]

The Community has expressed concern about the vague nature of the term "national security" and the possibility, therefore, that the law could be used to prevent investment in a wide range of industries.[162] The vague nature of the provision would also allow for application of the law in a discriminatory manner, and the

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[156] *Id.* at 8–10.

[157] Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 1301(a), 102 Stat. 1107, 1146–76 (codified as amended at 19 U.S.C.A. §§ 2411–19 (West Supp. 1991)).

[158] Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 1302, 102 Stat. 1107, 1176–79 (codified as amended at 19 U.S.C.A. § 2420 (West Supp. 1991)).

[159] EC TRADE BARRIERS REPORT, *supra* note 155, at 8–10.

[160] *Id.*

[161] 50 U.S.C.A. app. § 2170 (West Supp. 1989).

[162] EC TRADE BARRIERS REPORT, *supra* note 155, at 80–81; *see also EEC/US: Community Warning on Foreign Direct Investment Barriers*, Eur. Rep. (European Information Service) No. 1745, at 9; *EC/United States: While Welcoming President Bush's Orientation in Favor of "National Treatment" of Foreign Investments, EC Expresses Concern for Certain Aspects of American Legislation*, Europe (Agence Europe) No. 5671, at 7 (Feb. 19, 1992).

Community has sought assurances that the principle of national treatment will be honored.[163] These concerns lead the Commission to issue a formal statement on February 19, 1992, describing its concerns about U.S. investment provisions and warning that such restrictions should not be abused by applying them for "protectionist reasons."[164] In addition, the Community is seeking liberalization of U.S. investment restrictions in the shipping, telecommunications, and energy industries, where foreign ownership has been restricted since the turn of the century.[165]

c. *User Fees*

Since 1987, the Community has objected to the U.S. customs user fee,[166] supposedly a processing fee on imports. In 1987, the EC requested that GATT convene a panel to consider the issue.[167] The GATT panel concluded that the user fee should be limited to the cost of services rendered.[168] In 1990, the United States altered the fee structure.[169] The Community, however, continues to object that the fee is in excess of actual processing costs because the fee is based on the value of the import, with no relation to processing costs.[170]

The Community also has raised the issue of the recent threefold increase in the U.S. harbor maintenance fee, charged to both domestic users and importers.[171] The Community admits that the fee appears to be nominally paid by both importers and exporters, and therefore is not discriminatory. Nevertheless, the Com-

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[163] EC TRADE BARRIERS REPORT, *supra* note 155, at 80–81.

[164] *Id.*

[165] *Id.*

[166] Customs and Trade Act of 1990, 19 U.S.C.A. § 58c (West Supp. 1991); *see European Community Criticizes U.S. Measures at GATT*, Reuters North European Service, June 18, 1987, *available in* LEXIS, Europe Library, Allnews File.

[167] EC TRADE BARRIERS REPORT, *supra* note 155, at 20.

[168] GATT, Basic Instruments and Selected Documents, Supp. No. 35, at 245 (Feb. 2, 1988).

[169] Customs and Trade Act of 1990, Pub. L. No. 101-382, § 111, 104 Stat. 629, 635–39 (codified as amended at 19 U.S.C.A. § 58c (West Supp. 1991)). Additional legislation enacted in October 1990 extended the alteration for four years, until September 30, 1995. Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-58, § 10001(a), 104 Stat. 1388, 1388–385 (codified as amended at 19 U.S.C.A. § 58c(j)(3) (West Supp. 1991)).

[170] EC TRADE BARRIERS REPORT, *supra* note 155, at 20.

[171] Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 11214(b), 104 Stat. 1388, 1388–436 (codified at 26 U.S.C.A. § 4461 (West Supp. 1991)).

munity believes that the *ad valorem* structure of the fee makes it illegal under GATT.[172]

d. *U.S. Trade Barriers Affecting Entry of Automobiles Into the U.S. Market*

The so-called "gas guzzler" tax the United States imposes under the Internal Revenue Code,[173] has been the object of criticism by the Community. The tax applies to all cars averaging less than 22.5 miles per gallon. Cars imported into the United States, however, are more likely to pay a gas guzzler tax than otherwise-comparable domestically produced cars because the fuel economy of the car is based on the "model type."[174] Under the U.S. Environmental Protection Agency (EPA) regulation's definition of "model type," cars of different efficiency can be considered one model type, so that the fuel economy of heavier models can be averaged with other more fuel efficient cars which use the same engine and chassis.[175] Hence, the U.S. manufacturer—which typically produces several different vehicles within the same model type—can sell some cars which do not meet the allowable fuel economy level without being taxed. EC carmakers, however, typically do not include different vehicles within a single model type, so that averaging does not occur.[176] During 1991, the Community viewed the tax as an attempt by the United States to raise revenue in a discriminatory manner,[177] although concern appeared to have eased in early 1992.

The Community has leveled a similar criticism with regard to the U.S. Corporate Average Fuel Economy law (CAFE).[178] Under CAFE, penalties are imposed on carmakers based on a minimum average fuel economy level of the entire corporate fleet, currently 27.5 miles per gallon. Because CAFE allows full-line carmakers to average the fuel economy of small and large cars, they are able to meet the standard. This structure benefits the U.S. carmakers who are full-line, while imposing greater constraints on the limited-line manufacturers with larger, higher-value vehicles, who

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[172] EC TRADE BARRIERS REPORT, *supra* note 155, at 21.
[173] I.R.C. § 4064 (1988).
[174] EC TRADE BARRIERS REPORT, *supra* note 155, at 34–36.
[175] 40 C.F.R. § 600.002-85 (1991).
[176] EC TRADE BARRIERS REPORT, *supra* note 155, at 34–36.
[177] *Id.*
[178] Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 2008 (1988).

tend to be European. Thus, the EC views the penalties as discriminatory.[179]

In addition, the Community contends that CAFE acts to encourage U.S. domestic sourcing of automobile parts. Under CAFE, the fuel efficiency of domestic and imported cars is calculated separately. Domestic cars have 75 percent of the total value of the vehicle produced in the United States. As a consequence, a company which sells both less efficient domestic cars and more efficient imported cars, can increase the average fuel efficiency of the domestic fleet by increasing the domestic content of the imported cars. The company thereby turns them into "domestic" cars under CAFE.

e. *U.S. Legislation Affecting Fisheries*

In 1991 and early 1992, the EC actively opposed the U.S. ban on tuna from Mexico and Venezuela and from countries importing from Mexico or Venezuela, which include France, Italy, Spain, and Portugal. The U.S. law provides for imposition of an embargo on countries that do not meet certain standards for the protection of dolphins.[180] Starting in 1991, the United States implemented sanctions against the aforementioned countries, and against countries which import tuna from the countries embargoed by the United States. A U.S. court has upheld the embargo.[181] The embargo is primarily on tuna products, but can be expanded to include all fisheries products.[182]

The Community has objected to the unilateral nature of the U.S. action, arguing that the issue should be resolved on a multilateral basis and that the standard for protection should not be decided solely by the United States.[183] European officials have also stated that the overly broad scope of the sanctions are out of proportion with the objective of reducing dolphin mortality and are, therefore, in violation of GATT.[184]

Last August, a GATT panel determined that the U.S. ban was illegal on the basis that the United States was, in effect, legislating

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[179] EC TRADE BARRIERS REPORT, *supra* note 155, at 34–37.

[180] Marine Mammal Protection Act, 16 U.S.C.A. § 1371(a)(2) (West Supp. 1991).

[181] Earth Island Institute v. Mosbacher, C 88 1380 TEH, 1992 WL 29984 (N.D. Cal.).

[182] EC TRADE BARRIERS REPORT, *supra* note 155, at 14.

[183] *Id.*

[184] *Id.*

outside its proper jurisdiction.[185] In order for the panel decision to have any force, however, it must be formally adopted. Beginning in February 1992, GATT members, led by the Community, began urging adoption of the panel decision.[186]

In early March, the GATT panel report had not been adopted because the original complainant, Mexico, and the United States had agreed to resolve the dispute.[187] Nonetheless, Mexico had not pursued the issue aggressively in order to avoid a confrontation with the United States at a sensitive time in the NAFTA negotiations.[188]

The U.S. administration recently made an unsuccessful effort to abolish the tuna ban.[189] The administration backed an amendment to pending fisheries legislation, in order to overturn the ban.[190] The relevant committee of Congress, however, did not support the amendment, causing it to languish.[191] Hence, the controversy is unresolved to date.

Additionally, other legislation in the fisheries conservation area has been the subject of EC-U.S. negotiation. The Fisheries Conservation Amendments of 1990 calls for the United States to enter into international agreements which include control measures, such as the right to board and inspect vessels and to have onboard observers on driftnet fishing in U.S. waters.[192] The legislation also threatens a boycott for countries found engaged in practices which the United States deems damaging. Again, the Community views this as an area for multilateral rulemaking.

f. *Procymidone Ban*

In 1990, the United States banned imports of wine from the EC on the ground that the wine contained a fungicide which

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[185] *See GATT: EEC Urges Council to Adopt Panel Ruling on U.S. Tuna Ban*, Eur. Rep. (European Information Service) No. 1746, at 1 (Feb. 22, 1992).

[186] *See* Frances Williams, *GATT Members Set to Oppose U.S. on Tuna Import Curb*, FIN. TIMES, Feb. 19, 1992, at 6.

[187] *EC and 17 Other Delegations Push for Adoption of GATT Tuna-Dolphin Panel*, 10 Inside U.S. Trade No. 8, at 1 (Feb. 21, 1992).

[188] *Id.*

[189] *See Administration Backs Down on Amendment to Repeal Mexican Tuna Ban*, 10 Inside U.S. Trade No. 9, at 20 (Feb. 28, 1992).

[190] *Id.*

[191] *Id.*

[192] Fisheries Conservation Amendments of 1990, Pub. L. No. 101-627, § 107, 104 Stat. 4436, 4442 (codified as amended at 16 U.S.C.A. § 1826(d) (West Supp. 1991)).

might pose a health hazard.[193] Procymidone, a chemical used by European vineyards had been cleared for consumption by European authorities. Following bilateral negotiations between the EC and the United States, represented by the FDA and the EPA, a partial solution was reached when the EPA set a temporary, four-year tolerance level for procymidone in grapes grown before January 1, 1990.[194] Although the Community welcomed this step insofar as it allows continued exports of pre-1990 vintages, the Community still points to the problems surrounding post-1990 vintages. The Community does not believe that the alleged risks from procymidone are established.

g. *Beer and Wine Excise Tax*

In 1990, the United States increased dramatically excise taxes on beer and wine.[195] Although the Community has not objected directly to the increase, it has objected to the tax exemptions for solely "small domestic producers."[196] In fact, the definition of "small" exempts a large portion of the U.S. wine industry.[197] According to the Community this law is a discriminatory tax in violation of GATT Article III.2.[198]

h. *Other EC Bilateral Issues*

The Community has raised concerns about a number of other issues not discussed in detail in this Article. In 1989, a GATT dispute panel found that Section 337 of the U.S. trade law, which permits the United States to block entry of products infringing U.S. patents, violates GATT.[199] The United States has yet to implement changes to this law, which generates ongoing EC concerns. The Community also opposes Jones Act restrictions on the use of foreign-built vessels in U.S. coastwise trade,[200] certain "Buy

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[193] EC TRADE BARRIERS REPORT, *supra* note 155, at 42–43.

[194] *See EPA Action on Procymidone Clears the Way to End Ban Against European Wine Imports*, 8 Int'l Trade Rep. (BNA) No. 6, at 195 (Feb. 6, 1991).

[195] Omnibus Budget Reconciliation Act of October 1990, Pub. L. No. 101-58, §§ 11201 (b)(1)(A)–(D), (c)(1), 104 Stat. 1388, 1388-415, 1388-416 (codified at 26 U.S.C.A. §§ 5041, 5051 (West Supp. 1991)).

[196] EC TRADE BARRIERS REPORT, *supra* note 155, at 38–39.

[197] *Id.*

[198] *Id.*

[199] GATT, Basic Instruments and Selected Documents, Supp. No. 36, at 345 (Nov. 7, 1989); *see also* EC TRADE BARRIERS REPORT, *supra* note 155, at 77.

[200] 46 U.S.C. app. 883 (1988).

American" provisions, financial and telecommunications services barriers, and cargo preference laws.[201]

III. STRUCTURE FOR EC-U.S. TRADE RELATIONS

In addressing the types of trade issues described in the previous section, the United States and the Community must each reach an internal consensus on whether to pursue a particular matter and determine the most promising strategy and negotiating forum for seeking its objectives. This internal process is often as difficult as the ultimate negotiation. Both the United States and the Community have developed similar mechanisms for determining priorities and developing strategies. Both have given primary trade negotiating responsibility to a single entity within their governments, while maintaining involvement of other government experts. Both have instituted interagency or inter-service bodies to foster consensus-building and cooperation.

The U.S. and EC systems for developing trade policy, however, are different in several important respects. Most notably, the Community must deal with the added complexity of developing a consensus for its trade agenda among all twelve Member States. As a result, procedures designed to gain approval for negotiating positions from Member States are more structured in the EC than is coordination between the various divisions of the EC bureaucracy. By contrast, the most formalized trade-making apparatus in the United States is aimed at coordinating the interests and activities of the various departments and agencies of the U.S. government. United States trade officials, however, face the complexity of dealing with a powerful and assertive Congress which frequently has different objectives than the executive branch.

Actual trade negotiations can involve officials from many levels. It is not unusual for a single EC-U.S. trade matter to receive the attention of technical experts, mid-level trade officials, senior trade negotiators, cabinet members, and heads of state at some time during the negotiation. Similarly, EC-U.S. bilateral trade issues may be pursued in multilateral negotiations such as GATT, bilateral negotiations, GATT dispute settlement proceedings, and through the use or threat of unilateral trade sanctions. Some trade disputes are considered in all of these venues. Even the nature of bilateral negotiations may vary widely, from official

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[201] *See* EC TRADE BARRIERS REPORT, *supra* note 155, at 25, 40, 45, 66, 72.

sessions devoted to a specific subject to side meetings or minor agenda items in meetings of heads of state. The following is an overview of the trade policy process in both the United States and the EC and a description of the two governments' opportunities for negotiation.

A. *EC and U.S. Competence in Trade Relations*

The President of the United States, and in some cases Congress, have enjoyed authority to represent the United States in its trade relations for over 200 years. The Constitution is viewed as giving the President the inherent power to negotiate treaties and international agreements and to conduct the less formalized aspects of international trade relations.[202] The Constitution, however, specifically provides that Congress has the authority to regulate commerce with foreign nations[203] and requires that the Senate consent to treaties.[204] Thus, international agreements such as GATT are negotiated by executive branch officials under delegated authority from Congress.[205]

The authority for the Community to play a role in international trade matters is provided in Articles 113 and 114 of the EEC Treaty,[206] which transfers the competence to enter into tariff and general trade policy negotiations with third countries from Member States' governments to the EC. The Commission—under the direction of the Council and subject to the Council's approval—represents the Community in bilateral and multilateral trade negotiations.[207]

B. *Key Participants in U.S. Trade Policy*

1. Executive Branch

Over time, Congress has delegated vast authority in the international trade area to the President. In addition to emergency authority granted to the President, Congress has passed numerous trade statutes delegating authority. The first major grant of

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[202] U.S. CONST. art. II; EDMOND MCGOVERN, INTERNATIONAL TRADE REGULATION: GATT, THE UNITED STATES AND THE EUROPEAN COMMUNITY 67, 68, 70, 79 (1986).

[203] U.S. CONST. art. I, § 8, cl. 3.

[204] U.S. CONST. art. II, § 1.

[205] For a more detailed discussion, see MCGOVERN, *supra* note 202, at 64–90.

[206] TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY [EEC TREATY].

[207] *Id.*; *see* MCGOVERN, *supra* note 202, at 94–96.

authority occurred in 1934 when Congress delegated the negotiation and implementing authority for reciprocal tariff reduction.[208] Congress retained the power to renew the authority, as it has in subsequent delegations of negotiating authority. Furthermore, escape clause action, antidumping and countervailing duty legislation,[209] and Section 301 complaints, among other trade regulations, are the responsibility of the executive branch as the consequence of congressional delegation of authority.[210]

a. *Office of the U.S. Trade Representative*

In the United States, trade issues generally are handled directly or coordinated by the Office of the U.S. Trade Representative (USTR).[211] The process led by USTR often includes officials at the Departments of Commerce, State, Agriculture, or other departments with jurisdiction over specific issues on the bilateral agenda. USTR is part of the Office of the President and the U.S. Trade Representative is a Presidential appointee who serves as a member of the President's cabinet.[212]

A number of USTR's professionals are involved in negotiating EC-U.S. trade issues. The Assistant USTR for Europe and the Mediterranean and his staff play an important role in monitoring, coordinating, and negotiating European trade issues. Any one of three Deputy USTRs—who are the USTR's senior appointees—could become involved in disputes or negotiations when the issues are particularly political or involve the Deputy USTR's broader responsibilities. Similarly, various USTR industry or issue experts frequently handle negotiations with the EC in their areas of responsibility, such as steel or textiles.

b. *Commerce Department and Other Executive Branch Departments*

The Commerce Department also is a frequent participant in or leader of bilateral discussions. In addition to the Secretary of

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[208] Trade Agreements Act, ch. 474, §§ 1–4, 48 Stat. 943, 943–45 (1934) (codified as amended at 19 U.S.C. §§ 100, 1201, 1351–54 (1988).

[209] 19 U.S.C.A. §§ 1671–77K (West Supp. 1991).

[210] *See* MCGOVERN, *supra* note 202, at 71 - 80.

[211] The USTR was created by Executive Order 11075 on January 15, 1963. Congress established the office as an agency of the Executive Office of the President. 19 U.S.C.A. § 2171(a) (West Supp. 1991).

[212] *See A Preface to Trade*, Executive Office of the President, United States, Trade Representative 1982, at 23.

Commerce, European issues are sometimes handled in the Commerce Department by the Under Secretary for International Trade, the Under Secretary for Export Administration, the Office of European Community Affairs—particularly when Single Market initiatives are at issue—and industry and issue specialists.[213] The Office of European Community Affairs closely monitors developments of the Community.

The State Department generally becomes involved with trade negotiations when broader political concerns are at issue. The State Department serves an important function through supervising the activities of the official U.S. Mission to the EC, located in Brussels.[214] This Mission is headed by an Ambassador and has a staff of EC trade and industry specialists.

Because many EC-U.S. issues involve agricultural trade, the Department of Agriculture often becomes a key player in bilateral discussions.[215] The primary participants are the Secretary, the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, and other issue experts. Finally, the Customs Service generally takes the lead on customs issues,[216] and the Treasury Department plays a key role in investment issues.[217]

c. *Coordination Within the Executive Branch*

Under the Trade Expansion Act of 1962, the President established an interagency trade policy mechanism to assist with the implementation of policy.[218] This organization consists of three tiers of committees which constitute the principal mechanism for developing and coordinating U.S. positions on international trade. The Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC), administered and chaired by USTR, are the principal subcabinet interagency trade policy co-

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[213] For a description of the structure of the Department of Commerce, see OFFICE OF THE FEDERAL REGISTER, THE UNITED STATES GOVERNMENT MANUAL 1991/92 144–70 (1991).

[214] For a description of the structure of the Department of State, see *id.* at 424–37.

[215] For a description of the structure of the Department of Agriculture, see *id.* at 104–43.

[216] For a description of the structure of the Customs Service, see *id.* at 492–93.

[217] For a description of structure of the Department of the Treasury, see *id.* at 476–508.

[218] Trade Expansion Act of 1962, Pub. L. No. 87-794, 76 Stat. 872 (codified as amended in scattered sections of 19 U.S.C. (1988)).

ordination groups.[219] The TPRG is staffed by members of executive branch agencies at the Under Secretary level. The TPSC is the first line operating group, with representation at the senior civil servant level.[220] Supporting the TPSC are subcommittees responsible for specialized areas and several task forces that work on particular issues. Through the interagency process, USTR assigns responsibilities for thorough economic analysis to members of the appropriate TPSC subcommittee or task force. Conclusions and recommendations of this group are then presented to the full TPSC and serve as the basis for reaching interagency consensus. If agreement is not reached in the TPSC, or if particularly significant policy questions are being considered, issues are handled by the TPRG.[221]

The important TPRG and TPSC committees for EC trade issues are the TPSC Subcommittee on Western Europe and the 1992 Task Force. The Subcommittee on Western Europe has established subgroups dealing with such issues as the EC-U.S. citrus agreements. Beginning in 1989, the TPSC created a new 1992 Task Force outside the committee structure. The 1992 Task Force operates at the TPRG level with working groups on standards, quantitative restrictions, services, and customs.

Until February 1992, the final tier of the interagency trade policy mechanism was the Economic Policy Council (EPC), chaired by the President with the Secretary of the Treasury serving as the chairman *pro tempore*.[222] The EPC provided Cabinet-level review of major economic issues and was involved in many important trade issues, especially those issues requiring the President's attention. In February 1992, the President established a new structure, the Policy Coordinating Group (PCG), which replaced the EPC.[223] The PCG provides a structure for developing

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[219] Member agencies of the TPRG and the TPSC consist of the Departments of Commerce, Agriculture, State, Treasury, Labor, Justice, Defense, Interior, Transportation, and Energy; the Office of Management and Budget; the Council of Economic Advisors; the National Security Council; and the International Development Cooperation Agency. *Id.*; *see also* 15 C.F.R. §§ 2002, 2003. Representatives of other agencies may also be invited to attend meetings depending on the specific issues discussed.

[220] *See Trade Policy Development* (unpublished paper available from the Office of the United States Trade Representative, Office of Public Affairs (Apr. 24, 1991)).

[221] *Id.*

[222] *See Trade Policy Development*, *supra* note 220.

[223] *See Policy Coordinating Group* (unpublished paper available from The White House, Office of Policy Development (Feb. 26, 1992)).

domestic policy similar to the structure established for national security policy.[224]

The PCG operates at three levels: a cabinet level Policy Coordinating Group and Executive Committee; a PCG Deputies Group; and a PCG Working Group.[225] Trade issues reviewed at the TPRG and TPSC level flow to the PCG Working Group on Economic Policy chaired by the Secretary of Treasury.[226] The PCG Working Group members are at the Assistant Secretary level or above.[227] The role of the Deputies Group, is to resolve issues, whenever possible, and to refine options on issues meriting consideration by the PCG.[228]

During the interagency review stage, advice is generally sought from the private sector advisory committees and from Congress.[229] While virtually all issues are developed and formulated through the interagency process, the USTR has definitive responsibility for making recommendations to the President, or, where appropriate, framing the issue for Presidential decision.[230]

2. Congress

Despite its broad constitutional authority, Congress has only a limited official role in conducting day-to-day trade relations between the United States and the EC. Several U.S. trade laws, such as the Uruguay Round fast track legislation, require the President to consult frequently with Congress during negotiations and in ongoing trade matters.[231] Congress has required the President to provide annual reports concerning his trade agenda and current trade barriers which are intended to provide opportunities for Congress to oversee U.S. trade developments.[232]

Despite Congress's limited role in day-to-day trade relations, important Members of Congress and a handful of subcommittees play a critical role in defining the bilateral trade agenda with the EC. The trade subcommittees of the House Ways and Means

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[224] *Id.*

[225] *Id.*

[226] *Id.*

[227] *Id.*

[228] *Id.*

[229] *See* Trade Act of 1974, 19 U.S.C. § 2155 (1988).

[230] *See A Preface to Trade, supra* note 212, at 23.

[231] *See* Jeanne Jagelski, Negotiating Authority for the Uruguay Round of Multilateral Trade Negotiations (Congressional Research Service, Feb. 10, 1987).

[232] 19 U.S.C. 2213 (1988).

Committee and the Senate Finance Committee are the primary sources of Congressional activity relating to European trade issues, although individual members also become active on issues of importance to their constituencies.

Congress has considerable leverage in urging its will upon U.S. negotiators. Most importantly, the Senate must ratify new treaties[233] such as the Uruguay Round agreement of GATT. The Senate's role in the ratification process allows Senators to extract concessions in return for their support. Such specific trade-related responsibilities, however, are not necessary to give Members of Congress an important role in the ongoing trade debate; the usual give-and-take between the Congress and the Administration on other legislative matters provides unlimited opportunities to interject themselves into individual issues.

C. *Key Participants in EC Trade Policy*

1. European Commission

The Commission is the executive branch of the European Community. The Commission's staff of about 14,000 officials primarily based in Brussels is organized into 23 departments called Directorates General (DGs).[234] The External Relations Directorate—known as DG-I—has primary responsibility for handling EC-U.S. trade relations.

A number of officials within DG-I play an important role in U.S. trade matters. The Commissioner for External Relations is active at the same political level as the USTR or Secretary of State. The senior career officials—the Director-General and particularly the Deputy Director-General for the GATT—are very involved in both multilateral negotiations such as the Uruguay Round and bilateral disputes. The Uruguay Round Steering Group consisting of three high-level officials has important authority on a wide range of trade issues.

Virtually every subdivision of DG-I—known as directorates—may become involved in EC-U.S. trade matters as well, depending on the subject matter and importance of the issue. The various trade issue and industry specialists in DG-I often play a significant role in resolving trade disputes. For example, when EC-U.S. is-

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[233] *Id.*

[234] D. LASOK & J.W. BRIDGE, LAW AND INSTITUTIONS OF THE EUROPEAN COMMUNITIES 32 (1987).

sues involve specific industries or arise in the context of multilateral trade developments, Directorate A—which includes GATT, agriculture, and the internal market—and Directorate D—which includes sectoral issues such as steel and semiconductors—have primary responsibility.[235] The U.S. division of the North American affairs directorate (Directorate B) is responsible for monitoring all U.S. trade developments and coordinating some Commission activity.

As in the United States, other parts of the Commission play an important role in trade issues subject to their specialized jurisdiction. The International Affairs Directorate within the Agriculture Directorate-General (DG-VI) plays an important role in the EC decision-making process involving bilateral and multilateral disputes in agriculture. Internal Market and Industrial Affairs (DG-III) is often the most significant participant in issues involving the Single Market Program. Other services of the Commission—such as DG-IV (Competition) and DG-XIII (Telecommunications)—play a similarly important role in their areas of responsibility.

Coordination within the Commission of trade policy initiatives and positions, known as inter-service coordination, is not as formalized as is interagency coordination in the United States. In large part this is because of the greater importance in the Community of coordinating national policies, as discussed below. Much of the Commission's inter-service cooperation is informal, as officials from various parts of the Commission maintain frequent contact in order to create and preserve consensus on a particular trade matter.

Coordination also is formalized in a series of Inter-Service Groups which meet on an occasional basis to discuss matters of common interest. For example, the EC-U.S. Inter-Service Group, chaired by the Director for Relations with North America and including experts from all important Directorates-General and the General Secretariat, meets once a month to consider a broad range of EC-U.S. issues. Other Inter-Service Groups are defined by industry rather than geography, such as the groups concerning semiconductors, electronics, steel, and automobiles. The importance of these groups varies significantly and depends on the

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[235] The structure of the entire Commission, including DG-I, is set forth in the DIRECTORY OF THE COMMISSION OF THE EUROPEAN COMMUNITIES (Feb. 1990), Office for Official Publications of the European Communities.

presence of ongoing negotiations in the field of jurisdiction and the availability of other less formalized means of coordination.

2. Council of Ministers

While the Commission manages day-to-day bilateral and multilateral trade relations, the Council of Ministers, consisting of the heads of governments from all twelve Member States, is responsible for making important policy decisions.[236] The Council is composed of representatives of national governments, normally ministers.[237] Participation in Council meetings varies according to the subject at issue, so that if the subject is trade the Member State's trade ministers will constitute the Council. Ministers with jurisdiction over specific areas of trade negotiation, such as agriculture, also play an important role in EC-U.S. trade matters. Because the individuals are officials in their own national governments, a Council member's position is largely dictated by national policies. The Council exerts its will on trade issues primarily through the "113 Committee," described below.

3. European Parliament

The European Parliament plays a relatively small role in EC-U.S. trade relations. Although Parliament will gain additional powers in coming years, it currently does not have as much impact on trade matters as Congress. Parliament exercises essentially advisory authority, however, it can attempt to influence trade policy by issuing reports and presenting written questions to the Commission.[238] Within Parliament, the Committee on External Economic Relations has jurisdiction over trade issues. In addition, the Delegation for Relations with the United States monitors U.S. issues and engages in exchange programs with U.S. legislators.

4. Coordination Within the Community

The Commission has the authority to conduct day-to-day trade relations while the Council has the authority to set overall trade policy. Thus, coordination between the two is an extremely im-

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[236] EEC TREATY arts. 113–14; MCGOVERN, *supra* note 202, at 94–96.

[237] EEC TREATY art. 2.

[238] Art. 140 of the EEC TREATY obliges the Commission to reply orally or in writing to questions put to it by the Parliament.

portant aspect of EC trade activity. This is accomplished through the "113 Committee," named for the article of the EEC Treaty providing for this coordination.[239]

The 113 Committee consists of officials from both the Council and the Commission. The Council delegation usually consists of three or four representatives from each Member State. A nation's representation could include officials from its permanent delegation in Brussels, its trade ministry, or other ministries with an interest in the matters to be discussed in a particular meeting, such as agriculture and telecommunications. It is rare that the ministers themselves attend the meetings. The Commission is represented by several officials with responsibility for the issues under consideration by the Committee at a meeting. The participants in the 113 Committee meetings frequently change during the course of each session as new agenda items are considered. A secretariat coordinates the agenda and activities of the committee. Meetings of the 113 Committee normally are held on a weekly basis.

The purpose of the 113 Committee is to assure that the Commission's negotiating activities are consistent with the policies of the Council. The Commission normally has significant latitude to negotiate with third countries as long as it remains within the general policy boundaries established by the Council. As a result, Commission officials must consider whether it is necessary or useful to bring negotiating issues before the 113 Committee in order to keep all participants informed of important developments, to gain Council support, or to reinforce a consensus. The 113 Committee permits this fluid interplay between the Council and the Commission to continue during the course of a negotiation. Consideration of issues by the 113 Committee, however, can have a damaging effect on particularly sensitive negotiations, because it is difficult to preserve confidentiality in such a large group of differing interests.

D. *EC-U.S. Negotiating Process*

1. Multilateral, Bilateral, or Unilateral Option

Both the EC and the United States have three basic options for resolving trade disputes. First, if the issue is one included in the Uruguay Round, the issue may be resolved in the context of the

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[239] EEC TREATY art. 113.

multilateral GATT negotiating process. If the issue is not being addressed in this or any other multilateral forum, either party may initiate bilateral negotiations, which could eventually result in formation of a GATT dispute settlement panel. Finally, either party may act alone and retaliate unilaterally against the offending practice.

When broad ranging multilateral negotiations such as the current Uruguay Round are conducted under the auspices of GATT, trade disputes between the United States and the Community may be resolved in this multilateral framework. In addition, in individual sectors such as steel, where ongoing multilateral negotiations exist, EC-U.S. disputes may also be addressed in a multilateral framework.

Bilateral negotiations are the most commonly used mechanism for the resolution of disputes arising between the United States and the EC. The first step in resolving any dispute is usually the request for direct bilateral discussions in Washington and Brussels, starting at a technical or expert level, and moving up to the subcabinet or even ministerial level if the issues cannot be resolved at lower levels. These talks involve the types of participants and negotiating forums described in the previous sections.

If the issues cannot successfully be addressed informally, either the United States or the EC may pursue its claim under GATT dispute resolution procedures.[240] Two recent U.S.-initiated disputes considered by GATT panels are the oilseeds case of 1989 and the pending Airbus controversy.[241] The EC also has invoked the GATT dispute settlement procedure in recent years, for instance in the 1988 Customs User Fee proceeding, discussed above.[242]

In recent years, annual publication by both the United States and the EC of offending trade practices has played a role in bilateral negotiations. Governments have become more aggressive in identifying problems and private interests have become more active in attempting to place their concerns on the bilateral agenda. Thus, both the United States and the EC have institu-

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[240] GATT, arts. XXII, XXIII.

[241] For background on these controversies and GATT's role in resolving them, see *GATT Investigative Panel, supra* note 142, and *EC-U.S. Negotiations on Airbus Called Difficult, But 'In the Right Direction,'* 9 Int'l Trade Rep. (BNA) No. 6, at 240 (Feb. 5, 1992).

[242] GATT, Basic Instruments and Selected Documents, Supp. No. 35, at 245 (Feb. 2, 1988).

tionalized the identification of trade barriers with annual reports—the so-called "trade barriers reports."[243]

In addition to the bilateral approach, in recent years, the United States has used a highly controversial weapon in its trade arsenal—the unilateral measures provided for under U.S. trade legislation, such as Section 301 and "Super 301" and "Special 301" of the 1988 Trade Act.[244] Despite its rhetoric opposing unilateral action on principle, the United States has effectively used the threat of unilateral retaliation in a number of instances.[245] The EC enacted its own unilateral measure in 1984 modeled after Section 301.[246] This procedure—known as the New Commercial Policy Instrument—does not pose the same level of threat as Section 301 and requires recourse to GATT in resolving disputes. It has been used against the United States only once, when an investigation was initiated against U.S. patent protection proceedings.[247] This resulted in a GATT ruling against the United States.[248] In addition to these formalized unilateral provisions, both governments may take retaliatory action in the form of ad hoc regulatory decisions which discriminate against the other in order to pursue their trade objectives.

2. Opportunities for Negotiation

Once each government has determined its negotiating position and strategy, a number of avenues are available in which U.S. and EC officials may meet to engage in discussions or negotiations. United States and European heads of state have always met periodically to discuss mutual trade concerns. It is at these summit meetings that the most important decisions are made and political momentum is generated for progress in negotiations at lower levels of the government.

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[243] In 1985, the United States began the practice of publishing an annual report on foreign trade barriers, which includes a country-by-country listing of alleged barriers to U.S. trade and an estimate of their impact on U.S. exports. *See, e.g.*, 1991 FOREIGN TRADE BARRIERS REPORT, *supra* note 80. The EC has responded with its own even more detailed report, devoted solely to alleged U.S. trade barriers, which totaled 87 pages in 1991. EC TRADE BARRIERS REPORT, *supra* note 155.

[244] *See supra* notes 157–58; *Fact Sheet*, *supra* note 82, at 1.

[245] *See, e.g.*, *supra* note 82 and accompanying text (broadcasting); *supra* notes 108–10 and accompanying text (public procurement in telecommunications); *supra* note 128 and accompanying text (meat plants); *supra* note 149–50 (shipbuilding subsidies).

[246] Council Regulation 2641/84, 1984 O.J. (L 252) 1.

[247] Commission Decision, 1987 O.J. (L 117) 18.

[248] GATT, Basic Instruments and Selected Documents, Supp. No. 36, at 345 (Nov. 7, 1989).

These ties were strengthened in November 1990 when the EC and the United States signed the Transatlantic Declaration.[249] Under the declaration, the President of the United States, the President of the Commission, and the President of the European Council have committed to meet every six months to discuss a wide range of political, economic, and trade issues. While these biannual talks at the political level have not supplanted other contacts between heads of state, they have provided a scheduled and useful tool for developing the political momentum necessary to resolve important issues.

Even without the summits, EC trade officials from the various Commission Directorates—External Relations, Agriculture, Competition, and Telecommunications—and U.S. officials from USTR, the State Department, the Commerce Department, and the Department of Agriculture, long have engaged in negotiations at the cabinet, subcabinet, and expert level on pending bilateral trade issues. In many cases, these are the most important talks in resolving disputes.

At the most informal level, trade officials in the U.S. Mission to the Community in Brussels maintain frequent contact with all levels of the EC administration to monitor and influence EC trade policy and represent U.S. interests. The most frequent consultation of this type is the regular Monday afternoon meeting at the Commission. This meeting involves the Minister Counselor for Economic Affairs of the U.S. Mission in Brussels and the Head of the U.S. Division in the EC's External Relations Directorate. Similarly, the representatives of the EC Delegation to the United States in Washington, notably the Economic Affairs Counselor and the Deputy Head of Delegation, frequently meet with officials from USTR, the State Department, the Commerce Department, and other government agencies involved in trade matters. Due, however, to the apparent independence of the institutions within the U.S. administration, the EC representatives do not conduct a regular weekly meeting with U.S. officials, as is done in Brussels.

Naturally, U.S. and EC officials also discuss matters of mutual interest in the various multilateral negotiations in which they participate. The most notable of these is the Uruguay Round negotiations of GATT. In these cases, the interplay of the multilateral discussions and related bilateral talks becomes quite complex.

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[249] The text of the Transatlantic Declaration is reprinted in European Community News, No. 41/90, Nov. 27, 1990.

CONCLUSION

It is ironic that disagreements between the United States and the Community have become the most difficult and intractable issues in the Uruguay Round. The underlying dynamics of the trading relationship are healthy. Trade is balanced and growing, and trade deficits which do occur are not the result of major structural imbalances. Moreover, the trade policy differences between the United States and the EC are not as great as they are between other trading partners.

The current difficulties in the relationship may be the product of the two governments' past successes. After several decades of multilateral and bilateral negotiations, the easy issues have been resolved. Those trade frictions which remain inevitably are those which are most difficult to eliminate, because they are deeply imbedded in government policies and reflect the interests of strong constituencies. This is true of disputes involving government subsidies, import quotas, high tariffs, and public procurement. To some extent, the disputes reflect differing views on the role of government in developing new industries and supporting old ones.

The large number of relatively minor disputes concerning technical standards and differing regulatory practices also result from the success of the overall relationship. Active trade creates trade issues. Trade between the United States and the Community is so significant and the economies have become so intertwined that minor problems frequently will arise.

The leaders of the two governments recognize that their success in concluding and implementing a new trade agreement under GATT will be the most important factor in determining the course of EC-U.S. trade relations over the next several years. An agreement is necessary to resolve the hundreds of issues now on the table and to create a favorable environment for continuing discussions in areas not addressed by the Uruguay Round. The two governments, however, also recognize that even if the GATT negotiations succeed, their trade agenda will continue to be full. For then, they can turn to the difficult issues which remain, expand trading rules for new areas such as services and investment, and respond to problems caused by the growth in the trading relationship.