

**Trade Policy Review Body**

**TRADE POLICY REVIEW**  
**Report by the Secretariat**  
**EUROPEAN UNION**

This report, prepared for the tenth Trade Policy Review of the European Union, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from the European Union on its trade policies and practices.

Any technical questions arising from this report may be addressed to Mr. Karsten Steinfatt (tel: 022 739 6759), Mr. John Finn (tel: 022 739 5081), Mr. Cato Adrien (tel: 022 739 5469), and Ms. Zheng Wang (tel: 022 739 5288).

Document WT/TPR/G/248 contains the policy statement submitted by the European Union.

---

Note: This report is subject to restricted circulation and press embargo until the end of the first session of the meeting of the Trade Policy Review Body on the European Union.



---

---

**CONTENTS**

	<i>Page</i>
SUMMARY	vii
I. ECONOMIC ENVIRONMENT	1
(1) TRADE AND COMPETITIVENESS	1
(2) RECENT DEVELOPMENTS	3
(i) Crisis and policy response	3
(ii) Trade and investment flows	6
II. TRADE POLICY REGIME	13
(1) LEGAL AND INSTITUTIONAL FRAMEWORK	13
(2) OBJECTIVES AND CONSULTATIONS	17
(3) PARTICIPATION IN THE WORLD TRADE ORGANIZATION	18
(4) PREFERENTIAL TRADE AGREEMENTS AND ARRANGEMENTS	20
(i) Unilateral preferences	20
(ii) Reciprocal preferences	22
(5) INVESTMENT AGREEMENTS AND ARRANGEMENTS	25
(6) AID FOR TRADE	26
III. TRADE POLICIES AND PRACTICES BY MEASURE	28
(1) MEASURES DIRECTLY AFFECTING IMPORTS	28
(i) Customs procedures	28
(ii) Customs valuation	31
(iii) Rules of origin	32
(iv) Tariffs	34
(v) Other charges	37
(vi) Contingency measures	39
(vii) Restrictions and controls	43
(viii) Technical regulations and standards	45
(ix) Sanitary and phytosanitary standards (SPS)	55
(2) MEASURES DIRECTLY AFFECTING EXPORTS	61
(i) Registration and documentation	61
(ii) Export taxes and fees	61
(iii) Restrictions and controls	61
(iv) Official support and related fiscal measures	62
(v) Finance, insurance, guarantees, and promotion	63
(3) MEASURES AFFECTING PRODUCTION AND TRADE	64
(i) Business framework and foreign investment regime	64
(ii) State trading and state owned enterprises	67
(iii) Subsidies and other government assistance	70
(iv) Government procurement	77
(v) Competition policy	84
(vi) Intellectual property rights	88

---

	<i>Page</i>
IV. DEVELOPMENTS IN SELECTED SECTORS	101
(1) AGRICULTURE	101
(i) Agriculture in the European Union	101
(ii) Agriculture policies	104
(iii) Domestic support levels	111
(2) TRADE IN SERVICES	116
(i) Introduction	116
(ii) Financial services	117
(iii) Transport	125
(iv) Telecommunications and postal services	131
REFERENCES	135
APPENDIX TABLES	139

---

**CHARTS**

	<i>Page</i>
<b>I. ECONOMIC ENVIRONMENT</b>	
I.1 Export volumes of goods and services 1999-08	1
I.2 Export growth and foreign demand, 1999-08	2
I.3 Real GDP growth, 2008-09	4
I.4 Public debt, 2008-09	4
I.5 Structure of merchandise trade, 2005 and 2009	8
I.6 Direction of merchandise trade, 2005 and 2009	9
<b>II. TRADE POLICY REGIME</b>	
II.1 New comitology rules, (Article 291)	15
<b>III. TRADE POLICIES AND PRACTICES BY MEASURE</b>	
III.1 Overall level of aid provided by member States, 1992-2009	72
III.2 Non-crisis aid provided by member States, 2004-09	73
<b>IV. DEVELOPMENTS IN SELECTED SECTORS</b>	
IV.1 Export subsidies in the European Union, 2003/04 and 2007/08	111
IV.2 Domestic support in the European Union, 2000/01 and 2007/08	112
IV.3 Amber Box, Blue Box and Green Box Support in the European Union, 2000/01-2007/08	114
IV.4 Schematic representation of policy initiatives	122

**TABLES**

<b>I. ECONOMIC ENVIRONMENT</b>	
I.1 Trade in services, 2007-09	10
I.2 Distribution of FDI stocks 2006-09	11
<b>II. TRADE POLICY REGIME</b>	
II.1 Selected notifications to the WTO, June 2008-January 2011	19
II.2 Overview of recent EU trade agreements, December 2010	23
<b>III. TRADE POLICIES AND PRACTICES BY MEASURE</b>	
III.1 Time limits for the entry summary declaration, January 2011	30
III.2 Structure of MFN tariffs	35
III.3 Summary analysis of MFN tariff, 2011	36
III.4 Anti-dumping investigations and measures imposed, 2006-10	40
III.5 Anti-dumping measures by country, 2006-10	41
III.6 Countervailing duty investigations and measures imposed, 2006-10	42
III.7 Specific trade concerns over EU TBTs, October 2008-January 2011	46
III.8 Selected aspects of regulation in four member States, early 2010	49
III.9 Specific trade concerns over EU SPS measures, October 2008 to January 2011	55
III.10 Minimum public procurement thresholds, 2010-11	79

	<i>Page</i>	
III.11	Selected procurement indicators, 2006-08	79
III.12	Copyright-dependent industries' contribution to GDP and employment, various years	89
III.13	Enforcement of intellectual property rights, 2007-09	97
IV.	DEVELOPMENTS IN SELECTED SECTORS	
IV.1	Agriculture goods output at basic prices for selected agricultural products, 2008-10	101
IV.2	Production of selected agricultural products, 2006-09	102
IV.3	Exports of selected agricultural products, 2006-09	102
IV.4	Imports of selected agricultural products, 2006-09	103
IV.5	Structure of farming in individual member States, 2007 and 2009	103
IV.6	Total producer support estimate and single commodity transfer values for selected Commodities, 2000-09	115
IV.7	EU(27) exports of commercial services, 2008-10	117
IV.8	EU(27) imports of commercial services, 2008-10	117

#### APPENDIX TABLES

I.	ECONOMIC ENVIRONMENT	
AI.1	Destination of exports, 2000 and 2005-09	141
AI.2	Structure of exports, 2000 and 2005-09	142
AI.3	Origin of imports, 2000 and 2005-09	143
AI.4	Structure of imports, 2000 and 2005-09	144
II.	TRADE AND INVESTMENT REGIMES	
AII.1	Status of dispute-related WTO matters involving the EU, September 2008-January 2011	145
III.	TRADE POLICIES AND PRACTICES BY MEASURE	
AIII.1	Applied preferential tariffs by HS sector, 2011	147
AIII.2	Summary of the main legislation of intellectual property rights, 2011	148
AIII.3	Term of protection of major intellectual property rights, 2011	150

---

---

**SUMMARY**

1. At the time of its last Trade Policy Review, in April 2009, the European Union (EU) was in deep economic recession. In spite of intensified protectionist pressures, the EU maintained the overall openness and transparency of its trade and investment regime. Given the EU's leadership position as the world's largest trader, its decision to refrain from tightening restrictions on imports in response to the crisis had a stabilizing effect on the multilateral trading system. Nonetheless, some long-standing barriers to market access and other measures that distort international competition remain in place. The EU has a significant interest in undertaking further trade and investment liberalization, in line with its recognition that an open trade regime is vital to enhance external competitiveness and economic growth.

2. The period since the last Review of the EU has been marked by the sharp contraction and subsequent recovery of global and EU trade. From a long-term perspective, trade performance has varied widely across individual member States, largely reflecting uneven gains in productivity and competitiveness, especially within the euro area. The EU considers that structural reforms are needed to correct this situation and to achieve the economic growth objectives defined in its Europe 2020 strategy. Strengthening the internal market for goods and services is a key priority for structural reform.

3. Since the Lisbon Treaty entered into force in December 2009, the EU's external trade and investment policy has been conducted within a transformed legal and institutional framework. The European Parliament has rights equal with the Council in adopting EU trade legislation, and must give its consent before the Council can ratify international trade agreements. In addition, the Lisbon Treaty broadened the exclusive competence of the EU to encompass foreign direct investment. Several trade policy regulations, including on contingency

measures, are being adapted to the new standard "comitology" rules defining procedures for the control by member States of the Commission's exercise of its implementing powers. The Commission considers that the new comitology rules increase transparency and give it greater political responsibility.

4. While the EU's external trade policy attaches top negotiating priority to concluding the Doha Round, it is pursuing an agenda of "competitiveness-driven" free-trade agreements (FTAs). The EU has recently signed such an agreement with Korea, and has concluded negotiations on an FTA with Colombia and Peru, and another FTA with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama. During the period under review, separate FTAs entered into force with Albania, Bosnia and Herzegovina, Montenegro, and Serbia; a comprehensive Economic Partnership Agreement (EPA) with the CARIFORUM region has been applied provisionally since December 2008. Despite the continued growth of the EU's extensive network of preferential trade agreements, some 85% of total EU imports entered under the MFN regime in 2008 (latest year for which data are available), highlighting the fundamental importance of the multilateral trading system for EU trade.

5. In late 2009, the EU eliminated tariff quotas on imports of rice and sugar under Everything But Arms, an arrangement under the EU's Generalized System of Preferences (GSP) that grants duty- and quota-free access to the EU market for least developed countries. Moreover, the EU has introduced new, more flexible rules of origin for products imported under GSP. The new rules, which have been applied since 2011, are simpler and allow additional goods, in particular those processed in the least developed countries, to qualify for preferential treatment. In March 2011, the EU was preparing a proposal to amend its GSP regime. The EU grants duty- and quota-free access (except for sugar, which is subject to a transitional safeguard mechanism) to all African, Caribbean, and

---

Pacific countries that have initialled an EPA, while negotiations for comprehensive EPAs continue.

6. The EU's main trade policy instruments remained largely unchanged during the period under review. The simple average applied MFN tariff rate was 6.4% in 2011, slightly less than in 2008. The applied MFN rate for agriculture (WTO definition) decreased to 15.2% in 2011 from 17.9% in 2008, reflecting the rise in global commodity prices and the resulting decline in the *ad valorem* equivalent rates. At 4.1%, the average applied MFN rate for non-agricultural goods remained unchanged. However, the structure of the EU's MFN tariff remains complex, and around 9% of tariff lines have peak rates of more than 15%.

7. Both the number of anti-dumping measures in force and the rate at which these are adopted have decreased since 2008. Nonetheless, with 125 measures in force in early 2011, the EU remains an important user of anti-dumping measures. Almost 45% of these measures are applied to a single WTO Member (China). Although there has been a slight increase in the total number of countervailing measures in force, the EU continues to make relatively limited use of this trade policy instrument. The EU has not applied safeguards since 2005.

8. Security considerations have continued to drive changes relating to customs procedures. During the period under review, the EU introduced advance cargo information requirements as part of the so-called "safety and security amendment" to the Customs Code. In addition, the EU is pursuing trade facilitation measures, including preparations for the establishment of single window services, and the introduction of a customs registration number recognized throughout the EU. These and other ongoing trade facilitation initiatives are essential to help minimize transaction costs, especially those resulting from measures to ensure physical security at national borders.

9. The extraordinary intervention by many EU member States in support of domestic firms affected by the economic crisis was directed primarily at the financial sector and sought to avert the systemic consequences of a full-blown financial crisis. Nonetheless, other sectors, notably automobiles, construction, and tourism, received considerable support too. Member States granted part of this support under schemes approved by the Commission, thus increasing transparency and helping to minimize distortions within the EU market. It is important to persevere with ongoing initiatives at EU level to phase out crisis support once the economic recovery has taken hold. This would ensure that support measures do not hinder long-term adjustment and restructuring in the targeted sectors.

10. The EU did not modify its government procurement regime during the period under review; the bulk of government procurement (around 85%) remains under national legislation of EU member States. According to the Commission, member States did not introduce "buy local" procurement requirements at national or sub-national levels in response to the economic crisis. The EU's competition policy has been progressively refined towards a "more economic approach"; arguably, this has moved the EU closer to the antitrust enforcement of some of its major trading partners, thus reducing the scope for inter-jurisdictional conflicts in this area.

11. During the period under review, the EU lowered the registration cost for Community trade marks and strengthened enforcement of intellectual property rights (IPRs). Major copyright and patent reforms are ongoing, but efforts to create a unitary EU patent and a unified patent court have not been successful. The Commission is seeking alternatives to unified patent protection in the EU. The Lisbon Treaty contains a specific provision on intellectual property, which is an important step towards an EU-wide IPR regime.

---



12. The "Health Check" of the Common Agricultural Policy (CAP), agreed by EU agriculture ministers in November 2008, further reduced the role of the CAP in the market, and extended the systems of support that are decoupled from agricultural prices or production. However, total support remains considerable in both absolute and relative terms and market price support continues to represent a large, though declining, portion of transfers to producers. Furthermore, the reforms of the CAP have focussed on reducing export subsidies and trade-distorting domestic support while MFN tariffs remain relatively high.

13. As part of current efforts to address competitiveness concerns, the EU attaches high priority to the reinforcement of the internal market for goods and services. During the period under review the EU adopted a package of measures that aims to remove regulatory obstacles to intra-EU trade in goods. The package includes EU-wide principles and reference provisions on conformity assessment procedures and a common framework on accreditation. In addition, the EU adopted legislation to minimize the possibility that member States restrict the marketing of goods that are not in compliance with their national technical regulations, but that have been lawfully placed on the market of another member State. At the last Review of the EU, several Members indicated that the EU's regulatory practices have become increasingly burdensome in gaining access to the EU market. It is important that the EU consider carefully the

possible trade impact of its regulatory environment, including its high regulatory standards as regards food and product safety, to ensure that its technical regulations and conformity assessment procedures do not create unnecessary obstacles to trade with third countries.

14. Work to implement the Services Directive, a pillar of the internal market for services, continued throughout the period under review. Under the Services Directive, member States must ensure that their authorization schemes for service providers are non-discriminatory, proportionate, and justified by an overriding reason relating to the public interest. Several member States missed the end-2009 deadline to transpose the Directive into national legislation. The publication in early 2011 of the results of a "mutual evaluation process" of the Services Directive found that, despite significant progress, burdensome requirements remain in place and continue to restrict intra-EU services trade. The EU has been at the forefront of deregulation and liberalization in some specific services sectors. For example, under the Third Postal Directive, 16 member States, representing 95% of EU postal markets, abolished all remaining postal services monopolies at the end of 2010. The remaining member States must do so by end-2012.

---



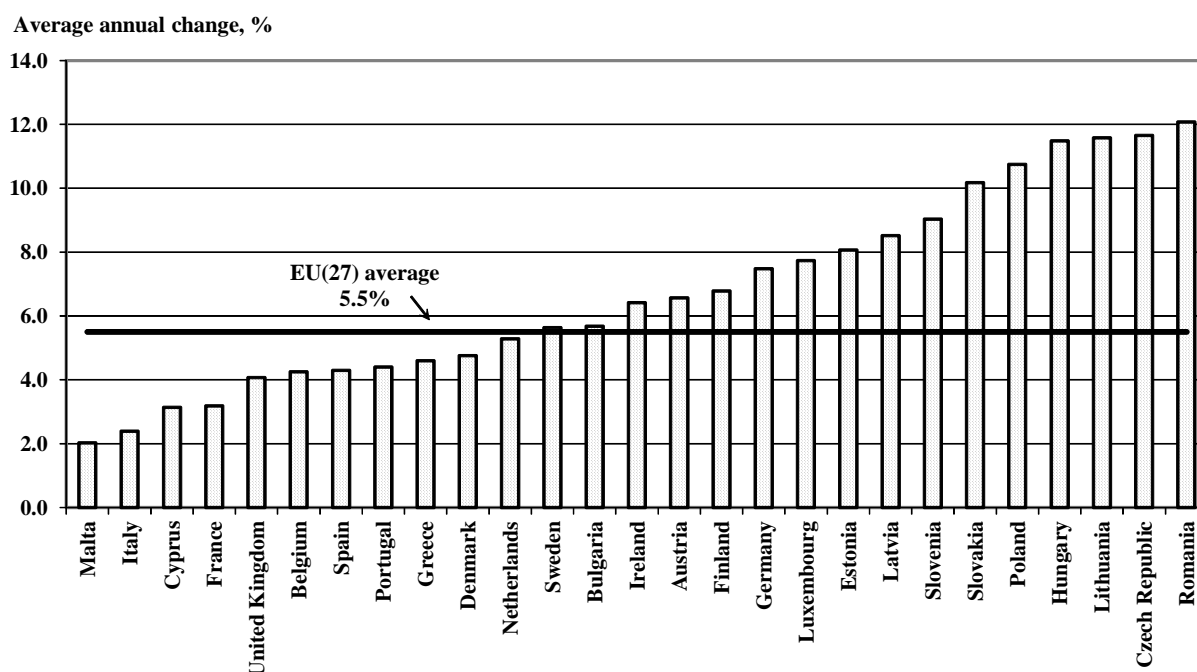
## I. ECONOMIC ENVIRONMENT

### (1) TRADE AND COMPETITIVENESS

1. The EU is the world's largest economy and trader, with almost 29% of global output, 17% of global merchandise trade, and 26% of global commercial services trade in 2009.<sup>1</sup> In the context of the economic crisis, extra-EU trade of goods and services decreased from almost 31% in 2008 to 28% of EU-27 GDP in 2009, reversing a previous upward trend. Including intra-EU trade, several member States are among the top ten goods and services traders in the world. Germany, by far the largest trader among EU member States, was the world's third largest trader of goods, and the second largest trader of services in 2009.

2. During the decade leading up to the economic crisis that started in 2008, the performance of exports across member States varied greatly (Chart I.1). Several member States that acceded to the EU in 2004 or later recorded rapid growth in export volumes of goods and services (including intra-EU exports). This strong performance was partly driven by an increase in new member States' exports of intermediate manufacturing goods to Germany, and to a lesser extent, Austria and the Netherlands, as firms from these three countries invested in production facilities in the new member States to reduce costs.<sup>2</sup>

**Chart I.1**  
**Export volumes of goods and services, 1999-08<sup>a</sup>**



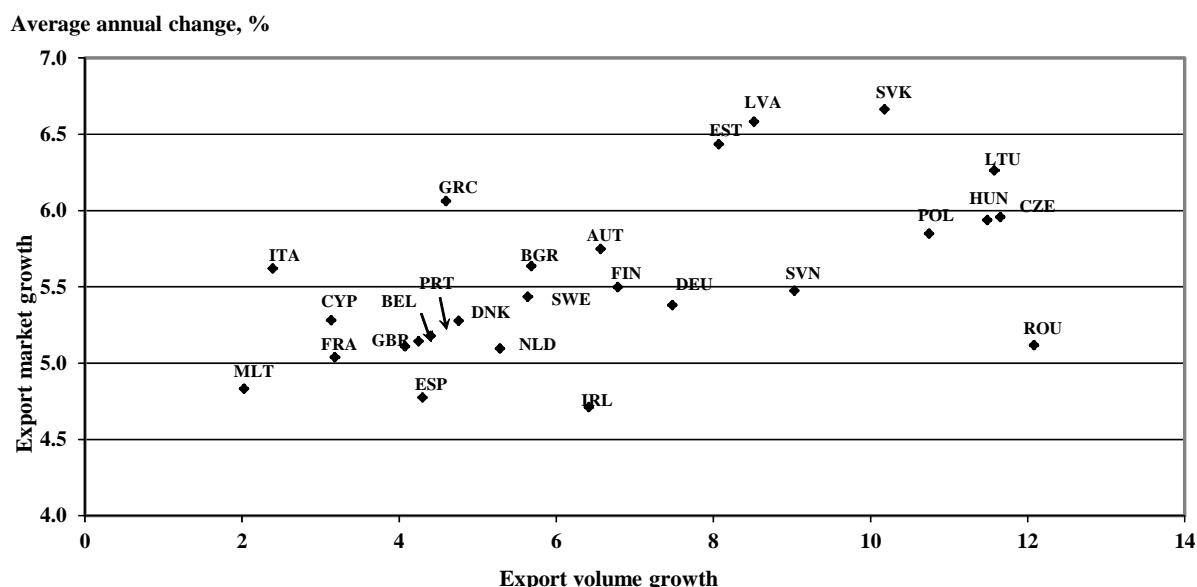
Source: European Commission, Economic and Financial Affairs, Economic databases and indicators. Viewed at: [http://ec.europa.eu/economy\\_finance/db\\_indicators/index\\_en.htm](http://ec.europa.eu/economy_finance/db_indicators/index_en.htm).

<sup>1</sup> The EU's share of global output is based on nominal GDP, and the share in global merchandise and commercial services trade excludes intra-EU trade.

<sup>2</sup> European Central Bank (2005).

3. Export volume growth in several other member States lagged markedly during the decade preceding the economic crisis (Chart I.1). Although this can be attributed partly to relatively low demand in key trading partners, many of these countries have also recorded losses in market shares (Chart I.2). The factors underlying these losses vary across member States, but are linked largely to the product composition of exports, and to poor price and non-price competitiveness. For example, the persistent loss of market share of Italian exports reflects Italy's particular export basket, and to a lesser extent, a slowdown in the growth of productivity and an increase in unit labour costs.<sup>3</sup>

**Chart I.2**  
**Export growth and foreign demand, 1999-08**



Note: Export volume growth refers to the average annual percentage change of export volumes of goods and services (including intra-EU trade). Export market growth refers to the potential export growth for a country assuming that its market share remains unchanged; it is calculated as the weighted average of import volume growth for goods and services at constant prices in 35 markets, with the weighting pattern derived from the share of each member State's exports going to these markets in a chosen base year.

Source: European Commission, Economic and Financial Affairs, Economic databases and indicators. Viewed at: [http://ec.europa.eu/economy\\_finance/db\\_indicators/index\\_en.htm](http://ec.europa.eu/economy_finance/db_indicators/index_en.htm).

4. German export performance during the decade prior to the onset of the economic crisis excelled relative to other large EU exporters (Chart I.2). Empirical evidence suggests that the sharp increase in Germany's exports resulted largely from improvements in price and cost competitiveness, as from 2002 unit labour costs fell due to wage moderation. In addition, German companies benefited from cost reductions by offshoring and outsourcing parts of their supply chains to lower-cost countries, particularly newer member States.<sup>4</sup> Apart from price and cost competitiveness, product specialization has contributed to Germany's export performance. Around half of German goods exports have a relatively high unit value.<sup>5</sup> Germany accounts for one third of EU exports of high unit value goods, roughly the same share as Italy, France, and the United Kingdom combined. Its share in global exports of these goods remained relatively stable at 10% between 1995 and 2004.

<sup>3</sup> Larch (2005).

<sup>4</sup> See OECD (2010c).

<sup>5</sup> Based on unit value data for 2004, contained in Curran and Zignago (2009).

---

---

**(2) RECENT DEVELOPMENTS****(i) Crisis and policy response**

5. At the time of its previous Review in April 2009, the EU was in the midst of a severe economic recession; this has been followed by a sovereign debt crisis in some euro-area countries. Like most other WTO Members, the EU largely resisted pressures to respond to the recession by tightening restrictions on imports or exports.

6. An economic recovery, supported by considerable fiscal and financial policy stimulus, is under way, but it is likely to be moderate and uneven.<sup>6</sup> Although output for the EU as a whole is forecast to regain its pre-crisis level in the second quarter of 2012, growth in 11 member States growth is expected to remain below pre-crisis levels until at least end-2012.<sup>7</sup>

7. The recession was widespread (Chart I.3). EU-27 real GDP decreased at an average of 1.1% per quarter for five consecutive quarters beginning in the second quarter of 2008. This reflects the collapse of external demand following the intensification of the financial crisis, and a sharp contraction in private demand due to rising uncertainty, tighter financial conditions, higher unemployment, and lower asset prices. On a yearly basis, EU-27 real GDP increased by 0.5% in 2008 and contracted by 4.2% in 2009; it is expected to rise by 1.8% in both 2010 and 2011.<sup>8</sup>

8. Unemployment in the EU rose from 6.7% in the first quarter of 2008 to 9.6% in the fourth quarter of 2010, undoing previous gains. Changes in the unemployment rates of individual member States during this period ranged from an increase of 14 percentage points in Lithuania to a decrease of almost 1 percentage point in Germany. At the end of 2010, the unemployment rate was above the EU average in Bulgaria, Estonia, Greece, France, Hungary, Ireland, Latvia, Lithuania, Portugal, Slovakia, and Spain. In the fourth quarter of 2010, the long-term unemployment was 41% of EU total unemployment.

9. Following the onset of the financial crisis, member States intervened on a large scale to stabilize their economies. The European Central Bank (ECB) and other central banks in the EU eased monetary policy substantially. In addition, Governments provided significant fiscal support through the operation of automatic stabilizers and, sometimes, discretionary stimulus measures (Chapter III(3)(iii)).

10. A majority of member States provided support for the financial sector. In 16 of them, support ranged between 5% and 35% of GDP, while in Ireland it reached approximately 170% of GDP.<sup>9</sup> This support was subject to EU state aid rules, thus helping to minimize the potential for cross-border market distortions. However, as noted by the OECD, "many financial interventions were designed primarily with domestic banking groups in mind, and while non-domestic institutions could join, few took up this offer in practice, given support schemes at home".<sup>10</sup>

---

<sup>6</sup> IMF (2010b).

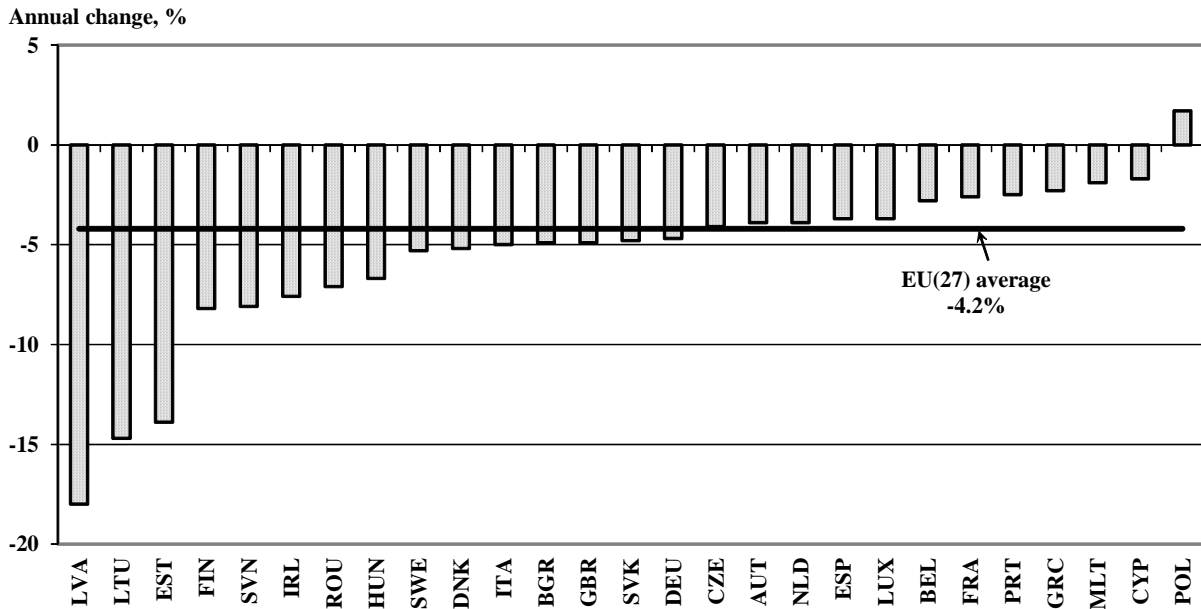
<sup>7</sup> European Commission document COM(2011) 11 final, 12 January 2011. Viewed at: [http://ec.europa.eu/economy\\_finance/articles/eu\\_economic\\_situation/pdf/2011/com2011\\_11\\_annex2\\_en.pdf](http://ec.europa.eu/economy_finance/articles/eu_economic_situation/pdf/2011/com2011_11_annex2_en.pdf).

<sup>8</sup> The figures for 2010 and 2011 are from European Commission (2011).

<sup>9</sup> European Commission document COM(2011)11 final, 12 January 2011. Viewed at: [http://ec.europa.eu/economy\\_finance/articles/eu\\_economic\\_situation/pdf/2011/com2011\\_11\\_annex2\\_en.pdf](http://ec.europa.eu/economy_finance/articles/eu_economic_situation/pdf/2011/com2011_11_annex2_en.pdf).

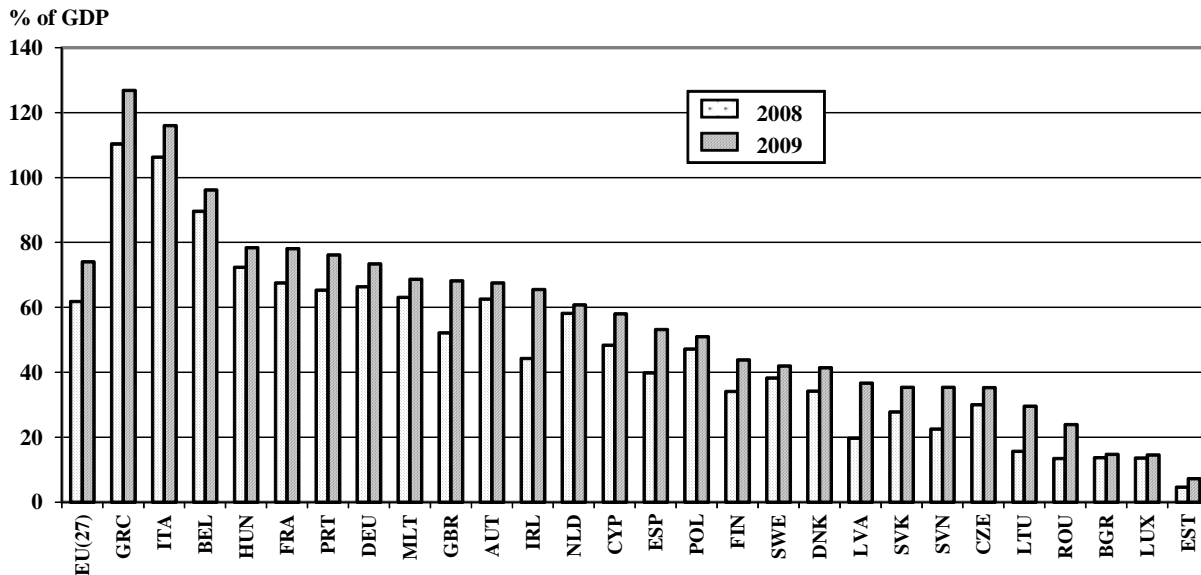
<sup>10</sup> OECD (2010b).

**Chart I.3**  
**Real GDP growth, 2008-09**



Source: EUROSTAT. Viewed at: [http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search\\_database](http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database).

**Chart I.4**  
**Public debt, 2008-09**



Source: EUROSTAT. Viewed at: [http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search\\_database](http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database).

11. Public finances in the EU deteriorated sharply during the period under review. In 2009, all EU member States recorded budget deficits, which ranged from less than 1% of GDP in Luxembourg to 14% of GDP in Ireland; 11 member States recorded negative primary balances. Government debt as a share of GDP increased in almost all member States, undoing moderate progress during the pre-crisis period (Chart I.4). The sharp deterioration in public finances reflects the decline of revenues following the contraction of economic activity, and significant pressures on expenditure due to the operation of automatic stabilizers and the introduction of discretionary fiscal stimulus measures.

12. The economic crisis reduced somewhat the large current account surpluses and deficits that prevailed in many member States prior to its outbreak. Nonetheless, current account deficits and surpluses remain significant, especially within the euro area. Several member States that recorded a large deficit in their current account balance at the onset of the crisis, for example Greece, Portugal, and Spain, were generally in deficit as EU economic activity recovered, while member States with large current account surpluses prior to the crisis (e.g., Germany and the Netherlands) continue to maintain these surpluses. According to the Commission, this partly reflects structural weaknesses, including weaknesses in domestic demand in surplus countries, and weak price and cost competitiveness, often combined with high debt levels in deficit countries.<sup>11</sup>

13. The revelation in October 2009 of large fiscal imbalances in Greece prompted a debt crisis, which has spread to other euro area countries.<sup>12</sup> In response, the ECB provided liquidity and credit support, and the Council agreed to set up crisis financing instruments.<sup>13</sup> Among them, the European Financial Stability Facility will be replaced by the European Stability Mechanism on a permanent basis from mid-2013. This will require an amendment to the Treaty on the Functioning of the EU.<sup>14</sup> In addition, several member States affected by the crisis have embarked on fiscal consolidation paths; Greece and Ireland have done so as part of joint EU-IMF financial assistance packages.

14. In early 2011, the European Parliament and the Council were discussing a package of draft legislative measures that seeks to broaden, deepen, and integrate the surveillance of member States' macroeconomic policies and structural reforms.<sup>15</sup> The package includes a proposal to reform the Stability and Growth Pact, which is the existing framework for coordinating national fiscal policies among euro area countries, and to broaden surveillance to correct and prevent macroeconomic imbalances related to external positions, competitiveness, and internal developments. Integrated surveillance is based on the so-called "European Semester", a framework for synchronizing national budget procedures and reform with EU surveillance. The European Council endorsed the introduction of a European Semester from 2011.

---

<sup>11</sup> European Commission document COM(2011)11 final, 12 January 2011. Viewed at: [http://ec.europa.eu/economy\\_finance/articles/eu\\_economic\\_situation/pdf/2011/com2011\\_11\\_annex2\\_en.pdf](http://ec.europa.eu/economy_finance/articles/eu_economic_situation/pdf/2011/com2011_11_annex2_en.pdf).

<sup>12</sup> For a detailed description of the Greek debt crisis, see IMF (2010a).

<sup>13</sup> Council of the European Union press release 9596/10 (Presse 108), Extraordinary Council meeting, Economic and Financial Affairs, Brussels, 9/10 May 2010. Viewed at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ecofin/114324.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/114324.pdf).

<sup>14</sup> European Commission press release MEMO/10/636, "European Stability Mechanism (ESA) - Q&A", 1 December 2010. Viewed at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/636>; and European Council document EUCO 30/1/10 REV 1, European Council 16-17 December 2010 Conclusions, 25 January 2011.

<sup>15</sup> European Commission online information, "A new EU economic governance – a comprehensive Commission package of proposals". Viewed at: [http://ec.europa.eu/economy\\_finance/articles/eu\\_economic\\_situation/2010-09-eu\\_economic\\_governance\\_proposals\\_en.htm](http://ec.europa.eu/economy_finance/articles/eu_economic_situation/2010-09-eu_economic_governance_proposals_en.htm).

15. The Commission considers that member States with large current account deficits, weak competitiveness, and weak adjustment capacity need large price and cost adjustment to restore competitiveness.<sup>16</sup> Among the recommended policy measures are product market reforms and the full implementation of the Services Directive (see also Chapter IV(2)(i)). For member States with large current account surpluses, the Commission considers that policy measures must address the sources of persistently weak domestic demand, and could include further liberalization of the services sector and improving investment conditions.

16. According to the Commission, increased competition resulting from the removal of internal barriers to trade in services should have a positive impact on demand through lower prices and a positive income effect. In addition, the Commission notes that the removal of barriers to investment should increase foreign direct investment in services, and have a positive effect on productivity and income.

17. Furthermore, the EU sees trade policy as a key tool to buttress member States' efforts to achieve the objective of "smart, inclusive, and sustainable growth" under the Europe 2020 strategy (see Chapter II(2)). In this context, the Commission recognizes that trade opening leads to higher productivity and thereby contributes to increased external competitiveness.<sup>17</sup>

## **(ii) Trade and investment flows**

### **(a) Merchandise trade**

18. The steady increase in extra-EU27 imports and exports between 2003 and 2008 was reversed in 2009, as EU total trade fell by approximately €500 billion to €2,361 billion. Exports decreased 13% to €1,138 billion, and imports fell 21% to €1,223 billion (Tables AI.2 and AI.4).

19. The fall in exports between 2008 and 2009 mainly reflects a large decrease in exports of machinery and transport equipment, the EU's principal export category with almost 40% of total EU exports (Chart I.5). Exports of chemicals, the second largest category, increased slightly, in terms of both value and participation in total exports. Germany recorded the largest fall in extra-EU exports of machinery and transport equipment. German car exports were particularly affected, accounting for almost half of the total decrease in EU car exports; France and Italy also recorded significant decreases in exports of machinery and vehicles.

20. The United States remains by far the largest destination for EU exports, despite an 18% decrease in value terms between 2008 and 2009. Since 2005, the participation of the United States in total EU exports has fallen by six percentage points (Chart I.6 and Table AI.1). Russia, which had been the second largest export destination in 2008, dropped to fourth place in 2009, behind Switzerland and China. Around half of EU exports to China are machinery and transport equipment.

21. Between 2008 and 2009, imports of iron and steel fell almost 60% to approximately €18 billion, the largest decline in relative terms for any product group. Imports of mining products, including fuels, decreased 38% to €307 billion. These products comprise the second-largest import category, with around one quarter of total EU imports in 2009 (Chart I.5). The largest import category is machinery and transport equipment, with 28%.

---

<sup>16</sup> European Commission document COM(2011)11 final, 12 January 2011. Viewed at: [http://ec.europa.eu/economy\\_finance/articles/eu\\_economic\\_situation/pdf/2011/com2011\\_11\\_annex2\\_en.pdf](http://ec.europa.eu/economy_finance/articles/eu_economic_situation/pdf/2011/com2011_11_annex2_en.pdf).

<sup>17</sup> Commission staff working document SEC(2010) 1269. Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=636&serie=382&langId=en>.



22. China is the largest source of EU imports, followed by the United States and Russia (Chart I.6 and Table AI.3). The United States was the main import source for chemicals, raw materials, and food and drink, which together represent about one-fifth of total EU imports. The main EU suppliers of chemical products are the United States and Switzerland, while energy products come mainly from Russia and Norway. China is the main source for EU imports of machinery and other manufactured goods. The share of Africa in total EU imports has lingered around 10% since 2005.

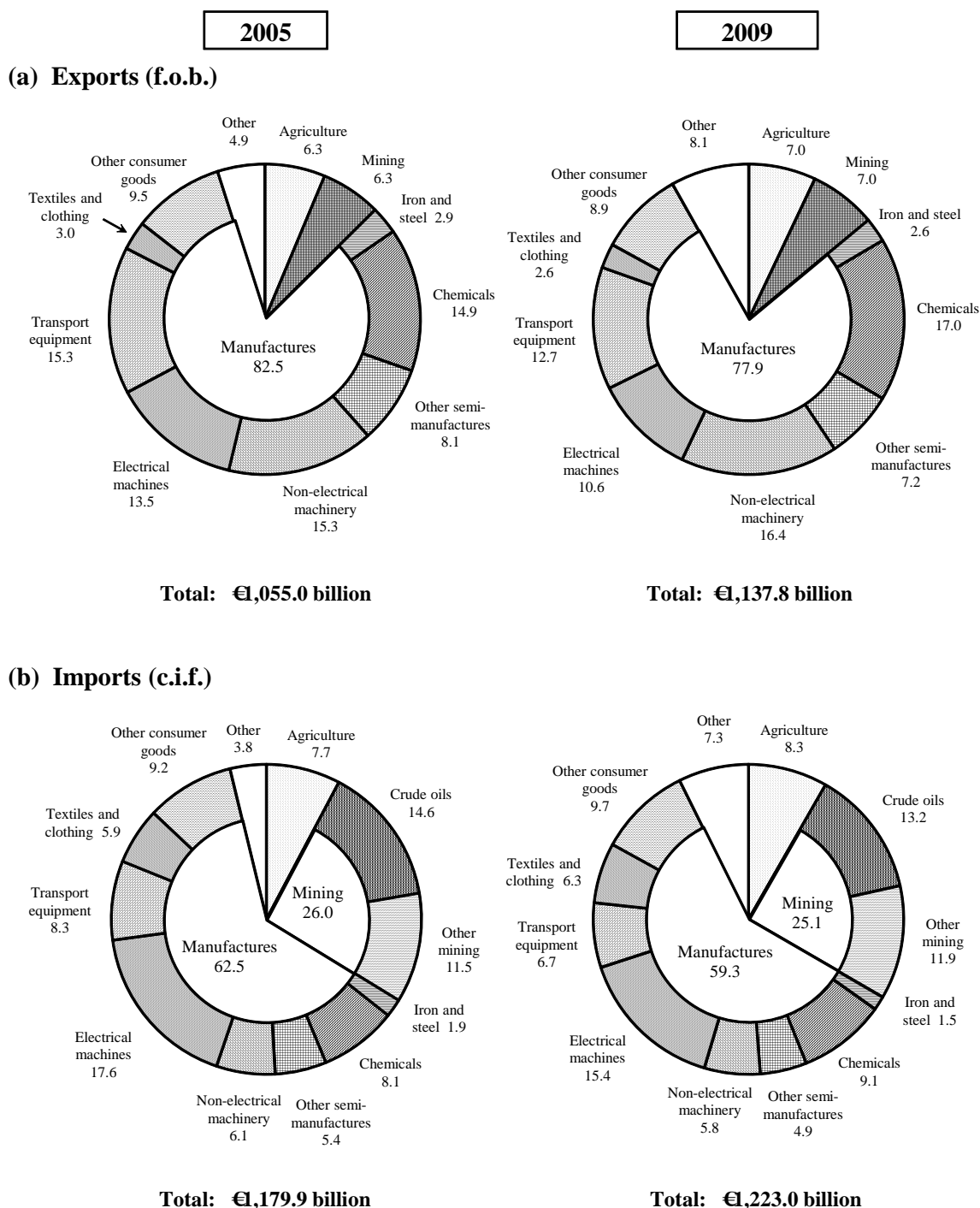
23. All member States recorded falls in both extra-EU exports and imports in 2009. Lithuania, Finland, Bulgaria, Romania, Poland, and Slovenia recorded the largest fall in exports in relative terms; they all had Russia as one of their top three trading partners. The United States was the main trading partner for Belgium, France, Ireland, Italy, and the United Kingdom in 2009. These five countries recorded below average declines in trade between 2008 and 2009.

24. Close to two thirds of the EU's total trade was carried out within the EU in 2009. The share of intra-EU trade in total trade of individual member States ranged between 82% for the Czech Republic and 54% for the United Kingdom. Intra-EU exports decreased 19% in 2009, compared with a 16% decline for extra-EU exports. For new member States except Cyprus, Poland, and Slovakia, the fall in intra-EU trade was above the EU average, with Latvia and Lithuania recording the largest falls. The bulk of intra-EU trade consists of machinery and vehicles, other manufactures goods, and chemicals.

25. The preceding analysis of merchandise trade flows is based on United Nations Comtrade data. At end-March 2011, Comtrade had no data on EU trade flows for 2010. EU trade data for 2010 were available from the COMEXT database maintained by the Commission. Based on these data, EU exports grew 23% in 2010, and imports almost 24%, reflecting the strong recovery of global trade. The two major export categories recorded growth rates of 26% (machinery and transport equipment) and 15% (chemicals) in 2010. Imports of all major import categories showed increases in 2010 ranging from 20% for food and drink to 100% for oils and fats. Exports to China, Turkey, and Russia, increased between 30% and 40% in 2010, the largest increases among the EU's major trading partners. Imports from large developing countries, notably China, Russia, India, and Brazil recorded vigorous growth in 2010.

**Chart I.5**  
**Structure of merchandise trade, 2005 and 2009**

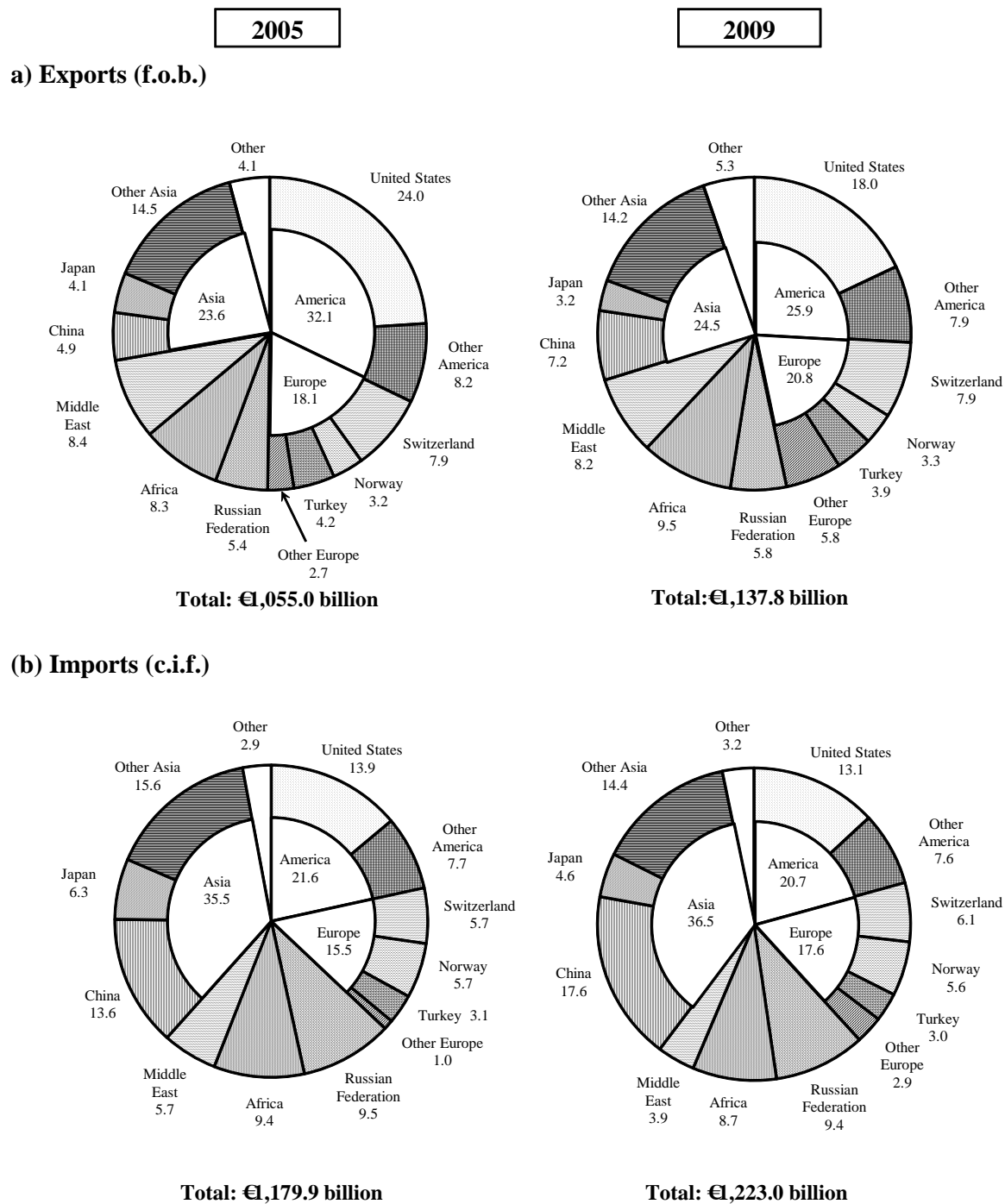
Per cent



Source: WTO Secretariat estimates, based on UNSD, Comtrade database (SITC Rev.3).

**Chart I.6**  
**Direction of merchandise trade, 2005 and 2009**

Per cent



Source: WTO Secretariat estimates, based on UNSD, Comtrade database (SITC Rev.3).

(b) Services trade

26. Between 2008 and 2009 extra-EU services exports and imports decreased almost 10%. The balance surplus totalled approximately €63 billion in 2009, down from almost €76 billion a year earlier. The surplus fell due to deteriorating balances in transportation, construction services, financial services, other business services, computer and information services, and government services (Table I.1). The balances in travel, insurance services, royalties and licence fees, and personal, cultural, and recreational services improved in 2009. Transportation, travel, and other business services, including trade-related services, operational leasing services, and miscellaneous business, professional and technical services, represent roughly two thirds of total EU exports and imports.

**Table I.1**  
**Trade in services, 2007-09**  
(€billion and %)

	EU-27 exports			EU-27 imports		
	2007	2008	2009	2007	2008	2009
Total (€billion)	506.1	529.0	477.9	419.1	453.4	414.6
	<b>% of total services exports</b>			<b>% of total services imports</b>		
Transportation	24.4	25.7	22.6	24.5	24.8	21.3
Travel	14.8	13.9	14.2	22.6	20.7	20.8
Other services	60.4	60.3	63.1	51.1	51.9	55.0
Communications services	2.0	2.3	2.7	2.6	2.8	3.1
Construction services	3.2	3.3	3.5	1.9	1.8	2.1
Insurance services	2.9	2.9	3.2	1.9	1.9	1.8
Financial services	10.7	9.4	8.6	4.9	4.2	4.0
Computer and information services	5.1	5.7	6.2	2.7	2.8	3.0
Royalties and licence fees	5.4	5.1	5.6	8.3	9.2	9.8
Other business services	28.5	29.1	30.8	25.7	26.2	27.9
Personal, cultural and recreational services	1.0	0.9	1.0	1.4	1.5	1.4
Government services, n.i.e.	1.7	1.4	1.5	1.7	1.6	1.8
Services not allocated	0.6	0.1	0.1	1.8	2.6	2.9
<b>Selected trading partners</b>						
European Free Trade Association	16.3	16.9	17.6	14.3	14.1	14.5
Switzerland	12.3	13.2	13.9	11.3	11.3	11.8
Russia	3.7	4.1	3.9	2.8	3.1	2.7
Turkey	1.4	1.3	1.3	2.9	2.9	2.8
Canada	2.4	2.3	2.3	2.3	2.1	2.0
United States	27.6	25.5	24.8	31.1	29.5	30.5
South America	3.6	4.4	4.3	2.7	3.1	3.1
Brazil	1.4	1.9	1.9	1.2	1.4	1.6
Asia	24.8	24.4	24.4	21.7	21.6	20.8
China	3.3	3.8	3.9	3.4	3.4	3.2
Hong Kong, China	1.8	1.7	1.6	1.8	1.8	1.6
India	1.7	1.7	1.9	1.7	1.8	1.8
Japan	4.0	3.7	3.6	3.4	3.4	3.1
Korea	1.5	1.5	1.3	1.0	1.1	0.9
Singapore	2.4	2.3	2.3	1.8	1.9	1.9
Thailand	0.5	0.5	0.5	1.2	1.1	1.1
Australia	2.2	2.3	2.5	1.6	1.4	1.5
Africa	6.6	7.0	7.1	7.8	7.4	7.6
South Africa	1.3	1.2	1.1	1.1	1.0	0.9

Source: WTO Secretariat, based on Eurostat online information, "International Trade in Services". Viewed at: <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home>.

27. The United States has traditionally been the EU's largest trading partner, accounting for around 25% of exports and 30% of imports in 2009 (Table I.1). Nonetheless, the U.S. share has declined considerably since 2000, when imports from, and exports to the United States each represented 38% of total EU imports and exports of services. Switzerland is the second largest trading partner, with almost 14% of exports and 12% of imports. Services exports to Brazil, China, India, and Russia have roughly doubled since 2004; together they account for almost 12% of EU services exports.

28. The United Kingdom continues to be the EU's largest exporter of services, representing 21% of total EU exports in 2009, followed by Germany and France. Germany was the biggest importer, accounting for around 18% of total imports, followed by the United Kingdom and France. The United Kingdom recorded the largest balance surplus, followed by Sweden, France, and Greece. Ireland recorded the highest balance deficit, followed by the Netherlands and Italy.

29. About 58% of total EU trade in services in 2009 was between member States. This share has remained relatively stable during the past decade.

(c) Foreign direct investment (FDI)

30. The EU is the world's largest recipient and supplier of FDI. As a result of the economic and financial crisis, EU outward FDI flows decreased by half between 2007 and 2009, to €274 billion. Inward FDI flows fell slightly less, to €19 billion.

31. The EU is a net investor in the rest of the world. Outward FDI stock totalled €3,666 billion at end 2009, up 10% from a year earlier (Table I.2). The stock of inward FDI increased 7%, to €2,707 billion. The services sector accounts for approximately three quarters of inward and outward FDI stocks, and manufacturing for about one fifth. The United States is the largest FDI partner, with 31% of total outward stock, and almost 40% of inward stock. The United Kingdom is the main EU investor in the United States. Switzerland is the EU's second largest FDI partner, with 13% of total outward and inward stock. Almost 60% of foreign affiliates of EU-based parent companies are resident in another member State.<sup>18</sup>

**Table I.2**  
**Distribution of FDI stocks 2006-09**  
(€billion and %)

	Outward stock					Inward stock				
	2006	2007	2008	2009	Share 2009 (%)	2006	2007	2008	2009	Share 2009 (%)
Extra-EU-27	2,746.0	3,231.6	3,319.8	3,665.6	100.0	2,022.7	2,447.9	2,522.3	2,707.2	
EFTA	416.5	516.9	522.6	573.6	15.6	350.6	419.2	384.4	420.1	15.5
Switzerland	364.6	458.0	462.9	503.3	13.7	282.5	323.6	315.7	347.9	12.9
Norway	50.2	57.1	54.8	67.4	1.8	55.6	80.9	56.0	61.5	2.3
Russia	50.5	71.5	83.2	88.8	2.4	14.6	24.7	26.4	27.5	1.0
Turkey	33.9	49.0	45.1	51.3	1.4	5.0	5.7	6.6	7.6	0.3
Canada	114.1	142.6	142.7	157.5	4.3	105.2	103.0	108.1	119.5	4.4
United States	949.3	1,027.1	1,076.4	1,134.0	30.9	926.1	1,027.2	1,014.6	1,044.1	38.6
Mexico	45.1	49.1	50.6	58.3	1.6	9.7	10.7	10.9	14.4	0.5

Table I.2 (cont'd)

<sup>18</sup> Data for 2007, latest year available, (Eurostat, 2011).

	Outward stock					Inward stock				
	2006	2007	2008	2009	Share 2009 (%)	2006	2007	2008	2009	Share 2009 (%)
South America	171.5	191.9	216.5	235.2	6.4	21.4	54.4	69.3	70.3	2.6
Argentina	40.0	35.2	40.3	44.3	1.2	1.8	2.0	2.4	2.5	0.1
Brazil	92.4	107.7	108.5	132.2	3.6	14.6	41.2	52.5	56.3	2.1
Asia	380.1	423.1	485.4	553.8	15.1	196.0	241.2	266.6	304.6	11.3
China	32.6	40.9	52.4	58.3	1.6	3.6	4.6	5.6	5.7	0.2
Hong Kong, China	86.1	89.3	89.3	92.9	2.5	17.4	17.2	25.5	26.8	1.0
India	12.4	16.2	17.4	27.2	0.7	2.3	4.6	6.2	5.5	0.2
Indonesia	10.6	12.6	14.3	17.5	0.5	-3.5	-2.7	-3.0	-2.6	-0.1
Japan	75.7	74.8	78.4	84.0	2.3	97.9	122.3	122.6	135.3	5.0
Korea	28.4	32.8	27.8	28.9	0.8	7.4	9.2	8.6	9.9	0.4
Malaysia	9.4	12.5	13.6	24.7	0.7	2.6	3.0	3.6	3.0	0.1
Singapore	52.5	66.7	89.2	95.8	2.6	26.8	45.0	39.3	50.2	1.9
Thailand	9.2	10.5	11.5	13.3	0.4	0.3	0.6	0.5	1.0	0.0
Chinese Taipei	13.5	7.7	7.5	9.3	0.3	0.6	0.8	0.4	0.5	0.0
Australia	53.6	69.9	70.3	82.8	2.3	18.8	25.7	21.2	30.2	1.1
Africa	128.4	149.5	162.2	208.8	5.7	19.9	23.0	29.5	31.2	1.2
South Africa	42.5	55.1	55.1	77.0	2.1	3.1	6.0	6.8	6.2	0.2

Source: WTO Secretariat, based on Eurostat online information, "EU direct investment outward stocks detailed by extra EU destination country" and "EU direct investment inward stocks by extra EU investing country". Viewed at: <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home>.

## II. TRADE POLICY REGIME

### (1) LEGAL AND INSTITUTIONAL FRAMEWORK

1. The entry into force of the Lisbon Treaty in December 2009 brought about major changes to the legal and institutional framework for EU trade and investment policy. The Lisbon Treaty amends the Treaty on European Union, signed in Maastricht in 1992, and the Treaty establishing the European Community, signed in Rome in 1957, and renamed the Treaty on the Functioning of the European Union (TFEU).<sup>1</sup> Together, the two amended treaties establish and govern the operation of the EU. By virtue of the Lisbon Treaty, the EU replaces and succeeds the European Community.<sup>2</sup>

2. External trade policy, that is, trade policy regarding non-EU countries, is an area of exclusive EU competence. This means that only the EU can adopt legally binding acts in this area; member States may do so only if empowered by the EU, or to implement EU acts. The Lisbon Treaty broadens the scope of the EU's external trade policy to encompass foreign direct investment, thus establishing the EU's exclusive competence in this area.<sup>3</sup> Prior to the Lisbon Treaty, foreign direct investment was partially within the scope of the EU's external trade policy. The term "direct investment" has been interpreted by the Court of Justice of the EU to cover investment that serves to establish lasting and direct links with the undertaking to which capital is made available to carry out an economic activity (see also Chapter III(3)(i)).<sup>4</sup>

3. The Lisbon Treaty expressly states that the EU's external trade policy covers trade in services and the trade aspects of intellectual property rights, along with trade in goods and foreign direct investment.<sup>5</sup> Although the Treaty of Nice had previously brought services and trade-related intellectual property rights into exclusive EU competence as part of the EU's external trade policy, there were some exceptions. Member States retain varying degrees of independent regulatory authority, which may result in the adoption of national measures that affect trade within the EU, and with non-EU countries.

4. Under the Lisbon Treaty, framework legislation on external trade policy must be adopted by the European Parliament and the Council in accordance with the "ordinary legislative procedure".<sup>6</sup> Previously, external trade legislation was adopted by the Council alone, and did not involve the European Parliament. Apart from external trade policy, the Lisbon Treaty extends the ordinary legislative procedure to some 40 new cases of decision making in several policy areas, including the common agricultural policy and the common fisheries policy.<sup>7</sup>

---

<sup>1</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, Official Journal (OJ) C 306, 17 December 2007. For the consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, see OJ C 83, 30 March 2010. Viewed at: <http://eur.lex.europa.eu>.

<sup>2</sup> See WTO document WT/L/779, 30 November 2009.

<sup>3</sup> Article 207(1) TFEU.

<sup>4</sup> See, for example, *Test Claimants in the FII Group Litigation*, Case C-446/04, 12 December 2006, See also *Holböck*, C-157/05, 24 May 2007; *Commission/Germany*, C-112/05, 23 October 2007; and *Commission/Spain*, C-274/06, 14 February 2008. Viewed at: <http://eur.lex.europa.eu>.

<sup>5</sup> Article 207(1) TFEU.

<sup>6</sup> Article 207(2) TFEU. The Council consists of representatives of each member State government at ministerial level. Article 16(2) of the Treaty on European Union.

<sup>7</sup> For the full list of areas subject to the ordinary legislative procedure, see European Commission online information, "Ordinary Legislative Procedure Step by Step". Viewed at: [http://ec.europa.eu/codecision/stepbystep/text/index\\_en.htm](http://ec.europa.eu/codecision/stepbystep/text/index_en.htm).

5. Under the ordinary legislative procedure, only the Commission can put forward legislative proposals, with some exceptions.<sup>8</sup> The European Parliament and the Council may amend the proposals. If the Parliament and the Council cannot reach agreement on draft legislation at second reading, a conciliation committee composed of equal numbers of representatives from both institutions is convened to negotiate a joint text. If the conciliation committee reaches an agreement, the text can be adopted as an EU act. The Parliament and the Council agree on most legislative proposals at first or second reading.

6. With the entry into force of the Lisbon Treaty, "comitology" is being replaced by a new legal framework. Comitology refers to the procedure whereby committees composed of representatives from member States control the Commission in the exercise of the "implementing powers" conferred on it by the legislator.<sup>9</sup> Critics viewed the comitology procedure as opaque and failing to provide stakeholders with the necessary information.<sup>10</sup> According to the Commission, the new legal framework will increase the transparency of the system for the Council and the European Parliament.

7. The new legal framework is based on the distinction introduced by the Lisbon Treaty between "delegated acts" and "implementing acts".<sup>11</sup> The Commission may adopt a delegated act, defined as a "non-legislative act of general application", to make certain changes to EU acts. These changes may be necessary in the interest of efficiency, for example to ensure that technical regulations or sanitary and phytosanitary measures take account of scientific progress or specific events, without the need to adopt legislation (Chapter III(1)(viii) and (ix)). The power to adopt delegated acts may be conferred on the Commission only by means of an act adopted by legislative procedure, and may be used to supplement or amend certain "non-essential" parts of that act.<sup>12</sup> The Commission's exercise of delegated powers is subject to control by the European Parliament and the Council.

8. For EU acts that require uniform implementation across member States, the Lisbon Treaty generally requires the adoption of implementing acts by the Commission.<sup>13</sup> This is subject to the control of member States, in accordance with the "new comitology rules" that entered into force in March 2011 (Chart II.1). The Commission considers that it has acquired "a greater political responsibility".<sup>14</sup> This is mainly because, under the new rules, if a committee composed of member State representatives fails to reach a qualified majority against or in favour of the Commission's draft implementing act, the Commission has the choice between adopting or reviewing the draft act. Definitive multilateral safeguards are the only exception, since their adoption requires the support of the qualified majority of member States. Other contingency measures are subject to the standard new comitology rules (see Chapter III(1)(vi)).

---

<sup>8</sup> Article 289 TFEU.

<sup>9</sup> WTO (2009).

<sup>10</sup> WTO (2009).

<sup>11</sup> Articles 290 and 291 TFEU.

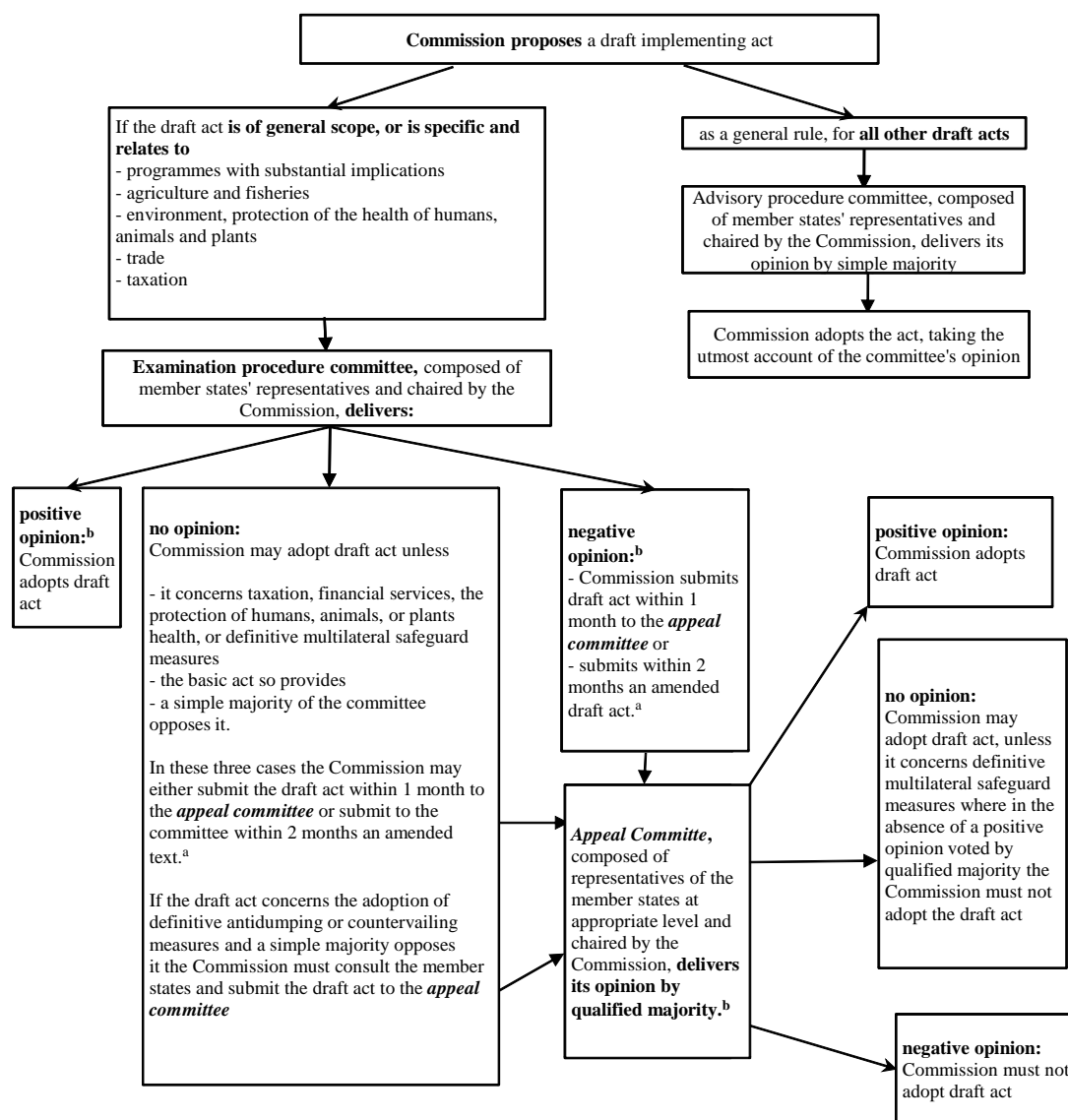
<sup>12</sup> Article 290(2) TFEU.

<sup>13</sup> Article 291(2) TFEU.

<sup>14</sup> European Commission press release IP/10/1735, "Comitology: new rules for Commission's implementing powers", 10 December 2010. Viewed at: <http://eur-lex-europa.eu>.



**Chart II.1**  
**New comitology rules, (Article 291)**



**a** However, the Commission may adopt the proposed measures without delay where this is necessary to avoid a significant disruption of the markets in agriculture or a risk for the financial interest of the EU, and submit the act immediately to the appeal committee. If the appeal committee delivers a positive opinion or no opinion, these measures remain in force. If the appeal committee delivers a negative opinion, the Commission must repeal the act.

**b** By qualified majority.

Source: Council of the European Union Factsheet 7070/11, "Entry into force of new comitology rules", 28 February 2011.

9. In March 2011, the Commission issued a legislative proposal, known as Omnibus I, adapting 24 trade policy regulations to the new comitology rules.<sup>15</sup> Trade policy had not been subject to comitology procedures prior to the adoption of the Lisbon Treaty. The trade policy regulations in question include all instruments on contingency measures, the GSP Regulation, and the Economic Partnership Agreement Market Access Regulation. The Commission's legislative proposal must be adopted by the Parliament and the Council in accordance with the ordinary legislative procedure.

10. Before starting trade negotiations with non-EU countries, the Commission must obtain authorization from the Council, which acts by qualified majority voting. The Commission must conduct negotiations in consultation with a special committee appointed by the Council, and within the framework of relevant Council negotiating directives.<sup>16</sup> The Commission must report regularly to the special committee on the progress of the negotiations. With the entry into force of the Lisbon Treaty, the Commission must also report on the progress of the negotiations to the European Parliament.

11. The Lisbon Treaty significantly enhances the role of the European Parliament in the ratification of trade agreements by requiring the Parliament's consent before the Council can ratify a trade agreement. The Parliament and the Council vote on trade agreements as a whole. In the context of this Review, the Commission notes that "nothing could prevent the Parliament from adopting a resolution announcing that it will not give its consent unless certain conditions are met". According to the Commission, a resolution by the Parliament would have no legal effect and could not be considered formal negotiating guidelines. The Council may agree to the provisional application of a trade agreement, which does not require parliamentary consent. However, if the Parliament refused consent to the conclusion of an agreement, provisional application would have to be discontinued.

12. The European Parliament gives its consent by simple majority, while qualified majority is generally required for Council ratification. Unanimity by the Council is required for agreements on trade in cultural and audiovisual services that "risk prejudicing the Union's linguistic and cultural diversity", and for agreements in the field of social, education, and health services that "risk seriously disturbing the national organization of such services and prejudicing the responsibility of a member State to deliver them".<sup>17</sup> Council unanimity is also required for agreements on trade in services, trade-related intellectual property rights, and foreign direct investment that include "provisions for which unanimity is required for the adoption of internal rules".<sup>18</sup> Examples of these provisions include new restrictions on capital movements (Article 64(3) TFEU), or the harmonization of indirect taxation (Article 113 TFEU).

13. To the extent that an agreement establishing a free-trade area covers certain other issues that are beyond the competence of the EU, it must also be ratified by national parliaments in member States. These issues include the harmonization of member States' laws and regulations regarding education or the cultural objectives mentioned in Article 167 TFEU.<sup>19</sup> According to the European Commissioner for Trade, "there is still room to think twice about the appropriate form of future trade agreements under the Lisbon Treaty".<sup>20</sup> He raised the question of whether ratifications by national

---

<sup>15</sup> See European Commission document COM(2011) 82 final, 7 March 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0082:FIN:EN:PDF>.

<sup>16</sup> Article 207 TFEU.

<sup>17</sup> Article 207(4) TFEU.

<sup>18</sup> Article 207(4) TFEU.

<sup>19</sup> Article 165(4) TFEU.

<sup>20</sup> "The Implications of the Lisbon Treaty for EU Trade Policy", Speech by the European Commissioner for Trade, Oporto, 8 October 2010. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/october/tradoc\\_146719.pdf](http://trade.ec.europa.eu/doclib/docs/2010/october/tradoc_146719.pdf).

parliaments in 27 member States are needed "when the European Parliament can now exercise parliamentary scrutiny over these agreements".

## (2) OBJECTIVES AND CONSULTATIONS

14. The Lisbon Treaty considers trade policy as an integral part of the EU's overall external action. Thus, EU trade policy must address developmental, environmental, and social objectives, and contribute to the objectives set out in the Treaty on the European Union, including the development and consolidation of democracy and the rule of law, and the respect of human rights.<sup>21</sup>

15. The Commission's blueprint for EU trade policy, released in November 2010, is based on the view that trade openness enhances economic growth, creates jobs, and contributes to external competitiveness.<sup>22</sup> The blueprint seeks to "take a more assertive approach to ensure the benefits of trade reach European citizens".<sup>23</sup> Among the blueprint's concrete proposals are to: complete negotiations at the WTO and with major trading partners, including India and MERCOSUR; deepen trade relations with "other strategic partners", including China, Japan, Russia, and the United States, particularly through the removal of non-tariff barriers; help EU businesses access global markets by setting up a mechanism to redress the balance between open markets in the EU, for example in public procurement, and closed markets in some of the EU's trading partners; negotiate comprehensive investment provisions with key trading partners; ensure that EU rights are properly enforced; and set up a new framework of rules for trade preferences for developing countries.

16. The Directorate-General for Trade of the European Commission maintains the Civil Society Dialogue, which provides registered stakeholders with an opportunity to participate in dedicated meetings with the Commission on a wide range of trade and trade-related issues. In addition, the Directorate-General for Trade holds public consultations on its major policy initiatives; participation in these consultations is open to EU and non-EU parties through a website.<sup>24</sup>

17. The Commission uses "trade sustainability impact assessments" to analyse the economic, environmental, and social impact of EU trade agreements for the EU and its trading partners. Trade sustainability impact assessments are carried out by external consultants for major trade negotiations, after the Commission has been authorized by the Council to begin negotiations; the assessments are published online.<sup>25</sup> In addition, major policy initiatives and legislative proposals by the Commission must undergo a regulatory impact assessment (Chapter III(1)(viii)).

18. No countries acceded to the EU during the period under review. Accession negotiations are ongoing with Croatia, Iceland, and Turkey.<sup>26</sup>

---

<sup>21</sup> Article 21 of Title V, Treaty on European Union.

<sup>22</sup> European Commission (2010f); see also Commission staff working document SEC(2010) 1269. Both viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=636&serie=382&langId=en>.

<sup>23</sup> Europa press release IP/10/1484, 9 November 2010, "EU sets assertive trade policy agenda for next five years". Viewed at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1484&format=HTML&aged=0&language=EN&guiLanguage=en>. See also European Commission (2010f).

<sup>24</sup> European Commission online information, "Public consultations". Viewed at: <http://trade.ec.europa.eu/consultations/index.cfm>.

<sup>25</sup> European Commission online information, "Assessments". Viewed at: <http://ec.europa.eu/trade/analysis/sustainability-impact-assessments/assessments>.

<sup>26</sup> European Commission document MEMO/10/527, 27 October 2010. Viewed at: <http://europa.eu>.

### (3) PARTICIPATION IN THE WORLD TRADE ORGANIZATION

19. According to the Commission, maintaining the WTO system, and ensuring that it continues to adapt to a fast-changing world, is a central priority of EU trade policy.<sup>27</sup> The EU's top negotiating priority is to complete the Doha Round by the end of 2011 at the latest.<sup>28</sup>

20. The EU is an original Member of the WTO; each of its member States is also a Member. The EU is a party to the Agreement on Government Procurement and a participant in the Information Technology Agreement.

21. The EU's commitments with respect to agricultural market access, domestic support, and export subsidies to reflect the enlargement from 15 to 27 member States have not yet been formally agreed in the WTO and consolidated in the EU's goods schedule. The EU-15 goods schedule was certified in early 2010.<sup>29</sup> In the context of this Review, the Commission indicated that the EU will be able to proceed with the certification of the EU-25 goods schedule once all signatories of the Geneva Agreement on Trade in Bananas have completed the internal procedures necessary for the agreement's entry into force. In March 2011, the General Secretariat of the Council of the EU notified the Director-General of the WTO that the EU had completed these procedures.<sup>30</sup> Furthermore, the negotiations to consolidate the EU's services commitments pursuant to Article XXI of the GATS following the accession of Bulgaria and Romania have not yet been concluded, nor has the certified EU-25 schedule entered into force since it has not been ratified by all member States (March 2011).

22. The EU submitted numerous notifications during the period under review (Table II.1). Neither, the EU nor its member States has notified "any new, or any changes to existing laws, regulations or administrative guidelines which significantly affect trade in services" under Article III:3 of the GATS since 1999. According to the Commission, the scope of measures that would have to be notified under Article III:3 appears to be extremely broad, and in the absence of reliable and up-to-date statistics on trade in services, it is unclear which standards should apply to determine when a measure significantly affects trade in services. Moreover, the Commission notes that, given that the EU has commitments across virtually all sectors, the strict application of Article III:3 would be administratively impracticable. In the context of this Review, Commission officials indicated that the EU is supportive of transparency and the reflection work proposed in the regular session of the Committee on Trade in Services to improve the notification mechanism and clarify the scope of measures that need to be notified.

23. Since its last Review, the EU has been involved in eight new cases as a respondent, and in three new cases as a complainant under the Dispute Settlement Understanding (Table AII.1). The EU has presented 33 monthly status reports regarding the implementation of the Dispute Settlement Body's recommendations and rulings in the dispute on measures affecting the approval and marketing of biotech products (October 2010).<sup>31</sup> In the latest status report, the EU indicated that it "remains ready to continue its discussions with the United States with the goal of resolving this dispute and related issues."<sup>32</sup>

---

<sup>27</sup> European Commission (2009d).

<sup>28</sup> European Commission (2010f).

<sup>29</sup> WTO documents WT/Let/667-9, 19 March 2010.

<sup>30</sup> General Secretariat of the Council of the European Union, Note Verbale SGS11/2903, 8 March 2011.

<sup>31</sup> WTO documents WT/DS291/37 and addenda.

<sup>32</sup> WTO document WT/DS291/37/Add.33, 15 October 2010.

**Table II.1**  
**Selected notifications to the WTO, June 2008-January 2011<sup>a</sup>**

Legal provision	Description of requirement	Frequency	WTO document
<b>General Agreement on Tariffs and Trade 1994</b>			
Article XXVIII:5	Reservation of rights to modify schedule	Ad hoc	G/MA/227, 18 December 2008
Article XVII:4(a) and paragraph 1 of the Understanding on the Interpretation of Article XVII	State-trading enterprises and products traded by them	Every two years (new and full notifications)	G/STR/N/12/EEC, 18 September 2009
Article XXIV:7(a)	Customs unions and free-trade areas	Ad hoc	WT/REG280/N/1, 3 March 2010 WT/REG285/N/1, 31 May 2010 WT/REG274/N/1, 28 September 2009 WT/REG258/N/1, 15 December 2008 WT/REG242/N/1, 16 July 2008
<b>Agreement on Agriculture</b>			
Article 18.2	Imports under tariff quotas (Table MA:2)	Annual	G/AG/N/EEC/62, 26 October 2009 and /67, 18 January 2011; the latest notification covers marketing year 2008/09 and calendar year 2009.
Article 5.7 and 18.2	Special safeguard (Table MA:5)	Annual	G/AG/N/EEC/60, 26 March 2009; /63, 25 January 2010; and /66, 12 January 2011; the latest notification covers marketing year 2008/09.
Article 18.2 and 18.3	Domestic support	Annual/ad hoc (DS:2)	Table DS:1: G/AG/N/EEC/59, 2 March 2009; /64, 4 February 2010; /68, 24 January 2011; and revisions to previous notifications; the latest notification covers marketing year 2007/08. Table DS:2: G/AG/N/EEC/58, 24 February 2009; /65, 4 February 2010; and /69, 24 January 2011.
Article 18.2	Export subsidies (Tables ES:1, ES:2 and ES:3)	Annual	G/AG/N/EEC/57, 25 November 2008; /61, 15 October 2009; /70, 16 March 2011; and revisions to previous notifications; the latest notification covers marketing year 2008/09.
Article 16.2	Possible negative effects of the reform programme on least-developed and net food-importing developing countries	Annual	G/AG/N/EEC/56, 18 April 2008; this notification covers calendar years 2004 and 2005.
<b>Agreement on the Application of Sanitary and Phytosanitary Measures</b>			
Annex B, paragraph 3	Enquiry point	Once, then changes	G/SPS/ENQ/25, 15 October 2009
Annex B, paragraph 10	National notification authority	Once, then changes	G/SPS/NNA/15, 15 October 2009
Article 7 and Annex B, paragraph 5	Proposed and adopted SPS regulations	Ad hoc	Several notifications (series G/SPS/N/EEC)
<b>Agreement on Technical Barriers to Trade</b>			
Articles 2, 3, 5 and 7	Proposed and adopted technical regulations and conformity assessment procedures	Prior or, for urgent problems, immediately after the measure is taken	Several notifications (series G/TBT/N/EEC)
Article 10.1 and 10.3	Enquiry point	Once, then changes	G/TBT/ENQ/35/Rev.2, 13 May 2009
Paragraph J of the Code of Good Practice for the Preparation, Adoption and Application of Standards	Work programme of bodies that have accepted the Code	Semi-annual	ISO/IEC, <i>WTO TBT Standards Code Directory</i>

Table II.1 (cont'd)

Legal provision	Description of requirement	Frequency	WTO document
<b>Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement)</b>			
Article 16.4	Anti-dumping actions	Semi-annual	G/ADP/N/202/EEC, 5 October 2010 <sup>b</sup>
Article 16.4	Anti-dumping actions	Ad hoc	G/ADP/N/212, 8 March 2011 <sup>b</sup>
<b>Agreement on Rules of Origin</b>			
Annex II, paragraph 4	Preferential rules of origin	Once, then changes and new rules	Last notification in 1995
<b>Agreement on Import Licensing Procedures</b>			
Article 7.3	Questionnaire	Annual	G/LIC/N/3/EEC/13, 19 October 2010 <sup>b</sup>
<b>Agreement on Subsidies and Countervailing Measures</b>			
Article 25.1	Subsidies	Every two years (new and full notifications)	G/SCM/N/186/EEC, 23 December 2009, and addenda.
Article 25.11	Countervailing duties actions	Semi-annual	G/SCM/N/212/EEC, 11 October 2010 <sup>b</sup>
Article 25.11	Countervailing duties actions	Ad hoc	G/SCM/N/218, 9 December 2010 <sup>b</sup>
<b>Agreement on Safeguards</b>			
Article 12.1(a)	Initiation of an investigation	Ad hoc	G/SG/N/6/EEC/5, 5 July 2010
Article 12.6	Legislation	Ad hoc	G/SG/N/1/EEC/2, 12 November 2010
<b>General Agreement on Trade in Services</b>			
Article III:3	New or changes to laws or regulations that significantly affect trade in services	Annual	Last notification in 1999
Articles III:4 and IV:2	Contact and enquiry points	Once, then changes	S/ENQ/78/Rev.11, 26 October 2009
Article V:7(a)	Economic integration agreements	Ad hoc	S/C/N/557, 22 June 2010 S/C/N/517, 14 October 2009 S/C/N/515, 12 October 2009 S/C/N/514, 7 October 2009
<b>Agreement on Trade-Related Aspects of Intellectual Property Rights</b>			
Article 63.2	Laws and regulations	Once, then changes	IP/N/1/EEC/4, 28 January 2010 IP/N/1/EEC/G/5-7
Article 69	Contact points	Once, then changes	IP/N/7/Rev.3/Add.2, 26 January 2011
TRIPS Council meeting of 22-25 July 1996	Contact points for technical cooperation	Once, then changes	IP/N/7/Rev.3, 17 February 2010
<b>Agreement on Government Procurement</b>			
WTO document GPA/1, Annex 3	National threshold	Biennial	GPA/W/309/Add.4, 5 February 2010
Article XIX:5	Procurement statistics	Annual	GPA/94/Add.4, 15 July 2010 <sup>b</sup>
<b>Other</b>			
GATT document L/4903 (Decision of 28 November 1979)	MFN derogation in favour of developing countries	Ad hoc	WT/COMTD/N/4/Add.4, 12 March 2009
WTO document G/L/59 (Decision on Notification Procedures for Quantitative Restrictions)	Quantitative restrictions	Biennial	Last notification in 2003

a Unless otherwise indicated.

b Refers only to the most recent notification.

Source: WTO Secretariat.

#### (4) PREFERENTIAL TRADE AGREEMENTS AND ARRANGEMENTS

##### (i) Unilateral preferences

24. In July 2008, the Council adopted a revised scheme of generalized tariff preferences for the period January 2009 to December 2011. The revised scheme was notified to the WTO in March 2009

and is based on Regulation No 732/2008.<sup>33</sup> The new Regulation does not introduce any substantive changes to the EU's Generalized System of Preferences (GSP). In March 2011, the EU was preparing a proposal to amend its GSP regime.

25. The EU's GSP consists of three arrangements: standard GSP, which provides tariff preferences to eligible developing countries; GSP+, which offers additional tariff reductions to "vulnerable" countries that implement international standards in the fields of human rights, core labour standards, sustainable development, and good governance; and Everything But Arms (EBA), which grants duty- and quota-free access for products from least developed countries (LDCs).<sup>34</sup> The EU eliminated tariff quotas on imports of rice and sugar under EBA in late 2009. Importers of EBA sugar must purchase at a price not lower than 90% of the EU reference price until September 2012.

26. Regulation No 732/2008 introduces several technical changes. The most significant is the withdrawal and restoration of preferences based on updated statistics: preferential treatment is withdrawn for a product group from a beneficiary country if, during the previous three years, the beneficiary country's exports of that product group into the EU exceed 15% of total EU imports of the same product group from GSP beneficiary countries. For textiles and clothing, the threshold is 12.5%. For the period 2009-11, preferences were withdrawn for footwear and other products under HS Section XII from Viet Nam, and restored for: Algeria (minerals); India (jewellery, pearls, precious metals, and stones); Indonesia (wood and articles of wood); Russia (chemical products and base metals); South Africa (transport equipment); and Thailand (transport equipment).

27. Furthermore, the EU may withdraw GSP preferences temporarily for the reasons listed under Article 15 of the GSP Regulation. These include: serious and systematic violations of core human and labour rights conventions; serious shortcomings in customs controls; and serious and systematic unfair trading practices. Temporary withdrawal is preceded by an investigation. During the period under review, GSP+ preferences for Sri Lanka were withdrawn temporarily; an investigation in relation to El Salvador's GSP+ preferences was terminated without temporary withdrawal.<sup>35</sup> GSP preferences for a product from a given country may be removed under the GSP's safeguard clause if imports of that product "cause, or threaten to cause, serious difficulties to a Community producer of like or directly competing products".<sup>36</sup> The EU did not remove any GSP preferences under the safeguard clause during the review period.

28. In October 2010, 15 WTO Members qualified for GSP+ preferences.<sup>37</sup> EBA preferences are available for the 49 LDCs recognized by the United Nations.

29. The overall importance of GSP in total EU imports is low. For example, in 2008 some 86% of total EU imports entered under MFN, compared with around 5% under standard GSP, GSP+, and EBA.<sup>38</sup> However, GSP preferences are important in particular sectors and countries. Imports under GSP accounted for almost 29% of total EU imports of footwear in 2008, 28% of animal and vegetable

---

<sup>33</sup> WTO document WT/COMTD/N/4/Add.4, 12 March 2009; and Council Regulation (EC) No 732/2008, 22 July 2008, applying a scheme of generalized tariff preferences for the period 1 January 2009 to 31 December 2011; amending Regulations (EC) No 552/97, (EC) No 1933/2006; and Commission Regulations (EC) No 1100/2006 and (EC) No 964/2007.

<sup>34</sup> For a detailed description of the three arrangements, see WTO (2009).

<sup>35</sup> Regulations Implementing Regulation (EU) No 143/2010 of the Council of 15 February 2010 (OJ L45, 20 February 2010) and Commission document C(2009) 7936.

<sup>36</sup> Article 20, Regulation (EC) No 732/2008.

<sup>37</sup> Armenia, Azerbaijan, Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Georgia, Guatemala, Honduras, Mongolia, Nicaragua, Panama, Peru, and Paraguay.

<sup>38</sup> Centre for the Analysis of Regional Integration at Sussex (undated).

fats, 23% of live animals, and 21% of raw hides. Of the 49 EBA beneficiaries in 2008, 7 exported more than 75% of their exports to the EU under EBA zero duties. For two GSP+ beneficiaries, more than half of their exports to the EU entered under GSP+. Three countries exported more than half of their total exports to the EU under the standard GSP.

30. Based on data provided by the Commission, average preference margins under standard GSP (excluding GSP+ and EBA) relative to MFN are around 2 percentage points or less for all major product categories except prepared food, for which the margin is slightly higher (2.7 percentage points). Prepared food also has the highest average preference margin among major product categories under GSP+ (almost 12 percentage points), followed by footwear with around 7 percentage points. Under EBA, the average preference margin is almost 12 percentage points for prepared food, 9 percentage points for live animals, 9 percentage points for textile articles, and around 4 percentage points for vegetable products. In 2009, the latest year for which data are available, utilization rates were 53% for standard GSP, 86% for GSP+, and 69% for EBA. According to the EU, these utilization rates are "negatively affected by the availability for many beneficiary countries of alternative preferential arrangements such as free-trade agreements or autonomous trade preferences".

31. New GSP rules of origin have applied since January 2011 (Chapter III(1)(iii)). The EU notified its new GSP rules of origin in March 2011.<sup>39</sup>

32. The EU grants unilateral preferential tariff treatment to industrial and some agricultural products from Moldova, under a WTO waiver that expires in December 2013.<sup>40</sup> It also grants unilateral preferential tariff treatment to six countries in the Western Balkans under a WTO waiver that expires in December 2011 (see section (ii) below).<sup>41</sup>

33. The trade provisions of the Cotonou Agreement granting trade preferences to African, Caribbean and Pacific (ACP) countries expired on 31 December 2007. In advance of the application of comprehensive Economic Partnership Agreements (EPAs) by ACP countries, since January 2008 the EU has granted "advance EPA treatment" in the form of duty- and quota-free access for products from ACP countries that have initialled an EPA (see section (ii) below).<sup>42</sup>

## **(ii) Reciprocal preferences**

34. Trade and economic relations with Iceland, Liechtenstein, and Norway are governed by bilateral free-trade agreements (FTAs) with the EU and the agreement on the European Economic Area, which extends most EU single market legislation to these countries. Switzerland also has an FTA with the EU and implements EU legislation in areas covered by several bilateral agreements. Customs unions are in force with Andorra, Turkey, and San Marino.

35. Apart from these agreements, the EU has FTAs in force with: Albania, Algeria, Bosnia and Herzegovina, CARIFORUM states, Chile, Croatia, Egypt, Faroe Islands, Former Yugoslav Republic of Macedonia (FYROM), Israel, Jordan, Lebanon, Mexico, Montenegro, Morocco, Palestinian Authority, Serbia, South Africa, Tunisia, and certain overseas countries and territories. The FTAs with Albania, CARIFORUM states, Chile, Croatia, FYROM, Montenegro, and Mexico cover both goods and services; the rest cover only goods. The EU considers that "free-trade agreements (FTAs), if approached with care, can build on WTO and other international rules by going further and faster in

<sup>39</sup> WTO document G/RO/N/69, 29 March 2011.

<sup>40</sup> WTO document WT/L/722, 15 May 2008.

<sup>41</sup> WTO document WT/L/654, 2 August 2008.

<sup>42</sup> Council Regulation (EC) No 1528/2007 of 20 December 2007 (OJ L 348, 31 December 2007).



promoting openness and integration, by tackling issues which are not ready for multilateral discussion and by preparing the ground for the next level of multilateral liberalisation".<sup>43</sup>

36. During the period under review, FTAs entered into force with Albania (services aspects), Bosnia and Herzegovina (goods aspects), Montenegro (services aspects), and Serbia (good aspects) (Table II.2). Previously, stabilization and association agreements had entered into force with Croatia and the FYROM. Unilateral trade preferences granted to these six Members expired at the end of 2010 and have not yet been extended (March 2011).

**Table II.2**  
**Overview of recent EU trade agreements, December 2010<sup>a</sup>**

<b>EU-ALBANIA</b>	
Title	FTA between the EU and Albania (goods and services)
Parties	EU, Albania
Date of signature/entry into force	12.06.2006/01.12.2006 (goods) and 01.04.2009 (services)
Transition for full implementation (goods)	10 years
Main products excluded from liberalization (EU)	HS 0102, 0201, 0202, 2204
Services covered	Yes
EU merchandise trade (2009)	0.1% of total EU imports; 0.2% of total EU exports
WTO document series	WT/REG226
<b>EU-BOSNIA AND HERZEGOVINA</b>	
Title	FTA between the EU and Bosnia and Herzegovina (goods)
Parties	EU, Bosnia and Herzegovina
Date of signature/entry into force	16.06.2008/01.07.2008
Transition for full implementation (goods)	5 years
Main products excluded from liberalization (EU)	Certain tariff lines under HS 0102 and 0201, and some fish and fish products; all lines under HS 0202; certain tariff items of baby beef, fishery products, and sugar are subject to preferential tariff rate quotas.
Services covered	No
EU merchandise trade (2009)	0.1% of total EU imports; 0.3% of total EU exports
WTO document series	WT/REG242
<b>EU-MONTENEGRO</b>	
Title	FTA between the European Union and Montenegro (goods and services)
Parties	EU, Montenegro
Date of signature/entry into force	15.10.2007/01.01.2008 (goods) and 01.05.2010 (services)
Transition for full implementation (goods)	5 years
Main products excluded from liberalization (EU)	Certain tariff lines under HS 0102 and 0201, and some fish and fish products; all lines under HS 0202, 1701, and 1702; certain tariff items of baby beef, fishery products, and sugar are subject to preferential tariff rate quotas.
Services covered	Yes
EU merchandise trade (2009)	0% of total EU imports and 0% of total EU exports
WTO document series	WT/REG236

**Table II.2 (cont'd)**

<sup>43</sup> European Commission (2006a).

<b>EU-SERBIA</b>	
Title	FTA between the EU and the Republic of Serbia (goods)
Parties	EU, Serbia
Date of signature/entry into force	29.04.2008/01.02.2010
Transition for full implementation (goods)	6 years
Main products excluded from liberalization (EU)	Certain tariff lines under HS 0102 and 0201; all lines under HS 0202; certain tariff items of baby beef, fishery products, and sugar are subject to preferential tariff rate quotas.
Services covered	No
EU merchandise trade (2009)	0.3% of total EU imports and 0.6% of total EU exports
WTO document series	WT/REG285
<b>EU-CARIFORUM STATES</b>	
Title	EPA between the CARIFORUM States and the EU
Parties	EU, Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago
Date of signature/entry into force	Signature: 15.10.2008 except for Guyana (01.11.2008), and Haiti (11.12.2009); provisional application: 29.12.2008; Haiti is due to apply the agreement once it has been ratified.
Transition for full implementation (goods)	CARIFORUM States are due to complete their tariff elimination process within 15 years of 1 January 2011.
Main products excluded from liberalization (EU)	No exclusions; until 2015, EU imports of sugar are subject to a transitional safeguard mechanism if they exceed a dual threshold
Services covered	Yes
EU merchandise trade (2009)	0.4% of total EU imports and 0.4% of total EU exports
WTO document series	WT/REG255

a This table covers agreements that entered into force between mid-2008 and end-2010 and have been notified to the WTO. The EPA between the EU and Papua New Guinea has been applied provisionally since 20 December 2009, but has not yet been notified to the WTO. The EPAs with Cameroon and Côte d'Ivoire have been notified to the WTO, but their entry into force is awaiting ratification by Cameroon and Côte d'Ivoire.

Source: WTO Secretariat.

37. The EU's trading arrangements with ACP countries are covered by EPAs in seven ACP country configurations: CARIFORUM, Pacific, Central Africa, West Africa, Southern African Community, Eastern African Community, and Eastern and Southern Africa. Since January 2008, the EU has granted duty- and quota-free access to all ACP countries that have at least initialled an EPA.<sup>44</sup> EU imports of sugar under EPAs are subject to a transitional safeguard mechanism until 2015. The CARIFORUM region has concluded a so-called "comprehensive EPA" covering trade in goods and services, investment, and trade-related issues like innovation and intellectual property. The other regions have concluded negotiations for "interim EPAs" covering trade in goods while negotiations for comprehensive EPAs continue. The EU and Papua New Guinea have signed and ratified an interim EPA. Other interim EPAs were initialled or signed with Botswana, Burundi, Cameroon, Comoros, Côte d'Ivoire, Fiji, Ghana, Kenya, Lesotho, Madagascar, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe. Since 2000, a bilateral Trade, Development and Cooperation Agreement has been in force between the EU and South Africa.

38. FTAs in force with Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the Palestinian Authority, and Tunisia are part of Association Agreements concluded in the context of the Euro-Mediterranean partnership, which seeks to liberalize trade between the EU and individual Mediterranean countries, and between the Mediterranean countries themselves. The FTAs cover trade

<sup>44</sup> Council Regulation (EC) No 1528/2007 of 20 December 2007 (OJ L 348, 31 December 2007).

in goods; the EU concluded negotiations to liberalize further trade in agriculture and fisheries with Jordan (2007), Israel and Egypt (2008), Morocco (2009), and the Palestinian Authority (2010). Negotiations are ongoing with Tunisia. The EU signed bilateral protocols establishing dispute settlement mechanisms for the resolution of trade disputes with Tunisia (2009), and Egypt, Lebanon, and Morocco (2010). In addition, the EU initialled a protocol with Jordan in 2010. Negotiations on the liberalization of trade in services are ongoing with Egypt, Israel, Morocco, and Tunisia.

39. The EU signed an FTA with Korea in October 2010, covering goods and services. The FTA will be applied provisionally from July 2011. In February 2011, the European Parliament gave its consent to the agreement, whose formal conclusion is subject to ratification by EU member States.

40. The EU concluded FTA negotiations with Colombia and Peru in March 2010. Ecuador suspended its participation in these negotiations in July 2009. The negotiations toward an Association Agreement, including an FTA, between the EU and Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama were concluded in May 2010. The EU expects the trade provisions of these agreements to enter into force during the first half of 2012.

41. During the period under review, the EU launched free-trade negotiations with Canada, Malaysia, and Singapore. FTA negotiations with MERCOSUR were "relaunched" in May 2010. FTA negotiations with India and Ukraine are ongoing; those with a group of seven ASEAN countries are on hold, as are the negotiations with the Gulf Cooperation Council.

#### **(5) INVESTMENT AGREEMENTS AND ARRANGEMENTS**

42. There are some 1,200 bilateral investment treaties (BITs) in force between individual EU member States and non-EU countries.<sup>45</sup> In addition, several BITs are in force among EU member States. The vast majority of BITs concluded by EU member States establish provisions on the protection of investment at the post-establishment phase and do not cover entry conditions. In addition, the EU has concluded several international agreements with third countries with provisions on market access for foreign investment, and post-establishment national treatment and most favoured nation treatment for sectors liberalized by the parties. According to the European Commission, this "clear and complementary division of labour in the field of investment has resulted in a rather large and atomised universe of investment agreements".<sup>46</sup>

43. The Lisbon Treaty integrates foreign direct investment into EU external trade policy, thus attributing to the EU exclusive competence in this area (see section (1) above). As a result, member States are no longer competent to negotiate international agreements on foreign direct investment with third countries unless empowered to do so by the EU. Furthermore, the Commission notes that "the continuing existence of Member States' international agreements relating to investment, and the commitments undertaken therein, are questionable in relation to the EU's exclusive competence on foreign direct investment".<sup>47</sup>

---

<sup>45</sup> European Commission document COM (2010) 343 final, 7 July 2010. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc\\_146307.pdf](http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc_146307.pdf).

<sup>46</sup> European Commission document COM (2010) 343 final, 7 July 2010. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc\\_146307.pdf](http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc_146307.pdf).

<sup>47</sup> European Commission online information, "Roadmap on the Proposal for a Regulation of the European Parliament and the Council establishing transitional arrangements for international investment agreements between Member States and third countries". Viewed at: [http://ec.europa.eu/governance/impact/planned\\_ia/docs/86\\_trade\\_international\\_investment\\_agreements\\_en.pdf](http://ec.europa.eu/governance/impact/planned_ia/docs/86_trade_international_investment_agreements_en.pdf).

44. In July 2010, the Commission released a draft Regulation establishing transitional arrangements for bilateral investment agreements between member States and third countries. The regulation seeks to maintain legal certainty for investors after the transfer of competence on foreign direct investment to the EU.<sup>48</sup> The draft regulation must be approved by the Council and the European Parliament under the ordinary legislative procedure. Under the draft Regulation, member States are authorized to maintain in force BITs that they notify to the Commission. The Commission may withdraw authorization for BITs that: conflict with EU law; overlap with an existing agreement between the EU and a third country, and the overlap is not addressed in the agreement with the EU; or undermines EU investment policy. Member States must also notify the Commission of, and seek its authorization for the modification of existing BITs, or the conclusion of new ones. The Commission can deny authorization if the member State's initiative undermines the objectives of EU negotiations or policy. In addition, member States must submit, prior to signature, negotiated texts of new or modified BITs for the Commission's approval.

45. In 2009, the Court of Justice of the EU found that Austria, Sweden, and Finland were in breach of EC Treaty obligations by maintaining BITs with third countries containing provisions that may interfere with the EU's power to restrict capital movements.<sup>49</sup>

46. According to the Commission, the integration of foreign direct investment into the EU's external trade policy offers the opportunity "to define an EU investment policy that will add an important dimension to the external competitiveness strategy of the Union."<sup>50</sup> In July 2010, the Commission released its proposed policy for EU comprehensive investment negotiations with third countries.<sup>51</sup> The Commission believes that EU international investment policy should seek to ensure the uniform treatment of EU investors, because the network of existing BITs results in an "uneven playing field for EU companies investing abroad, depending on whether they are covered as a 'national' under a certain Member State BIT or not."

47. The policy also sets out criteria for the selection of negotiating partners. These criteria include trade and investment flows, economic growth prospects, and the political, institutional and economic climate. In the short term, the Commission is interested in covering both investment protection and liberalization in its ongoing FTA negotiations, including with Canada, India, and Singapore. In the medium term, the Commission will explore the possibility of pursuing comprehensive, stand-alone investment agreements, with for example China and Russia.

## **(6) AID FOR TRADE**

48. The EU and its member States are among the leading providers of aid for trade. In October 2007, the Council adopted an aid-for-trade strategy, which aims to support developing countries "to better integrate into the rules-based world trading system and to use trade more effectively in promoting the overarching objective of eradicating poverty".<sup>52</sup> The strategy is a joint

---

<sup>48</sup> European Commission document COM(2010) 344 final, 7 July 2010. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc\\_146308.pdf](http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc_146308.pdf).

<sup>49</sup> Judgments C-205/06 and C-249/06, 3 March 2009; and judgement C-118/07, 19 November 2009.

<sup>50</sup> European Commission online information, "Roadmap: Commission Communication on EU investment policy", 19 March 2010. Viewed at: [http://ec.europa.eu/governance/impact/planned\\_ia/docs/87\\_trade\\_eu\\_investment\\_policy\\_en.pdf](http://ec.europa.eu/governance/impact/planned_ia/docs/87_trade_eu_investment_policy_en.pdf).

<sup>51</sup> European Commission document COM(2010) 343 final, 7 July 2010. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc\\_146307.pdf](http://trade.ec.europa.eu/doclib/docs/2010/july/tradoc_146307.pdf).

<sup>52</sup> Council of the European Union press release 13873/07 (Presse 235), "Council agrees strategy on aid for trade", 15 October 2007. Viewed at: [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/misc/96506.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/misc/96506.pdf).

---

---

initiative between member States and the EU. As part of the strategy, the Commission publishes an annual monitoring report on EU and member State aid-for-trade spending and implementation.<sup>53</sup>

49. According to the Commission, aid-for-trade commitments by the EU and its member States increased to a record high of €10.4 billion in 2008, around one fifth of total EU and member State official development assistance. Average annual aid-for-trade commitments by the EU and its member States for the period 2001-04 totalled €5.1 billion. As a share of total official development assistance, aid for trade has increased steadily since 2004.

50. In 2008, EU and member State support for trade-related assistance exceeded the target set in 2005 to provide €2 billion annually by 2010 (€1 billion by the EU and €1 billion by member States). Actual commitments totalled €2.15 billion (€1.14 billion by member States and €1.01 billion by the EU).

51. Africa was the top recipient of EU aid for trade in 2008, with approximately €4.6 billion of the total, followed by Asia with around €2.2 billion, Europe (€1.3 billion), the Americas (€0.7 billion), and Oceania (less than €0.01 billion); the remainder corresponds to the category "developing countries unspecified". Aid for trade for ACP countries increased to €3 billion in 2008.

52. The EU refined its collection of information relating to the implementation of its aid-for-trade strategy in 2009, and requested its field offices to provide information on several aid-for-trade subjects. In the context of this Review, the Commission indicated that this exercise had helped to establish "a snapshot of how things are working on aid for trade across countries in which the EU is providing aid for trade". Based on this information, the Commission concluded that trade issues are a common element of EU donors' policy dialogue with partner countries. It also found that, while many member States have some experience with joint needs assessment, strategy formulation, programmes, or delivery, these approaches could be applied more consistently.<sup>54</sup> According to the Commission, these findings are being addressed in 2011.

---

<sup>53</sup> European Commission online information. Viewed at: <http://ec.europa.eu/trade/wider-agenda/development/aid-for-trade>.

<sup>54</sup> European Commission staff working paper SEC(2009) 442 (Aid for Trade monitoring report 2009), 8 April 2009. Viewed at: [http://ec.europa.eu/development/icenter/repository/COMM\\_NATIVE\\_SEC\\_2009\\_0442\\_4\\_Aid-for-Trade-monitoring-report-2009\\_EN.pdf](http://ec.europa.eu/development/icenter/repository/COMM_NATIVE_SEC_2009_0442_4_Aid-for-Trade-monitoring-report-2009_EN.pdf).

### III. TRADE POLICIES AND PRACTICES BY MEASURE

#### (1) MEASURES DIRECTLY AFFECTING IMPORTS

##### (i) Customs procedures

1. The basic customs legislation is the EU Customs Code and its Implementing Regulation.<sup>1</sup> The Modernized Customs Code entered into force in June 2008, but is not yet applied, pending the application of the implementing provisions, due by 24 June 2013.<sup>2</sup> The EU has exclusive competence in the field of customs. Customs procedures, as defined in EU legislation, are harmonized and monitored at the level of the EU. Under EU legislation, the term "customs procedure" means release for free circulation, transit, customs warehousing, inward processing, processing under customs control, temporary admission, outward processing, and exportation.<sup>3</sup> National customs laws assist in the implementation of EU customs legislation. The national administrations and courts of member States are in charge of executing EU customs legislation under the oversight of the Commission and EU courts.

2. The European Commission maintains a website of customs legislation and related case law, and legislative proposals.<sup>4</sup> The Trade Contact Group is the main venue for regular consultations between the European Commission and economic operators on EU customs matters.<sup>5</sup>

3. EU customs legislation establishes the right of appeal and defines the general principles underpinning this right.<sup>6</sup> Appeals procedures are set out in national legislation, and vary across member States. Appeals must be lodged in the member State where the decision under dispute has been taken. Most member States require administrative review before a decision can be appealed judicially. The review by national courts of a decision taken by the customs administration of one member State is not binding on the customs administrations of other member States. In this context, the Commission notes that national courts have the possibility to refer cases to the Court of Justice of the EU for a preliminary ruling, which is binding on all customs administrations and judges in the EU.

4. In the context of the previous Review of the EU, some Members raised concerns and asked questions about the uniform implementation of customs procedures across the EU.<sup>7</sup> In response, the EU indicated that these concerns were "misplaced", for the EU had "fully harmonized customs procedures".<sup>8</sup> In addition, the EU noted that "issues with practical implementation" were not higher in the EU than in other large WTO Members. The EU's administration of several laws and regulations pertaining to customs classification and valuation, and the review of administrative actions relating to customs matters were the subject of WTO dispute settlement in 2005-06.<sup>9</sup>

---

<sup>1</sup> Council Regulation (EEC) No. 2913/92, 12 October 1992 (OJ L 302, 19 October 1992); and Commission Regulation (EEC) No. 2454/93, 2 July 1993 (OJ L 253, 11 October 1993).

<sup>2</sup> Regulation (EC) No 450/2008 of the European Parliament and of the Council, 23 April 2008 (OJ L45, 4 June 2008).

<sup>3</sup> Article 4(16), Council Regulation (EEC) No. 2913/92, 12 October 1992.

<sup>4</sup> European Commission online information, "Legislation". Viewed at: [http://ec.europa.eu/taxation\\_customs/common/legislation/index\\_en.htm](http://ec.europa.eu/taxation_customs/common/legislation/index_en.htm).

<sup>5</sup> European Commission document TAXUD/1426/2007 Revision 2, 18 December 2008. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/policy\\_issues/customs\\_trade\\_consultations/tcg\\_terms\\_of\\_reference\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/policy_issues/customs_trade_consultations/tcg_terms_of_reference_en.pdf).

<sup>6</sup> Article 243, Council Regulation (EEC) No. 2913/92, 12 October 1992.

<sup>7</sup> See, for example, WTO document WT/TPR/M/214, 8 June 2009, and Add.1, 2 July 2009.

<sup>8</sup> WTO document WT/TPR/M/214, 8 June 2009.

<sup>9</sup> See WTO document series WT/DS315.

5. The time needed to complete import procedures varies among member States.<sup>10</sup> It is among the shortest in the world for Cyprus, Denmark, Estonia, Luxembourg, the Netherlands, and Sweden, but around twice the OECD average for Bulgaria, Greece, Poland, Slovakia, and Slovenia. According to the Commission, these differences are due to geographical and logistical factors, and do not lead traders to favour particular ports.

6. From July 2009, persons established in the EU who are involved in activities covered by customs legislation must be in possession of a national number that is valid as an Economic Operator Registration and Identification (EORI) number, issued by the competent authority of the member State in which they are established. Numbers valid as EORI numbers are unique to each person and recognized throughout the EU; prior to their introduction, registration and issue of identification numbers were regulated at the national level. Non-established persons must obtain an EORI number if they perform one of the activities listed in Article 41(3) of the Customs Code Implementing Regulation; they must request an EORI number from the member State where they first perform one of these activities. The Commission maintains a document containing the list of authorities responsible for assigning EORI numbers in each member State.<sup>11</sup>

7. During the period under review, the EU introduced advance cargo information requirements for imports as part of the so-called "safety and security amendment" to the Customs Code.<sup>12</sup> From 2011, carriers must lodge an electronic Entry Summary Declaration (ENS) with the "customs office of first entry" into the EU. Article 181c of the Customs Code Implementing Regulation sets out several exceptions. In addition, the ENS is not required for imports covered by a security agreement between the EU and another country. These agreements exist with Norway and Switzerland; the agreement with Switzerland extends to Liechtenstein; an agreement with Andorra has been negotiated and is expected to enter into force in 2011. The ENS must be submitted electronically within the time limits specified for each mode of transportation (Table III.1). Annex 30A of the Customs Code Implementing Regulation specifies the data elements that must be provided as part of the ENS. The safety and security amendment was not subject to impact assessment. According to the Commission, the safety and security amendment is in line with the World Customs Organization's (WCO) SAFE Framework of Standards adopted by the WCO Council in June 2005.

8. Member States conduct risk analysis for customs control purposes on the basis of the information contained in the ENS. A common risk management framework has been operational since January 2007.<sup>13</sup> The principles that govern risk management in the EU are set out in the Customs Code Implementing Regulation.<sup>14</sup>

9. The Electronic Customs Decision instructed the European Commission to evaluate, in partnership with member States, "the common functional specifications" for a framework of single

---

<sup>10</sup> Based on World Bank online information, "Doing Business: Measuring Business Regulations", which compiles procedural requirements for exporting and importing a standardized cargo of goods by ocean transport. Documents associated with every official procedure are counted—from the contractual agreement between the parties to the delivery of goods—along with the time and cost necessary for completion. Viewed at: <http://www.doingbusiness.org/methodology/trading-across-borders>.

<sup>11</sup> See European Commission document TAXUD D(2009) 1608 rev. 5, 26 November 2010. Viewed at: [http://ec.europa.eu/ecip/documents/who\\_is/eori\\_national\\_implementation\\_en.pdf](http://ec.europa.eu/ecip/documents/who_is/eori_national_implementation_en.pdf); and TAXUD/2008/1633 rev.2, 23 August 2010. Viewed at: [http://ec.europa.eu/ecip/documents/who\\_is/taxud1633\\_2008\\_rev2\\_en.pdf](http://ec.europa.eu/ecip/documents/who_is/taxud1633_2008_rev2_en.pdf).

<sup>12</sup> Regulation (EC) No. 648/2005, 13 April 2005 (OJ L 117, 4 May 2005); Commission Regulation (EC) No. 1875/2006, 18 December 2006 (OJ L 360, 19 December 2006); Commission Regulation (EC) No. 312/2009, 16 April 2009 (OJ L 98, 17 April 2009); and Commission Regulation (EC) No. 414/2009, 30 April 2009 (OJ L 125, 21 May 2009).

<sup>13</sup> Regulation (EC) No. 648/2005 of the European Parliament and of the Council, 13 April 2005.

<sup>14</sup> Articles 4f-j.

window services by 15 February 2011.<sup>15</sup> According to the Decision, single window services would involve the "seamless flow of data" between economic operators, customs authorities and other agencies, and the European Commission. In addition, it would allow economic operators to submit all information required for customs clearance, including information required by agencies other than Customs. Member States endorsed the common functional specifications for the preparatory phase of single window services in December 2010. The preparatory phase focuses on the automated validation of the customs declaration's supporting documentation.

**Table III.1**  
**Time limits for the entry summary declaration, January 2011**

Transportation mode	Time limit for ENS submission
Containerized maritime cargo (except short sea)	24 hours before loading in each foreign load port if the vessel makes at least one call at a port in the customs territory of the EU
Bulk and break bulk maritime cargo (except short sea)	4 hours before arrival at the first port in the customs territory of the EU
Short-sea shipping: Between the customs territory of the EU (except French overseas departments, Azores, Madeira and Canary Islands) and Greenland, Faroe Islands, Ceuta, Melilla, Iceland, ports on the Baltic Sea, ports on the North Sea, ports on the Black Sea, ports on the Mediterranean, and all ports of Morocco	2 hours before arrival at the first port in the customs territory of the EU
Movements with a duration of less than 24 hours between a territory outside the customs territory of the EU and the French overseas departments, Azores, Madeira and Canary Islands	2 hours before arrival at the first port in the customs territory of the EU
Short haul flights (less than 4 hours duration)	By the time of take off
Long haul flights (duration of 4 hours or more)	4 hours before arrival at the first airport in the customs territory of the EU
Rail and inland waterways	2 hours before arrival at the customs office of entry in the customs territory of the EU
Road traffic	At least 1 hour before arrival at the customs office of entry in the customs territory of the EU
Combined transport	The applicable time limit is determined by the mode of transport that enters the customs territory of the EU

*Source:* WTO Secretariat, based on European Commission working document TAXUD/2010/0051, Customs Code Committee: Guidelines on entry and summary declarations in the context of Regulation No. 648/2005, 29 October 2010.

10. EU member States may grant authorized economic operator status to interested persons involved in activities covered by customs legislation. EU customs legislation specifies the criteria that member States must consider in assessing applications for authorized economic operator status.<sup>16</sup> Participation in authorized economic operator programmes is voluntary. Programme benefits depend on the type of certificate granted to the economic operator, and may include fewer customs controls, priority treatment during customs controls, and reduced data requirements when filing an ENS. The European Commission has published guidelines to ensure "a common understanding and uniform application of the new customs legislation related to the [authorized economic operator] concept, and to guarantee the transparency and an equal treatment of economic operators."<sup>17</sup> In addition, the EU set up a helpdesk and a dedicated network of contact points between the Commission and national customs authorities to ensure the uniform application of the authorized economic operator programme.

<sup>15</sup> Article 4(4), Decision No. 70/2008/EC of the European Parliament and of the Council, 15 January 2008 (OJ L 23, 26 January 2008).

<sup>16</sup> Articles 5a (2), Council Regulation (EEC) No. 2913/92, 12 October 1992 and Article 14h-k, Commission Regulation (EEC) No. 2454/93, 2 July 1993.

<sup>17</sup> European Commission document TAXUD/2006/1450, 29 June 2007. Viewed at: [http://ec.europa.eu/ecip/documents/who\\_is/aeo\\_guidelines\\_en.pdf](http://ec.europa.eu/ecip/documents/who_is/aeo_guidelines_en.pdf).



11. Participation in EU authorized economic operator programmes is not open to persons established outside the EU, unless the economic operator is established in a country that has concluded a mutual recognition agreement with the EU. There is one such agreement, with Japan. Non-established airline and shipping companies that have a regional office in the EU and that benefit from certain customs simplification measures under the Customs Code Implementing Regulation may also apply for authorized status.<sup>18</sup> Applications for authorized status must be submitted to the member State with "the best knowledge of the applicant's customs related activities".<sup>19</sup> Authorized status granted by one member State must be recognized by the customs authorities of all other member States.

12. Under EU customs legislation, national customs administrations must issue advance written rulings on tariff classification and origin matters.<sup>20</sup> Advance rulings issued by the customs authorities of one member State are binding on national customs authorities of all other member States.<sup>21</sup> The Customs Code Implementing Regulation sets out a procedure to resolve inconsistencies in binding information issued by two or more member States.<sup>22</sup> The European Commission maintains a public online database of advance written rulings on tariff classification.<sup>23</sup>

13. The 2007 *Customs Audit Guide*, agreed between the Commission and member States, sets out a voluntary framework for post-clearance audits carried out by national authorities of member States.

#### (ii) Customs valuation

14. There have been no changes in customs valuation legislation since the last Review of the EU, in 2009. The main legislation is the EU Customs Code (Articles 28-36), and its Implementing Regulation (Articles 141-181a, and Annexes 23-29). The EU notified its customs valuation legislation and replied to the checklist of issues on customs valuation to the GATT, prior to the establishment of the WTO.<sup>24</sup>

15. The transaction value is the primary basis for determining customs value in the EU. It includes international freight, insurance, and other c.i.f. charges.<sup>25</sup> Around 95% of all import declarations are accepted in accordance with the transaction value method. Administrative and judicial review of customs valuation decisions are subject to appeal in each member State (see section (i) above).

16. The Customs Valuation Section of the Customs Code Committee has published a compendium with commentaries and conclusions on specific valuation topics.<sup>26</sup> The compendium, which contains an overview of European Court of Justice rulings relating to customs valuation, is updated regularly and available to the public.

<sup>18</sup> Articles 324e, 445, and 448.

<sup>19</sup> European Commission document TAXUD/2006/1450, 29 June 2007. Viewed at: [http://ec.europa.eu/ecip/documents/who\\_is/aeo\\_guidelines\\_en.pdf](http://ec.europa.eu/ecip/documents/who_is/aeo_guidelines_en.pdf).

<sup>20</sup> Article 12, Council Regulation (EEC) No. 2913/92, 12 October 1992.

<sup>21</sup> Articles 5 and 11, Commission Regulation (EEC) No. 2454/93, 2 July 1993.

<sup>22</sup> Article 9.

<sup>23</sup> European Commission online information, "European Binding Tariff Information". Viewed at: [http://ec.europa.eu/taxation\\_customs/dds2/ebti/ebti\\_home.jsp?Lang=en](http://ec.europa.eu/taxation_customs/dds2/ebti/ebti_home.jsp?Lang=en).

<sup>24</sup> GATT documents L/5008, 22 July 1980, and VAL/2/Rev.1/Add.6, 29 October 1981.

<sup>25</sup> Article 32.1(e), Council Regulation (EEC) No 2913/92, 12 October 1992.

<sup>26</sup> European Commission document TAXUD/800/2002-EN, September 2008. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_duties/declared\\_goods/european/compendium\\_2008\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_duties/declared_goods/european/compendium_2008_en.pdf).

**(iii) Rules of origin**

17. The EU applies non-preferential and preferential rules of origin. The legal basis for non-preferential rules of origin is Articles 22-26 of the Customs Code, and Articles 35-65 of the Implementing Regulation. Non-preferential rules of origin are applied for several purposes, including the application of quantitative restrictions, MFN tariff quotas, origin marking, contingency measures, and government procurement.

18. The test to determine the origin for non-preferential purposes of imported goods produced in more than one country is "substantial transformation". Under this test, a good is considered to originate in the country where it underwent its "last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture".<sup>27</sup> For certain goods, a list of working or processing operations is contained in Annexes 10 and 11 of the Implementing Regulation. Furthermore, the "list rules" published by the European Commission provide guidance to national customs authorities in assessing "substantial transformation".<sup>28</sup> In general, these rules are expressed as a shift in tariff heading or subheading in the HS nomenclature, a specified minimum level of value added, or a specific manufacturing or processing operation.

19. In October 2010, the European Parliament adopted the Commission's proposal for a regulation establishing a scheme for origin marking.<sup>29</sup> The proposed regulation would introduce compulsory origin marking for certain industrial products imported from non-EU countries except Iceland, Liechtenstein, Norway, Switzerland, and Turkey. The proposed regulation's definition of country of origin is based on the EU's non-preferential rules of origin. The products covered include textiles, footwear, leather, furniture, ceramic, and jewellery. The draft regulation must be adopted by the Council before its entry into force. Agricultural products and foodstuffs are already subject to origin marking or labelling for health, safety, or other regulatory purposes.

20. Preferential rules of origin are maintained under preferential arrangements. In general, to benefit from preferential treatment, goods that incorporate inputs from non-partner or non-beneficiary countries must undergo a certain amount of working or processing in the partner country or in the beneficiary country, as specified in an annex to each of the arrangements.

21. A regulation containing revised rules of origin for GSP entered into force in January 2011.<sup>30</sup> According to the Commission, this regulation "relaxes and simplifies rules and procedures for developing countries wishing to access the EU's preferential trade arrangements, while ensuring the necessary controls are in place to prevent fraud".<sup>31</sup> A study conducted by the Commission in 2007 concluded that the perceived complexity and restrictiveness of the rules of origin that existed prior to

---

<sup>27</sup> Article 24, Council Regulation (EEC) No. 2913/92, 12 October 1992.

<sup>28</sup> European Commission online information, "Table of list rules applicable to products". Viewed at: [http://ec.europa.eu/taxation\\_customs/customs/customs\\_duties/rules\\_origin/non-preferential/article\\_1622\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/non-preferential/article_1622_en.htm).

<sup>29</sup> European Commission document COM(2005) 661 final, 16 December 2005. Viewed at: <http://www.europeanlawmonitor.org/legislation/2005/COM2005661text.pdf>; and European Parliament press release, "MEPs vote for country-of-origin markings on non-EU goods, 21 October 2010. Viewed at: <http://www.europarl.europa.eu/en/pressroom/content/20101020IPR89448/html/MEPs-vote-for-country-of-origin-markings-on-non-EU-goods>.

<sup>30</sup> Commission Regulation (EU) No. 1063/2010, 18 November 2010 (OJ L 307, 23 November 2010).

<sup>31</sup> EU online information, "New developments: the future of rules of origin". Viewed at: [http://ec.europa.eu/taxation\\_customs/customs/customs\\_duties/rules\\_origin/preferential/article\\_777\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/preferential/article_777_en.htm).

the introduction of the revised rules partly explained the low use of certain GSP preferences, particularly for products of interest to the least developed countries.<sup>32</sup>

22. The revised GSP rules of origin are expressed as changes of HS tariff heading or subheading, specific processing requirements, or value-added requirements. The sectors that use methods other than value added include agricultural and processed agricultural products, steel and non-ferrous metals, footwear, textiles and clothing, leather, and headgear and feathers. The limit on the use of non-originating materials (the "general tolerance" level) has been raised from 10% to 15%. Products under HS Chapters 50-63 remain subject to specific tolerance rules.

23. Origin rules based on the value-added method allow up to 70% content of non-originating materials for most industrial and processed agricultural products originating in the least developed countries, compared with up to 50% for other GSP beneficiary countries. For most apparel products originating in the least-developed countries, the double transformation requirement has been replaced with a single transformation requirement.

24. The revised rules of origin maintain the possibility of cumulating origin among the members of a regional group, subject to conditions. Regional cumulation operates within three regional groups.<sup>33</sup> In addition, the revised regulation adds a fourth group consisting of Argentina, Brazil, Paraguay, and Uruguay, and allow cumulation across certain groups, subject to conditions. Certain sensitive products are excluded from regional cumulation.

25. GSP beneficiary countries may cumulate origin with goods under Chapters 25-97 from Norway, Switzerland, Liechtenstein, and, with the entry into force of the revised rules of origin, Turkey.<sup>34</sup> Furthermore, the Commission may, upon request from a GSP beneficiary country, allow "extended" cumulation between that beneficiary and a country that has a free-trade agreement in force with the EU, subject to conditions. Products under Chapters 1-24 are excluded from extended cumulation.

26. Under the revised rules, a new self-certification system, the Registered Exporter System (REX), will replace the current system of origin certification by public authorities from January 2017. Under the REX, GSP beneficiary countries must set up an electronic record of registered exporters and transmit it to the European Commission. GSP beneficiary countries may receive an additional three years for the implementation of the REX if they are not in a position to implement the new system by 1 January 2017.

27. In the context of its previous Review, the European Union indicated that it would consider extending the revised rules of origin for GSP to other arrangements, depending on the level of development of the countries involved, and "once the rules are adopted and tested within the GSP scheme".<sup>35</sup>

---

<sup>32</sup> European Commission internal document TAXUD/GSP-RO/IA/1/07, 25 October 2007. Viewed at: [http://ec.europa.eu/taxation\\_customs/customs/customs\\_duties/rules\\_origin/preferential/article\\_777\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/preferential/article_777_en.htm).

<sup>33</sup> Brunei-Darussalam, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, and Viet Nam (group I); Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru, and Venezuela (group II); and Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka (group III).

<sup>34</sup> Agreement in the form of an Exchange of Letters between the Community and each of the EFTA countries that grants tariff preferences under the GSP (Norway and Switzerland), providing that goods originating in Norway or Switzerland shall be treated on their arrival on the customs territory of the Community as goods with content of Community origin (reciprocal agreement), OJ L 38, 8 February 2001.

<sup>35</sup> WTO document WT/TPR/M/214/Add.1, 2 July 2009.

(iv) **Tariffs**

(a) MFN tariff

28. The EU grants MFN or better treatment to WTO and non-WTO Members.

29. Under the Treaty on the Functioning of the EU, common customs tariff duties are set by the European Parliament and the Council, or the Council based on a proposal from the Commission.<sup>36</sup> The basic legal instrument on the tariff is Regulation No. 2658/87.<sup>37</sup> The tariff nomenclature, known as the Combined Nomenclature, is based on the Harmonized Commodity Description and Coding System (HS). The 2011 tariff reflects the fourth amendment to the HS (HS 2007). The nomenclature and the rates of duty are contained in Annex I of Regulation No. 2658/87. An updated version of Annex I is published annually as a Commission regulation in the L-Series of the *Official Journal*.<sup>38</sup> The Combined Nomenclature is specified at the eight-digit level.

30. The EU maintains a public, online database that integrates tariff rates and other measures, including quantitative restrictions and contingency measures, applied on imports (and exports). According to the Commission, the database, known as TARIC, "secures the uniform application [of these measures] by all Member States and gives all economic operators a clear view of all measures to be undertaken when importing or exporting goods."<sup>39</sup> The codes under TARIC are specified at the ten-digit level.

31. The following analysis is based on the 2011 tariff. Apart from *ad valorem* duties, the EU applies several non-*ad valorem* type duties, mostly on agricultural products. Furthermore, the EU uses seasonal duties and duties that are reduced if a product's declared price is above a certain level (entry price system).<sup>40</sup> Entry prices apply on 28 tariff lines at the 8-digit level, including tomatoes, cucumbers, courgettes, citrus fruits, grapes, apricots, and plums. The EU uses the "Meursing Table" to determine the customs tariffs for processed agricultural products based on what they are made of. These products include confectionary, cakes, and biscuits. Their tariffs are defined according to the level of milk fats and proteins, sugar, and starch they contain. The table results in thousands of possible combinations of tariffs.

32. The Secretariat used average unit values to estimate the *ad valorem* equivalents (AVEs) of non-*ad valorem* tariff rates. The data used to calculate import unit values are from Eurostat for 2010. The analysis excludes 144 lines for which AVEs could not be estimated.<sup>41</sup> In the context of this Review, the Commission expressed reservations about the Secretariat's methodology for estimating AVEs.<sup>42</sup>

<sup>36</sup> Article 31, Treaty on the Functioning of the European Union.

<sup>37</sup> Council Regulation (EEC) No. 2658/87, 23 July 1987 (OJ L 256, 7 September 1987).

<sup>38</sup> The latest version is contained in Commission Regulation (EU) No. 861/2010, 5 October 2010 (OJ L 284, 29 October 2010).

<sup>39</sup> European Commission online information, "Online customs tariff database (TARIC)". Viewed at: [http://ec.europa.eu/taxation\\_customs/customs/customs\\_duties/tariff\\_aspects/customs\\_tariff/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_duties/tariff_aspects/customs_tariff/index_en.htm).

<sup>40</sup> The rules for the application of the entry price for fruit and vegetables are laid down in Regulation (EC) No 1580/2007, 21 December 2007 (OJ L 350, 31 December 2007).

<sup>41</sup> AVEs were not estimated for lines with no or very low imports, or no entry prices; regarding compound or alternate tariffs, only the *ad valorem* component was used for the analysis.

<sup>42</sup> The Commission indicates that any calculation of AVEs has shortcomings that can lead to distortions in the characterization of the actual level of tariff protections. The Commission notes that it is therefore important to treat results of AVE calculations with great caution, bearing in mind that the result can be influenced by several elements, including: the base period and partners chosen; commodity prices; exchange

33. The 2011 tariff comprises 9,294 lines at the eight-digit level, some 400 lines less than in 2008 (Table III.2). According to the Commission, the decrease in the number of tariff lines since 2008 is the result of the modernization of the EU's tariff nomenclature. The simple average applied MFN tariff rate, including the AVEs of non-*ad valorem* tariff rates, was 6.4%, slightly less than in 2008. Based on the relevant WTO definition, the average applied rate for agriculture fell to 15.2% from 17.9% in 2008. This reflects increases in prices of agricultural products and the resulting reduction in the AVEs of non-*ad valorem* tariff rates applied on such products. The average applied rate for non-agricultural products remained unchanged at 4.1%. Around one-quarter of all tariff lines are duty free; and approximately 9% of lines are "nuisance" rates.

34. Close to 9% of all tariff lines have MFN rates exceeding 15%. Under the WTO definition, dairy is subject to the highest average tariff rate, followed by tobacco, live animals and their products, and grains (Table III.3). All rates above 100% are AVEs relating to agricultural goods; these apply on prepared or preserved mushrooms (200.6% and 153.7%), concentrated or sweetened milk and cream (164.8%), whey (139%), olive oil (159.3%), certain meats and edible meat offal (157.8% and 122.9%), and isoglucose (120.6%). The highest rates for non-agricultural products apply on motor vehicles (22%) and on fish (22-26%).

**Table III.2**  
**Structure of MFN tariffs**  
(%)

	2006	2008	2011
Total number of lines	9,843	9,699	9,294
Bound tariff lines (% of all tariff lines)	100.0	100.0	100.0
Duty-free tariff lines (% of all tariff lines)	26.0	25.3	25.0
Dutiable tariff lines average rate (%)			8.5
Non- <i>ad valorem</i> tariffs (% of all tariff lines) <sup>a</sup>	10.0	10.1	10.5
Tariff quotas (% of all tariff lines)	3.4	4.8	4.9
Non- <i>ad valorem</i> tariffs with no AVEs (% of all tariff lines)	2.1	2.7	2.9
Domestic tariff "spikes" (% of all tariff lines) <sup>b</sup>	5.6	5.3	5.7
International tariff "peaks" (% of all tariff lines) <sup>c</sup>	9.0	8.4	8.7
Overall standard deviation of applied rates	14.0	14.1	10.3
"Nuisance" applied rates (% of all tariff lines) <sup>d</sup>	9.4	9.6	8.8

a Excluding Petroleum.

b Domestic tariff spikes are defined as those exceeding three times the overall simple average applied rate.

c International tariff peaks are defined as those exceeding 15%.

d Nuisance rates are those greater than zero, but less than or equal to 2%.

Source: WTO Secretariat estimates, based on Common Customs Tariff, OJ L 284, 29 October 2010, and IDB WTO database.

35. Around 11% of tariff lines are non-*ad valorem*. On average, these continue to afford higher protection than *ad valorem* rates. The average AVE of non-*ad valorem* tariff rates is 24.7%, compared with 4.6% for *ad valorem* duties. Apart from agricultural products, non-*ad valorem* tariff rates apply on 34 tariff lines, including mostly glass and watches, watch and clock movements, and watch cases.

rates; shocks in specific markets; treatment of mixed tariffs and tariff lines for which trade data are not available; and the extent to which preferential trade is included in the unit value calculation.

**Table III.3**  
**Summary analysis of MFN tariff, 2011**

Analysis	No. of lines <sup>a</sup>	Applied 2011 rates			CV
		Simple avg. tariff (%)	Range tariff (%)	Std-dev (%)	
<b>Total</b>	9,294	6.4	0-200.6	10.3	1.6
HS 01-24	2,251	15.0	0-200.6	17.6	1.2
HS 25-97	7,043	3.7	0-85.7	3.8	1.0
<b>By WTO definition<sup>b</sup></b>					
<b>Agriculture</b>	1,998	15.2	0-200.6	18.9	1.2
Live animals and products thereof	323	22.2	0-157.8	23.4	1.1
Dairy products	151	32.6	1-164.8	27.7	0.9
Coffee and tea, cocoa, sugar, etc.	293	15.6	0-120.6	15.7	1.0
Cut flowers and plants	54	4.6	0-19.2	4.4	1.0
Fruit and vegetables	428	15.0	0-200.6	15.1	1.0
Grains	55	21.6	0-70.8	17.1	0.8
Oil seeds, fats, oils and their products	164	7.3	0-159.3	17.0	2.3
Beverages and spirits	279	13.8	0-117.7	17.2	1.3
Tobacco	20	25.8	6.2-74.9	23.0	0.9
Other agricultural products	231	5.9	0-93	12.1	2.0
<b>Non-agriculture (excl. petroleum)</b>	7,255	4.1	0-26	4.1	1.0
Fish and fishery products	375	11.1	0-26	6.2	0.6
Mineral products, precious stones and precious metals	477	2.5	0-12	3.0	1.2
Metals	1,002	1.7	0-10	2.2	1.3
Chemicals and photographic supplies	1,247	4.4	0-17.3	2.6	0.6
Leather, rubber, footwear and travel goods	275	4.9	0-17	4.6	0.9
Wood, pulp, paper and furniture	446	1.2	0-10	2.3	1.9
Textiles and clothing	1,207	8.0	0-12	3.1	0.4
Transport equipment	257	5.0	0-22	5.0	1.0
Non-electric machinery	885	1.7	0-9.7	1.4	0.8
Electric machinery	451	2.8	0-14	3.2	1.1
Non agricultural articles n.e.s.	633	2.5	0-13.9	1.9	0.8
<b>By ISIC sector<sup>c</sup></b>					
Agriculture, hunting, forestry and fishing	555	8.7	0-93	12.4	1.4
Mining	117	0.2	0-8	1.2	4.7
Manufacturing	8,621	6.3	0-200.6	10.2	1.6
<b>By stage of processing</b>					
Raw materials	1,142	6.8	0-93	10.2	1.5
Semi-processed products	2,764	4.8	0-124.4	6.8	1.4
Fully-processed products	5,388	7.1	0-200.6	11.6	1.6

a Total number of lines is listed. Tariff rates are based on a lower number of lines, since lines with no AVEs have been excluded.

b 41 tariff lines on petroleum products are not taken into account.

c International Standard Industrial Classification (Rev.2). Electricity, gas and water are excluded (1 tariff line).

Note: CV = coefficient of variation.

Source: WTO Secretariat estimates, based on Common Customs Tariff, OJ L 284, 29 October 2010, and IDB WTO database.

36. The tariff shows escalation between semi- and fully processed goods, and reverse escalation between raw materials and semi-processed goods (Table III.3). Tariff quotas cover around 5% of tariff lines (Chapter IV(1)).

(b) WTO bindings

37. The EU bound all tariff lines. In general, applied tariffs are at their bound rates. The average bound tariff rate is 6.4%.

38. The WTO certified Schedule of Concessions reflecting the EU's enlargement from 12 to 15 member States became effective in February 2010.<sup>43</sup> The EU's commitments with respect to agricultural market access, domestic support, and export subsidies to reflect the enlargement from 15 to 27 member States have not yet been formally agreed in the WTO and consolidated in the EU's Schedule (see Chapter II(3)).

39. The EU is covered by the collective General Council waiver suspending the application of GATT binding disciplines to allow WTO Members to implement the HS 2007 changes pending the incorporation of these changes into their schedules of concessions.<sup>44</sup> This waiver expires in December 2011

(c) Tariff suspensions

40. The Council may approve "autonomous" tariff suspensions and quotas on the basis of a proposal from the Commission. These are temporary measures defined as "an exception to the normal state of affairs [that] permit the total ... or partial waiver ... of the normal duties applicable to imported goods".<sup>45</sup> According to the Commission, these measures allow enterprises to obtain supplies at a lower cost, thus improving their competitive capacity and stimulating economic activity in the EU. In addition to raw materials and semi-finished goods not available within the EU, tariff suspensions may cover finished products and manufacturing equipment, subject to conditions. Once an autonomous tariff suspension has been approved for a particular good, any person may import that good at the autonomous tariff rate.

41. Member States transmit requests for autonomous tariff suspensions to the Commission, which examines them with the assistance of the Economic Tariff Questions Group representing the industries of each member State. In 2011, 1.3% of tariff lines are subject to autonomous tariff suspensions, compared with 1.4% in 2008. According to the Commission, as a general rule autonomous tariff suspensions are opened for a period of five years, and are automatically prolonged if they are used sufficiently. The Commission notes that an early termination of these measures is possible if economic circumstances change; measures are reviewed regularly, and interested parties may request to delete them. Products covered include basic chemicals, components for the microelectronics industry, and components for heavy and industrial machinery.

(d) Preferential tariffs

42. The EU grants tariff preferences unilaterally or in the context of bilateral or regional free-trade agreements (see Chapter II(4)). Based on data provided by the Commission, the Secretariat estimated the average tariff rates applied on the EU's preferential partners in 2011 (Table AIII.1).

(v) Other charges

43. In general, domestic and imported goods and services are subject to VAT in all member States, in accordance with the so-called VAT Directive.<sup>46</sup> VAT is assessed on the customs value plus duties, other charges, and incidental expenses for imports, and on the sale price for domestic products. VAT on imports must generally be paid at the time of customs clearance. Goods are treated as imports for VAT purposes if they arrive from outside the EU (within the meaning of the VAT Directive) or via another EU country without having been released for free circulation. Imported

<sup>43</sup> WTO document WT/Let/666, 19 March 2010.

<sup>44</sup> WTO document WT/L/809, 16 December 2010.

<sup>45</sup> European Commission document 98/C 128/02 (OJ C 128/2, 25 April 1998).

<sup>46</sup> Council Directive 2006/112/EC, 28 November 2006 (OJ L 347, 11 December 2006).

goods are in free circulation once the applicable duties have been paid and the customs formalities complied with.

44. VAT rates differ across member States. The standard rate applied by member States must be at least 15%, and member States may apply up to two reduced rates of at least 5% on 21 categories of supplies of goods and services listed in Annex III of the VAT Directive, including food, water, medicines, certain medical equipment, books, newspapers, periodicals, certain agricultural inputs, passenger transport, renovation and repairing of private dwellings, social services that do not fulfil the conditions for exemption, and admission to sporting events. There are multiple derogations to the basic rate structure, resulting in the application in member States of different combinations of rates.<sup>47</sup> Standard VAT rates cover about two thirds of total consumption, with the remainder subject to other rates.<sup>48</sup>

45. Member States may derogate from the VAT rules in specific circumstances and subject to Council authorization.<sup>49</sup> The Commission publishes a list of the derogations in force in member States.<sup>50</sup> In addition, under the VAT Directive, member States may retain "notified" derogation measures, provided these fulfil certain criteria and were applicable on 1 January 1977 and notified to the Commission before 1 January 1978.<sup>51</sup>

46. Domestic and imported alcoholic beverages, manufactured tobacco products, and energy products, including gasoline, natural gas, and electricity are subject to excise duties in all EU member States. Excise duty rates applied on these products vary across member States, but must be at least equal to the minimum rates established in EU legislation, which also defines the product categories subject to excise duties, and the basis on which they must be calculated.<sup>52</sup> A Council Directive adopted in February 2010 gradually increases minimum excise duty rates on cigarettes and fine-cut tobacco.<sup>53</sup> EU member States have not yet agreed to increase the minimum rates on alcoholic beverages, in line with inflation, as proposed by the Commission in 2006.<sup>54</sup> The Excise Duty Tables published by the Commission contain the rates of excise duty on alcoholic beverages, tobacco, and energy levied by member States.<sup>55</sup>

47. Under Council Directive 92/83/EEC, member States may levy reduced excise duty rates on beer and ethyl alcohol produced by small domestic breweries and distilleries, as defined in the Directive. Reduced rates may be lower than the minimum rates defined in EU legislation, but not less than half the rate of the standard excise duty on these products. Under the Directive, member States

<sup>47</sup> Articles 102-129, Council Directive 2006/112/EC, 28 November 2006.

<sup>48</sup> European Commission document COM(2010) 695 final, 1 December 2010. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/common/consultations/tax/future\\_vat/com\(2010\)695\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/future_vat/com(2010)695_en.pdf).

<sup>49</sup> Articles 395 and 396, Council Directive 2006/112/EC, 28 November 2006.

<sup>50</sup> European Commission online information, "Table of derogations". Viewed at: [http://ec.europa.eu/taxation\\_customs/taxation/vat/key\\_documents/table\\_derogations/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/vat/key_documents/table_derogations/index_en.htm).

<sup>51</sup> Article 394, Council Directive 2006/112/EC, 28 November 2006.

<sup>52</sup> Council Directive 92/83/EEC, 19 October 1992 (OJ L 316, 31 October 1992); Council Directive 92/84/EEC, 19 October 1992 (OJ L 316, 31 October 1992); Commission Regulation (EC) No 3199/93, 22 November 1993 (OJ L 288, 23 November 1993); Council Directive 95/59/EC, 27 November 1995 (OJ L 291, 6 December 1995); Council Directive 92/79/EEC, 19 October 1992 (OJ L 316, 31 October 1992); Council Directive 92/80/EEC, 19 October 1992 (OJ L 316, 31 October 1992); and Council Directive 2003/96/EC, 27 October 2003 (OJ L 283, 31 October 2003).

<sup>53</sup> Council Directive 2010/12/EU, 16 February 2010 (OJ L 50, 27 February 2010).

<sup>54</sup> European Commission document COM(2006) 486 final, 8 September 2006. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/excise\\_duties/alcoholic\\_beverages/com\(2006\)486\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/excise_duties/alcoholic_beverages/com(2006)486_en.pdf).

<sup>55</sup> European Commission document Ref 1.032, Excise Duty Tables (Parts I-III), January 2011. Viewed at: [http://ec.europa.eu/taxation\\_customs/taxation/excise\\_duties/alcoholic\\_beverages/rates/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/excise_duties/alcoholic_beverages/rates/index_en.htm).



must apply the reduced rate on eligible beer and ethyl alcohol from other EU member States.<sup>56</sup> According to the Commission, although the Directive is silent on whether similar reduced rates should be granted on beer and ethyl alcohol from outside the EU, in practice similar tax reductions are provided in accordance with GATT commitments, usually on condition of a certificate of eligibility by the relevant national authority where the brewery or distillery is established. The member States that maintain reduced excise duty rates for small domestic breweries or distilleries are Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Latvia, Luxembourg, the Netherlands, Portugal, Romania, Slovakia, and the United Kingdom.

48. Apart from VAT and excise duties on alcohol, tobacco, and energy, member States levy taxes on other goods and services. The European Commission maintains a public database on member States' main taxes in revenue terms, and a list of minor taxes.<sup>57</sup>

**(vi) Contingency measures**

49. According to the European Commission, "the defence of EU production against international trade distortions should be considered as a necessary component of an open and fair trade strategy".<sup>58</sup>

50. In January 2008, the European Commission concluded that "more reflection time is needed to seek the right answers to questions which were raised during the intensive and somewhat controversial discussion on the TDI [trade defence instrument] review process".<sup>59</sup> According to the Commission, this decision was taken due to the lack of consensus among member States and the European Parliament; the Commission continues to believe that the periodic review of its contingency measures will help to ensure their effectiveness. In this context the EU Trade Commissioner indicated that, once the economic crisis subsides, he plans to revisit "the question of whether our [contingency] instruments can be further refined, also in the light of any changes which may be required as a result of the Doha round".<sup>60</sup> During the period under review, the Commission and member States agreed on ways to improve transparency in investigations. As a result, during 2010 the Commission revamped the TDI website and improved disclosures in investigations, among other initiatives.<sup>61</sup>

51. Aspects of EU contingency measures were the subject of three WTO disputes during the review period. Two complaints were brought by China and one by India (Table AII.1).<sup>62</sup>

52. According to the European Commission, 0.6% of total EU imports were subject to contingency measures in 2009, the same level as the year before.

<sup>56</sup> Articles 4.3 and 22.3.

<sup>57</sup> European Commission online information, "Taxes in Europe database". Viewed at: [http://ec.europa.eu/taxation\\_customs/taxation/gen\\_info/info\\_docs/tax\\_inventory/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/gen_info/info_docs/tax_inventory/index_en.htm); and "List of minor taxes, 2010 edition". Viewed at: [http://ec.europa.eu/taxation\\_customs/taxation/gen\\_info/info\\_docs/tax\\_inventory/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/gen_info/info_docs/tax_inventory/index_en.htm). Minor taxes are defined as taxes yielding less than 0.1% of GDP in revenue.

<sup>58</sup> Europa online information, "Speaking Points: Anti-dumping cases state of play and perspectives", Karel de Gucht, European Commissioner for Trade, 24 November 2010. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc\\_147051.pdf](http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_147051.pdf).

<sup>59</sup> European Commission document SEC(2009) 1413, 26 October 2009. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc\\_145263.pdf](http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145263.pdf).

<sup>60</sup> Europa online information, "Opening Statement to the European Parliament", Karel de Gucht, European Commissioner for Trade November 2010. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/february/tradoc\\_145788.pdf](http://trade.ec.europa.eu/doclib/docs/2010/february/tradoc_145788.pdf).

<sup>61</sup> European Commission document SEC(2010) 558 final, 13 October 2010. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/december/tradoc\\_147086.pdf](http://trade.ec.europa.eu/doclib/docs/2010/december/tradoc_147086.pdf).

<sup>62</sup> See WTO document series WT/DS405, DS397, and DS385.

(a) Anti-dumping and countervailing duties

53. The main EU legislation is contained in Regulation No. 1225/2009 on anti-dumping (AD) and Regulation No. 597/2009 on countervailing (CV) measures.<sup>63</sup> The EU does not impose AD or CV measures on imports from Iceland, Liechtenstein, and Norway, except for fish and other goods that are outside the scope of the European Economic Area.

54. The European Commission is responsible for conducting AD and CV investigations. The adoption of AD and CV measures is subject to the new comitology rules that entered into force in March 2011. These new rules establish the conditions for control by the member States of the Commission's exercise of implementing powers under Article 291 TFEU (see Chapter II(1)). According to the Commission, these rules "will help to avoid the politicization of the process, leave less room for lobbying by any party or by third countries, and ensure a more robust trade defence policy".<sup>64</sup> Prior to the entry into force of the Lisbon Treaty, the adoption of AD and CV measures was subject to "special procedures in which the Council frequently had the last word".<sup>65</sup> In March 2011, the Commission issued a legislative proposal adapting several trade regulations, including on AD and CV duties, to the new comitology rules. The Commission's proposal must be adopted by the Parliament and the Council in accordance with the ordinary legislative procedure.

55. Initiations of AD investigations have fallen slightly since the previous Review of the EU (Table III.4). The number of new provisional measures increased while definitive measures decreased.

56. The EU had 125 AD measures in force at end-2010, slightly fewer than two years earlier (Table III.5). Imports from 27 countries or territories were affected. China accounted for 44% of total AD measures, compared with 38% in 2008, while India, Russia, and Thailand, each accounted for around 6%. Undertakings are in effect for nine products from nine countries. According to the Commission, the average duration of AD measures in the EU is between six and seven years; approximately 12% of AD measures remain in place for more than ten years.

**Table III.4**  
**Anti-dumping investigations and measures imposed, 2006-10<sup>a</sup>**

	2006	2007	2008	2009	2010
Investigation initiations	35	9	18	15	15
Provisional measures	13	12	5	9	9
Definitive measures	13	12	16	9	6
Expired measures <sup>b</sup>	9	16	2	3	14
Confirmation of measure following expiry review	11	12	8	5	10
Termination of measure following expiry review	8	3	5	0	1

a As at 31 December 2010.

b Measures that expired automatically after their five-year imposition.

Source: WTO Secretariat, based on European Commission (various years), Anti-dumping, Anti-subsidy, Safeguard Statistics. Viewed at: <http://ec.europa.eu/trade/tackling-unfair-trade/trade-defence>, and information provided by the Commission.

<sup>63</sup> Council Regulation (EC) No. 1225/2009, 30 November 2009 (OJ L 343, 22 December 2009); and Council Regulation (EC) No. 597/2009, 11 June 2009 (OJ L 188, 18 July 2009).

<sup>64</sup> European Commission press release IP/10/1735, "Comitology: new rules for Commission's implementing powers, 16 December 2010.

<sup>65</sup> European Commission press release IP/10/1735, "Comitology: new rules for Commission's implementing powers, 16 December 2010.

57. Around one third of the goods subject to AD measures in the EU are chemicals, 23% are base metals, including iron and steel, 7% are mineral products, and 6% are textiles, clothing, and footwear.<sup>66</sup> Some of the highest definitive AD duties that resulted from original investigations or reviews between June 2008 and June 2010 concern certain welded pipes of iron or non-alloy steel (90.6%) and certain prepared or preserved citrus fruits (up to 100.1%) from China, and stainless steel fasteners from Viet Nam (up to 707%).<sup>67</sup>

58. The EU can impose AD measures only if the Commission determines that the measure is not against the wider interest of the EU economy. Since the previous Review of the EU, no AD proceedings have been terminated due to a finding that the measure in question would be against the "Community interest".

**Table III.5**  
**Anti-dumping measures by country, 2006-10**

	2006	2007	2008	2009	2010
<b>Trading partner/region</b>					
Algeria	1	1	1	1	1
Armenia	0	0	0	1	1
Australia	1	1	1	0	0
Belarus	5	3	3	3	3
Brazil	1	1	1	2	2
Bulgaria	1	0	0	0	0
China	40	44	48	54	54
Chinese Taipei	6	6	6	6	5
Croatia	2	2	1	1	1
Egypt	0	0	1	1	1
Faeroe Islands	1	1	1	0	0
India	8	7	8	8	7
Indonesia	6	5	5	5	4
Israel	1	1	1	1	1
Japan	1	0	0	0	0
Kazakhstan	0	1	2	2	2
Korea	5	5	5	5	5
Laos	1	1	1	1	1
Libya	1	1	0	0	0
Macao, China	0	0	1	1	1
Macedonia	0	0	1	1	1
Malaysia	5	4	4	4	3
Moldova	1	1	1	1	1
Morocco	1	1	1	1	1
Norway	2	2	0	0	0
Pakistan	2	2	1	0	0
Philippines	2	2	1	1	1
Romania	2	0	0	0	0
Russia	10	8	8	8	8
Saudi Arabia	1	1	1	1	0

**Table III.5 (cont'd)**

<sup>66</sup> These data refer to the situation in August 2010.

<sup>67</sup> Only AD duties in the form of *ad valorem* duties were considered. See WTO documents G/ADP/N/180/EEC, 11 March 2009; G/ADP/N/188/EEC, 6 November 2009; G/ADP/N/195/EEC, 31 March 2010; and G/ADP/N/202/EEC, 5 October 2010.

	2006	2007	2008	2009	2010
South Africa	1	1	2	2	2
Sri Lanka	1	1	1	1	1
Thailand	8	7	7	8	7
Turkey	2	1	0	0	0
Ukraine	6	7	6	6	6
United States	3	4	4	5	3
Viet Nam	6	5	4	4	2
<b>Total number of measures</b>	134	127	128	135	125

Source: WTO Secretariat, based on European Commission (various years), Anti-dumping, Anti-subsidy, Safeguard Statistics. Viewed at: <http://ec.europa.eu/trade/tackling-unfair-trade/trade-defence>, and information provided by the Commission.

59. Initiations of CV measures investigations increased between 2008 and 2009, then decreased in 2010 (Table III.6). During 2010, the EU imposed 4 provisional measures and 3 definitive measures, compared with 1 provisional and 1 definitive measures in 2009.

**Table III.6**  
Countervailing duty investigations and measures imposed, 2006-10

	2006	2007	2008	2009	2010
Investigation initiations	1	0	2	6	3
Provisional measures	0	0	0	1	4
<b>Definitive measures</b>	0	0	0	1	3
Expired measures <sup>b</sup>	0	2	0	1	0
Confirmation of measure following expiry review	1	1	1	0	1
Termination of measure following expiry review	0	0	0	0	0

a As at 31 December 2010.

b Measures that expired automatically after their five-year imposition.

Source: WTO Secretariat, based on European Commission (various years), Anti-dumping, Anti-subsidy, Safeguard Statistics. Viewed at: <http://ec.europa.eu/trade/tackling-unfair-trade/trade-defence>, and information provided by the Commission.

60. At the end of December 2010, 11 CV measures were in force, 3 more than in mid-2008. Five measures apply on imports from India, and the rest on Brazil, Iran, Israel, Pakistan, the United Arab Emirates, and the United States. The goods affected are PET and PET film, antibiotics, graphite electrode systems, sulphanilic acid, and biodiesel. Undertakings are in effect for PET and sulphanilic acid from India.

61. The highest definitive CV duties that resulted from original investigations or reviews between June 2008 and June 2010 concern antibiotics from India (up to 32%) and PET from India (up to 19.1%).<sup>68</sup> Five goods that were subject to CV measures in late 2010, were also subject to AD measures.

(b) Safeguards

62. Regulation No. 260/2009 contains the general EU rules on safeguards.<sup>69</sup> It applies on imports from outside the EU, except from Armenia, Azerbaijan, Belarus, the Democratic People's Republic of

<sup>68</sup> Only CV measures in the form of *ad valorem* duties were considered. See WTO documents G/SCM/N/185/EEC, 18 March 2009; G/SCM/N/195/EEC, 19 October 2009; G/SCM/N/203/EEC, 26 April 2010; and G/SCM/N/212/EEC, 11 October 2010.

<sup>69</sup> Council Regulation (EC) No. 260/2009, 26 February 2009 (OJ L 84, 31 March 2009).

Korea, Kazakhstan, Russia, Tajikistan, Turkmenistan, Uzbekistan, and Viet Nam. Safeguards applied on imports from these countries are subject to Regulation No. 625/2009.<sup>70</sup> Imports of textile products from certain non-members of the WTO are also excluded from the coverage of the general safeguard rules. Regulation No. 427/2003 governs the imposition of transitional product-specific safeguards on imports from China.<sup>71</sup>

63. The Commission is in charge of conducting safeguard investigations in cooperation with member States. The adoption of definitive safeguard measures is not subject to the standard regime under the new comitology rules (see Chapter II(1)). Unlike AD and CV measures, the adoption of definitive safeguards requires a positive opinion voted by qualified majority of a committee composed of member State representatives.

64. The EU has not applied any safeguard measures since 2005. During the period under review, one safeguard investigation was initiated, and no definitive safeguard measures were imposed. The investigation, launched in June 2010, concerns wireless wide area networking modems.<sup>72</sup> The proceeding was terminated in January 2011 as the request for the investigation was withdrawn. One surveillance measure, on steel products of any origin, has been in place since 2002.<sup>73</sup> Under EU safeguard legislation, the Commission may decide to impose surveillance if the "trend in imports of a product originating in a third country threatens to cause injury to EU producers".<sup>74</sup> Surveillance is a system of automatic import licensing during a limited period.

65. Under the EU-Korea free-trade agreement, the parties may adopt a "bilateral safeguard" re-introducing temporarily MFN duties on bilateral trade if, as a result of trade liberalization, an increase in imports would cause or threaten to cause serious injury.<sup>75</sup> The European Parliament voted in favour of the Regulation implementing this provision in February 2011. A similar Regulation exists under the EU's Economic Partnership Agreements (see Chapter II(4)).<sup>76</sup>

#### (vii) Restrictions and controls

66. The EU does not maintain quantitative restrictions on imports from WTO Members to protect domestic producers. Certain steel products from Russia and Kazakhstan, and certain textiles from Belarus and the Democratic People's Republic of Korea are subject to import quotas.<sup>77</sup>

67. The EU maintains import surveillance schemes for certain steel products regardless of origin. According to the latest EU reply to the questionnaire on import licensing procedures, import surveillance schemes seek to improve the "transparency of import trends", and are not intended to limit market access.<sup>78</sup> The surveillance scheme on imports of certain steel products is administered through automatic licensing; set up in 2002, its duration has been prolonged until end-2012.<sup>79</sup>

<sup>70</sup> Council Regulation (EC) No. 625/2009, 7 July 2009 on common rules for imports from certain third countries, OJ L 185, 17 July 2009.

<sup>71</sup> Council Regulation (EC) No. 427/2003, 3 March 2003 (OJ L 65, 8 March 2003).

<sup>72</sup> See OJ C 171, 30 June 2010.

<sup>73</sup> Commission Regulation (EC) No. 117/2005, 26 January 2005 (OJ L 24, 27 January 2005); and Commission Regulation (EC) No. 469/2005, 23 March 2005 (OJ L 78, 24 March 2005).

<sup>74</sup> Article 11(1), Council Regulation (EC) No. 260/2009 of 26 February 2009 on the common rules for imports, OJ L 84, 31 March 2009.

<sup>75</sup> Article 3.1, Free Trade Agreement between the European Union and the Republic of Korea. Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=443&serie=273&langId=en>.

<sup>76</sup> Council Regulation (EC) 1528/2007, 20 December 2007 (OJ L 348, 31 December 2007).

<sup>77</sup> WTO document G/LIC/N/3/EEC/13, 18 October 2010.

<sup>78</sup> WTO document G/LIC/N/3/EEC/13, 18 October 2010.

<sup>79</sup> Commission Regulation (EU) No. 1241/2009, 16 December 2009 (OJ L 332, 17 December 2009).

The EU ended the surveillance scheme on eight categories of textile products from China on 31 December 2008 and on imports of certain textile and clothing products from Uzbekistan in May 2010. According to the Commission, its bilateral textile agreements with Russia and Serbia do not foresee any quantitative restrictions on imports or exports.

68. Pursuant to Article 130(1) of Regulation No. 1234/2007, the Commission may impose licensing requirements on imports of certain agricultural products.<sup>80</sup> The products that require an import licence, as listed in Annex II, Part I, of Regulation No. 376/2008, include cereals, rice, sugar, olive oil and table olives, flax and hemp, milk and milk products, beef and veal, fruit and vegetables, and processed fruits and vegetables. Import licences are issued by the competent authorities of the member States at the request of operators. In addition, imports of agricultural products subject to tariff quotas administered by methods other than first-come, first served are subject to licensing. The licensing requirements are set out in Regulation 1301/2006 and individual regulations establishing the modalities for the quotas. The Commission notes that licences for imports under tariff quotas are granted in a non-discriminatory way on the basis of the "simultaneous examination method. In general, importers must lodge a security to apply for an import licence. The amount of the security depends on the product, and is forfeited if the product in question is not imported during the period of validity of the licence.

69. Quantitative restrictions and controls on imports are in place to implement sanctions imposed by United Nations resolutions, and provisions under international treaties or conventions. In addition, the EU maintains unilateral import controls to attain non-economic objectives.

70. For example, imports of timber and timber products from countries that have entered into a Forest Law Enforcement Governance and Trade (FLEGT) "Voluntary Partnership Agreement" (VPA) with the EU are subject to licensing.<sup>81</sup> As part of these agreements, timber-producing countries voluntarily agree to set up a national scheme to verify the legality of their shipments of timber and timber products to the EU. FLEGT VPAs have been ratified with Ghana (September 2009), and the Republic of Congo and Cameroon (February 2011); signature and ratification of a VPA with the Central African Republic is ongoing (March 2011). Negotiations are ongoing with the Democratic Republic of Congo, Gabon, Indonesia, Liberia, Malaysia, and Viet Nam. There are no operational FLEGT licensing schemes, pending the development and testing of appropriate verification systems.

71. In October 2010, the EU adopted legislation that prohibits placing illegally harvested timber and timber products containing such timber on the EU market.<sup>82</sup> Under Regulation No. 995/2010, "operators" who place domestically produced or imported timber and timber products on the EU market for the first time must exercise "due diligence" to minimize the risk that such products contain timber harvested in contravention of the applicable legislation in the country of harvest.<sup>83</sup> Due diligence involves a risk management exercise based on information and criteria set out in the Regulation. In addition, persons trading timber and timber products within the EU, other than those placing such products for the first time on the EU market, must keep records of their suppliers and customers. The Regulation will be applied from 3 March 2013, and two implementing measures, to be developed by the Commission, must be adopted by 3 March and 3 June 2012. Timber and timber

<sup>80</sup> Council Regulation (EC) No 1234/2007, 22 October 2007 (OJ L 299, 16 November 2007).

<sup>81</sup> See Council Regulation (EC) No. 2173/2005, 20 December 2005 (OJ L 347, 30 December 2005); and Commission Regulation (EC) No 1024/2008, 17 October 2008 (OJ L 277, 18 October 2008).

<sup>82</sup> Regulation (EU) No. 995/2010 of the European Parliament and of the Council, 20 October 2010 (OJ L 295, 12 November 2010).

<sup>83</sup> Article 4(2), Regulation (EU) No. 995/2010 of the European Parliament and of the Council of 20 October 2010.

products covered by valid licences under FLEGT or the Convention on International Trade in Endangered Species of Wild Fauna and Flora are considered to comply with the requirements of the new Regulation.

**(viii) Technical regulations and standards**

72. During the last Review of the EU, some Members stated that the EU's regulatory practices, and its technical regulations and conformity assessment procedures had become increasingly important in determining access to the EU market, sometimes creating, in their view, unnecessary obstacles to trade.<sup>84</sup> In response, the EU indicated that its regulations pursue legitimate objectives, are subject to a thorough impact assessment, are developed according to a transparent process allowing ample opportunity for interested parties from other WTO Members to participate and make their views known, and are largely based on relevant international standards. While recognizing that the number of regulatory requirements in some areas had increased, the EU noted that this reflects scientific progress and the identification of new risks. In addition, the EU indicated that it provides technical assistance to assist developing countries in meeting regulatory requirements.

73. Technical regulations and conformity assessment procedures are adopted at national and EU levels. Only goods that are not covered by the EU's "fully harmonizing" legislation may be subject to national technical regulations or conformity assessment procedures. Harmonizing legislation is legislation adopted jointly by the European Parliament and the Council, or by the Commission when the European Parliament and the Council have granted the relevant implementing powers to the Commission. The general legal basis for the adoption of harmonizing legislation relating to the establishment and functioning of the EU internal market is Article 114 TFEU. Other TFEU provisions may also provide a relevant legal basis, depending on the subject. For example, there is a substantial body of legislation in the field of agricultural products based on Article 38 TFEU.

74. Under Regulation No. 764/2008, the Commission must publish "a non-exhaustive list of products which are not subject to Community harmonisation legislation".<sup>85</sup> According to the Commission, around 25% of the EU goods market is not covered by harmonizing rules.<sup>86</sup>

75. The EU last updated its notification on the implementation and administration of the TBT Agreement in November 2006.<sup>87</sup> It implemented obligations under the TBT Agreement through Decision 94/800/EC.<sup>88</sup> The Commission has overall responsibility for the implementation and administration of the TBT Agreement.<sup>89</sup> The TBT enquiry point for EU legislation is the Enterprise and Industry Directorate-General of the Commission.<sup>90</sup> Member States have designated TBT enquiry points for national legislation.

<sup>84</sup> WTO document WT/TPR/M/214, 8 June 2009.

<sup>85</sup> Article 12(4), Regulation No. 764/2008 of the European Parliament and of the Council, 9 July 2008 (OJ L 218, 13 August 2008). For the list of non-harmonized products. Viewed at: <http://ec.europa.eu/enterprise/intsub/a12/index.cfm?fuseaction=a12.menuproducts>.

<sup>86</sup> European Commission staff working document SEC(2009) 1684/2. Viewed at: [http://ec.europa.eu/eu\\_law/docs/docs\\_infringements/annual\\_report\\_26/en\\_sec\\_sectors\\_autre\\_document\\_travail\\_service\\_part1\\_v4clean.pdf](http://ec.europa.eu/eu_law/docs/docs_infringements/annual_report_26/en_sec_sectors_autre_document_travail_service_part1_v4clean.pdf).

<sup>87</sup> WTO document G/TBT/2/Add.12/Rev.3/Suppl.1, 22 November 2006.

<sup>88</sup> Council Decision (of 22 December 1994) concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations, OJ L 336, 23 December 1994.

<sup>89</sup> WTO document G/TBT/2/Add.12/Rev.3, 18 October 2005.

<sup>90</sup> WTO document G/TBT/ENQ/37, 15 June 2010.

76. The EU notified 146 technical regulations and conformity assessment procedures to the WTO between October 2008 and mid-January 2011 (28 in 2008, 63 in 2009, 50 in 2010, and 5 in 2011). The notifications cover products such as household appliances, electric and electronic equipment, machinery, motor vehicles and parts, fuels, construction materials, measuring devices, textile and apparel, chemicals, fertilizers, food, water, wine, vitamins and minerals, cosmetics, seal products, and genetically modified plants. The notifications normally specify a comment period of at least 60 days, and a proposed date of adoption after the expiry of the comment period. During the period under review, the EU submitted a large number of addenda, providing additional information on the adoption, entry into force, and content of the final text of previously notified TBT measures.

77. Individual member States notified around 140 technical regulations and conformity assessment procedures during the period under review. France accounted for the largest share, with 21%, followed by the Czech Republic and Slovenia (14% each), Finland (10%), and Denmark, Italy, and Sweden (around 8% each). Estonia, Germany, Hungary, Lithuania, the Netherlands, Poland, Portugal, Slovakia, Spain, and the United Kingdom have also made notifications. Notifications covered, *inter alia*, construction materials, fire safety equipment, measuring devices, machine tools, dairy and other agricultural products, food additives and supplements, alcohol and alcoholic beverages, veterinary medicines, fertilizers, motor vehicles, arms and ammunition, and tobacco and tobacco products. For approximately 17% of individual member State notifications, the comment period, or the period between the date on which a notification was published and its date of adoption, was less than 60 days.

78. Between October 2008 and January 2011, WTO Members raised concerns in the TBT Committee over several measures proposed or adopted by the EU or individual member States (Table III.7). Of the 17 new concerns raised, one was followed by formal dispute settlement.

79. Since the last Review of the EU, France has notified one recognition agreement under Article 10.7 of the TBT Agreement.<sup>91</sup> By the EU or by any other member State no notifications were submitted under Article 10.7.

**Table III.7**  
Specific trade concerns over EU TBTs, October 2008-January 2011

Issue	Selected WTO references	Member(s) concerned	First raised
Proposed regulation on cosmetic products	G/TBT/M/46; G/TBT/N/EEC/186 and Corr.1	China	05.11.2008
Non-inclusion of napropamide in Annex 1 of Council Directive 91/414/EEC	G/TBT/M/46; G/TBT/N/EEC/203	India	05.11.2008
Measure on novel foods	G/TBT/M/46, 47; G/TBT/N/EEC/188	Colombia, Costa Rica, Ecuador, Mexico, Peru	05.11.2008
Draft Commission Directive amending Council Directive 67/548/EEC (dangerous chemical substances)	G/TBT/M/46, 47, 48; G/TBT/N/EEC/212	Australia, Botswana, Brazil, Canada, Chile, China, Colombia, Cuba, Dominican Republic, Ecuador, India, Indonesia, Japan, Korea, Mauritius, Philippines, South Africa, Turkey, United States, Venezuela, Zimbabwe	05.11.2008
Requirement on the capacity labelling of batteries and accumulators	G/TBT/M/46	Japan	05.11.2008

Table III.7 (cont'd)

<sup>91</sup> WTO documents G/TBT/10.7/N/108, 9 June 2010. In addition, several notifications by Ukraine under Article 10.7 of the TBT Agreement specified some EU member States as parties to the notified agreements.



Issue	Selected WTO references	Member(s) concerned	First raised
Regulation concerning trade in seal products <sup>a</sup>	G/TBT/M/47, 48, 49, 51; G/TBT/N/EEC/249 and Add. 1-2; G/TBT/N/EEC/325	Brazil, Canada, Norway	18.03.2009
Marketing standards for olive oil	G/TBT/M/47; G/TBT/N/EEC/226	New Zealand, United States	18.03.2009
Requirements for ride-on lawn mowers (France)	G/TBT/M/47, 48, 49, 51	United States	18.03.2009
Implementing measures of the Directive on eco-design of energy-using products	G/TBT/M/47, 49; G/TBT/N/EEC/208 and Add.1; 228 and Add.1; 229 Adds 1 and 2; 234 and Add.1; 237 and Add.1; and 273 and Add.1	China	18.03.2009
Certification programmes, labelling schemes, geographical indications and regional certification quality measures for agricultural products (Green Paper on Agricultural Product Quality Policy)	G/TBT/M/47, 48	Mexico, United States	18.03.2009
Tariff rate quota on meat and meat products	G/TBT/M/48	Argentina, Australia, Paraguay, Uruguay	25.06.2009
Restrictions on the marketing and use of organostannic compounds	G/TBT/M/48, 49; G/TBT/N/EEC/244 and Add.1	Japan	25.06.2009
Ban on products containing biocide Dimethylfumarate (DMF)	G/TBT/M/48; G/TBT/N/EEC/258 and Add.1	Japan	25.06.2009
Accreditation and market surveillance relating to the marketing of products	G/TBT/M/48, 49, 51; G/TBT/N/EEC/152	Australia, Korea, Thailand, United States	25.06.2009
Regulation on marketing standards for poultry meat	G/TBT/M/48, 49, 51; G/TBT/N/EEC/267	Australia, Brazil	25.06.2009
Draft dairy regulation (Italy)	G/TBT/M/50, 51; G/TBT/N/ITA/13	Australia, New Zealand	24.03.2010
Registration for traditional herbal medicinal products	G/TBT/M/51	China, Ecuador, India	23.06.2010
EU restriction on the use of certain hazardous substances in electrical and electronic equipment	G/TBT/M/46, 47, 48, 49, 51; G/TBT/N/EEC/247 and G/TBT/Notif.00/310, Corr.1	Australia, Canada, China, Israel, Japan, Jordan, Korea, Republic of, Malaysia, Mexico, Thailand, Egypt, United States, Venezuela	31.03.1999
Ban on the use of nickel-cadmium in batteries	G/TBT/M/48; G/TBT/N/EEC/98	Australia, Canada, China, Japan, Thailand, Egypt, United States, Venezuela	11.06.1999
Regulation on certain wine sector products	G/TBT/M/46, 47, 48, 49, 51; G/TBT/N/EEC/15, Corr.1-2; G/TBT/N/EEC/57; G/TBT/N/EEC/252 and Add.1; and G/TBT/N/EEC/264 and Add.1	Argentina, Australia, Bolivia, Brazil, Canada, New Zealand, Mexico, Paraguay, Peru, South Africa, United States, Uruguay	01.10.1999

Table III.7 (cont'd)

Issue	Selected WTO references	Member(s) concerned	First raised
Regulation on the registration, evaluation and authorization of chemicals (REACH)	G/TBT/M/46, 47, 48, 49, 51; G/TBT/N/EEC/52 and Add.1-5; Add.3/Rev.1; G/TBT/N/EEC/295 and 297; G/TBT/N/EEC/333-6	Argentina, Australia, Botswana, Brazil, Canada, Chile, China, Chinese Taipei, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Indonesia, Israel, Japan, Korea, Kuwait, Malaysia, Mexico, Pakistan, Philippines, Qatar, Saudi Arabia, Singapore, South Africa, Switzerland, Thailand, Egypt, United States, Uruguay	20.03.2003
Restrictions on the use of Deca-bromo diphenylether (deca-BDE) by Sweden	G/TBT/M/46, 47; G/TBT/N/SWE/59	Chinese Taipei, Israel, Japan, Jordan, United States	15.03.2006
Fire performance of construction products	G/TBT/M/48; G/TBT/N/EEC/92 and Add.1	Brazil, Colombia, Japan, Korea, Republic of, Mexico, Philippines, Thailand, United States	15.03.2006
Regulation on classification, labelling and packaging of substances and mixtures (ATPs and CLP)	G/TBT/M/49, 51; G/TBT/N/EEC/151 and Add.1-2; G/TBT/N/EEC/212 and Add.1-3; and G/TBT/N/EEC/163 and Add.1-2, Add.1/Corr.1	Argentina, Australia, Botswana, Brazil, Canada, Chile, China, Colombia, Cuba, Dominican Republic, Ecuador, India, Indonesia, Japan, Korea, Republic of, Malaysia, Mauritius, Philippines, Russian Federation, South Africa, Zimbabwe, Thailand, Turkey, United States, Venezuela	05.07.2007
Ban on seal products (Germany)	G/TBT/M/46; G/TBT/N/DEU/5 and Add.1	Canada, Norway	20.03.2008
Production and labelling of organic products	G/TBT/M/47, 49; G/TBT/N/EEC/101 and Add.1	Argentina, Cuba, Ecuador	20.03.2008
Chemical requirements for toys	G/TBT/M/50; G/TBT/N/EEC/184 and Add.1	China, Korea	20.03.2008

a Continued to formal dispute settlement.

Source: WTO Secretariat.

80. Technical regulations and conformity assessment procedures at the EU and national levels are developed and adopted under procedures governing the development and adoption of regulation in general. These procedures vary significantly across member States (Table III.8).

81. Technical regulations and conformity assessment procedures are established at the EU level through EU legislative acts adopted by the European Parliament and the Council, or by the Commission on the basis of implementing powers conferred by means of an EU act. Following the entry into force of the Lisbon Treaty in December 2009, the adoption of technical regulations and conformity assessment procedures by the Commission on the basis of implementing powers is subject to a new legal framework (see Chapter II(1)).

82. The Commission maintains a website for public consultations on policy and legislative initiatives.<sup>92</sup> Notices of preparation of legislation are published in the EU *Official Journal* "C series"; once adopted, legislation is published in the *Official Journal* "L series", as required by the Treaty on the Functioning of the EU. Although there is no statutory requirement to publish notices of preparation of legislation, the Commission indicated that these are published. According to the Commission, the period allowed between publication of a measures and its application to economic operators varies depending on the measure and whether the measure needs to be transposed into national legislation. The Commission noted that, in general, the minimum implementation period for

<sup>92</sup> European Commission online information, "Your Voice in Europe". Viewed at: [http://ec.europa.eu/yourvoice/index\\_en.htm](http://ec.europa.eu/yourvoice/index_en.htm).

harmonization legislation is between 18 and 24 months; it may be longer for legislation that breaks new ground or introduces substantial amendments to existing requirements.

**Table III.8**  
**Selected aspects of regulation in four member States, early 2010**

<b>General legislative framework</b>	
Belgium	The federal, three regional, and three community governments legislate in their areas of competence; laws issued by the federal government and decrees issued by regions and communities (called "ordinances" in the case of Brussels-capital region) are on an equal footing; in addition, each government has a sub-structure of secondary regulations, also on an equal footing with each other.
Germany	Federal laws are usually fleshed out in secondary legislation issued by the Länder. Länder issue their own laws and regulation in areas of exclusive Land competence; they may delegate implementation responsibilities to the counties and municipalities: The hierarchical status of legal instruments depends on the enacting body. Municipalities do not have legislative powers per se, but can issue implementing bye-laws on permits and licences.
Sweden	In general, primary legislation (proposed by the government and enacted by parliament) is fleshed out in secondary regulations (ordinances and regulations) by government agencies: Only the parliament and the government have the right, under the Instrument of Government, to issue legal norms; however both the parliament and the government may delegate rulemaking powers to government agencies and local governments.
United Kingdom	Primary legislation, which is contained in acts of parliament, often confers powers on the executive to make legislation, which is either notified to, or approved by, the parliament; the assemblies in Scotland, Wales and Northern Ireland can make laws in their own areas of competence.
<b>Forward planning</b>	
Belgium	Each government issues a policy statement agreed by the coalition parties at the beginning of a legislature.
Germany	The coalition agreement adopted by the coalition parties at the beginning of each legislative term sets the general policy framework; the chancellery summarizes ongoing and future ministerial projects in a document that is regularly updated.
Sweden	Based on the coalition agreement at the start of each political term, the prime minister's office submits a list of upcoming bill proposals twice a year to the parliament.
United Kingdom	The annual Queen's speech on the opening of the parliament sets out the main lines of the legislative programme for the coming year. Major policy proposals are presented in white papers by government ministries. Forward planning procedures for secondary regulations are much less developed and there is no systematic coordination.
<b>Rulemaking procedures</b>	
Belgium	General procedures for making new federal regulations are laid down in several circulars related to the operation of the Council of Ministers.
Germany	The constitution and the Administrative Procedures Act set out a framework of general administrative procedure requirements; more elaborate standardized procedures to create new legislation at the federal level are set out in the Joint Rules of Procedure of the federal ministries, which are binding.
Sweden	The Instruments of Government sets out consultation procedures for rulemaking.
United Kingdom	There is no general administrative procedure law; instead, the UK relies on a range of codes and guidance covering different policy fields and issued by different government entities.
<b>Public consultation</b>	
Belgium	Stakeholders are generally consulted through a dense, highly structured and extensive network of advisory boards comprising representatives of target groups related to various policy/regulatory issues. Other forms of consultation, including more open "notice and comment" procedures using the Internet to reach out directly to citizens, are emerging alongside the traditional approach.
Germany	Public consultation by the federal government is formally regulated by the Joint Rules of Procedure, which specifies that ministries must consult early and extensively with a range of stakeholders. In practice, individual ministries have significant latitude on such issues as feedback, timing, publication of comments, and selection of consultation partners. Informal pre-consultation rounds (with the Länder, municipalities and associations) are the norm at an early stage in the process before a bill is drafted. Although e-consultation is an important and steadily emerging feature, the federal government has nonetheless not yet established a single web portal for all current and previous consultation on federal initiatives.
Sweden	Public consultation by the government with parties affected by draft legislation is in principle mandatory. A key element of the consultation process is the Committee of Inquiry: before the government makes legislative proposals, a Committee of Inquiry writes a report that is referred to relevant bodies for consideration; reports are published. Beyond the Committee of Inquiry system, which covers major legislation, there is a general requirement to consult. There are no explicit or shared guidelines on how to carry out this consultation. Ministries and agencies may define their own approach, including direct consultation of the public.

Table III.8 (cont'd)

<b>Public consultation</b>	
United Kingdom	The Code of Practice on Consultation, revised in 2008, promotes an open consultations approach, but the recent review of the Code of Practice on Consultation showed that there was concern at the way consultations are carried out in practice. The Code applies to all central government departments and agencies that have a close relationship with a parent department. All departments put their consultation exercises on a departmental web page; work is under way to develop a comprehensive online tool providing access to all central government consultations.
<b>Access to regulations</b>	
Belgium	Regulations are accessible through different official publications and websites; regulations at the federal, regional, and community levels are published in the official journal, which is available online; in addition, regulations are compiled in a website, with consolidated versions and search facilities.
Germany	Once a law or an ordinance is enacted, it is promulgated in the federal official journal. A publicly available database of federal administrative regulations has been in place since 2006.
Sweden	There is an obligation on the government to publish acts and ordinances, including amendments, in the Swedish Code of Statutes; there is also an online database containing a directory of all laws, ordinances and government agency regulations. The government also publishes bi-annually general information on important new laws that will enter into force in the coming six months.
United Kingdom	Several databases of information on regulations are available, but none is comprehensive; the Ministry of Justice is extending the statute law database which will cover primary and secondary regulations in current form, i.e. including subsequent amendments
<b>Ex-ante impact assessment</b>	
Belgium	Ex ante impact assessment is a relatively new policy in Belgium, and still a "work in progress". With the exception of the process in Flanders, impact assessment remains mostly focused on administrative burdens, although there have been recent efforts to extend its scope.
Germany	Impact assessment is backed up by a comprehensive handbook issued by the Interior ministry in 2006. Key impacts are covered including environmental, economic and social. The process is applied to primary legislation, and partially covers secondary regulations. The approach is comprehensive on paper, but in practice impact assessment appears to have a limited impact on decision-making.
Sweden	A new policy seeks to promote a more systematic and more coherent approach going beyond impacts on small firms, and a strengthened institutional framework. The emphasis remains firmly on the economic and business aspects. The centrepiece of the revised approach is a new Regulatory Impact Assessment Ordinance for the government agencies, which entered into force in January 2008. The ordinance sets specific requirements for impact assessment.
United Kingdom	The government has recently updated its policy on ex ante impact assessment; the new process is designed to promote greater transparency and sharpen the approach via enhanced quantification and a process to promote "early stage" consideration of costs and benefits before a policy is too advanced, the overall objective being to ensure that the benefits of new regulations justify the burdens. Wide-ranging institutional and methodological support is in place.
<b>Enforcement</b>	
Belgium	Inspections and enforcement follow the lines of Belgium's division of competences between governments. For areas of federal competence, inspections are under the responsibility of units of relevant ministries, or administrative agencies; the same structure applies to regions and communities with respect to their competences. There is a significant enforcement role at the local level of government. Risk analysis is well established in inspection methodologies.
Germany	Most legislation adopted at the federal level is implemented and enforced by the Länder, which rely extensively on the districts, counties, and municipalities to execute state and even federal legislation. Risk based approaches to enforcement are not explicitly practiced.
Sweden	The current approach to enforcement is complex and widely acknowledged to be in need of reform. Enforcement responsibilities are spread across a range of bodies, and regulated in different ways through more than 230 laws. The government has started to take steps to rationalise and clarify enforcement responsibilities. A risk based approach is not yet used to a large extent.
United Kingdom	Responsibilities for enforcement are divided between national regulatory agencies and local authorities. There has been a reappraisal of the approach to enforcement, resulting in the adoption of new statutes (Regulatory Enforcement and Sanctions Act, enacted in July 2008, and the Regulators Compliance Code, which came into force in April 2008). There has been steady progress towards the adoption of common principles of regulatory enforcement based on risk assessment.
<b>Regulatory streamlining</b>	
Belgium	Procedures for ex post review of regulations are still under development. Legislation only rarely provides for ex post review. Sunset clauses are not commonly used. At the federal level, one of the "Twelve Strategic Works" outlined in the policy note of the federal government provided for the introduction of ex post evaluation of existing laws. This led to the establishment of the Parliamentary Committee for Legislative Monitoring in 2007. Regional governments are also trying to develop ex post review mechanisms.

Table III.8 (cont'd)

Regulatory streamlining	
Germany	The federal government has passed several laws to repeal redundant regulations, and a Simplification Act to clean up the stock of environmental regulations. However, the German system does not encourage sunset clauses or other devices that would trigger reviews of individual regulations.
Sweden	Sweden is active in the use of different processes aimed directly at regulatory streamlining. The Action Plan for Better Regulation, set up in 2006, is updated annually and covers a broad range of regulatory simplification measures.
United Kingdom	Although there are a number of useful initiatives, there is no systematic effort to consolidate or simplify the regulatory stock. A new impact assessment form requires officials to commit to a date when they will review the actual costs and benefits of any new proposal, and establish whether the policy has achieved the desired effects. This post implementation review should typically occur within three years of implementation, depending on the nature of the policy.

Source: WTO Secretariat, based on OECD (2010), Better Regulation in Europe (various issues), Paris.

83. According to the Commission, the EU notifies draft measures to the WTO once a complete text of the measure is available, but at a stage when comments can be taken into account. Some WTO Members consider that public consultations on EU regulatory proposals could be enhanced.<sup>93</sup> For example, one Member noted that, by the time the EU issues public notices of proposed regulations, deliberations among EU member States have progressed too far to allow for the meaningful consideration of trading partners' views.

84. Proposed technical regulations and conformity assessment procedures may be subject to impact assessment by the Commission. Pursuant to the EU's "Better Regulation Policy", all "major" policy initiatives and legislative proposals "with potential significant economic, social, and environmental impacts" must undergo impact assessment. Under the Commission's guidelines on impact assessment, revised in 2009, assessment should include analyses of the effects of trade and investment policies on foreign and domestic businesses and consumers, and of particular policies on the EU's WTO obligations.<sup>94</sup>

85. The requirements relating to technical regulations and conformity assessment procedures are listed by sector in the Export Helpdesk website of the Commission.<sup>95</sup> In addition, an overview of EU legislation relating to various product areas is available on the website of the Commission's Directorate-General for Enterprise and Industry.<sup>96</sup>

86. Under the "new approach" to technical harmonization launched in the mid-1980s, technical regulations adopted at the EU level contain "essential requirements" expressed in terms of performance-based indicators or objectives, leaving manufacturers free to determine the technical characteristics to comply. Essential requirements define the results to be attained, or the hazards to be dealt with, without specifying any particular technical solution. Technical solutions to meet essential requirements are set out in harmonized standards developed by the European Standardization Organizations based on a mandate from the Commission. Compliance with these standards confers a presumption of conformity with the essential requirements covered by the standards. Technical regulations adopted prior to the introduction of the new approach usually establish detailed specific technical requirements. Motor vehicles are entirely subject to the old approach. New-approach regulations cover a wide variety of products, including electrical and electronic products, pressure equipment and gas appliances, toys, machinery, medical devices, radio and telecom equipment, elevators, personal protective equipment, equipment for use in explosive atmospheres, and recreational craft. The Commission does not have data on the market shares of products subject to old

<sup>93</sup> WTO document WT/TPR/M/214, 8 June 2009.

<sup>94</sup> European Commission document SEC(2009) 92, 15 January 2009. Viewed at: [http://ec.europa.eu/governance/impact/commission\\_guidelines/docs/iag\\_2009\\_en.pdf](http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf).

<sup>95</sup> Export Helpdesk online information. Viewed at: [http://exporthelp.europa.eu/index\\_en.html](http://exporthelp.europa.eu/index_en.html).

<sup>96</sup> See, for example: [http://ec.europa.eu/enterprise/sectors/index\\_en.htm](http://ec.europa.eu/enterprise/sectors/index_en.htm).

and new approach legislation. According to the Commission, some sectors, for example chemicals, are subject to both types of approaches.

87. In the context of its previous Review, the EU stated that EU legislation relies on supplier's declaration of conformity for a "major part" of goods marketed in the EU.<sup>97</sup> Some of the goods subject to supplier's declaration of conformity are electrical and electronic products, energy-related products subject to eco-design requirements, radio and telecom equipment, most machinery, toys, refrigeration appliances, and some categories of pressure equipment, personal protective equipment, recreational craft, and medical devices. In addition, supplier's declaration of conformity is used for goods that, in the absence of more specific safety legislation at the EU level, are subject to the General Product Safety Directive.<sup>98</sup> These goods include childcare goods, textiles, and several other consumer goods. Third-party conformity assessment conducted by "notified bodies" is used for products deemed high-risk. Notified bodies are certification, inspection, and testing bodies designated by member States to perform specific conformity assessment activities mandated under EU product legislation. The designation of notified bodies by member States involves a technical assessment, typically based on accreditation, and a political decision whereby member States take responsibility for the operation and supervision of the notified body.<sup>99</sup> Conformity assessment bodies that are not established in the EU cannot qualify as notified bodies.

88. In July 2008, the European Parliament and the Council adopted the New Legislative Framework, a package of measures that seeks to remove "the remaining obstacles to free circulation of products" within the EU. The New Legislative Framework consists of Decision No. 768/2008 and Regulation 765/2008.<sup>100</sup> Decision No. 768/2008 contains common principles and reference provisions for the future development of (or amendment of existing) harmonizing legislation. It sets out a menu of conformity assessment procedures, and the criteria to choose among them, including the nature of the risk associated with the product, the need to avoid imposing too burdensome conformity assessment requirements in relation to the risks, and the appropriateness of the conformity assessment procedure to the type of product, and to the type and degree of risk. According to the Commission, the Decision transposes into EU legislation the toolbox of conformity assessment procedures elaborated by the ISO Conformity Assessment Committee. In developing new or amending existing legislation, EU legislators must justify any departure from the common principles and reference provisions contained in Decision 768/2008. During 2010, the Commission held public consultations on its proposal to align ten existing new-approach directives to the new provisions of Decision No. 768/2008.<sup>101</sup>

89. Pursuant to the New Legislative Framework, accreditation should be the preferred method for determining the technical competence of a particular certification, inspection, or testing body under EU product legislation that requires third-party conformity assessment. From January 2010, the EU applies a new common framework on accreditation, set out in Regulation 765/2008. Accreditation was previously governed by national legislation. According to the Commission, in the absence of a common legal basis, member States had been using "different approaches to accreditation, applying

---

<sup>97</sup> WTO document WT/TPR/M/214/Add.1, 2 July 2009.

<sup>98</sup> Directive 2001/95/EC of the European Parliament and of the Council, 3 December 2001 (OJ L 11, 15 January 2002).

<sup>99</sup> WTO document G/TBT/M/51, 1 October 2010.

<sup>100</sup> Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 (OJ L 218, 13 August 2008); and Decision No 768/2008/EC of the European Parliament and of the Council, 9 July 2008 (OJ L 218, 13 August 2008).

<sup>101</sup> European Commission online information, "New Legislative Framework for the marketing of products: Proposal to align ten product harmonisation directives to Decision 768/2008". Viewed at: [http://ec.europa.eu/enterprise/newsroom/cf/itemlongdetail.cfm?item\\_id=4289&lang=en](http://ec.europa.eu/enterprise/newsroom/cf/itemlongdetail.cfm?item_id=4289&lang=en).

differing systems with uneven rigour".<sup>102</sup> The objectives of the new accreditation framework are to: create confidence in the quality of conformity assessment bodies and their certificates; ensure common and transparent rules for the assessment of the competence and monitoring of conformity assessment bodies; and stabilize the accreditation system in the EU.

90. Under the new framework, member States must appoint a single national accreditation body, which must operate accreditation under the principles set out in Regulation No. 765/2008. For example, national accreditation bodies cannot be involved in conformity assessment, operate on a for-profit basis, or compete with other accreditation bodies in the member State where they are established, or elsewhere in the EU. The new framework recognizes the European Cooperation for Accreditation (EA), as the official accreditation "infrastructure", responsible for managing peer evaluations of national accreditation bodies' conformity to the relevant legal requirements. All national accreditation bodies must be members of the EA, and regularly submit to peer evaluation.

91. National accreditation bodies must recognize the equivalence of the services of other national accreditation bodies that have successfully passed the peer review. Member States cannot refuse certificates or test reports issued by a conformity assessment body accredited by another member State's national accreditation body.<sup>103</sup> Regulation No. 765/2008 does not contain provisions relating to the recognition of non-EU accreditation bodies, or the acceptance of certification and test reports issued by such bodies.

92. Under EA policy, the relationship with accreditation bodies from countries outside EFTA or the "European neighbourhood" should be managed through the International Accreditation Forum (IAF) Multilateral Recognition Agreement (MLA) and the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Agreement (MRA).<sup>104</sup> According to the policy, "in certain exceptional cases, EA could offer to ABS [accreditation bodies] from some of these countries the possibility of signing a Cooperation Agreement", subject to conditions, including the fulfilment by the foreign accreditation body of "all the specific requirements established by EA for its members, pursuant to Regulation (EC) 765/2008". Regarding countries from the European neighbourhood, the EU has concluded an agreement on conformity assessment and acceptance of industrial products (ACAA) with Israel in the field of pharmaceuticals. This agreement is not yet in force (March 2011). In addition, ACAA negotiations are ongoing with Croatia and the Former Yugoslav Republic of Macedonia. Preparations for ACAA negotiations are under way in additional sectors with Israel, and with Algeria, Egypt, Jordan, Lebanon, Morocco, the Palestinian Authority, Tunisia, and Ukraine. ACAAs are a specific type of mutual recognition agreement based on the alignment with the EU of relevant product legislation and infrastructure.

93. Some WTO Members have expressed concerns about the possible impact of the new EU accreditation framework on member States' recognition of non-EU accreditation bodies under the IAF MLA, and the ILAC MRA (see Table III.7 above). In response, the EU indicates that the common accreditation framework is a tool to support the EU's internal regulatory policy based on the existing international accreditation framework. In addition, the EU notes that the common framework is not

---

<sup>102</sup> European Commission online information, "Single Market for Goods: Accreditation". Viewed at: [http://ec.europa.eu/enterprise/policies/single-market-goods/regulatory-policies-common-rules-for-products/new-legislative-framework/accreditation/index\\_en.htm](http://ec.europa.eu/enterprise/policies/single-market-goods/regulatory-policies-common-rules-for-products/new-legislative-framework/accreditation/index_en.htm).

<sup>103</sup> Article 11, Regulation (EC) No. 765/2008 of the European Parliament and of the Council, 9 July 2008.

<sup>104</sup> European co-operation for Accreditation document EA-1/13: 2009, EAs Relationship with Accreditation Bodies not being Members of the EU or EFTA, May 2009. The following participate in the European neighbourhood policy: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Palestinian Authority, Syria, Tunisia, Ukraine.

intended to "change or undermine" international cooperation agreements between accreditation bodies; and does not "affect or force changes in the accreditation practices in third countries".

94. In addition to a common accreditation framework, Regulation No. 765/2008 sets out common principles for market surveillance. According to the Commission, a majority of member States have made legal and administrative changes to meet these requirements.<sup>105</sup> Under the Regulation, customs authorities must carry out "appropriate checks on the characteristics of products on an adequate scale" before those products can be marketed in the EU.<sup>106</sup>

95. In principle, EU and imported goods that are not covered by EU harmonizing legislation and have been lawfully placed on the market of a member State can be marketed in another member State, even if they do not comply with the technical regulations of the member State of destination. The only exceptions to this principle are restrictions introduced for reasons specified in Article 36 TFEU, or for other overriding reasons of public interest that are proportionate to the aim pursued. According to the Commission, the most common justification for restrictions on the free movement of goods is related to the protection of health and life of humans, animals, and plants. As recognized by the European Parliament and the Council, "many problems still exist as regards the correct application of the [mutual recognition] principle".<sup>107</sup>

96. In July 2008, the European Parliament and the Council adopted Regulation No. 764/2008 "to minimise the possibility of technical rules' creating unlawful obstacles to the free movement of goods between Member States".<sup>108</sup> Under the procedures, which apply from May 2009, member States that use technical regulations to restrict market access for products lawfully marketed in another member State must justify their position with technical or scientific evidence, and must grant economic operators affected by the restriction an opportunity to provide comments. The new procedures operate alongside the notification procedure under Directive 98/34/EC, through which the Commission and member States have monitored member States' proposals to introduce technical regulations or conformity assessment procedures since the early 1980s.<sup>109</sup> Between the entry into force of Regulation No. 764/2008 and December 2010, the Commission received 1,114 notifications from 7 member States denying within their territory the marketing of non-harmonized products lawfully marketed in other member States. The notifications cover articles of precious metal, food additives, foodstuffs, fertilizers, and medicinal products.

97. Although compliance with "harmonized European standards" is voluntary, in practice there is a strong incentive for EU and foreign manufacturers to meet the standards referred to in new-approach technical regulations. This is because under the new approach to product regulation, only products that conform to "harmonized European standards" benefit from the presumption of conformity with the relevant legislative requirements. Harmonized European standards are developed by the European Standards Organizations, that is, the European Committee for Standardization, the European Committee for Electrotechnical Standardization, and the European Telecommunications Standards Institute, upon request from the European Commission. European Standards Organizations have

---

<sup>105</sup> European Commission document ENTR/C1/McM/nt ARES.c1(2010). Viewed at: [http://ec.europa.eu/enterprise/policies/single-market-goods/files/new-legislative-framework/nlf\\_implementation\\_report\\_en.pdf](http://ec.europa.eu/enterprise/policies/single-market-goods/files/new-legislative-framework/nlf_implementation_report_en.pdf).

<sup>106</sup> Article 27(1), Regulation (EC) No. 765/2008 of the European Parliament and of the Council, 9 July 2008.

<sup>107</sup> Regulation (EC) No. 764/2008 of the European Parliament and of the Council, 9 July 2008 (OJ L 218, 13 August 2008).

<sup>108</sup> Regulation (EC) No. 764/2008 of the European Parliament and of the Council, 9 July 2008.

<sup>109</sup> Directive 98/34/EC of the European Parliament and of the Council, 22 June 1998 (OJ L 24, 21 July 1998).



accepted the WTO Code of Good Practice. In addition, all member States have notified the acceptance of the Code by one or more of their national standards organizations.

**(ix) Sanitary and phytosanitary standards (SPS)**

98. The European Union and each of its member States have notified enquiry points under the SPS Agreement.<sup>110</sup> The Directorate General for Health and Consumers of the European Commission is the EU notification authority.<sup>111</sup> Member States are members of the Codex Alimentarius Commission, the World Organization for Animal Health (OIE), and the International Plant Protection Convention (IPPC). The EU is a member of Codex and the IPPC.

99. The EU notified 56 regular and 3 emergency SPS measures to the WTO between October 2008 and mid-January 2011. The EU considers that, of the 35 notified measures for which there was a relevant international standard, 27 conformed to that international standard. Apart from the emergency notifications, almost 60% of notifications specified the multilaterally recommended 60-day period for public comment; for the rest, the EU considered that a comment period was not applicable, or the period between the publication of the notification and the adoption of the measure was less than 60 days. The EU identified 15 notified measures as "trade facilitating". In addition, during the period under review, the EU submitted a large number of addenda, providing additional information on previously notified SPS measures.

100. The Netherlands made the only notification from a member State during the period under review.<sup>112</sup> The notification covers an emergency measure affecting imports of ornamental plants from China.

101. Since the last Review of the EU, WTO Members have discussed concerns in the SPS Committee regarding several EU measures (Table III.9). Of the ten trade concerns raised, two have been resolved or partially resolved, and one was followed by formal dispute settlement, with a panel established in November 2009.<sup>113</sup> In October 2010 the EU submitted a document to the SPS Committee identifying 14 specific trade concerns that it had raised, and that it considered resolved.<sup>114</sup>

**Table III.9**  
Specific trade concerns over EU SPS measures, October 2008 to January 2011<sup>a</sup>

	Relevant source document <sup>b</sup>	Raised by	Date first raised	Solution
Maximum residue levels of pesticides	G/SPS/R/61	India	October 2010	Not reported
Regulation 1099/2009 on the humane treatment of animals	G/SPS/R/59	India	June 2010	Not reported
Artificial colour warning labels	G/SPS/R/59	United States	March 2010	Not reported
Risks arising from carambola fruit fly in French Guyana	G/SPS/R/58	Brazil	March 2010	Not reported
Measures related to wood packaging material	G/SPS/R/58	Canada	November 2000	Resolved
Regulation on novel foods	G/SPS/R/56	Colombia, Ecuador, Peru	March 2006	Not reported
Greece's inspection and testing procedures for imported cereals	G/SPS/R/55	Canada	March 2005	Not reported

Table III.9 (cont'd)

<sup>110</sup> WTO document G/SPS/ENQ/25, 15 October 2009.

<sup>111</sup> WTO document G/SPS/NNA/15, 15 October 2009.

<sup>112</sup> WTO document G/SPS/N/NLD/69, 24 December 2008.

<sup>113</sup> See WTO document series WT/DS389.

<sup>114</sup> WTO document G/SPS/GEN/1051, 14 October 2010.

	Relevant source document <sup>b</sup>	Raised by	Date first raised	Solution
Import restrictions on cooked poultry	G/SPS/R/53	China	October 2007	Partially resolved
Maximum residue levels for pesticides in cacao	G/SPS/R/53	Ecuador	October 2008	Not reported
Restrictions on U.S. poultry exports	G/SPS/R/51	United States	October 2006	Under dispute settlement

a Covers concerns raised, addressed, or resolved between mid 2008 and October 2010.

b Only the most recent source document is cited.

Source: WTO Secretariat.

102. According to the Commission, SPS measures are adopted mostly at EU level, although member States may also adopt SPS measures. The main EU legislation on SPS is contained in Regulation No. 178/2002, known as the General Food Law; Regulations No. 852/2004, 853/2004, and 854/2004 on food hygiene; Regulation No. 882/2004 on official controls; and Council Directive 2000/29/EC on plant health.<sup>115</sup>

103. The Commission's Animal Health Strategy for the period 2007-13 aims to replace "the existing series of linked and interrelated policy actions by a ... single clear regulatory framework converging as far as possible with the OIE/Codex recommendations/standards and guidelines".<sup>116</sup> The deadline for the preparation of a legislative proposal on animal health is March 2012. In addition, the Commission intends to adopt, in a package with the draft animal health law, legislative proposals for: a review of the regulation on official controls for feed and food; plant health legislation; and legislation on seeds and propagation materials.

104. The adoption of EU basic acts on SPS require the assent of both the European Parliament and the Council under the ordinary legislative procedure (see Chapter II(1)). SPS measures at the EU level are usually established on the basis of implementing powers conferred on the Commission by means of an EU basic act. Thus, their formulation and adoption has been subject to the "comitology" procedure. The main regulatory committees involved in the development of SPS measures are the Standing Committee on the Food Chain and Animal Health and the Standing Committee on Plant Health. Following the entry into force of the Lisbon Treaty in December 2009, new rules govern the Commission's exercise of implementing powers (see Chapter II(1)). Furthermore, under the Lisbon Treaty, SPS measures may also be established on the basis of powers conferred on the Commission to adopt "delegated acts".

105. The General Food Law set out the general principles governing food and feed at EU and national levels. Measures adopted under the Law must be based on risk analysis "except where this is not appropriate to the circumstances or the nature of the measure".<sup>117</sup> According to the Commission, no measures have been adopted under this exception since the last Review of the EU. Risk

<sup>115</sup> Regulation (EC) No. 178/2002 of the European Parliament and of the Council, 28 January 2002 (OJ L 31, 1 February 2002); Regulation (EC) No. 852/2004 of the European Parliament and of the Council, 29 April 2004 (OJ L 139, 30 April 2004); Regulation (EC) No. 853/2004 of the European Parliament and of the Council of, April 2004 (OJ L 139, 30 April 2004); Regulation (EC) No. 854/2004 of the European Parliament and of the Council, 29 April 2004 (OJ L 139, 30 April 2004); Regulation (EC) No. 882/2004 of the European Parliament and of the Council, 29 April 2004 (OJ L 191, 28 May 2004); and Council Directive 2000/29/EC of 8 May 2000 (OJ L 169, 10 July 2000).

<sup>116</sup> European Commission (2007a).

<sup>117</sup> Article 6(1), Regulation (EC) No. 178/2002 of the European Parliament and of the Council, 28 January 2002.

management must take into account the opinions of the European Food Safety Authority, an independent institution that provides scientific advice on food safety issues.

106. The General Food Law permits the establishment of "provisional" measures if "the possibility of harmful effects on health is identified but scientific uncertainty persists".<sup>118</sup> These measures must be "proportionate and no more trade restrictive of trade than is required to achieve the high level of health protection" in the EU, and must be reviewed "within a reasonable period of time".

107. Measures adopted under the General Food Law must take into consideration international standards, "except where such standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives of food law or where there is a scientific justification, or where they would result in a different level of protection from the one determined as appropriate in the Community". Regarding animal health and food of animal origin, the Commission indicates that EU legislation is largely based on OIE/Codex recommendations, standards, and guidelines.<sup>119</sup> According to the Commission, there are areas where the EU could increase its convergence with these standards, including disease status, imports, quality and evaluation of veterinary services, laboratory testing, animal nutrition, and vaccination. Regarding measures in the field of plant health and products of non-animal origin, the Commission notes that the EU always follows the relevant international standards.

108. Imported food must comply with the relevant requirements of EU food law and animal health law; conditions recognized by the EU to be at least equivalent to these requirements; or the requirements contained in specific agreements. The EU has SPS agreements with Andorra, Canada, Chile, EFTA, Faroe Islands, Liechtenstein, Mexico, New Zealand, San Marino, Switzerland, and the United States. These agreements are available online.<sup>120</sup>

109. Imports of live animals and products of animal origin are prohibited unless they are from a country or region that has received prior approval, and thus appears on the relevant "third country list" managed by the Commission. The term products of animal origin covers food that has been derived from animals or comes from animals, whether processed (e.g., ham, marinated fish, egg powder, and gelatine) or not (e.g., fresh meat, fishery products, raw milk, eggs, and honey).<sup>121</sup> It also covers products not intended for human consumption, whether processed (e.g., pet food) or not (e.g., raw material for pharmaceutical use, wool, hides, and skins).

110. Requests for first-time imports of live animals and products of animal origin must be submitted to the Commission by the competent national authority of the exporting country. In general, the approval process involves an audit, including an on-site visit, by the Commission's inspection service, the Food and Veterinary Office (FVO). The objective of the inspection is to evaluate whether the animal and public health situation, official services, legal provisions, control systems, and production standards meet EU requirements. The Commission indicates that it does not charge a fee for its audits and pays for the expenses of the audit team.

111. If the outcome of the inspection is satisfactory, the Commission prepares draft legislation to include the country in question in the lists regarding animal and public health. The Commission adopts the draft legislation provided that the Standing Committee on the Food Chain and Animal Health agrees. Approvals may cover all or part of a country, reflecting its animal and public health

---

<sup>118</sup> Article 7(1).

<sup>119</sup> European Commission (2007a).

<sup>120</sup> EU online information, "International Affairs: Sanitary and Phytosanitary Agreements". Viewed at: [http://ec.europa.eu/food/international/trade/agreements\\_en.htm](http://ec.europa.eu/food/international/trade/agreements_en.htm).

<sup>121</sup> European Commission document (2006b).

status and the type of animal or product of animal origin for which approval is sought. Applicant countries must be OIE members, have systems in place for the rapid detection, reporting, and confirmation of OIE listed diseases, and fulfil other legislative requirements. The Commission has published guidance on these requirements.<sup>122</sup>

112. In addition to being entered in the relevant list, countries seeking to export animals and products of animal origin to the EU must obtain approval for their residues monitoring programme. Individual slaughterhouses, processing plants, fishing vessels, and other establishments must also be listed for export to the EU on the basis of a proposal from the exporting country. In general, only products of animal origin from establishments that appear on the relevant list can export to the EU. For food, these approvals also involve the adoption of legislation by the Commission. The Commission has published guidance on the criteria for these approvals.<sup>123</sup> Imports of meat are also subject to certification on the protection of animals at the time of slaughter or killing.<sup>124</sup> There are no statutory limitations regarding the duration of the process to approve first-time imports of live animals and products of animal origin.

113. Unlike for animals and products of animal origin, first-time imports of plants and their products require pre-approval. The same principle applies on food of non-animal origin, which includes fruits, vegetables, cereals, drinks, spices, condiments, and food of mineral origin. All food must comply with the general requirements on food hygiene in Regulation No. 852/2004, and, depending on the product, on contaminants, pesticide residue levels, food additives, food irradiation, novel foods, and radioactivity. There are also product-specific requirements for quick frozen foodstuffs, foodstuffs for particular nutritional purposes, and genetically modified organisms. Certain plants and plant product must comply with phytosanitary requirements.

114. Control procedures on imports of animals and products of animal origin are largely harmonized across the EU.<sup>125</sup> Imports of these products must be accompanied by health certification attesting to the fulfilment of EU import conditions.<sup>126</sup> They must undergo official controls at an EU approved border inspection post, and may be subject to additional controls at their country of destination. The list of approved "border inspection posts" is reviewed three or four times per year; there are around 300 within the EU. The official controls in the border inspection posts involve documentary, identity, and physical checks. The frequency of physical checks can be reduced for products of animal origin subject to EU harmonized requirements, taking into consideration the risk profile of the product in question.<sup>127</sup> Live animal imports must be notified to the border inspection post at least 24 hours before arrival, while imports of products of animal origin must be notified before arrival. The first part of the Common Veterinary Entry Document is used for this notification; the notification can be carried out electronically through the Trade Control and Expert System, known as TRACES. Consignments of live animals and products of animal origin must also be accompanied by the model health certificate set out in EU legislation for the relevant species or product. In the

---

<sup>122</sup> European Commission document SANCO/7166/2010. Viewed at: [http://ec.europa.eu/food/international/trade/importing\\_en.htm](http://ec.europa.eu/food/international/trade/importing_en.htm). See also, European Commission online information, "International Affairs, Import Conditions". Viewed at: [http://ec.europa.eu/food/international/trade/index\\_en.htm](http://ec.europa.eu/food/international/trade/index_en.htm).

<sup>123</sup> European Commission document SANCO/7166/2010. Viewed at: [http://ec.europa.eu/food/international/trade/importing\\_en.htm](http://ec.europa.eu/food/international/trade/importing_en.htm). See also, European Commission online information, "International Affairs, Import Conditions". Viewed at: [http://ec.europa.eu/food/international/trade/index\\_en.htm](http://ec.europa.eu/food/international/trade/index_en.htm).

<sup>124</sup> The principal legislation on animal welfare is listed in: European Commission online information, "Animal Welfare: Main Community Legislative References". Viewed at: [http://ec.europa.eu/food/animal/welfare/references\\_en.htm](http://ec.europa.eu/food/animal/welfare/references_en.htm).

<sup>125</sup> Council Directive 97/78/EC, 18 December 1997 (OJ L 24, 30 January 1998).

<sup>126</sup> Council Directive, 17 December 1996 (OJ L 13, 16 January 1997).

<sup>127</sup> Decision 94/360/EC, 20 May 1994 (OJ L 158, 25 June 1994).

absence of an EU model health certificate for a particular species or product, member States may establish their own import requirements.

115. Certain products of animal origin are subject to "special import conditions", which consist mostly of 100% testing of each import consignment or pre-export testing and certification. These measures affect nine WTO Members and involve fishery products, horse and rabbit meat, poultry, eggs and egg products, honey, and milk powder (July 2010).<sup>128</sup>

116. National authorities must organize regular official controls for imports of feed and food of non-animal origin. Control activities at national level must take place at an appropriate place, which may be the border, point of release for free circulation, or retail outlets.<sup>129</sup> In general, feed and food of non-animal origin may enter the EU without certification by the exporting country or pre-arrival notification. Consignments of certain imports of feed and food of non-animal origin specified in Annex I to Regulation No. 669/2009 must be notified prior to arrival, and must enter the EU through designated points of entry, where they are subject to reinforced controls.<sup>130</sup> These include documentary checks on all consignments, and identity and physical checks, including laboratory analysis, at the frequency established by the Annex. Annex I is subject to quarterly review.

117. Plants and plant products listed in Council Directive 2000/29/EC (Annex V, Part B) must be accompanied by a phytosanitary certificate issued by the competent authority of the exporting country, and are subject to border controls, including physical inspection.<sup>131</sup> The frequency of controls may be reduced for products from specific countries, based on risk profiling.<sup>132</sup> There are 51 products from specific countries subject to reduced inspections.<sup>133</sup> Unless determined by member States on an exceptional basis for particular commodities, imports of plants and plant products are not restricted to specific border posts.

118. The Rapid Alert System for Food and Feed (RASFF) is a network managed by the Commission that allows food and feed authorities of member States to exchange information about measures taken in response to serious risks detected in relation to food and feed. The legal basis for RASFF is the General Food Law, which sets out the criteria for notification to RASFF.<sup>134</sup> For example, members of RASFF are required to notify rejections of food or feed at the border if the consignment is rejected because of a risk to human or animal health. Border rejections represent just under half of the original notifications to RASFF.<sup>135</sup> In 2009, there were about twice as many border rejection notifications regarding food of non-animal origin than animal origin. The main category of food of non-animal origin notified in border rejections is "nuts, nut products and seeds", while fish is the main category of food of animal origin.

---

<sup>128</sup> Albania, Bangladesh, China, Gabon, India, Indonesia, Mexico, Myanmar, and Ukraine. European Commission online information, "Special Import Conditions". Viewed at: [http://ec.europa.eu/food/animal/bips/special\\_imports\\_en.htm](http://ec.europa.eu/food/animal/bips/special_imports_en.htm).

<sup>129</sup> Article 15(2), Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004 (OJ L 191, 28 May 2004).

<sup>130</sup> Commission Regulation (EC) No 669/2009, 24 July 2009 (OJ L 194, 25 July 2009).

<sup>131</sup> Council Directive 2000/29/EC, 8 May 2000 (OJ L 169, 10 July 2000).

<sup>132</sup> Commission Regulation (EC) No. 1756/2004, 11 October 2004 (OJ L 313, 12 October 2004).

<sup>133</sup> European Commission online information, "Notification of Reduced Plant Health Checks for Certain Products". Viewed at: [http://ec.europa.eu/food/plant/organisms/imports/recommended\\_products2008.pdf](http://ec.europa.eu/food/plant/organisms/imports/recommended_products2008.pdf).

<sup>134</sup> Article 50.

<sup>135</sup> European Commission (2010e).

119. Under Regulation No. 882/2004, the Commission may recognize specified pre-export checks that a non-EU member State carries out on feed and food.<sup>136</sup> The Commission recognizes pre-export controls carried out by the United States on peanuts and derived products with respect to aflatoxins.<sup>137</sup> The EU is discussing with Canada the possibility of recognizing Canada's pre-export checks of wheat and certain derived products with respect to ochratoxin A.

120. The use of genetically modified organisms (GMOs) is regulated at EU level on the basis of Regulation No. 1829/2003 on genetically modified food and feed, Directive 2001/18/EC on the deliberate release of GMOs into the environment, and Regulation 1830/2003 on the traceability and labelling of GMOs, and food and feed produced from GMOs.<sup>138</sup> Member States may not legislate with respect to the cultivation of GMOs, only to their use. In July 2010, the European Commission adopted a proposed regulation to amend Directive 2001/18/EC to allow member States to restrict or prohibit the cultivation in all or part of their territories of GMOs authorized at the EU level. Under the proposed regulation, member States may adopt measures with respect to the cultivation of GMOs in their territories, but not with respect to the import into the EU of authorized GM seeds and plant propagating material, and the products of their harvest. Prohibitions or restrictions would be based on grounds other than those covered by the environmental and health risk assessment under the existing EU authorization system for GMOs. According to this system, the level of protection of human and animal health and of the environment chosen in the EU may not be revised by a member State.

121. Under the proposed regulation, member States must notify measures they intend to adopt, and the reasons for adopting them, to the Commission and to the other member States one month prior to their adoption. The proposed legislation does not change the authorization procedure for GMOs. The Commission's legislative proposal is subject to the procedure on co-decision with the European Parliament and the Council.

122. According to the Commission, the new approach is necessary "to achieve the right balance between maintaining the EU system of authorisations based on scientific assessment of health and environmental risks and the need to grant freedom to Member States to address specific national, regional or local issues raised by the cultivation of GMOs".<sup>139</sup> Several member States have prohibited or restricted cultivation of GMOs authorized at the EU level. For example, Austria, France, Germany, Hungary, and Lithuania have prohibited maize MON 810; Austria has prohibited maize T 25; and Austria, Hungary, and Luxembourg have prohibited Amflora potato. According to the scientific opinion of the European Food Safety Agency, "these measures were not based on new or additional scientific information since the authorizations were granted and therefore such measures were not justified from a legal point of view."<sup>140</sup> A judgement issued by the Court of Justice of the EU in July 2009 considered that legislation adopted by Poland to prohibit the marketing of GM seeds was contrary to EU law.<sup>141</sup>

---

<sup>136</sup> Article 23.

<sup>137</sup> Commission Decision 2008/47/EC, 20 December 2007 (OJ L 11, 15 January 2008).

<sup>138</sup> Regulation (EC) No. 1829/2003 of the European Parliament and of the Council, 22 September 2003 (OJ L 268, 18 October 2003); Directive 2001/18/EC of the European Parliament and of the Council, 12 March 2001 (OJ L 106, 17 April 2001); and Regulation (EC) No. 1830/2003 of the European Parliament and of the Council, 22 September 2003 (OJ L 268, 18 October 2003).

<sup>139</sup> European Commission document COM(2010) 380 final, 13 July 2010. Viewed at: [http://www.reading.ac.uk/foodlaw/pdf/com2010\\_380-gm-cultivation.pdf](http://www.reading.ac.uk/foodlaw/pdf/com2010_380-gm-cultivation.pdf).

<sup>140</sup> European Commission document COM(2010) 380 final, 13 July 2010. Viewed at: [http://www.reading.ac.uk/foodlaw/pdf/com2010\\_380-gm-cultivation.pdf](http://www.reading.ac.uk/foodlaw/pdf/com2010_380-gm-cultivation.pdf).

<sup>141</sup> Case C-165/08.

**(2) MEASURES DIRECTLY AFFECTING EXPORTS****(i) Registration and documentation**

123. Persons established in the EU who are involved in activities covered by customs legislation must be in possession of a national number that is valid as an Economic Operator Registration and Identification (EORI) number (see section (1)(i)).

124. Since July 2009, export declarations must be lodged electronically at the customs office of export, i.e., the customs office designated by the customs authorities for the completion of the formalities (for goods destined to leave the customs territory of the Community).<sup>142</sup> In principle, export declarations for containerized maritime cargo must be lodged at least 24 hours before the cargo is loaded on the outbound vessel; export declarations for other cargo must be lodged before the goods leave the EU.<sup>143</sup> The EU Customs Code Implementing Regulation specifies certain exceptions.<sup>144</sup>

125. Export declarations must contain the security data specified in Annex 30A of the EU Customs Code Implementing Regulation. Security data are not required for exports to Liechtenstein, Norway, and Switzerland. Exports from authorized economic operators are subject to reduced security data requirements (see section (1)(i)).

**(ii) Export taxes and fees**

126. The EU does not apply taxes on exports.

**(iii) Restrictions and controls**

127. There have been no major changes, during the review period, in the EU legal framework governing export restrictions and controls. EU member States maintain quantitative restrictions and controls on exports for foreign policy and security reasons.<sup>145</sup> Arms exports are controlled at the member State level. In assessing applications to export arms listed in the EU Common Military List, member States have agreed to follow the EU Code of Conduct on Arms Exports.<sup>146</sup> The Common Military List was updated in March 2008.<sup>147</sup>

128. Exports of "dual-use" items are controlled at the EU level. The EU's dual-use export control system, set out in Regulation No. 428/2009, defines dual-use items as "items, including software and technology, which can be used for both civil and military purposes, and shall include all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices".<sup>148</sup> The list of controlled dual-use items is contained in

<sup>142</sup> Article 161(5), Council Regulation (EEC) No 2913/92, 12 October 1992.

<sup>143</sup> Article 592b, Commission Regulation (EEC) No 2454/93, 2 July 1993.

<sup>144</sup> Article 592a, Commission Regulation (EEC) No 2454/93, 2 July 1993.

<sup>145</sup> Regulation (EEC) No. 2603/69 of the Council, 20 December 1969 establishing common rules for exports, (OJ L 324, 27 December 1969).

<sup>146</sup> European Union Code of Conduct on Arms Exports, 5 June 1998. Viewed at: <http://www.consilium.europa.eu/uedocs/cmsUpload/08675r2en8.pdf>.

<sup>147</sup> Common Military List of the European Union, adopted by the Council on 23 February 2009 (OJ C 65, 19 March 2009).

<sup>148</sup> Article 2, Council Regulation (EC) No. 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, OJ L 134, 29 May 2009.

Annex I of the Regulation. Member States may impose export controls on unlisted dual-use items under certain conditions specified in the Regulation.<sup>149</sup>

129. Exports of most controlled items to Australia, Canada, Japan, New Zealand, Norway, Switzerland, and the United States are authorized under the Community General Export Authorizations. The specific conditions for exporting under the Authorizations are specified in Annex II of Regulation No. 428/2009; member States may impose certain additional administrative requirements.

130. All other exports controlled under Regulation No. 428/2009 are subject to authorization granted by the member State where the exporter is established. There are national general, global, or individual authorizations, all of which are valid throughout the EU. France, Germany, Greece, Italy, the Netherlands, Sweden, and the United Kingdom have national general authorizations, which must be granted in accordance with the conditions set out in Article 9(4) of the Regulation. Individual and global authorizations are granted to one exporter, and cover either one end user (individual) or several countries and end users (global). In assessing applications for individual or global authorizations, member States must take into consideration the criteria specified in the Regulation.<sup>150</sup>

131. The European Commission indicates that "there is a lack of transparency across Member States regarding both the scope and conditions of use of national general export authorisations and the list of exporters denied access to national general export authorisations".<sup>151</sup> According to the Commission, "this leads to regulatory treatment of certain exports that benefits businesses established in one Member State at least partly at the expense of businesses established in and national security interests of other Member States, and is not in the best interests of the Community as a whole".

132. The European Commission proposes creating new Community General Export Authorizations "to simplify the current legal system, enhance the EU industry's competitiveness and establish a level playing field for all EU exporters when they export certain items to certain destinations".<sup>152</sup> The proposal is under discussion in the Council and the European Parliament. In addition, as part of its blueprint for EU trade policy, the Commission announced in November 2010 that it would adopt a Green Paper "seeking to improve [the EU's] export control system".<sup>153</sup>

**(iv) Official support and related fiscal measures**

133. The EU provides export subsidies to eligible exporters of certain agricultural products (Chapter IV(1)).

134. In June 2010, a WTO panel issued its report on a complaint by the United States against certain EU measures affecting trade in large civil aircraft.<sup>154</sup> Among the panel's findings was that certain instances of financing by Germany, Spain, and the United Kingdom for the design and

<sup>149</sup> Articles 4 and 8.

<sup>150</sup> Article 12.

<sup>151</sup> European Commission document COM(2008) 854 final, 16 December 2008. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc\\_142038.pdf](http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc_142038.pdf).

<sup>152</sup> European Commission document COM(2008) 854 final, 16 December 2008. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc\\_142038.pdf](http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc_142038.pdf).

<sup>153</sup> European Commission (2010).

<sup>154</sup> WTO document WT/DS316/R, 30 June 2010.



development of the A380 aircraft constitute prohibited export subsidies. The EU has appealed the panel's report.<sup>155</sup>

135. Under the EU Customs Code's drawback system, importers can claim repayment of import duties paid on imported goods if they export such goods in the form of "compensating products", that is, products resulting from processing operations.<sup>156</sup> In addition, the Customs Code establishes a suspension system whereby imported goods intended for export in the form of compensating products are not subject to import duties.<sup>157</sup> Once in force, the Modernized Customs Code will eliminate the drawback system. The Commission indicates that there are no data on the value of repayments under the drawback system. In addition, the Commission notes that drawback has not played an important role in the EU.

**(v) Finance, insurance, guarantees, and promotion**

136. Official export credits are subject to EU rules. The Directive on medium- and long-term export credit insurance establishes principles for official insurance and guarantee arrangements, premiums, and cover policies.<sup>158</sup> Export credits are granted at the member State level through official export credit agencies.

137. Following the onset of the financial crisis in 2008, the European Commission simplified the "escape clause" for short-term export insurance.<sup>159</sup> Under the escape clause, member States may, subject to authorization from the Commission, offer export credit insurance cover for "marketable risks", provided that the cover is temporarily unavailable in the private market.<sup>160</sup> Marketable risks are defined as commercial and political risks on public and non-public debtors established in the EU and eight other OECD countries, with a maximum risk period of less than two years. Member States must notify the Commission of their intention to use the escape clause.

138. Under the new simplified procedures, member States invoking the escape clause must provide evidence of the lack of cover for short-term export credit from a large, well-known international private export credit insurer, and a national credit insurer. Alternatively, they must demonstrate that insurers refused to cover specific operations of at least four well-established exporters in its territory. Between mid-December 2008 and October 2010, the European Commission authorized 13 simplified export-credit schemes (Austria, Belgium, Denmark, Finland, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, the Netherlands, Slovenia, and Sweden).<sup>161</sup>

139. In January 2011, the Commission issued a Communication extending the procedural simplification on short-term export credit insurance until end 2011.<sup>162</sup> The Commission notes that

---

<sup>155</sup> In parallel the EU challenged a number of U.S. measures affecting trade in large civil aircraft. In July 2010, the Chairman of the panel set up in the context of this dispute informed the Dispute Settlement Body that the panel expects to complete its work in the first half of 2011.

<sup>156</sup> Article 114.1(b), Council Regulation No. 2913/92, 12 October 1992.

<sup>157</sup> Article 114.1(a).

<sup>158</sup> Council Directive 98/29/EC, 7 May 1998 (OJ L 148, 19 May 1998).

<sup>159</sup> Communication from the Commission-Temporary Community Framework for State Aid Measures to Support Access to Finance in the Current Financial and Economic Crisis (OJ C 16, 22 January 2009).

<sup>160</sup> Communication of the Commission to Member States amending the communication pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance (OJ C 325, 22 December 2005).

<sup>161</sup> European Commission document SEC(2010) 1462 final, 1 December 2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:1462:FIN:EN:PDF>.

<sup>162</sup> Communication of the Commission-Temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis (OJ C 6, 11 January 2011).

"companies still find it difficult to find coverage from private insurers in many sectors and many Member States". In addition, the Commission decided in December 2010 to extend the application of the underlying legal framework on short-term export-credit insurance (the 1997 Communication) until end 2012.<sup>163</sup>

140. The EU provides assistance to promote its agricultural products and food outside the EU (Chapter IV(1)). In addition, export promotion schemes are in place at the national or sub-national levels.

### **(3) MEASURES AFFECTING PRODUCTION AND TRADE**

#### **(i) Business framework and foreign investment regime**

141. Legal and administrative barriers to entrepreneurship in the EU are below the OECD average. Among EU member States, barriers to entrepreneurship are highest in Poland and Greece, and lowest in the United Kingdom, the Netherlands, and Sweden.<sup>164</sup>

142. Corporate income is taxed in every member State, but the rates and the rules for determining the tax base differ substantially. Unlike indirect taxes, EU law does not specifically require harmonization of direct taxes. Corporate income tax rates in the EU average 23.2%.<sup>165</sup> The top statutory tax rate on corporate income ranges from 10% in Bulgaria and Cyprus to 35% in Malta.

143. The Treaty on the Functioning of the EU prohibits restrictions on capital movements among EU member States, and between EU and non-EU members.<sup>166</sup> Restrictions on direct investment from non-EU members that were in place in December 1993 (December 1999 for Bulgaria, Estonia, and Hungary) are exempt from this prohibition.<sup>167</sup> Also exempt are restrictions "justified on grounds of public policy or public security", and those taken "to prevent infringement of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information".<sup>168</sup>

144. Following the entry into force of the Lisbon Treaty in December 2009, the adoption of measures on direct investment between EU and non-EU members requires the assent of the Council and the European Parliament, in accordance with the ordinary legislative procedure (Chapter II(1)). However, under EU rules on capital movements, if the measure is "a step backwards in Union law as regards the liberalisation of the movement of capital to or from third countries", it must be adopted by the Council unanimously, in consultation with the European Parliament.<sup>169</sup> The Commission notes that no such measures have been adopted since the last Review of the EU. In exceptional circumstances, the Council may adopt temporary safeguard measures restricting capital movements

---

<sup>163</sup> Communication of the Commission amending the period of application of Communication of the Commission to the Member States pursuant to Article 93(1) of the EC Treaty applying Articles 92 and 93 of the Treaty to short-term export-credit insurance (OJ C 329, 7 December 2010).

<sup>164</sup> As measured by the "Barriers to Entrepreneurship" indicator for 2008 in the OECD's "Indicators of Product Market Regulation" database. Viewed at: [http://www.oecd.org/document/36/0,3343,en\\_2649\\_34323\\_35790244\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/36/0,3343,en_2649_34323_35790244_1_1_1_1,00.html). The data are available for 21 EU member States.

<sup>165</sup> European Commission (2010d).

<sup>166</sup> Article 63(1).

<sup>167</sup> Article 64, TFEU.

<sup>168</sup> Article 65(1)(b).

<sup>169</sup> Article 64, TFEU.

with non-EU member States subject to the conditions set out in Article 66 of the Treaty on the Functioning of the EU.

145. The Treaty on the Functioning of the EU prohibits measures that restrict the "freedom of establishment" of EU nationals in the territory of another member State. This means that companies or firms formed in accordance with the law of a member State, and having their registered office, central administration, or principal place of business in the EU can establish agencies, branches, or subsidiaries in the territory of another member State.<sup>170</sup> Freedom of establishment extends to the EU subsidiaries of non-EU companies, but not to their branches or agencies.

146. EU member States have long maintained a policy of national treatment of foreign direct investment (FDI), subject to sector-specific restrictions. Empirical analysis shows that member States did not react to the recent financial and economic crisis by introducing new FDI restrictions.<sup>171</sup>

147. The overall level of restrictiveness on FDI in most EU member States is lower than the OECD average.<sup>172</sup> Luxembourg, the Netherlands, Portugal, Romania, and Slovenia maintain the lowest level of FDI restrictions among member States, and Poland the highest. On average, restrictions on FDI are highest in real estate, fishing, transport, agriculture, and media. They mostly take the form of equity limitations. Other barriers to FDI are requirements on key personnel and reciprocity requirements regarding investments from outside the EU (Box III.1). Member States' special rights in certain state-owned enterprises have also been found to restrict investment (see section (ii) below.

148. Several member States, including France, Germany, and the United Kingdom maintain FDI review procedures for national security purposes. During the period under review, Germany amended its Foreign Trade and Payments Act to broaden the scope of investment reviews. Under the amended Act, the Federal Ministry of Economics and Technology can examine foreign investment transactions to determine whether they jeopardize public interest or public security. Reviews are carried out only on transactions resulting in the acquisition of 25% or more of a resident company by investors from outside the EU or EFTA; transactions by EU-based companies may be examined if a non-EU shareholder owns 25% or more of the voting shares of that company if there are indications of abuse or circumvention.<sup>173</sup>

149. There are no notification requirements under Germany's investment review procedures. The Federal Ministry of Economics and Technology is responsible for determining whether a particular foreign investment transaction is covered by the Act. It uses information from the Federal Agency of Banking Supervision and the weekly lists of transactions issued by the Federal Competition Agency. In principle, the Ministry must decide whether to conduct a review within three months of the acquisition. It must issue an administrative act informing the companies concerned about the initiation of the review. Investors under review must submit the documents listed in the *Federal Gazette* of 24 April 2009.

150. Germany's Ministry of Economics and Technology may prohibit or impose conditions on a foreign investment transaction within two months of receiving the required information. The Ministry's decision is subject to judicial review. The Ministry has not prohibited or imposed conditions on any transaction under the amended Act. The Secretariat did not receive official data on the number of cases reviewed.

<sup>170</sup> Articles 49 and 54, TFEU.

<sup>171</sup> London Economics (2010).

<sup>172</sup> Based on 2010 data for 24 EU member States. See Kalinova, Palerm and Thomsen (2010). The Data are available for 24 EU member States.

<sup>173</sup> Paragraph 53(1), *Verordnung zur Durchführung des Außenwirtschaftsgesetzes*.

**Box III.1: Reciprocity requirements in selected EU member States, December 2010**

**Austria:** extraction, preparation, and storage of mass minerals; operation of oil refineries, gas plants, filling stations, and district heating; trading of fuels; investment in transport services, including road freight, taxis, buses; establishment of tour operators and travel agencies by non-resident entities

**Belgium:** establishment of travel agencies by enterprises originating in non-EU member States

**France:** establishment in the banking and financial services sector of non-resident investors originating in non-EU member States; establishment of insurance companies originating in non-EU member States; investment by non-EU residents in: political and general information publications appearing at least once per month (other than those intended for foreign communities in France) and audio-visual communication services; insurance brokerage; exploration, extraction, and exploitation of hydrocarbons, and waterfalls; and acquisition of agricultural land adjacent to the Swiss border

**Germany:** establishment of airline enterprises with headquarters abroad

**Greece:** establishment of travel agencies by enterprises originating in non-EU member states

**Ireland:** foreign acquisition of shipping vessels registered in Ireland

**Italy:** foreign investment in the exploration and exploitation of liquid and gaseous hydrocarbons; granting of tour operator and travel agent licences to nationals of non-EU member states, or to enterprises in such states

**United Kingdom:** authorization of mergers and take-overs involving investors from non-EU member states

*Source:* WTO Secretariat, based on OECD Code of Liberalization of Capital Movements, 2010. Viewed at: <http://www.oecd.org/daf/investment/codes>.

151. In Germany, prior to acquiring a resident company, foreign investors may request a certificate confirming that their acquisition does not compromise public policy or public security. Applications must be accompanied by a general outline of the planned acquisition, and information on the investors and their activities. If the Ministry of Economics and Technology does not launch an examination within one month of receiving an application, the certificate is deemed to be issued. Certificates are legally binding.

152. Under France's Decree 2005-1739, certain investments in "sensitive" sectors from companies whose corporate headquarters are outside the EU or the European Economic Area (EEA) are subject to notification and review.<sup>174</sup> These investments are reviewable if they result in: control of a firm with corporate headquarters in France; acquisition of a branch of a firm with corporate headquarters in France; or acquisition of more than one-third of the capital or voting rights of a firm with corporate headquarters in France.

153. Investments in sensitive sectors from companies whose corporate headquarters are in the EU or EEA are also subject to review under France's Decree, but under less stringent conditions.<sup>175</sup> For some sensitive sectors, investments from these companies are reviewed only if they result in control of a firm with corporate headquarters in France, or in the acquisition of a branch of a firm with corporate headquarters in France. For other sensitive sectors, reviews are carried out exclusively on investments that result in the acquisition of a branch of a firm with corporate headquarters in France.

<sup>174</sup> The Decree lists the following sensitive sectors: gambling; private security; research, development, and production to stem the use of pathogens or toxins in terrorist activities; equipment designed to intercept communications; testing and certification of information technology systems; supply of goods or services relating to the security of information systems; dual-use goods and technology; cryptology equipment and services; businesses certified for national defence; production of, or trade in weapons, munitions and explosives for military applications, or equipment used in warfare; and businesses under contract to supply research or equipment to the Ministry of Defence or its subcontractors. Articles R153-1 and 2, Monetary and Financial Code.

<sup>175</sup> Articles R153-3 et seq., Monetary and Financial Code.

In addition, some sensitive sectors are defined more narrowly for investments from companies headquartered in the EU or EEA than for other investments.

154. The entity responsible for carrying out investment reviews in France is the Ministry of Economy, Finance, and Industry. Reviews must be completed within two months after the submission of information by the investor. The Ministry may prohibit a particular transaction, or set conditions to mitigate the security concerns raised by it. The Ministry's decision to prohibit a transaction may be appealed administratively and judicially. The Secretariat has no data on the number of cases reviewed or on their outcome.

155. In December 2010, work was under way to address the European Commission's formal request to France to modify Decree 2005-1739 of 30 December 2005.<sup>176</sup> The Commission is concerned that some aspects of this decree are in contradiction with EU law and could discourage investment from other member States.

**(ii) State trading and state owned enterprises**

156. During the period under review, the EU notified that it does not maintain "any state trading enterprises in accordance with the working definition contained in paragraph 1" of the Understanding on the Interpretation of Article XVII.<sup>177</sup> Individual member States did not submit any notifications pursuant to Article XVII of the GATT 1994.

157. State-owned enterprises have exclusive rights in respect of imports of alcoholic beverages (Finland and Sweden), gas (Greece and Luxembourg), and electricity (Luxembourg). In 2007, the Court of Justice of the EU ruled that Sweden's ban on imports of alcoholic beverages was a prohibited quantitative restriction under EU law, and could not be justified as a means to protect human life and health (Box III.2).

**Box III.2: Sweden's import monopoly on alcoholic beverages**

Under a Swedish law examined by the Court of Justice of the EU in 2007, imports and retail sales of alcoholic beverages in Sweden may be carried out exclusively by Systembolaget, a state-owned enterprise.

The Court of Justice ruled that the prohibition on imports of alcoholic beverages by private individuals is a prohibited quantitative restriction on imports under EU law. Although Swedish law requires Systembolaget to supply, and if necessary, import alcoholic beverages that it does not offer, the Court indicated that individuals importing alcoholic beverages through Systembolaget are confronted with "a variety of inconveniences with which they would not be faced were they to import the beverages themselves."

The Court rejected the justifications for the import ban provided by Sweden, i.e., to limit the consumption of alcohol generally, and to protect young persons from the harmful effects of alcohol. It considered the ban "unsuitable" for attaining the objective of limiting alcohol consumption generally because of the "rather marginal nature of its effects in that regard". Under the law, the consumer can always request Systembolaget to supply alcoholic beverages. Furthermore, because the law bans imports by private individuals irrespective of age, the Court found that it "clearly goes beyond what is necessary for the objective sought, which is to protect younger persons against the harmful effects of alcohol consumption."

The Commission notes that, following the Court's decision, the Swedish Government retains full powers on the retail sale of alcoholic beverages through its alcohol retail monopoly Systembolaget, with the exception of distant purchases of alcohol for private consumption from other member States. According to the Commission, "this has been required by the Court of Justice of the European Union while interpreting the Treaty rules on the free movement of goods (Articles 34-36 TFEU)".

*Source:* WTO Secretariat, based on Court of Justice of the EU, Case C-170/04 *Klas Rosengren and Others v Riksklagaren*, 5 June 2007; and information provided by the Commission.

<sup>176</sup> European Commission press release IP/06/1353, "Free movement of capital: Commission calls on France to modify its legislation establishing an authorisation procedure for foreign investments in certain sectors of activity", 12 October 2006. Viewed at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/1353&format=HTML&aged=0&language=EN&guiLanguage=en>.

<sup>177</sup> WTO document G/STR/N/12/EEC, 18 September 2009.

158. As indicated in the Secretariat Report for the previous Review of the EU, state ownership varies significantly across member States. The extent of state ownership across business sectors, measured as the proportion of sectors where the state controls at least one firm, is below the OECD average in Belgium, Estonia, Ireland, the Netherlands, and the United Kingdom, and above average in the Czech Republic, France, Greece, Italy, Poland, Slovenia, and Sweden.<sup>178</sup>

159. Long-standing de jure monopolies are in effect in several member States, for example in rail transportation, energy, utilities, and gambling. Under the third Postal Directive, member States must abolish all remaining postal service monopolies by 31 December 2010.<sup>179</sup> Cyprus, the Czech Republic, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Poland, and Romania, which together represent 5% of the EU letter post market, may postpone the implementation of the third Postal Directive by two years. According to a study prepared for the Commission, although the postal markets in Estonia and Finland have been fully liberalized, licensing requirements inhibit market entry in the correspondence segment in Estonia, and the letters market in Finland (Chapter IV(2)(iv)).<sup>180</sup>

160. In addition, EU member State governments often enjoy special rights in certain state-owned companies. Some of these measures have been challenged on the basis that they infringe EU rules on the free movement of capital (Box III.3 and section (i) above).

**Box III.3: Selected member State's special rights in state-owned companies**

**Germany:** In October 2007, the Court of Justice of the EU ruled in case C-112/05 that Germany had failed to fulfil its obligations under EU rules on the free movement of capital by maintaining in force three provisions of the 1960s law that privatized the car manufacturer Volkswagen. These provisions grant public authorities (the Land of Lower Saxony and potentially, the Federal Government) automatic representation on the company's supervisory board, limit the voting rights of every shareholder to 20% of the share capital, and fix the blocking minority at 20% for the most important decisions of the general assembly of shareholders. In its ruling, the Court pointed out that the 20% voting cap, in conjunction with the 20% blocking minority, were derogations from German general law on limited liability companies. According to the Court, the Land of Lower Saxony, which had a share of approximately 20%, could oppose important resolutions based on a lower level of investment than would be required under general company law. The Court concluded that this situation was liable to dissuade investors from other member States, and thus was a restriction on the free movement of capital. Regarding the right of the Federal Government and the Land of Lower Saxony to appoint two representatives each to the supervisory board of Volkswagen, provided that they are shareholders but irrespective of the extent of their holding, the Court stated that this gave two public actors the possibility of exercising influence in excess of their investment levels, and was therefore a restriction on the movement of capital.

In late 2008, Germany abolished the provisions on the automatic representation of public authorities on the board, and the 20% voting cap. The Law's provision fixing a 20% blocking minority remains in place. Germany's Ministry of Justice considers that, with the recent amendments to the Volkswagen law, Germany has applied the Court of Justice's ruling "speedily and fully".

**Box III.3 (cont'd)**

<sup>178</sup> As measured by the "Scope of public enterprises" indicator for 2008 in the OECD's "Indicators of Product Market Regulation" database. Viewed at: [http://www.oecd.org/document/36/0,3746,en\\_2649\\_34323\\_35790244\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/36/0,3746,en_2649_34323_35790244_1_1_1_1,00.html). The data cover 21 EU member States.

<sup>179</sup> Directive 2008/6/EC of the European Parliament and of the Council, 20 February 2008 (OJ L 52, 27 February 2008).

<sup>180</sup> ITA Consulting GmbH and WIK-Consult GmbH (2009).

**Greece:** Under Law 3631/2008 the acquisition by shareholders other than the State of voting rights in "strategic companies" is limited to 20%, unless prior approval is granted by an inter-ministerial privatization committee. In addition, the Law requires the ex-post validation by the Minister of Economy and Finance of important corporate and certain specific management decisions pertaining to these companies. According to the Commission, which began a procedure to contest certain aspects of Law 3631/2008 in May 2008, the criteria for granting prior approval to acquire voting rights beyond 20% are imprecise, and there are no criteria for ex-post validation of certain company decisions by the Minister of Economy and Finance. The Commission considers that "this situation gives the administrative authorities a wide margin of discretion, which ... restricts the rights of potential investors deriving from [EU rules on] the free movement of capital". In addition, the Commission considers that the scope of Greece's law is unclear, thus creating uncertainty. The Commission concludes that the prior approval and ex-post validation schemes go beyond what is necessary to ensure the objectives pursued by the Government. The case was referred to the Court of Justice of the EU in February 2011.

The powers also allow the Minister to veto certain key management decisions, and to appoint a non-voting director. Special powers clauses were introduced into the articles of association of several companies, including ENI (petrochemical and energy), Telecom Italia (telecommunications), Enel (electricity), and Finmeccanica (defence). The Decree of the President of the Council of Ministers of 10 June 2004 defined criteria for the exercise of special powers, requiring that special powers be exercised "solely when justified by important and compelling reasons in the public interest concerning, more particularly, public policy, public security, public health and defence", and that they take the form of "measures appropriate and proportionate to the protection of those interests".

In its ruling of March 2009 in case C-327/2009, the Court of Justice of the EU found that the criteria for the exercise of special powers were formulated in a "general and imprecise manner". Moreover, the Court ruled that the lack of any connection between the criteria and the powers to oppose the acquisition of shareholdings and the conclusion of pacts by shareholders "increases the uncertainty surrounding the circumstances in which those powers may be exercised and gives them a discretionary nature". In November 2009, the Commission called on Italy to apply this ruling.

**Portugal:** Energias de Portugal (EDP) was privatized in six successive phases between 1997 and 2006. Currently, the Portuguese State holds 25.73% of the share capital. The legal framework governing the privatization of EDP and the articles of association set out special rights for the State in the company. These special rights include veto rights on resolutions to amend the company's articles of association, and the right to appoint a director in the company. The articles of association impose a limit on voting rights in the general assembly for all shareholders holding more than 5% of the capital of the company, except for the State entities. The Commission considers that these special powers are unjustified restrictions on the free movement of capital and the right of establishment under the Treaty on the Functioning of the EU, in so far as they hinder both direct investment and portfolio investment. In 2008, it referred the case to the European Court of Justice. In its November 2010 ruling, the Court found that Portugal had failed to fulfil its obligations regarding the free movement of capital and rejected Portugal's defence that maintaining special state rights in the company was a matter of public security and security of energy supply. In March 2011, the Commission formally asked Portugal for information on measures taken to comply with the Court's ruling.

*Source:* WTO Secretariat, based on Court of Justice of the EU, Case C-112/05, *Commission v Germany*, 23 October 2007; Federal Ministry of Justice press release, "*Bundesregierung: Urteil des EuGH zum VW-Gesetz eins zu eins umgesetzt*", 30 January 2009. Viewed at: <http://www.bmj.bund.de>; Court of Justice of the EU, Case C-326/07, *Commission v Italy*, 26 March 2009; Court of Justice of the EU, Case C-543/08, *Commission v. Portugal*, 11 November 2010; and European Commission online information, "Surveillance and analysis of capital movements: infringement procedures". Viewed at: [http://ec.europa.eu/internal\\_market/capital/analysis/index\\_en.htm#infringements](http://ec.europa.eu/internal_market/capital/analysis/index_en.htm#infringements).

(iii) **Subsidies and other government assistance**

(a) General legal and institutional framework

161. Subsidies and other government assistance are granted at the EU and member State levels. The latest EU subsidies notification to the WTO, submitted in December 2009, covers both types of subsidies, and contains statistical information at least up to end 2008.<sup>181</sup> The EU replied to questions on its notification posed by Australia, Canada, Japan, and the United States.<sup>182</sup> Questions referred to support for agricultural products, fisheries, shipbuilding, mining, civil aircraft research, pharmaceuticals, and support provided in the context of regional schemes.

162. The Treaty on the Functioning of the EU prohibits "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods ... in so far as it affects trade between Member States".<sup>183</sup> State aid that contributes to the achievement of "well-defined objectives of common European interest", including growth, employment, cohesion or environmental protection, may be considered compatible with the EU common market, and therefore, allowed.<sup>184</sup>

163. The authority to determine whether state aid is allowed rests with the European Commission. The Commission's assessment of aid is generally a "balancing of the positive effects of aid (in terms of contributing to the achievement of a well-defined objective of common interest) and its negative effects (namely the resulting distortion of competition and trade)".<sup>185</sup> The principles of the balancing test have been incorporated into "horizontal guidelines" for specific categories of state aid, including research, innovation, environmental protection, regional development, small and medium-sized enterprises, training, employment, and risk capital. The horizontal guidelines, which cover all sectors, define the conditions under which member States may grant particular types of aid.

164. In general, EU member States must notify the Commission, and obtain its authorization, before granting state aid. State aid eligible under the General Block Exemption Regulation, which entered into force in August 2008, is not subject to prior notification and scrutiny.<sup>186</sup> Neither is de minimis support (€200,000 or less per company over a period of three years).<sup>187</sup> Nearly €1 billion was awarded on the basis of block exemptions in 2009.<sup>188</sup> In general, individual aid awarded under an aid scheme does not need to be notified, provided the Commission has approved the terms and conditions of the particular scheme. If the aid granted to a single beneficiary under an existing scheme exceeds specific statutory thresholds, it is subject to notification and authorization. State aid granted in the absence of Commission approval is automatically classified as "unlawful aid". The Commission must order member States to recover unlawful aid that is found to be incompatible with the EU common market.

(b) Overall assistance

165. Assistance granted at the EU level is mostly for agriculture and "structural actions" (Chapter IV(1)). The EU's structural actions, which comprise the structural funds and the Cohesion

<sup>181</sup> WTO document G/SCM/N/186/EEC, 23 December 2009. Subsidies granted by individual member States are contained in addenda to this notification.

<sup>182</sup> WTO documents G/SCM/Q2/EEC/62-66.

<sup>183</sup> Article 107(1).

<sup>184</sup> OECD document DAF/COMP/GF/WD(2010)3, 11 January 2010. Viewed at: <http://www.oecd.org/dataoecd/52/2/44377696.pdf>; and European Commission (2008).

<sup>185</sup> European Commission (2008).

<sup>186</sup> Commission Regulation (EC) No 800/2008, 6 August 2008 (OJ L 214, 9 August 2008).

<sup>187</sup> Commission Regulation (EC) No 1998/2006, 15 December 2006 (OJ L 379, 28 December 2006).

<sup>188</sup> This figure refers to aid granted to industry and services.



Fund, seek to "strengthen the economic and social cohesion [of the EU], in particular by reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions".<sup>189</sup> According to the Commission, only a fraction of Cohesion policy funding is covered by state aid rules, as the majority of spending relates to general infrastructure or non-economic activities. In addition, the Commission indicates that the respect of state aid rules is an explicit requirement for benefitting from the structural funds.

166. According to the latest EU subsidies notification, outlays under the European Regional Development Fund, Cohesion Fund, and the Instrument for Pre-accession Assistance totalled close to €37 billion in 2008, the latest year available, compared with around €29 billion in 2006. The EU notification did not specify the allocation of these funds by member State or sector. The European Regional Development Fund accounts for approximately 80% of this assistance: as one of the structural funds, it is mainly used to co-finance investment for the creation or maintenance of jobs, infrastructure, and the development of local business initiatives and the activities of small and medium-sized enterprises.

167. The remainder of this section provides an overview of assistance granted by member States during the period under review, as measured by state aid data published by the European Commission. Given that assistance sometimes takes the form of regulatory or general measures that do not entail state aid, these data do not cover all assistance granted by member States; in particular, they do not reflect the total size of fiscal stimulus packages adopted by some member States during the economic crisis, and therefore underestimate assistance provided by member States during the period under review. For example, certain types of labour market support granted directly to workers under some of these stimulus packages may not be subject to state aid control by the Commission, and is therefore not included in the data presented in this section of the Report. Similarly, demand support measures, like car-scrapping schemes, to the extent that they do not discriminate with regard to the origin of the product, are not counted as state aid.

168. State aid provided by member States totalled approximately €427 billion in 2009, or 3.6% of EU-27 GDP.<sup>190</sup> On average, member States granted approximately €68 billion per year between 2007 and 2009, roughly three-and-a-half times the average for 2004-06. This reflects the sharp increase in state aid provided by member States in response to the financial and economic crisis (Chart III.1).

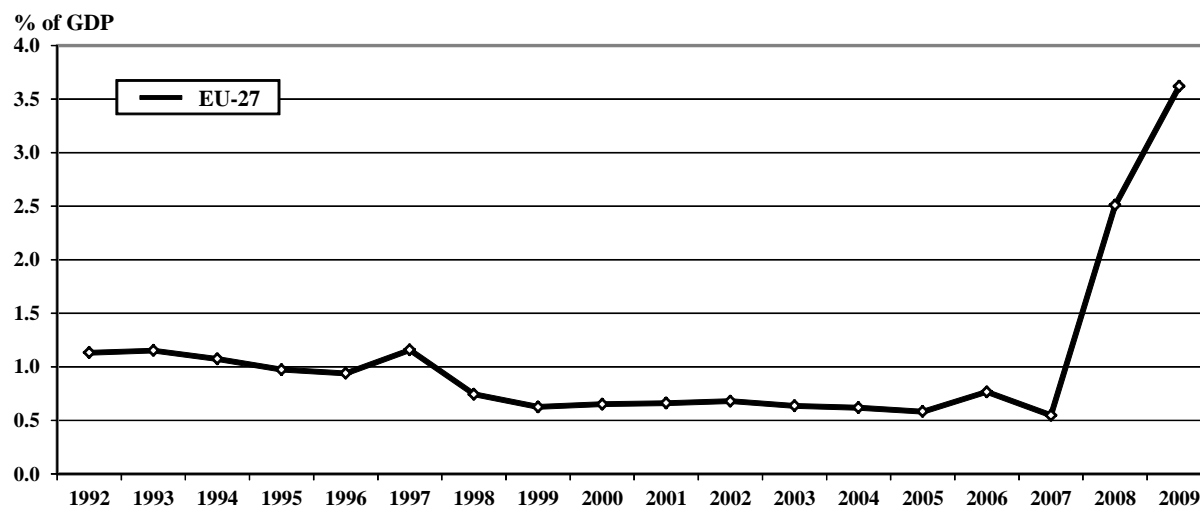
169. The United Kingdom granted the largest amount of state aid in 2009 (€124 billion), followed by Germany (€16.8 billion), France (€12.3 billion), Belgium (€4.3 billion), and Greece (€4.3 billion). Relative to economic size, state aid was highest in Belgium (10.2% of national GDP), followed by the United Kingdom (7.9%), Ireland (7.7%), Greece (6%), and Latvia (5.8%). For seven member States, the share of state aid in national GDP was less than 1%.

---

<sup>189</sup> WTO document G/SCM/N/186/EEC, 23 December 2009.

<sup>190</sup> This figure excludes aid to the railway sector and aid for compensation for "services of general economic interest" due to lack of data. Services of general economic interest are defined in EU competition law as "economic activities that public authorities identify as being of particular importance to citizens and that would not be supplied (or would be supplied under different conditions) if there were no public intervention." The sources of data on state aid are: European Commission document SEC(2010) 1462 final, 1 December 2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:1462:FIN:EN:PDF>; and European Commission online information, "State Aid control: Studies and reports". Viewed at: [http://ec.europa.eu/competition/state\\_aid/studies\\_reports/expenditure.html](http://ec.europa.eu/competition/state_aid/studies_reports/expenditure.html).

**Chart III.1**  
**Overall level of aid provided by member States, 1992-2009**



**Note:** Total aid excludes railways.  
Data for Austria, Sweden, and Finland are included from 1995 onwards, for EU-10 Member States from 2000, for Bulgaria and Romania from 2002.

**Source:** European Commission online information, Scoreboard: Data on State Aid Expenditure. Viewed at: [http://ec.europa.eu/competition/state\\_aid/studies\\_reports/expenditure.html](http://ec.europa.eu/competition/state_aid/studies_reports/expenditure.html).

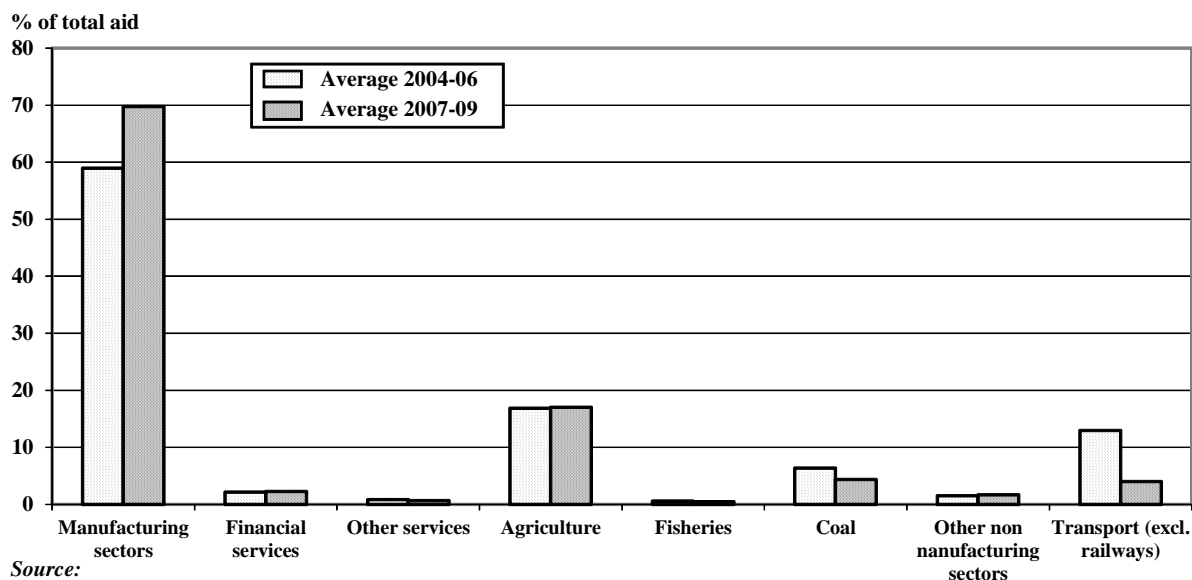
170. Excluding aid granted in response to the financial and economic crisis, average annual state aid decreased from €76.1 billion in 2004-06 to €70.1 billion in 2007-09. Twelve member States reduced their average state aid levels between 2004-06 and 2007-09. Relative to economic size, Bulgaria recorded the highest level of non-crisis aid in the EU (2.1% of national GDP) in 2009, followed by Malta (2%), Hungary (1.5%), and Finland (1.2%). Non-crisis state aid was 0.4% of national GDP or less in Estonia, Luxembourg, Italy, Netherlands, and the United Kingdom.

171. The bulk of non-crisis state aid provided by member States was directed at manufacturing, followed by agriculture. The share of manufacturing in total state aid increased significantly between 2004-06 and 2007-09, while the share of transport decreased. Other sectors' shares remained relatively stable (Chart III.2).

172. Excluding crisis-related measures, grants and tax exemptions were the most common instruments for provision of state aid, accounting for approximately 93% of the total in 2009.<sup>191</sup> Soft loans, guarantees, and equity participation accounted for slightly less than 7% of total aid. Austria, Bulgaria, Cyprus, Denmark, Luxembourg, and Slovenia used grants for the bulk of state aid. France, Germany, Ireland, Malta, Portugal, Slovakia, Sweden, and the United Kingdom used tax exemptions for at least 50% of state aid. Including aid in response to the financial and economic crisis, around half of total state aid in 2009 was in the form of equity participation, followed by guarantees (36% of total aid), and grants (10%).

<sup>191</sup> The total comprises aid for industry and services only.

**Chart III.2**  
**Non-crisis aid provided by member States, 2004-09**



European Commission online information, "Scoreboard: Data on State Aid Expenditure". Viewed at: [http://ec.europa.eu/competition/state\\_aid/studies\\_reports/expenditure.html](http://ec.europa.eu/competition/state_aid/studies_reports/expenditure.html).

(c) Assistance in response to the financial and economic crisis

173. Following the onset of the financial crisis in 2008, the Commission issued several communications providing guidance on the design and implementation of state aid in support of banks.<sup>192</sup> The communications cover public guarantees, recapitalization measures, impaired asset relief, and "restructuring aid". They are based on the consideration that the severity of the crisis justifies, for a limited period, state aid measures on the basis of Article 107(3)(b) of the Treaty on the Functioning of the EU, which stipulates that "aid to remedy a serious disturbance in the economy of a Member State" may be compatible with the EU common market. According to the Commission, the objective of the guidance is to ensure that emergency measures granted to maintain financial stability "guarantee a level playing-field between banks located in different Member States as well as between banks who receive public support and those who do not".<sup>193</sup>

174. Between October 2008 and October 2010, the Commission authorized state aid measures for the financial sector in 22 member States on the basis of Article 107(3)(b) of the Treaty on the Functioning of the EU.<sup>194</sup> The "maximum volume" of this state aid totalled nearly €4,590 billion, or

<sup>192</sup> See Communication from the Commission – The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (OJ C 270, 25 October 2008); Communication from the Commission – The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition (OJ C 10, 15 January 2009); Communication from the Commission on the treatment of impaired assets in the Community banking sector (OJ C 72, 26 March 2009); and Communication from the Commission on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules (OJ C 195, 19 August 2009).

<sup>193</sup> European Commission (2009a).

<sup>194</sup> European Commission document COM(2010) 701, 1 December 2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0701:FIN:EN:PDF>.

some 40% of EU-27 GDP.<sup>195</sup> Around three-quarters was in the form of guarantees, including the blanket guarantees covering all bank debts adopted by Denmark and Ireland. According to the Commission, member States relied principally on guarantee measures, because they had a "stabilising effect for the financial sector without weighing heavily on the public finances as opposed to more interventionist instruments such as recapitalisations or the cleaning of impaired assets".<sup>196</sup> Denmark, France, Germany, Ireland, and the United Kingdom accounted for nearly 70% of approved state aid for the financial sector.

175. The "amount actually used" of state aid in 2009, which reflects the volume of aid implemented by member States, totalled €1,107 billion, or around 9% of EU-27 GDP. Approximately three quarters corresponds to guarantees, under general schemes and ad hoc interventions in support of individual financial institutions.

176. The Economic and Financial Affairs Council, composed of the Economics and Finance Ministers of member States, concluded in December 2009 that it was necessary to design a transparent and coordinated strategy to phase out support measures for banks and avoid negative spill-over effects.<sup>197</sup> To provide incentives for banks to "exit" from support measures, the Commission defined several requirements for the renewal of bank guarantees beyond 30 June 2010, including higher fees based on banks' creditworthiness. In addition, the Commission requires that, from 2011, member States submit a restructuring plan for every bank receiving state support in the form of recapitalizations or impaired-asset relief.<sup>198</sup> Previously, only distressed banks, i.e., banks that received state support above 2% of their risk-weighted assets, were subject to this requirement.

177. Apart from support to the financial sector, member States provided support for the real economy, mostly within the broader framework of the European Economic Recovery Plan, adopted in December 2008 to ensure a coordinated EU response to the crisis.<sup>199</sup> The Plan called on member States to devote 1.2% of GDP to counter the effects of the crisis and adopt short-term measures in support of employment, infrastructure, construction, and business. As part of the Plan, the EU adopted in early 2009 a "temporary framework" allowing member States to provide state aid in response to "the exceptional difficulties of companies to obtain finance" until the end of 2010.<sup>200</sup> Like the communications on bank support, the temporary framework is based on the consideration that the severity of the crisis justifies, for a limited period, state-aid measures on the basis of Article 107(3)(b) of the Treaty on the Functioning of the EU.

---

<sup>195</sup> The maximum volume is the upper limit of support approved by the Commission; it does not represent the amounts handed to financial institutions.

<sup>196</sup> European Commission document SEC(2010) 1462 final, 1 December 2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:1462:FIN:EN:PDF>.

<sup>197</sup> European Council press release 16838/09 (Press 352), "2981st Council meeting, Economic and Financial Affairs", Brussels, 2 December 2009. Viewed at: [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/ecofin/111706.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ecofin/111706.pdf).

<sup>198</sup> European Commission press release IP/10/1636, "State aid: Commission prolongs crisis framework 0077ith stricter conditions", 1 December 2010. Viewed at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1636&format=HTML&aged=0&language=EN&guiLanguage=en>.

<sup>199</sup> European Commission document COM(2008) 800 final, 26 November 2008. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0800:FIN:EN:PDF>.

<sup>200</sup> Communication from the Commission-Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis (OJ C 83, 7 April 2009); and European Commission press release IP/08/1993, "State aid: Commission adopts temporary framework for Member States to tackle effects of credit squeeze on real economy", 17 December 2008. Viewed at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1993>.

178. The temporary framework opened up new possibilities for member States to provide assistance to firms in the form of: grants of up to €500,000 per firm for investments or working capital ("500k measure"); subsidized loans and subsidized guarantees; and aid for the production of "green" products. In addition, the temporary framework set out temporary adaptations of existing state-aid instruments on risk capital aid for small and medium-sized enterprises, and short-term export credit insurance (section (2)(v)). The 500k measure was not available to firms in the fisheries sector; grants were capped at €15,000 for firms producing primary agricultural products.<sup>201</sup> State-aid measures adopted under the temporary framework are subject to ex ante notification and authorization by the Commission.

179. Member States could adopt measures under the temporary framework until the end of 2010. In December 2010, the Commission agreed to extend certain temporary framework measures until end 2011. According to the Commission, "a limited prolongation of certain measures currently set out in the temporary framework, accompanied by the introduction of stricter conditions on the prolonged measures, constitutes a central element of a gradual return to normal state-aid rules, while limiting their impact on competition."<sup>202</sup>

180. The prolonged temporary framework maintains the possibility of providing subsidized guarantees and subsidized loans, including for the production of green products under stricter conditions. It reduces the maximum subsidy for guarantees, and prohibits subsidized loans to finance large firms' working capital. Firms in difficulty, as defined under EU state-aid rules, are not eligible for state-aid measures adopted under the prolonged temporary framework. In addition, the Commission decided to make permanent the upper limit on annual risk capital aid temporarily introduced by the original temporary framework.

181. The prolonged temporary framework discontinues the provision that allowed member States to grant up to €500,000 per company for investments or working capital. The Commission considers that, although the provision in the temporary framework was useful as a "short-term instrument when the uncertainty of the economic outlook was at the highest, it has also given rise to disparities in the internal market".<sup>203</sup> According to the Commission, around 7% of funds allocated by member States and approved by the Commission under this provision were actually paid out, and nearly 80% of aid disbursed was concentrated in one member State (Germany).

182. Between mid-December 2008 and October 2010, the Commission approved 73 schemes under the temporary framework and 4 ad hoc aid measures, totalling maximum aid of €82.5 billion (0.7% of EU-27 GDP). Schemes for aid up to €500,000 per company were implemented in 23 member States, subsidized guarantee schemes in 18, subsidized loan schemes in 8, reduced interest loan schemes for the production of green products in 5, and risk capital schemes in 6. In addition, Latvia, Romania, and Sweden received approval for 5 ad hoc aid measures, mostly to car manufacturers. Twelve member States put in place schemes providing up to €15,000 for agricultural producers.

---

<sup>201</sup> "Communication from the Commission amending the Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis"(OJ C261, 31 October 2009).

<sup>202</sup> "Communication of the Commission-Temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis" (OJ C6, 11 January 2011).

<sup>203</sup> "Communication of the Commission-Temporary Union framework for State aid measures to support access to finance in the current financial and economic crisis" (OJ C6, 11 January 2011).

183. France and Germany maintained the largest number of measures under the temporary framework, with seven aid schemes each, followed by Hungary, Italy, Latvia, and the United Kingdom. Cyprus adopted no measures under the temporary framework.

184. The Commission estimates that measures approved under the temporary framework totalled €1.3 billion in 2009, or almost 0.7% of EU-27 GDP. The amount of aid granted by member States was slightly below 3% of the maximum volume approved.

185. Assistance provided under the temporary framework was not sector specific. Thus, there are no consolidated data on the volume of aid under the temporary framework disaggregated by economic sector. Nonetheless, some parts of member States' fiscal stimulus packages targeted particular economic sectors. According to one estimate, one-third of all measures introduced by member States under the European Economic Recovery Plan were sector specific. The automobile sector, along with tourism and construction received the largest share of sectoral support (Box III.4).<sup>204</sup>

186. In its assessment of support measures introduced under the European Economic Recovery Plan, the Commission concluded that they did not unduly distort competition, and that they helped to achieve long-standing EU objectives like enhancing research, development, and innovation, extending ICT, improving transport links, and using energy more efficiently. Nonetheless, the Commission indicates that these measures could hinder much needed adjustment and restructuring in the targeted sectors. According to the Commission, "it is therefore important to plan the credible withdrawal of these measures once growth becomes durably anchored so as to avoid longer lasting distortions in the functioning of markets".<sup>205</sup>

**Box III.4: Support for the EU automobile industry during the 2008-09 economic crisis**

In autumn 2008, tighter credit conditions and falling business and consumer confidence sparked by the financial crisis led to a collapse in demand and a severe drop in output and capacity utilization throughout the EU. The ensuing economic crisis severely affected the automobile industry. Car sales in the EU decreased by between 25% and 45% in nine member States between September 2008 and January 2009. Production decreased in all five main vehicle-producing countries (Germany, France, Spain, United Kingdom, and Italy), with particularly sharp reductions in Italy (-23%) and France (-16%) between 2007 and 2008.

Several EU member States responded to these conditions by granting significant support for the automobile industry. Some measures sought to ease car companies' access to finance and encourage the industry to adapt to environmental legislation. For example, the "Pacte Automobile" announced by France in February 2009 includes subsidized loans to Renault and PSA Peugeot-Citroen to finance clean vehicles (€6.5 billion), loans to these companies' internal banks (€2 billion), and guarantees and funds for suppliers. In the United Kingdom, the Automotive Assistance Programme includes €2.5 billion in loans and guarantees to the automotive sector. Germany, Romania, and Sweden also introduced supply-side measures. Most supply-side measures were granted under non-sector-specific schemes approved by the Commission on the basis of the temporary framework.

**Box III.4 (cont'd)**

<sup>204</sup> European Commission (2010b).

<sup>205</sup> European Commission (2009b).

In addition, several member States set up sector-specific demand support. At least 12 member States (Austria, Denmark, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Slovakia, Sweden, and the United Kingdom) introduced temporary "scrapping schemes" that provided consumer subsidies for replacing old, energy-inefficient vehicles. The total cost of these programmes in 2009-10 ranged from €10 million in Luxembourg to €5.8 billion in Germany.

Following the introduction of scrapping schemes, new car registrations increased in the EU in early 2009, with substantial increases in Austria, Germany, Italy, Portugal, Slovakia, and the United Kingdom. In addition, production in sectors related to the automobile industry registered increases during the first eight months of 2009, particularly in Germany. There is some evidence that scrapping schemes had cross-border spillover effects. For example, German imports of cars increased significantly during the first half of 2009, particularly from France, Italy, Romania, and Slovakia.

The European Commission indicates that the extent of aid received by the automotive sector appears to be linked to the perceived importance of this sector in the economy at large. The sector's size in terms of value added, although relatively small for the EU as a whole (1.5% of EU GDP), is significant for some member States, including the Czech Republic and Germany, where it is almost 4% of national GDP. In many car-producing countries, including Hungary, Slovakia, and Spain, a large share of output is exported.

There were concerns about possible conditions attached to some supply-side measures. For example, during the Pacte Automobile's signing ceremony, the President of France stated that Renault and PSA had undertaken a very important commitment not to close any of their sites for the duration of their loans, and to make every effort to avoid layoffs. Following discussions with the Commission on these loans, the French authorities formally undertook to ensure that the loan agreements would not contain any conditions concerning "either the location of [the car manufacturers'] activities or the requirement to prioritize France-based suppliers". According to the Commission, a similar issue was raised in the context of state aid that Germany intended to grant to another car manufacturer, Adam Opel GmbH, under an approved temporary framework scheme related to the sale by General Motors of its Opel/Vauxhall European operations to an investor. General Motors eventually reversed its decision to sell Opel.

*Source:* European Commission (2010), Product Market Review 2009: Microeconomic consequences of the crisis and implications for recovery, European Economy 11/2009; European Commission document SEC(2010) 1462, Facts and figures on State aid in the Member States Accompanying the Report from the Commission (State Aid Scoreboard, Autumn 2010 Update), 1 December 2010; European Commission press release MEMO/09/90, "State aids: the Commission obtains guarantees from the French government on the absence of protectionist measures in the French plan for aid to the automotive sector", 28 February 2009; Elysée online information, "Pacte Automobile", viewed at: <http://www.elysee.fr/president/les-dossiers/economie/face-a-la-crise/relance/pacte-automobile-9-fevrier-2009/signature-des-accords-de-soutien-a-la-filiere.6213.html>; and OECD (2009), *Economic Outlook* 86, 2009.

#### (iv) Government procurement

187. In the EU, as in other WTO Members, government procurement accounts for a very significant proportion of total economic activity and represents a core function of government, with major implications for economic structure and growth.<sup>206</sup> In 2007, the EU public procurement totalled €2,088 billion (16.8% of its GDP), of which €367.2 billion (3% of GDP, and 18% of total public procurement) was above-threshold procurement, i.e., procurement covered by EU legislation rather than national legislation of EU member States.<sup>207</sup>

188. Public procurement policy in the EU aims to achieve the best value for money through open, transparent and non-discriminatory procedures, consistent with the underlying objectives of the

<sup>206</sup> In total, government procurement has been estimated to account for 15-20% of GDP in OECD economies, on average. See OECD (2002).

<sup>207</sup> WTO document GPA/94/Add.4, 15 July 2010.

Internal Market. All procurements carried out in the European Union above specified thresholds must comply with the requirements of the EU Directives on procurement, which are reflected in relevant legislation and regulations of the EU member States. In particular, procurement above the relevant thresholds must be advertised EU-wide and must follow uniform procedures.<sup>208</sup> Furthermore, given the EU's status as a party to the WTO Agreement of Government Procurement (GPA), the Directives themselves in addition to the member States' legislation must conform to the GPA.

189. The EU is a key player in the ongoing renegotiation of the Government Procurement Agreement in the WTO. In addition to the GPA, the EU has signed a number of bilateral agreements covering government procurement. In many cases, the texts of these agreements are based on the GPA. Hence, the positions taken by the EU in the GPA and bilateral negotiations will have significant consequences for the future of the Agreement.

(a) Procurement Directives and the GPA

190. Above-threshold public procurement continues to be regulated by Directive 2004/17/EC, which coordinates the procurement procedures of entities operating in the water, energy, transport, and postal services sectors (the Utilities Directive); and Directive 2004/18/EC, on the coordination of procedures for the award of public work contracts, public supply contracts, and public services contracts. Directive 2009/81/EC, on defence and security procurement, entered into force in August 2009, opening procurement in this sector purely at the EU level to European suppliers.<sup>209</sup> Member States must comply with the provisions of these Directives, which have to be transposed into national legislation. All member States have by now implemented the 2004 procurement legislative package, although Luxembourg transposed these Directives only at the end of 2009.<sup>210</sup> For supplies, services, and construction services (works), thresholds are specified in Commission Regulation (EC) No. 1177/2009, 30 November 2009, amending Directives 2004/17/EC and 2004/18/EC (Table III.10).

191. Since the previous Review of the EU in 2009, the procedures for awarding contracts, as specified under the EU procurement Directives, have not changed.<sup>211</sup> Moreover, according to the Commission, during the global crisis, no "buy local" requirement was imposed at any level through government procurement. The Commission highlighted to interested parties some existing provisions of the EU procurement Directives. For example, Directive 2004/18/EC allows recourse to accelerated procedures if justified on grounds of urgency. In December 2008, the Commission recognized that the exceptional nature of the global crisis could justify the use of this accelerated procedure, reducing the overall time limit of procurement from 87 days to 30 days. Following this, the Commission set up a monitoring mechanism on the application of this option by member States.

192. The EU public procurement regime aims to ensure the best possible value for money to create opportunities to purchase better quality and value supplies and services. To achieve this objective, open and transparent procedures must be followed. Procurement above the stipulated thresholds must be advertised in the *Official Journal* (S series), which is freely accessible on the *Tenders Electronic Daily* website.<sup>212</sup> In 2008, procurement published in the *Official Journal* represented between 1.2% and 9.6% of member States' GDP, between 7.1% and 61.1% of total procurement (Table III.11). The percentage varies among EU member States; for example, it is comparatively low in Germany, while much higher in Latvia, Bulgaria, and Estonia. The authorities attribute these variations to the

<sup>208</sup> WTO document WT/TPR/M/214/Add.1, 2 July 2009, p. 223.

<sup>209</sup> EU online information. Viewed at: [http://ec.europa.eu/internal\\_market/publicprocurement/dpp\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/dpp_en.htm).

<sup>210</sup> European Communities (2009a) and (2009b).

<sup>211</sup> For details of the procedures, see WTO (2009).

<sup>212</sup> TED online information. Viewed at: <http://ted.europa.eu/>.



different structures of the public sector (and its spending power) in the respective member State. In total, procurement subject to the publication requirement accounted for 3.1% of GDP and 18.2% of total expenditures for goods and services, indicating that the remainder is regulated under national legislation.

**Table III.10**  
Minimum public procurement thresholds, 2010-11<sup>a</sup>  
(Euros)

	Supplies		Services		Works	
	2008-09	2010-11	2008-09	2010-11	2008-09	2010-11
<b>Public contracts, other than for utilities</b>						
EU GPA contracting authorities	133,000	125,000	133,000	125,000	5,150,000	4,845,000
Other public sector contracting authorities	206,000	193,000	206,000	193,000	5,150,000	4,845,000
Contracts subsidized at more than 50% by the contracting authority <sup>b</sup>	n.a.	n.a.	206,000	193,000	5,150,000	4,845,000
<b>Service designs contests</b>						
Central government authorities	n.a.	n.a.	133,000	125,000	n.a.	n.a.
Other authorities	n.a.	n.a.	206,000	193,000	n.a.	n.a.
Specific sectors <sup>c</sup>	n.a.	n.a.	206,000	193,000	n.a.	n.a.
<b>Utilities<sup>d</sup></b>						
All sectors, except service design contests	412,000	387,000	412,000	387,000	5,150,000	4,845,000
Service designs contests	n.a.	n.a.	n.a.	387,000	n.a.	n.a.

n.a. Not applicable.

a Threshold amounts do not include VAT.

b Contracts that are subsidized at more than 50% by the contracting authorities involve either civil engineering to build hospitals, facilities intended for sports, recreation and leisure, school and university buildings, and buildings used for administrative purposes or the services connected to the aforementioned types of projects.

c Specific sectors refer to fields of research and development, telecommunications (CPC Reference No. 752), hotel and restaurant services, transport by rail and waterway, provision of personnel, vocational training, investigation and security, legal, health and social, recreational, cultural and sporting services.

d Utilities include water, energy, transport, postal and telecommunications services.

Source: Commission Regulation (EC) No. 1177/2009, 30 November 2009, amending Directives 2004/17/EC and 2004/18/EC. WTO documents GPA/W/299/Add.4, 1 January 2008, and GPA/W/309/Add.4, 5 February 2010.

**Table III.11**  
Selected procurement indicators, 2006-08

	Value of procurement published in the OJ as a percentage of GDP			Value of procurement published in the OJ as a percentage of total public procurement		
	2006	2007	2008	2006	2007	2008
Austria	1.7	1.7	2.4	9.7	9.2	12.5
Belgium	2.4	3.2	3.6	16.3	21.7	23.8
Bulgaria	..	8.5	8.7	..	51.9	52.2
Cyprus	4.4	5.1	4.6	37.1	49.0	44.5
Czech Republic	5.2	4.1	5.3	19.4	16.2	21.0
Denmark	3.0	3.2	3.0	20.2	21.6	19.5
Estonia	7.3	7.2	8.2	42.8	42.3	45.3
Finland	3.1	3.6	3.9	19.0	22.1	23.6
France	3.4	3.4	3.7	19.7	19.4	21.1
Germany	1.7	1.1	1.2	10.2	6.8	7.1
Greece	5.6	3.5	2.8	59.9	36.4	30.0
Hungary	6.8	4.5	5.2	31.7	20.8	26.0
Ireland	3.3	3.4	2.5	26.1	24.3	16.0
Italy	3.0	2.3	2.3	21.1	16.5	16.4
Latvia	13.8	12.3	9.6	82.9	77.1	61.1
Lithuania	4.2	4.2	3.6	25.3	23.8	20.8

Table III.11 (cont'd)

	Value of procurement published in the OJ as a percentage of GDP			Value of procurement published in the OJ as a percentage of total public procurement		
	2006	2007	2008	2006	2007	2008
Luxembourg	1.4	1.2	1.3	10.5	9.0	9.1
Malta	1.8	2.0	1.2	12.0	14.5	8.0
Netherlands	2.3	1.8	1.9	9.1	7.0	7.1
Poland	5.2	5.8	7.2	28.3	32.0	38.3
Portugal	1.9	1.7	2.5	12.4	10.7	14.9
Romania	..	7.3	7.4	..	33.6	36.9
Slovakia	3.1	3.6	3.7	11.9	14.1	15.2
Slovenia	5.0	6.6	5.1	25.9	43.4	32.8
Spain	4.2	4.1	3.6	28.9	26.7	23.9
Sweden	3.0	3.0	3.5	16.9	16.8	18.8
United Kingdom	4.6	3.9	4.4	25.4	22.3	23.5
<b>Total</b>	..	3.0	3.1	..	17.9	18.2

.. Not available.

Source: Eurostat (undated), *Public procurement advertised in the Official Journal*. Viewed at: <http://appsso.eurostat.ec.europa.eu/nui/setupModifyTableLayout.do>.

193. After a contract is awarded, contracting authorities are required to post an award notice on the TED website. There is an automatic reminder system to EU contracting authorities to ensure full compliance with the relevant publication obligations. According to the authorities, in 2008, 85% of the notices of intended procurement were followed by a contract award notice.<sup>213</sup> Although it is difficult to identify the exact nationality of successful suppliers/service providers, the Commission started to establish a methodology to monitor cross-border procurement, including from non-EU origin.<sup>214</sup> The authorities provide that, in 2007 (the latest year for which data are available), contracts of a total value of €12 billion (3.3% of total above-threshold procurement, and 3.9% of total procurement open to GPA partners) were awarded to suppliers originating from non-EU GPA signatories.

194. The EU is a party to the WTO Government Procurement Agreement (GPA), and the 27 EU member States must comply with the EU's obligations under the GPA. The GPA applies to procurement contracts of value above certain specified thresholds. As required by the GPA, thresholds in national currencies are to be notified by parties every two years.<sup>215</sup> The EU notified its GPA thresholds for 2010-11<sup>216</sup>, which are the same as those under the EU procurement Directives. Commission Regulation (EC) No. 1177/2009 stipulates that, one of the objectives of Directives 2004/17/EC and 2004/18/EC is to allow the contracting entities and the contracting authorities to comply with the obligation laid down in the GPA. Thus, the thresholds under those Directives should be aligned to correspond to the euro equivalents, rounded down to the nearest thousand, of the thresholds set out in the GPA.<sup>217</sup>

195. Although the thresholds are the same, the coverage of the GPA is different from that of the Directives. The GPA covers entities, goods, and services, including construction services, as

<sup>213</sup> WTO document WT/TPR/M/214/Add.1, 2 July 2009, p. 222.

<sup>214</sup> WTO document WT/TPR/S/214/Rev.1, p. 67.

<sup>215</sup> WTO document GPA/1, dated 5 March 1996, Annex 3.

<sup>216</sup> WTO document GPA/W/309/Add.4, 5 February 2010.

<sup>217</sup> OJ L 314/64, 1 December 2009. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:314:0064:0065:EN:PDF>.

specified in EU's Appendix I. In 2007, out of total €367.2 billion above-threshold procurement in the EU, €309.6 billion (84%) was open to GPA partners.<sup>218</sup>

196. Article XX of the GPA requires each party to provide a mechanism by which a supplier may challenge alleged breaches of the GPA before an independent and impartial review body. These procedures must meet the minimum standards of Article XX regarding the nature of the review body, the procedures for the hearing, and the remedies available.

197. The Remedies Directive, Directive 2007/66/EC, which supplemented and amended the Directives 89/665/EC and 92/13/EC, introduced two features. First, following an award decision for a public contract, contracting authorities must wait at least ten days before signing a contract. This "standstill period" gives bidders time to examine the decision and decide whether to initiate a review procedure. If a review procedure is initiated, the procurement process is automatically suspended until the review body reaches a decision. Second, more stringent rules were stipulated against illegal direct award of public contracts. In both cases, national courts or review bodies may nullify signed contracts if these rules are not followed. Member States had until December 2009 to bring their legislation into compliance with this Directive. By March 2011, all Member States but one had transposed the Directive. The Commission is currently checking the implementing measures communicated by member States. .

198. The rules governing the EU government procurement market are designed to ensure an open and transparent government procurement system. Nonetheless, suppliers from third countries do not have an automatic and enforceable right to participate in the EU procurement market, unless "an international agreement concluded by the EU in the field of public procurement grants them the right to do so (GPA or bilateral agreements with the EU)".<sup>219</sup> In this regard, participation in the GPA provides an enforceable right to the EU procurement market covered by the EU's commitments under the GPA.

199. EU procurement Directives do not apply to contracts below thresholds, and to certain exempted sectors (such as the telecommunications and broadcasting sectors).<sup>220</sup> Public procurement that is not directly covered by EU legislation is covered by national rules. Member States are understood to have discretionary authority in such cases to allow the participation of non-EU bidders in their procurement market, and suppliers from third countries have no enforceable right. For example, press reports suggested some foreign firms were excluded from bidding for UK public sector IT contracts.<sup>221</sup> The EU considers that procurement below thresholds does not need to follow the detailed rules of the EU procurement Directives; nevertheless the general principles of EU law (transparency, equal treatment and non-discrimination) must be respected.

200. The EU strongly supports the accession of new members to the GPA, with long-term strategy to turn the GPA into a multilateral agreement.<sup>222</sup> At the same time, the EU is keen on negotiating bilateral agreements covering government procurement. The EU has a key objective to contribute through its bilateral trade relations to the setting of effective, modern, and international procurement

<sup>218</sup> WTO document GPA/94/Add.4, 15 July 2010.

<sup>219</sup> WTO document WT/TPR/M/214/Add.1, 2 July 2009, p. 47.

<sup>220</sup> European Communities (2009a).

<sup>221</sup> Computerweekly.com. Viewed at: <http://www.computerweekly.com/Articles/2009/02/17/234874/UK-public-IT-handicapped-by-procurement-process-say-Indian-IT.htm>; and *SME Times* online information. Viewed at: <http://smetimes.tradeindia.com/smetimes/news/top-stories/2010/Aug/20/industry-missing-opportunities-in-global-governmental-procurement.html>.

<sup>222</sup> European Commission document COM(2009)592 final, 28 October. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009DC0592:EN:NOT>.

principles, and to substantially liberalize public procurement markets. When negotiating with developing countries, the EU's main emphasis is on encouraging transparency and the creation/strengthening of regional procurement markets. The EU now includes substantial chapters on public procurement in all its bilateral trade agreements.<sup>223</sup> So far, it has such agreements with CARIFORUM, Central America, Chile, Colombia, Iraq, Mexico, Peru, South Korea, and Switzerland. The EU stated that it is firmly committed to ensuring eventual GPA accession by its bilateral partners, and that it works to ensure the procurement chapter in its bilateral agreements is consistent with the GPA. When negotiating with partners that are already GPA signatories, the bilateral agreements are intended to deepen the commitments undertaken in the GPA framework, either by enhancing the rules, or by broadening the market access commitments, or both.

201. The EU is an important player in the ongoing renegotiation of the text and coverage commitments of the GPA. The text was provisionally agreed in 2006, but cannot be brought into force until negotiations on the coverage of the Agreement have also been concluded. The present negotiation includes the launch of a new set of work programmes in the WTO Committee on Government Procurement, which will explore the interaction of the GPA with key social considerations including the access to procurement markets by small and medium-sized enterprises (SMEs), and the implementation of "green" procurement.<sup>224</sup> The EU reaffirms its commitment to the rapid completion of the GPA negotiations, which would increase coverage of the Agreement, ultimately leading to the expansion of the GPA membership.

(b) E-procurement

202. To modernize and simplify procurement procedures and in accordance with the e-Government transition in some member States, the Commission adopted an Action Plan for e-Procurement in 2004.<sup>225</sup> However, the Commission's evaluation suggested that less than 5% of total procurement budgets were awarded through electronic systems in 2010. The EU considered that e-procurement has the potential to yield important improvements in the efficiency of individual purchases, the overall administration of public procurement and the functioning of the markets for government contracts.<sup>226</sup> Thus, the Commission issued its Green Paper on expanding the use of e-procurement in the EU in October 2010.<sup>227</sup>

(c) Other objectives of the public procurement regime

203. Although the principal objective of government procurement in the EU is to ensure the best value for money, the 2004 Directives also mention the possibilities of reflecting social and environmental considerations in technical specifications, selection and award criteria, as well as contract performance clauses.<sup>228</sup> At the same time, member States have national legislation provisions, intended to achieve social and environmental objectives through the public procurement system. Currently, a key challenge for the EU (as for other GPA parties) is to find ways to accord due

<sup>223</sup> EU online information. Viewed at: <http://ec.europa.eu/trade/creating-opportunities/trade-topics/public-procurement/>.

<sup>224</sup> WTO document GPA/106, 9 December 2010, paragraph 35.

<sup>225</sup> Government institutions and other public-sector organizations purchase supplies and services or tendering public works through the use of electronic communications and transactions.

<sup>226</sup> European Commission document SEC(2010) 1214 final, 18 October 2010. Viewed at: [http://ec.europa.eu/internal\\_market/consultations/docs/2010/e-procurement/evaluation-report\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2010/e-procurement/evaluation-report_en.pdf).

<sup>227</sup> European Commission document COM(2010) 571 final, 18 October 2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0571:FIN:EN:PDF>.

<sup>228</sup> For example, Article 26 of the Directive 2004/18/EC provides that the conditions governing the performance of a contract may concern social and environmental considerations.

weight to such objectives consistent with its respective policy interests and goals while ensuring that their implementation does not undermine the GPA's core principles of non-discrimination, transparency, and fair procedures.<sup>229</sup>

204. To illustrate the interplay of these issues, below-threshold procurement in the EU is regulated by national legislation, which must follow the basic principles of the Treaty on the Functioning of the European Union (transparency, non-discrimination, and equal treatment). The procurement Directives stipulate detailed rules/methods for estimating the value of contracts<sup>230</sup>, and an artificial split-up into smaller lots to circumvent the Directive represents an infringement.<sup>231</sup> Nonetheless, the contracting authorities may award contracts in lots with a view to accommodating social considerations, or promoting participation of SMEs in procurement, provided that the procurement requirement is not subdivided to avoid the application of the EU Directives.<sup>232</sup>

205. In this connection, to promote SMEs participation in the public procurement market, contracting authorities in some member States have suggested to award a specific call for tender into composite lots. One example is the 2006 Code on Public Procurement in France. The same Code also stipulated other measures to facilitate SMEs: bidders may be asked to indicate in their offers whether they intend to subcontract to third parties including SMEs (Article 48); and the economic monitoring mechanism within the Ministry of Economy, Finance and Industry must report the number of contracts awarded to SMEs (Articles 130 and 131).<sup>233</sup>

206. In Germany, many states have special laws and regulations to support SMEs; under the two main methods contracting authorities may split contract into lots; and a clause may be included in contract conditions requiring contractors to subcontract to SMEs.

207. Green public procurement (GPP) is "a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured".<sup>234</sup> The 2004 Directives clarified how public procurement can include environmental considerations, while national legislation in some member States also defined national criteria and approaches to GPP. Some have expressed the view that the EU procurement Directives lack flexibility, and tend to constrain member States' ability to achieve their social/environmental objectives through public procurement.

208. In July 2008, the Commission issued a communication "Public procurement for a better environment",<sup>235</sup> which proposed that 50% of all public tendering procedure should be green by 2010, where "green" means compliant with core GPP criteria set out by the Commission in the Communication. The Communication also provided guidance on how to reduce the environmental

---

<sup>229</sup> The role of such objectives is also expected to figure in the "Future Work Programmes" of the Committee on Government Procurement, following the entry into force of the revised text of the Agreement.

<sup>230</sup> Article 9 of Directive 2004/18/EC, and Article 17 of Directive 2004/17/EC.

<sup>231</sup> Article 9 (3) of Directive 2004/18/EC, and Article 17 (2) of Directive 2004/17/EC.

<sup>232</sup> European Commission online information, "Study on the incorporation of Social Considerations in Public Procurement in the EU – Proposed Elements for taking account of the Social Considerations in Public Procurement", 21 July 2008, p. 34. Viewed at: <http://ec.europa.eu/social/main.jsp?catId=331&langId=en&newsId=417&furtherNews=yes>.

<sup>233</sup> PublicTendering.com online information. "Code des marches publics 2006". Viewed at: <http://www.publictendering.com/pdf/legislation/cmp2006.pdf>.

<sup>234</sup> European Commission document COM (2008) 400 final, 16 July 2008. Viewed at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0400:FIN:EN:PDF>.

<sup>235</sup> European Commission document COM (2008) 400 final, 16 July 2008. Viewed at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0400:FIN:EN:PDF>.

impact caused by public sector consumption, and how to use GPP to stimulate innovation in environmental technologies, products, and services. The EU stated that the GPP is a voluntary policy.<sup>236</sup>

(d) Future directions

209. In 2010, the Commission issued a Communication announcing a future review of its public procurement regime.<sup>237</sup> The Commission finds that as the interaction between EU rules and national rules can be complex, there is a need for simplification of procedures.<sup>238</sup> It seems that the levels of participation by firms from other member States in procurement procedures remain low compared to the import penetration in the private sector, indicating a potential for more cross-border trade. The Commission has announced its intention to prepare a legislative proposal by the end of 2012, with a view to simplifying and updating the European rules to make the award of contracts more flexible and to enable public contracts to be put to better use in support of other policies. There is recognition, however, that legislative changes need to be consistent with the EU's international commitments, notably the GPA, in particular regarding the thresholds for applying the EU public procurement rules. The Commission is currently undertaking consultations and an economic impact evaluation of the current EU procurement directives, as well as an impact assessment, examining the various possible policy options, taking into consideration the implementation of the EU's international commitments, such as the GPA.<sup>239</sup>

210. As noted, the policy challenges are to be considered not only in the context of the EU's own Procurement Guidelines but also in the Future Work Programmes of the Agreement on Government Procurement (after the revised GPA text comes into force), in which the EU will play a significant role. This is an important context in which the EU will be able to provide input of its own experience with green and social and "other" objectives in the procurement process.

(v) Competition policy

211. Competition policy in the European Union remains a central pillar of the Single Market, protecting consumers from abusive practices and ensuring that entry to particular lines of business or geographic localities is not deterred by anti-competitive practices. Over time, competition policy in the EU has been progressively refined through developments such as the "more economic approach", which have enhanced the relevant authorities' focus on the economic effects of changes in market structures and of companies' behaviours in such markets. Arguably, this has brought about a higher level of convergence/harmonization with the competition policies of major economic partners, thereby reducing (though not eliminating) the scope for conflicts of jurisdiction with those partners and enhancing possibilities for beneficial economic integration.

(a) Legislative framework

212. As outlined in the previous Review of the EU, Council Regulation No. 1/2003 implements the rules on competition laid down by Articles 101 and 102 of the Treaty on the Functioning of the

---

<sup>236</sup> WTO document WT/TPR/M/214/Add.1, 2 July 2009, p. 220.

<sup>237</sup> European Commission document COM(2010) 608 final, 27 October 2010. Viewed at: [http://ec.europa.eu/internal\\_market/smact/docs/single-market-act\\_en.pdf](http://ec.europa.eu/internal_market/smact/docs/single-market-act_en.pdf); and European Commission document COM(2011) 15 final, 27 January 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0015:FIN:EN:PDF>.

<sup>238</sup> European Commission document COM(2011) 206/4, 13 April 2011.

<sup>239</sup> European Commission document COM(2011) 15 final, p. 54, 27 January 2011. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0015:FIN:EN:PDF>.

European Union.<sup>240</sup> Article 101 prohibits anti-competitive agreements between undertakings that "may affect trade between Member States"<sup>241</sup>, except for those beneficial, on balance, to economic efficiency and consumers. Article 102 prohibits, as incompatible with the internal market, the abuse of a dominant position, without exception.

213. Article 101 does not apply to agreements of minor importance (*de minimis*) where the aggregate market share of the undertakings is small (for example, less than 10% for competitors, or 15% for non-competitors). Also, it does not apply to agreements or practices in the insurance sector, and the motor vehicle business. Furthermore, block exemptions apply automatically in case of certain restrictive agreements, both vertical and horizontal, if they tend to improve economic efficiency. For block exemptions to apply to a given agreement, the parties' combined market shares must be below a level (depending on the type of block exemption) at which it can be assumed that the parties do not have market power. Moreover, in order to benefit from block exemption, an agreement must not contain "hardcore restrictions" of competition such as price fixing, output limitation or market sharing. Where an agreement falling under a block exemption restricts competition, the Commission and/or the competition authorities of member States may withdraw the benefits of these exemptions. The Commission did not withdraw these benefits during the Review period (2009-2011).

214. The main regulation governing merger control at the EU level is Council Regulation No. 139/2004, 20 January 2004 (the Merger Regulation), implemented by Commission Regulation No. 802/2004, 7 April 2004. Under the Merger Regulation, all concentrations with a "Community dimension" are subject to exclusive review by the European Commission prior to their implementation. These are mergers where the parties have a combined worldwide turnover of €5 billion and each party has a Community-wide turnover of €250 million. Mergers with a combined worldwide turnover of €2.5 billion are also examined by the Commission if: (i) the parties' combined turnover exceeds €100 million in at least three EU member States; (ii) each party has a turnover of €25 million in the same three EU member States; and (iii) the individual Community-wide turnover of each party exceeds €100 million. If these thresholds are not met, mergers may be subject to review under national laws of the member States.

215. The aim of the Merger Regulation is to examine whether a concentration would significantly impede effective competition, notably through the creation or strengthening of a dominant position. In such cases, the concentration is prohibited, or conditionally approved if the parties provide remedies to fix the identified problem. All other mergers must be unconditionally approved. In accordance with the stand-still obligation, no merger can be consummated unless approved by the Commission. Most mergers are approved within the initial (first phase) period, without the need for an in-depth (second phase) investigation. In 2010, there were 274 merger notifications to the Commission (up from 259 in 2009), of which 253 were unconditionally approved in the first phase, 14 were conditionally approved in the first phase, 3 were approved after a second-phase investigation, and 4 were withdrawn.<sup>242</sup> No merger was prohibited.

---

<sup>240</sup> Articles 101 and 102 of the TFEU have replaced Articles 81 and 82 of the EC Treaty.

<sup>241</sup> Article 101 of the Treaty prohibits agreements that: (i) directly or indirectly fix purchase or selling prices or any other trading conditions; (ii) limit or control production, markets, technical developments, or investment; (iii) share markets or sources of supply; (iv) apply dissimilar conditions to equivalent transactions with other trading partners; and (v) make the conclusion of contracts subject to the acceptance by other parties of further obligations unrelated to the subject of the contract.

<sup>242</sup> EU online information. Viewed at: <http://ec.europa.eu/competition/mergers/statistics.pdf>.

(b) Enforcement procedures

216. The responsibility for public enforcement of competition policy across the EU is shared by the European Commission and the national competition authorities of the member States. The system that has evolved for allocation of enforcement work between these two levels of authority is itself an interesting illustration of policy design and application within a multi-level system of governance. Overall, significant enforcement responsibility lies with the national authorities to the extent that this is deemed consistent with effective policy administration and the sound administration of the Single Market.

217. The EU established its European Competition Network (ECN) to facilitate cooperation among the responsible authorities and enhance the efficiency of policy application within the system of shared jurisdiction. Within the ECN, the Commission and member States' competition authorities share information and attempt to agree on the allocation of cases. Cases are to be dealt with by a single competition authority as often as possible. Where an agreement or practice substantially affects competition in more than one member State, the Network members seek to ensure that the case is assigned to the authority which is well placed to deal with it. If more than three Member States are substantially affected by an agreement or practice, the Commission will be particularly well placed to handle the case.<sup>243</sup>

218. In its 2009 Report on the functioning of the enforcement system after the first five years, the Commission noted that the challenge of boosting enforcement of the EU competition rules, and ensuring their consistent and coherent application, had been largely achieved. It indicated that enforcement of the EU competition rules had greatly increased since the entry into force of Council Regulation 1/2003. Between May 2004 and March 2009, more than 1,000 cases were pursued on the basis of the EU competition rules involving a wide variety of sectors. Discussions on case allocation arose in very few cases and was resolved swiftly.<sup>244</sup>

219. Nevertheless, the Commission maintains its authority to enforce relevant provisions of the Treaty directly, and is an important player in the overall system of competition law enforcement. In particular, the Commission may conduct investigations and take decisions either following a complaint or on its own initiative, when it suspects there may be a violation of the Treaty concerning competition policy.

220. The Commission may impose fines and/or periodic penalty payments. The Court of Justice reviews the Commission's activities and may rule against the Commission's decisions. Since 2009, the Court has ruled against the Commission's decisions in fines and in the rejection of the complaint in some cases. The Commission must, before taking a decision, consult the Advisory Committee on Restrictive Practices and Dominant Positions, which is made up of representatives of Member States' competition authorities.

(c) Major recent developments

221. With regard to substantive aspects of policy implementation, a major development in the EU since the 1990s has been the progressive implementation of a "more economics-based approach" in the enforcement of all aspects of competition law. While this focused initially on cases and

---

<sup>243</sup> EU online information, "Joint Statement of the Council and the Commission on the Functioning of the Network of Competition Authorities". Viewed at: [http://ec.europa.eu/competition/ecn/joint\\_statement\\_en.pdf](http://ec.europa.eu/competition/ecn/joint_statement_en.pdf).

<sup>244</sup> European Commission document SEC(2009) 574 final, chapter 5, 29 April 2009. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2009:0574:FIN:EN:PDF>.



enforcement methodologies relating to Article 101 and mergers and acquisitions, it has now been extended to the area of dominant conduct, with the issuance of the Commission's Guidance paper on the enforcement of Article 102 in 2009.<sup>245</sup> An insistence on substantive analysis is now pervasive in most, if not all, aspects of the Commission's antitrust work. Courts adjudicating competition law cases in the EU are also moving away from formalistic applications even with respect to the market integration standard. An important consequence of this trend has been to move the EU closer to the substantive approaches to antitrust enforcement of some of its major trading partners, potentially reducing the scope for inter-jurisdictional conflicts in this policy area.<sup>246</sup>

222. The EU's competition policy regime also covers state aid, which, by favouring certain firms over their competitors, may distort competition (section (3)(ii)).

223. During the period of the global financial crisis, measures taken by a number of the EU member States have limited the application of competition policy in the financial services sector (Chapter IV(1)(ii)). These measures have been criticized by some in that they may perpetuate rather than relieve the underlying sources of instability, or have other undesirable effects.<sup>247</sup> It has also been argued that much experience shows the health of financial and other markets is unlikely to be well served by the suspension, in times of economic distress, of basic rules to prevent anti-competitive practices.<sup>248</sup> The Commission agreed with these comments.

224. An important focus of the Commission's enforcement efforts in recent times has been on the pharmaceutical industry, which relies heavily on intellectual property rights. In January 2008, the EU launched a major inquiry to examine why fewer new medicines were being brought to market and why generic entry seemed to be delayed in some cases. The inquiry found that citizens waited more than seven months after patent expiry for cheaper generic medicines, costing them 20% extra in spending. The delayed market entry of generic medicines could be attributed to both the regulatory framework,<sup>249</sup> and certain companies' behaviours. The inquiry showed that originator companies used a variety of instruments to protect the commercial life of their products without generic entry.<sup>250</sup> In particular, 22% of the patent settlements were potentially problematic, relating to medicines worth more than €200 million. The EU considered that these instruments, although can be fully legitimate, may under certain circumstances violate the European competition law. In 2010, the Commission

---

<sup>245</sup> EU online information, "Communications from the Commission – Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (2009/C45/02)". Viewed at: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009XC0224\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009XC0224(01):EN:NOT).

<sup>246</sup> Anderson (2011, forthcoming).

<sup>247</sup> Jenny (2009).

<sup>248</sup> OECD online information, "Staying the course: Preserving competition in a time of crisis". Viewed at: [http://www.oecd.org/document/27/0,3746,en\\_2649\\_33725\\_42211291\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/27/0,3746,en_2649_33725_42211291_1_1_1_1,00.html).

<sup>249</sup> On regulatory issues, the inquiry confirmed that there was an urgent need to establish a single European Patent and a unified specialized patent litigation system in Europe, so as to reduce administrative burdens and uncertainty for companies: 30% of court cases were conducted in parallel in several member States, and in 11% of cases national courts reached conflicting judgements (section (vi)).

<sup>250</sup> Typical company behaviours include: (i) patent clusters, where the originator company filed for a large number of EU-wide patents for a single medicine; (ii) patent litigations between originator companies and generic companies, which on average lasted nearly 3 years; (iii) settlement agreements, where originator companies and generic companies agree on the terms for ending an ongoing litigation or dispute. In approximately 50% of these settlement agreements, generic entry was restricted. In addition, the inquiry also found that originator companies intervened in national procedures for the approval of generic medicines in a significant number of cases, which on average led to four months delay of the generic medicine. EU online information. Viewed at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/321&format=HTML&aged=0&language=EN&guiLanguage=en>.

carried out a monitoring exercise, focusing on patent settlements concluded in the pharmaceutical sector. This exercise found that compared with 2008, the number of settlements increased while the number of potentially problematic patent settlements decreased (down to 10% and the amount of money covered by these settlements was down to €1 million).<sup>251</sup> The decrease of the latter indicates an increased awareness of the industry that settlement agreements may attract the scrutiny of the competition law.

(d) International cooperation

225. Apart from the above-noted internal cooperation mechanisms (e.g. the ECN), the European Union is also a leading player in inter-jurisdictional cooperation on competition law in important fora including: the International Competition Network (ICN); the UNCTAD Intergovernmental Group of Experts on Competition Policy; and the OECD Competition Committee. The EU considered that these multilateral fora provide important platforms to advocate principles of sound competition enforcement and to develop a competition culture globally. This will enable competition authorities worldwide to respond more efficiently to cases involving multiple jurisdiction.

226. The EU includes competition policy in a number of bilateral agreements. Since 2008, the EU has signed bilateral trade agreement with Colombia and Peru, idem with the Andean countries, and an EPA with Caribbean that contain a chapter on competition. Regarding the EPA with Central Africa, only Cameroon signed it and a full EPA is still under negotiation; negotiations on a competition chapter started in 2008; however, there have not been any discussions on this topic since then.

(vi) Intellectual property rights

227. Since its previous Trade Policy Review in 2009, the EU has continued to develop its IPR protection in response to the changing economic and technical environment, particularly in the areas of copyright, patent, trademarks, geographical indications (GIs), and enforcement. During the period under review, major reforms on patents were under way, and the EU lowered the registration cost for Community trademarks, strengthened IPR enforcement by setting up an EU Observatory on Counterfeiting and Piracy, and initiated a review of its Customs Regulations on IPR enforcement. Creative industries in the EU contribute 3.3% of its GDP (2006) and 3% of total employment (2008). In 2008, 6.7 million people worked in the creative industries in the EU-27, and creative goods accounted for 4.3% of extra-EU exports.<sup>252</sup>

228. The adoption of the Lisbon Treaty marked an important step forward for the further development of a truly EU-wide IPR regime. It inserts an IP-specific provision. Article 118 of the Treaty on the Functioning of the European Union (TFEU) stipulates that measures shall be established "for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements".

229. The IPR regime in the EU is governed both by EU legislation and legislation in member States. The EU has an extensive body of intellectual property legislation (Table AIII.2). Member States' legislation implements and complements, where appropriate, EU legislation and commitments

---

<sup>251</sup> European Commission press release IP/10/887, "Antitrust: Commission welcomes decrease of potentially problematic patent settlements in EU pharma sector", 5 July 2010. Viewed at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/887&format=HTML&aged=0&language=EN&guiLanguage=en>.

<sup>252</sup> European Commission document SEC(2010) 1276 final, 28 October 2010. Viewed at: [http://ec.europa.eu/enterprise/newsroom/cf/\\_getdocument.cfm?doc\\_id=6222](http://ec.europa.eu/enterprise/newsroom/cf/_getdocument.cfm?doc_id=6222).

under international agreements. The EU is an observer to the World Intellectual Property Organization (WIPO), while its member States are WIPO members. In December 2009, the EU ratified the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

230. The EU has a regime of regional exhaustion, under which parallel imports from third countries are not allowed, while parallel imports within the EU are permitted.

(a) Copyright and related rights

231. Copyright-dependent industries play an important role in the EU economy. A WIPO study on the contribution of copyright industries to GDP and employment in a number of countries, including some EU member States, found that these industries represent a dynamic sector that, on average, grows faster than the rest of the economy (Table III.12).<sup>253</sup> Some other studies found that in the EU and some EU member States, the contribution of copyright industries to GDP varies from 2.6% to 6.9%, and the contribution to employment varies from 3% to 6.5%.<sup>254</sup> However, as the methodologies of the studies vary, their results are not comparable.

232. Following an impact assessment study, in July 2008, the Commission adopted a proposal to amend Directive 2006/116/EC, i.e., to extend the term of protection for performers and producers of sound recordings, from 50 years to 95 years. According to the EU, this extension would bring performers' protection closer to that given to authors (life plus 70 years), and this would not have a negative impact on prices.<sup>255</sup> The EU provided that the proposal is still pending before the Council, but may be adopted in 2011.

**Table III.12**  
Copyright-dependent industries' contribution to GDP and employment, various years

	Year of study	Contribution of copyright-dependent industries to GDP (%)	Contribution of copyright-dependent industries to employment (%)
Bulgaria	2005	2.8	4.3
Hungary	2002	6.7	7.1
Latvia	2000	5.1	5.6
Romania	2005	5.6	4.2
Netherlands	2005	5.9	8.8
Slovenia <sup>a</sup>	2007	5.1	6.8

a Data subject to revision.

Source: WIPO online information. Viewed at: [http://www.wipo.int/export/sites/www/ip-development/en/creative\\_industry/pdf/eco\\_table.pdf](http://www.wipo.int/export/sites/www/ip-development/en/creative_industry/pdf/eco_table.pdf).

233. Some studies have been critical of the proposed extension of the term of protection. For example, the Gowers Report argued that, as IP rights are a trade-off between incentives and access, if the exclusive rights granted by copyright (or any other form of IP right) lasts longer than it needs to, unnecessary costs would be imposed on consumers.<sup>256</sup> It found that the extension of the term of protection would bring minimal economic benefit to performers. Another study commissioned by DG

<sup>253</sup> WIPO online information. Viewed at: [http://www.wipo.int/ip-development/en/creative\\_industry/economic\\_contribution.html](http://www.wipo.int/ip-development/en/creative_industry/economic_contribution.html).

<sup>254</sup> These studies include: Picard, Toivonen and Grönlund (2003); KEA (2006); PIM (2009); TERA Consultants (2010); and European Commission document SEC(2010) 1276 final 28 October 2010. Viewed at: [http://ec.europa.eu/enterprise/newsroom/cf/\\_getdocument.cfm?doc\\_id=6222](http://ec.europa.eu/enterprise/newsroom/cf/_getdocument.cfm?doc_id=6222).

<sup>255</sup> EU online information. Viewed at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/508&format=HTML&aged=0&language=EN&guiLanguage=en>.

<sup>256</sup> HM Treasury (2006).

Internal Market and Services found that 50 years of protection was substantially longer than the terms that previously existed in many member States.<sup>257</sup>

234. The Commission disagreed with the findings of these studies, considering that certain results/statements in the studies were unfounded. According to the Commission, the extended term would enable performers to earn money for a longer period, and benefit record producers who would generate additional revenues from the sale of records, thus helping them to maintain their investment levels in new talent. The Commission considered that accompanying measures contained in the proposal ensure that performers would benefit. The 'use it or lose it' clauses in the contracts linking performers to their record companies would allow performers to claim back their rights if the record producer does not market the sound recording during the extended period. In addition, record companies would be required to set up a fund into which they would have to pay 20% of their revenues earned during the extended period. The money from this fund would be destined to help session musicians.<sup>258</sup>

235. Although copyright holders have the exclusive right to reproduce their works, EU legislation allows member States to limit this right by permitting private copying on condition that the right holders receive "fair compensation". Nonetheless, there are questions regarding the amount of the compensation, and the collection system.<sup>259</sup> In Case C-467/08 (Padawan v SGAE) the European Court of Justice (ECJ) ruled that "fair compensation" is an autonomous concept of European Union law, and should compensate for the harm suffered by the right holder as a result of the unauthorized reproduction of his work. Given the practical difficulties in identifying private users, the ECJ considered private copying levies to be a valid form of providing for fair compensation. The ECJ also stated, however, that private copying levies must not be applied to digital reproduction equipment, devices, and media purchased for purposes clearly unrelated to private copying (e.g. for professional use by professional users). National legislation that provides for the indiscriminate application of private copying levies, regardless of the distinction made by the ECJ in case C-467/08, is incompatible with Directive 2001/29/EC.

236. Challenges for copyright protection also arise from the popular use of the internet. In December 2009, the EU ratified the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), the "internet treaties".<sup>260</sup> The provisions of these two treaties were previously implemented in Directive 2001/29/EC on copyright in the information society. In order to continue to meet the challenges of the internet-based knowledge economy, the EU began a number of projects. A key EU priority is to digitize and disseminate Europe's cultural heritage by creating digital libraries, which can be accessed by researchers and consumers across Europe.<sup>261</sup> In 2011, two proposals were made with respect to digital libraries and archives: one was made to enable the digitisation and online accessibility of "orphan works", the other was to set up collective licensing

<sup>257</sup> Institute for Information Law of the University of Amsterdam (2006).

<sup>258</sup> Europa online information. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/term-protection/term-protection\\_en.htm](http://ec.europa.eu/internal_market/copyright/term-protection/term-protection_en.htm).

<sup>259</sup> European Commission Press Release No 106/10, 21 October 2010. Viewed at: <http://europa.eu/rapid/pressReleasesAction.do?reference=CJE/10/106&format=HTML&aged=0&language=EN&guiLanguage=en>.

<sup>260</sup> European Commission Press Release IP/09/191, "Second EU translation contest winners announced". Viewed at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/191>.

<sup>261</sup> European Commission document COM(2009) 532 final, 19 October 2009. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/docs/copyright-infso/20091019\\_532\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/copyright-infso/20091019_532_en.pdf). European Commission document COM(2010) 245 final/2, 26 August 2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=com:2010:0245:fin:en:pdf>; and Europa online information. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/copyright-infso/copyright-infso\\_en.htm](http://ec.europa.eu/internal_market/copyright/copyright-infso/copyright-infso_en.htm).

schemes for "out-of-commerce" works.<sup>262</sup> The EU has also been active in improving the distribution and availability of works for persons with a visual impairment.<sup>263</sup>

237. Online enforcement and data protection are important components of copyright protection. The EU has several Directives containing rules applicable to the online enforcement of IP rights, such as Directive 2004/48 (the Enforcement Directive), which establishes general applicable rules regarding IPR enforcement, and Directive 2000/31 (the Ecommerce Directive), which establishes minimum applicable rules regarding the conditional exemption of liability for internet service providers. However, certain flexibilities are left to member States in implementing these provisions.<sup>264</sup> For example, in many member States, ISPs (internet service providers) cannot store IP addresses for the specific purpose of online copyright enforcement; exceptions include France.

238. In October 2009, the Constitutional Council of France approved a revised version of its "Hadopi Law", (Loi No. 2009-669 of 12 June 2009 favorisant la Diffusion et la Protection de la Création sur Internet), which led to the creation of HADOPI (Haute Autorité pour la diffusion des oeuvres et la protection des droits sur internet).<sup>265</sup> Under the Law, individual internet subscribers must verify that their access does not infringe copyright legislation. In case of infringement, the HADOPI may start its "3-strike" procedure: (i) an email is sent to the connection owner, the ISP is to survey the internet connection, and the connection owner is encouraged to install a filter on his/her own connection; (ii) in the 6 months following the first step, if a repeated offence is suspected (by the copyright holders, their representatives, the ISP or the HADOPI), a certified letter is sent to the connection owner; (iii) in the year following the reception of the certified letter, if the connection owner fails to comply, or if copyright holders, their representatives, the ISP or the HADOPI suspect repeated offences, the ISP is required to suspend service for a period of 2 months to 1 year. The connection owner is blacklisted and third-party ISPs are prevented from providing him/her an internet connection. Before the last step, a judicial review may be conducted.

(b) Industrial property

*Patents*

239. Currently, there are three different avenues for patent applications: a national procedure is provided by the competent authority of each member State; a centralized procedure is available at the European Patent Office (EPO); and an international procedure is available under the Patent Cooperation Treaty (PCT) administered by the WIPO.

240. The European patent system under the EPO is considered as "incomplete", "fragmented", and costly.<sup>266</sup> For a European patent to take effect in member States, the patent owner must request validation at national level. This involves translation, local representation, and administration requirements. A European patent validated for example in 13 member States costs around €20,000, of which nearly €4,000 for translation. This is more than ten times the cost of obtaining a patent in the

---

<sup>262</sup> Out-of-commerce works differ from orphan works to the extent that their authors or publishers are known, but the book is not available in traditional or in the new electronic channels of trade. Orphan works are works where the author is not known or, even if known, cannot be located.

<sup>263</sup> Europa online information. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/copyright-info/copyright-info\\_en.htm#otherdocs](http://ec.europa.eu/internal_market/copyright/copyright-info/copyright-info_en.htm#otherdocs).

<sup>264</sup> Hunton & Williams (2009) and (2010).

<sup>265</sup> Legifrance online information. Viewed at: <http://www.legifrance.gouv.fr>

<sup>266</sup> Harhoff (2009).

United States (on average €1,850).<sup>267</sup> Because of the costs, most inventors seek patent protection in a limited number of member States (on average five). Low validation entails a fragmented system for patent protection in the EU, with negative effects on the commercial value of patented inventions.<sup>268</sup> Further, in legal disputes, innovators wishing to protect their inventions may have to litigate in parallel in several countries. This implies high costs, complicated system, and the risk of contradictory court decisions in different member States. For example, an inquiry in the pharmaceutical sector found that 30% of court cases were conducted in parallel in several member States, and in 11% of cases national courts reached conflicting judgements (section (v)).

241. In December 2009, the Competitiveness Council adopted Council Conclusions on an enhanced patent system in Europe. Two key features were the creation of a single EU patent, and the establishment of a court with jurisdiction both for European patents and for future EU patents. Some researchers expected total private savings through access to a unified patent court to be between €148 million and €289 million in the four years following its creation.<sup>269</sup> The unified patent court is to be established by the conclusion of an international agreement involving the EU, its Member States, and other states of the European Patent Convention (EPC).<sup>270</sup> In June 2009, the Council submitted a request for an opinion of the European Court of Justice on the compatibility of a draft agreement establishing a unified patent court with the EU Treaties. On 8 March 2011 the Court ruled that certain features of the draft agreement were inconsistent with the Treaties. The Commission is now working on identifying appropriate alternatives on the way forward for the patent litigation system.

242. The Commission first proposed the creation of a unitary EU patent in 2000. However, no agreement could be reached on the translation arrangements, and the Council concluded that the objective of a single EU patent could not be achieved. Subsequently, the Commission responded favourably to the request of 25 member States for the creation of unitary patent protection in the framework of enhanced cooperation.<sup>271</sup> The European Parliament and the Competitiveness Council gave their consent to enhanced cooperation in early 2011. The implementation of the authorising Council decision requires the adoption of two regulations; first, on the creation of unitary patent protection, and second, on the applicable translation arrangements. On 13 April 2011, the Commission adopted the proposals for the implementing regulations.

243. In recent years, the number of applications for renewable-energy patents has been increasing rapidly. In 2009, the EPO received 1,259 renewable-energy patent applications, up 27% from 2008. However, patents are scattered across many databases and in different formats, which results in a lack of clarity. The EPO developed a unified database for clean-energy patents in June 2009; clean-energy patents are classified in 160 categories, so that they can be identified more easily. Reportedly,

---

<sup>267</sup> Europa Press Release, "Patents: Commission proposes translation arrangements for future EU Patent", IP/10/870, Brussels, 1 July 2010. Viewed at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/870&format=HTML&aged=0&language=EN&guiLanguage=en>.

<sup>268</sup> European Commission document SEC(2010)797, 30 June 2010. Viewed at: [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2010/sec\\_2010\\_0797\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2010/sec_2010_0797_en.pdf).

<sup>269</sup> Harhoff (2009).

<sup>270</sup> The EPC currently has 38 contracting states: the 27 EU member States plus Albania, Croatia, Former Yugoslav Republic of Macedonia, Iceland, Liechtenstein, Monaco, Norway, San Marino, Serbia, Switzerland, and Turkey. Viewed at: <http://www.epo.org/about-us/epo/member-states/by-accession-date.html>.

<sup>271</sup> European Commission document COM(2010) 790 final, 14 December 2010. Viewed at: [http://ec.europa.eu/internal\\_market/indprop/docs/patent/COM\(2010\)\\_790-final\\_en.pdf](http://ec.europa.eu/internal_market/indprop/docs/patent/COM(2010)_790-final_en.pdf). The framework of enhanced cooperation allows a group of willing member States to go ahead with legislation in a given area, while others may join at any time in the future.

---

---

the EPO plans to create similar databases for clean technology in the areas of transport, buildings, and agriculture.<sup>272</sup>

244. Some member States are creating similar databases. For example, in June 2010, the Intellectual Property Office in the UK (UKIPO) launched a green technology database to facilitate the development of environment-friendly technology. This database contains patent applications processed under the UKIPO's "Green Channel" initiative launched in 2009. The Green Channel provides a fast-track service for patent applications for inventions with environmental benefits: patents may be granted in nine months compared with a current average time of two to three years.<sup>273</sup> Apparently, the databases run by the EPO and the UKIPO are separate; and the UKIPO database is much smaller.

#### *Trade marks*

245. The EU has the Community trade mark system, and national trade mark systems. Substantive provisions of the latter are harmonized by means of Directive 2008/95/EC so that the same protection applies throughout all member States.

246. The EU legislation relating to Community trade marks does not replace the laws of its member States. Also, the two regimes have different coverage and application requirements. A link is established through the concept of seniority, i.e., the possibility of claiming, in applying for the Community trade mark, the seniority of the earlier trade mark in the member State in or for which it was registered, preserving prior rights even if the earlier trade mark is not renewed. Another link is the concept of conversion, i.e., the possibility of converting a Community trade mark application that was refused, or declared invalid or revoked, into a national trade mark application in all member States in which the ground for refusal does not apply. The ensuing national trade mark applications will retain the filing date of the Community trade mark application.

247. Businesses can register a trade mark in each of the 27 EU member States, and at the same time a Community trade mark. Opposition against a national trade mark application can be filed based on a prior Community trade mark. Registering a Community trade mark may thus prevent a specific mark from being registered as a national trade mark by third parties. If, on the other hand, a company chooses to register a trade mark at national level and not as a Community trade mark, the same sign could be registered by another company in another member State. Trade mark infringement is dealt with by specialized national courts of first and second instance, or "Community trade mark courts", based on the Community Trade Mark Regulation 207/2009.

248. The Community trade mark has effect throughout the EU, and is registered and administered by the Office for Harmonization in the Internal Market (OHIM). In May 2009, OHIM fees were lowered and the procedures for the registration of a Community trade mark were simplified. The registration fee was eliminated so that businesses pay €1,050 instead of €1,750 for the application and registration of a Community trade mark, and the e-registration of a trade mark was reduced, from €1,600 to €900. It was estimated that these measures could save businesses some €60 million a

---

<sup>272</sup> "Green Patents Corralled – Intellectual property database could ease technology transfer", *Nature* 465, 21, 4 May 2010. Viewed at: <http://www.nature.com/news/2010/100504/full/465021a.html>.

<sup>273</sup> IPO online information, "Green Patent Database Launched", 4 June 2010. Viewed at: <http://www.ipo.gov.uk/about/press/press-release/press-release-2010/press-release-20100604.htm>.

year.<sup>274</sup> The processing time for the registration of a "straightforward" (without opposition procedures) Community trade mark was reduced from 8 months to about 7 months.<sup>275</sup>

249. Given the time that elapsed between the harmonization of trade mark legislation and the creation of the Community trade mark, as well as the increasing demands of stakeholders, the European Commission carried out an evaluation of the overall functioning of the trade mark system in Europe. This included the commissioning of a comprehensive study whose final report was published in March 2011.<sup>276</sup>

250. On the basis of an impact assessment yet to be carried out, the Commission envisages presenting a package proposal to revise both the Community Trade Mark Regulation and the Trade Mark Directive in October 2011. The objective is to modernize the trade mark system both at the EU and national levels by making it more effective, efficient and consistent as a whole, including enhancing the complementarity between the EU and national systems by facilitating cooperation between the OHIM and national trade mark offices.

### *Geographical indications*

251. At the EU level, there are three approaches for registering and protecting geographical indications: as protected designations of origin (PDOs) or protected geographical indications (PGIs) for wine, spirits, and agricultural and foodstuff products;<sup>277</sup> as collective Community trademarks; and through national appellation systems at member State level.

252. GIs are protected mainly under Regulations Nos. 1234/2007 (for wine), 110/2008 (for spirits), and 510/2006 (for agricultural and foodstuff products), in the form of PDOs or PGIs. In December 2010, the Commission submitted a proposal for a Regulation on agricultural product quality schemes.<sup>278</sup> Among others, it suggested that the GI regime be reformed by refining the eligibility criteria, shortening the application process, and inviting producer groups to take on a bigger administrative role. Also, a study was commissioned by the DG Trade on the protection of GIs for non-agricultural products.<sup>279</sup> The study found that, although it is difficult to conclude on the effectiveness of legal instruments on GI protection for non-agricultural products, many producers see the existing EU legal framework for PDOs and PGIs as an interesting route.

253. Applications for GIs of products originating from a geographic area in the EU are sent to the relevant member State; if the member State considers that the application meets the requirements for registration, it transmits it to the European Commission. Member States may charge a fee to cover their costs. The Commission verifies whether the conditions are met. If the Commission is satisfied

---

<sup>274</sup> Europa Press Release, "Trade Mark Protection in the EU Gets Much Cheaper and Easier to Obtain", IP/09/506, Brussels, 31 March 2009. Viewed at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/506>.

<sup>275</sup> OHIM (2010).

<sup>276</sup> Max Planck Institute for Intellectual Property and Competition Law, Munich (2011).

<sup>277</sup> A PDO is a name covering agricultural products and foodstuffs that are produced, processed, and prepared in a given geographical area using recognized know-how. A PGI is a name covering the same type of products that are closely linked to a geographical area where at least one of the stages of production, processing or preparation takes place. A TSG (traditional speciality guaranteed) is not a GI as it highlights traditional characters in terms of composition and/or method of production; when the distinguishing feature is geographical origin rather than composition or method of production, a TSG cannot be granted.

<sup>278</sup> European Commission document COM(2010) 733 final, 10 December 2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0733:FIN:en:PDF>.

<sup>279</sup> European Commission (2009c).



with the application, it publishes its positive conclusions in the *Official Journal*, and if no objections are raised within six months, the product is registered.

254. The registration system for and protection of GIs is also available for products from third countries. For GIs of products of non-EU origin, the application may be sent directly to the Commission, or to the authorities of the country where the geographical area is located, which transmits the application to the European Commission. No fees are requested for applications from third countries.<sup>280</sup> The authorities note that, the average registration time for foreign GIs and for European GIs is three years.

255. According to the Database of Origin and Registration (DOOR) online database (for agricultural products and foodstuffs), there are two third-country names among the 970 GIs (505 PDOs, 465 PGIs (Café de Colombia and Longkou Fensi (vermicelli)).<sup>281</sup> The wine register contains 1,923 names (1,336 PDOs and 587 PGIs),<sup>282</sup> of which, there are two third-country names (Vale dos Vinhedos (Brazil), and Napa Valley (the United States)). The spirits register contains 330 names, of which, two third-country name (Ron de Guatemala (Guatemala), and Pisco (Peru)), although neither has GI status at present.<sup>283</sup> One foreign GI has been registered since 2009: the Commission noted that is only a few applications from third countries have been received, and none has been rejected.<sup>284</sup> There were no application from third countries for wines or spirits during the review period.

256. A large number of third-country GIs are protected through bilateral agreements that the EU has signed with its trading partners.<sup>285</sup> In July 2010, the EU and Switzerland concluded negotiations on an agreement, covering GIs for agricultural products and foodstuffs (800 EU GIs and 22 Swiss GIs) registered before 15 September 2009; GIs for wine and spirits have been protected since 2002 under the agricultural trade agreement. The agreement is waiting to be ratified by both sides. The EU and China are also moving towards more GI protection. A "ten plus ten project" was initiated in 2007, under which, ten EU GIs are to be protected on the Chinese market, and ten Chinese GIs are to be protected on the EU market. EU-China bilateral negotiation on GIs are ongoing.<sup>286</sup>

257. Under the Community Trade Mark Regulation, GIs can be protected as Community collective trade mark.<sup>287</sup> Marks that identify the geographic origin of a product may be registered, as long as they have not become generic in the trade concerned. A collective trade mark may be applied for by associations of manufacturers, producers, suppliers of services, or traders, and may be used only by members of such associations. Community trade marks do not serve to identify the quality of a product.

<sup>280</sup> WTO document WT/TPR/M/214/Add.1, 2 July 2009.

<sup>281</sup> DOOR online information. Viewed at: <http://ec.europa.eu/agriculture/quality/door/list.html;jsessionid=2Wg7M46QnnBr6S1xFpp2zpX1syFmrcBQQhSp7ck0T53DWT8BTLpM!461975886>.

<sup>282</sup> European Commission online information. Viewed at: <http://ec.europa.eu/agriculture/markets/wine/e-bacchus/index.cfm?event=statistics&language=EN>.

<sup>283</sup> European Commission online information. Viewed at: <http://ec.europa.eu/agriculture/spirits/>.

<sup>284</sup> WTO document WT/TPR/M/214/Add.1, 2 July 2009.

<sup>285</sup> These are agreements with Albania (wine and spirits, 2006), Australia (wine, signed in 2008 and entered into force in 2010), Bosnia and Herzegovina (wine, spirits and foodstuffs, 2008), Canada (wine and spirits, signed in 2003 and entered into force in June 2004), Chile (wine and spirits, 2002), Croatia (wine and spirits, 2001), former Yugoslav Republic of Macedonia (wine and spirits, 2001), Mexico (spirits, 1997), Montenegro (wine, spirits and foodstuffs, 2008), Serbia (wine, spirits and foodstuffs: Interim Agreement on Trade and Trade Related Matters in force since 2010), South Africa (wine and spirits, 2002), and South Korea (wines, spirits, foodstuffs, signed in October 2010 and entered into force in July 2011).

<sup>286</sup> See Agra-net.com online news, 22 March 2011, "EU and China move GI protection forward".

<sup>287</sup> WTO document WT/TPR/M/214/Add.1, p. 142, 2 July 2009.

258. GIs may also be protected and enforced through labelling rules, unfair competition law, Customs law, trading standards, and other IPR systems applied in the EU and at national level in the member States. Some member States operate specific GI systems covering products that the EU system does not cover (such as handicrafts), and agricultural product GIs that are pending registration in the EU register. For the latter, Member States provide temporary protection within their national territory. Once the agricultural product GI is entered in the EU register, only the EU system gives legal protection to the name. Among others, the European Court of Justice confirmed the exclusivity of the EU system to provide legal GI protection for registered names in its ruling of 8.9.2009 in case C-478-07 (*Budějovický Budvar National Corporation v Rudolf Ammersin GmbH*, OJ C 22, 26.1.2008). The EU has taken steps to increase the visibility of the EU scheme by requiring the EU logos or scheme name to appear on labelling. These provisions are optional for third-country GIs registered in the EU.

(c) Enforcement

259. Enforcement of IPRs in the EU is based on the 2004/48 IPR Enforcement Directive and the 2001/29 Copyright Directive, and as regards enforcement at the EU borders, Council Regulation (EC) No. 1383/2003 and implementing Commission Regulation (EC) No. 1891/2004 (Table AIII.2). Law enforcement authorities other than the Customs are assigned to conduct internal control on IPR enforcement within member States' territories.

*Customs*

260. At the external border of the EU, Customs authorities may suspend the release of or detain goods that are suspected of infringing or found to have infringed IPRs. In most cases, Customs authorities act upon applications from right holders: applications have been growing over the years, and in 2009, less than 10% of cases were initiated ex-officio.<sup>288</sup> However, Customs may also act ex-officio if they have sufficient grounds for suspecting that goods infringe an IPR. The Customs authorities then notify the detention/suspension to the importer and the right holder. The right holder must submit an application for action within three working days of receiving the notification. If no application is submitted within this period, the goods are released.<sup>289</sup>

261. In 2009, there were over 43,500 cases of goods being detained by Customs, totalling 118 million articles (Table III.13). In almost half of these detentions, the goods were destroyed immediately and in around a quarter of cases, a court case was initiated to determine the infringement. In 12% of the court cases initiated, the goods were released because they appeared to be non-infringing original goods, or because no action was taken by the right holder after notification by the Customs authorities. In 85% of the cases, Customs action began while the goods were under an import procedure; in 9%, goods were discovered while in transit to the EU, and in 3.5% in transit to a declared destination outside the EU.

262. In May 2010, Brazil and India both requested consultations with the EU and the Netherlands regarding the Customs treatment of medicines in transit through EU ports, produced in India and destined for developing countries. The suspension of release by certain EU Member States' Customs authorities was based on grounds of alleged infringement of intellectual property rights in the transit

---

<sup>288</sup> European Commission (2010c).

<sup>289</sup> WTO document WT/TPR/M/241/Add.1, p. 421; and Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.

country, which is provided for under Council Regulation (EC) No. 1383/2003 and the national law of the Member States concerned (Chapter II(3)).<sup>290</sup>

263. Under the EU Customs Action Plan to combat IPR infringements for 2009-2012, a priority of the Commission and member States is to strengthen Customs enforcement.<sup>291</sup> In this context, in March 2010, the Commission opened a consultation process to review Council Regulation (EC) No. 1383/2003, 22 July 2003. The Commission intends to submit a proposal for a revised Regulation in 2011.<sup>292</sup> The draft Regulation aims to strengthen Customs enforcement of IPRs, while ensuring streamlining of procedures. In December 2010, the Commission also submitted a report on the application of Directive 2004/48/EC. The report concluded that the Directive provided a solid basis for the enforcement of IPRs in the internal market, and led to considerable improvement of the national legal framework. However, the same report also called for further clarifications of its provisions, because member States (and the courts) have different interpretations.<sup>293</sup> In January 2011, the Commission launched a consultation on the Commission report on the enforcement of intellectual property rights, aimed at identifying additional issues that should be addressed in the context of a possible review of the Directive.<sup>294</sup>

**Table III.13**  
**Enforcement of intellectual property rights, 2007-09**

	2007	2008	2009
<b>Customs actions</b>			
Applications by right holders	10,260	12,866	14,797
Number of cases	43,671	49,381	43,572
Number of articles	79,076,458	178,908,278	117,959,298
<b>Breakdown of cases in 2009</b>			<b>(%)</b>
<b>IP right in relation to detained articles</b>	Trade mark	90.05	
	Patent		4.99
	Copyright/related right		3.57
	Design and model right		1.32
	Plant variety right		0.05
	Protected designation of origin		0.00
<b>Results</b>	Destruction of goods		47.44
	Court case initiated		23.22
	No action undertaken		6.11
	Pending case		5.05
	Original goods		4.34
	Settlement out of court		0.07
	Data not available		13.78

**Table III.13 (cont'd)**

<sup>290</sup> WTO documents WT/DS408/1, and WT/DS409/1, 19 May 2010.

<sup>291</sup> OJ C 71/1, 25 March 2009.

<sup>292</sup> European Commission (2010a).

<sup>293</sup> European Commission document COM(2010) 779 final, 22 December 2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0779:FIN:EN:PDF>.

<sup>294</sup> Europa online information. Viewed at: [http://ec.europa.eu/internal\\_market/consultations/2011/intellectual\\_property\\_rights\\_en.htm](http://ec.europa.eu/internal_market/consultations/2011/intellectual_property_rights_en.htm).

Breakdown of cases in 2009		(%)
<b>Cases per procedure</b>	Imports	85.43
	Transit EU	8.98
	Transit	3.49
	Smuggling	0.82
	Warehouse	0.64
	Transshipment	0.33
	Export	0.31
	Re-export	0.01
<b>Top 4 categories of products</b>	Cigarettes	19
	Other tobacco products	16
	Labels, tags, and emblems	13
	Medicines and other products	10

.. Not available.

Source: EU (2010), "Report on EU Customs Enforcement of Intellectual Property Rights: Results at the EU Border – 2009". Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_controls/counterfeit\\_piracy/statistics/index\\_en.htm](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm).

### *EU Observatory on Counterfeiting and Piracy*

264. Although all goods entering or leaving the EU are potentially subject to examination, Customs may only examine a small part. Therefore, Customs has to rely on information given by right holders to identify infringing goods. Information on production, transport, and physical characteristics of the original goods is also important.<sup>295</sup> Thus, IPR enforcement requires coordination between public administrations and businesses. For this reason, the European Observatory on Counterfeiting and Piracy was set up as a platform to exchange information.

265. The Observatory was officially launched in 2009, as a pan-European platform to help combat counterfeiting and piracy with European and national representative associations from the main sectors affected by and most active in fighting counterfeiting and piracy. Currently, the Observatory comprises representatives from over 40 private stakeholders, 27 member States, and the Commission. Its role was agreed by its private sector stakeholders and the member States and is based on the 2008 Council Resolution<sup>296</sup>, the Commission's Communication on enhancing the enforcement of intellectual property rights in the internal market<sup>297</sup>, and the subsequent Council Resolution of 1 March 2010 on the enforcement of IPR in the internal market.<sup>298</sup>

266. A 2010 study on rapid information exchange systems for enforcement provides a comparative assessment of e-government initiatives at national and European levels and an assessment of needs for administrative cooperation and information sharing on counterfeiting and piracy. The Commission also published a Study on Online Copyright Enforcement and Data Protection in Selected Member

<sup>295</sup> WTO document WT/TPR/M/241/Add.1, 2 July 2009, p. 423.

<sup>296</sup> "Council Resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and anti-piracy plan", 4 October 2008. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:253:0001:0002:en:pdf>.

<sup>297</sup> European Commission document COM(2009)467 final, 11 September 2009. Viewed at: <http://eur-lex.europa.eu/lexuriserv/lexuriserv.do?uri=com:2009:0467:fin:en:pdf>.

<sup>298</sup> "Council Resolution, On the Enforcement of the Intellectual Property Rights in the Internal market", 6 March 2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:056:0001:0004:en:pdf>.

States. In addition, the Directorate General for the Internal Market launched a tender for a comprehensive study that, through defining a methodology, would quantify the scope, scale and impact of counterfeiting and piracy on European internal market. This study will be the first stage aiming to develop evidence-based policies in the area of intellectual property rights.<sup>299</sup> The study is due for completion at the end of 2011.

267. The Commission is expected to adopt a revised strategy for the protection and enforcement of IP rights in third countries, by the end of 2011, based on a recent study<sup>300</sup> assessing the implementation of the initial (2004) strategy<sup>301</sup>, and on additional inputs including a public consultation.

#### *International cooperation in IPR enforcement*

268. The EU continues to fight against counterfeiting and piracy, both unilaterally, and through bilateral, regional, and multilateral agreements. Detailed IPR clauses, particularly on enforcement and border measures, are included in several trade agreements concluded or negotiated by the EU.

269. The EU has signed free-trade agreements (FTAs) with Chile, Mexico, and South Africa, and since 2007 the Commission has proposed a new generation of FTAs with detailed provisions for IPR enforcement. The first of the new generation of FTAs, with South Korea<sup>302</sup>, was completed and signed in 2010. The EU also concluded FTAs with Central America, Colombia, and Peru, which include detailed provisions on effective protection and enforcement of IP rights. A similar approach is being followed in on-going FTA negotiations with India, MERCOSUR, and Singapore and in non-preferential cooperation agreements with China and Russia.

270. The EU also signed Economic Partnership Agreements (EPAs) with the African, Caribbean, and Pacific (ACP) group of countries. However, in 2009, only one full EPA (EU-CARIFORUM) and a few interim EPAs had entered into force (Chapter II (4)). Negotiations are ongoing for most other EPAs. Nine Partnership and Cooperation Agreements (PCAs) were concluded during 1997-99 with countries from Eastern Europe, the Southern Caucasus and Central Asia. However, it remains unclear to the Secretariat to what extent these agreements cover IPRs and IPR protection.

271. In parallel, enforcement and cooperation activities are being reinforced bilaterally, for example with Argentina, Brazil, China, Russia, Thailand, and Ukraine, to tackle problems raised by EU right holders. These activities include structured IP dialogues, as well as dedicated action plan with China focused on enhancing Customs cooperation in IPR enforcement, to reduce the amount of counterfeit and pirated goods traded bilaterally.

272. The EU is also a major participant in the negotiations for a plurilateral agreement: the Anti-Counterfeiting Trade Agreement (ACTA). Discussions on this agreement began in 2007 and formal negotiations were launched in June 2008. On 3 December 2010, the final text of the agreement was

---

<sup>299</sup> EU online information. Viewed at: [http://ec.europa.eu/internal\\_market/iprenforcement/observatory/index\\_en.htm](http://ec.europa.eu/internal_market/iprenforcement/observatory/index_en.htm).

<sup>300</sup> ADE (2010).

<sup>301</sup> OJ C 129/3, "Strategy for the enforcement of intellectual property rights in third countries", 26 May 2005. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/december/tradoc\\_147070.pdf](http://trade.ec.europa.eu/doclib/docs/2010/december/tradoc_147070.pdf).

<sup>302</sup> European Commission Press Release, "EU-Korea Free Trade Agreement online". Viewed at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=443&serie=273&langId=en>.

submitted for signature by each party.<sup>303</sup> According to the EU, the ACTA aims to "improve international standards on the actions against large-scale infringements of IPR".<sup>304</sup> Its goal is pursued through three primary components: (i) international cooperation; (ii) enforcement practices; (iii) legal framework for enforcement of IPR. The EU negotiators stated that the ACTA is entirely in line with the EU *acquis* and does not therefore require any changes to EU legislation.

---

<sup>303</sup> European Commission online information, "The Anti-Counterfeiting Trade Agreement". Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/december/tradoc\\_147079.pdf](http://trade.ec.europa.eu/doclib/docs/2010/december/tradoc_147079.pdf).

<sup>304</sup> WTO document WT/TPR/M/214/Add.1, 2 July 2009.

## IV. DEVELOPMENTS IN SELECTED SECTORS

### (1) AGRICULTURE

#### (i) Agriculture in the European Union

1. In 2009, agriculture production contributed about 1.6% to gross value added for all economic sectors in the EU and about 5.1% to employment. In 2010, agriculture goods (WTO definition) represented about 6.7% of total EU exports and about 5.7% of total EU imports.

2. The gross value added for agriculture, hunting and forestry in the EU was €168 billion in 2009. It has varied over the past ten years reflecting changes in prices, and is down from €194 billion in 2007.<sup>1</sup> To some extent, the changes in farm gate prices have reflected changes in policies as the Common Agricultural Policy has undergone considerable reform over the past ten years; they also reflect changes in international prices, which peaked in early 2008, fell back in 2009, and rose again in 2010. Despite the wide range of products grown and raised in the EU, six commodities make up over half of total value of production by value (Table IV.1).

3. Support to agriculture has been reformed significantly over the past few years, but remains considerable in both absolute and relative terms. In 2009, total support to the agriculture sector was estimated by the OECD to be just over €100 billion, which is the equivalent of nearly one third of the total value of production, while support to producers was estimated to be about €87 billion.<sup>2</sup>

**Table IV.1**

**Agriculture goods output at basic prices for selected agricultural products, 2008-10**

(€million)

	2008	%	2009	%	2010	%
<b>Total value of production (at farm gate)</b>	352,620	100	308,458	100	326,382	100
of which:						
Milk	52,718	15.0	41,782	13.5	47,413	14.5
Pigs	32,993	9.4	29,987	9.7	29,809	9.1
Cattle	30,737	8.7	28,665	9.3	28,578	8.8
Fresh vegetables	29,820	8.5	28,620	9.3	30,869	9.5
Plants and flowers	20,072	5.7	19,302	6.3	19,682	6.0
Other forage plants	18,942	5.4	17,830	5.8	n.a.	n.a.
Wheat and spelt	25,620	7.3	17,019	5.5	20,651	6.3
Poultry	17,487	5.0	16,312	5.3	16,877	5.2
Wine	16,298	4.6	16,065	5.2	15,668	4.8

n.a. Not available.

Note: Figures for 2010 are estimates.

Source: EuroStat database. Viewed at: <http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/themes> [February 2011].

4. The EU produces a very wide range of agricultural products and is the world's biggest producer of several agricultural commodities, including dairy milk, wheat, grapes, olives, rapeseed, and sunflower seeds, and it is the second or third biggest producer of a number of other products, such as beef, pig meat, eggs, and potatoes (Table IV.2).<sup>3</sup> The EU is also a major exporter and importer of agricultural products (Table IV.3 and Table IV.4). With a large and diversified trade in agriculture products and a large share of the world market, its agriculture policies can have a significant impact

<sup>1</sup> EuroStat database. Viewed at: <http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/themes>.

<sup>2</sup> OECD (2010a), p. 51.

<sup>3</sup> FAOStat database. Viewed at: <http://faostat.fao.org/site/339/default.aspx>.

on other countries, particularly on those whose economies depend on agriculture. The reverse is also true, that the EU, as a major producer, importer, and exporter of agriculture products is also affected by the agriculture policies of other countries.

**Table IV.2**  
**Production of selected agricultural products, 2006-09**  
('000 tonnes)

	2006	2007	2008	2009	% world production in 2009
Pig meat	21,804.9	22,697.0	22,387.7	21,888.1	20.6
Wheat	126,735.0	120,263.6	150,296.7	138,725.1	20.3
Butter and ghee	2,022.6	2,022.4	2,011.1	1,953.1	20.3
Cheese	8,669.0	8,770.5	8,762.1	8,692.0	44.9
Beer of Barley	39,928.1	40,004.2	39,470.7	38,404.7	22.8
Wine	17,672.8	15,796.6	15,931.0	16,336.2	60.3

Source: FAOSTat database. Viewed at: <http://faostat.fao.org/default.aspx> and European Commission.

**Table IV.3**  
**Exports of selected agricultural products, 2006-09**

HS Code	Product		2006	2007	2008	2009	% of world exports in 2009
0203	Pig meat	US\$ million	2,584.5	2,738.2	3,696.6	2,895.8	28.5
		000 tonnes	900.7	906.7	1,230.0	1,008.3	25.0
0405	Butter	US\$ million	600.8	704.9	740.1	503.5	23.2
		000 tonnes	241.1	211.7	153.1	147.5	16.2
0406	Cheese and curd	US\$ million	2,785.0	3,347.1	3,780.7	3,301.1	30.9
		000 tonnes	586.5	595.8	554.6	576.8	n.a.
1001	Wheat and meslin	US\$ million	2,203.7	2,181.9	6,157.4	4,628.2	21.4
		000 tonnes	13,978.3	8,448.4	18,184.9	20,602.6	16.4
2106	Food preparations not specified elsewhere	US\$ million	3,745.8	4,345.5	4,725.3	4,749.6	31.7
		000 tonnes	808.1	855.0	868.1	918.8	24.0
2203	Beer	US\$ million	2,421.7	2,749.3	3,041.9	3,016.8	45.5
		000 tonnes	2,173.4	2,388.2	2,588.2	2,630.5	37.0
2204	Wine of fresh grapes, incl fortified	US\$ million	6,957.0	8,272.2	9,205.3	7,534.7	52.3
		000 tonnes	1,839.0	1,893.3	1,799.0	1,664.6	34.4
2208	Distilled spirits	US\$ million	8,061.2	9,098.5	9,154.2	7,990.6	28.7
		000 tonnes	1,107.3	1,154.6	1,121.6	1,039.3	28.7
Total agricultural exports		US\$ million	86,592.5	99,692.2	118,115.8	102,144.7	

n.a. Not applicable.

Note: WTO definition of agricultural products.

Source: UN Comtrade database. Viewed at: <http://comtrade.un.org/> and European Commission.

5. The agriculture situation in the EU varies considerably from one member State to another and within individual member States. In general, the lower GDP per capita the more important is agriculture to the economy and to employment. Thus, in 2009, although the gross value added in agriculture was 1.6% of total GVA in the EU as a whole, it was over 7% in Romania and less than 1% in Belgium, Ireland, Luxembourg, and the United Kingdom. However, in all member States, agriculture's percentage contribution to GVA is declining, with the greatest falls in those states where it made the biggest contribution to the economy notably for Bulgaria and Romania where the relative decline in agriculture reflects general economic growth that started in the pre-accession period.



**Table IV.4**  
Imports of selected agricultural products, 2006-09

HS Code	Product		2006	2007	2008	2009	% of world imports in 2009
0803	Bananas, including plantains, fresh or dried	US\$ million	3,217.2	3,770.4	4,338.0	3,850.3	41.0
		000 tonnes	4,452.8	4,762.6	4,924.6	4,591.6	31.5
0901	Coffee, coffee husks and skins and coffee substitutes	US\$ million	5,490.1	6,663.8	8,246.5	7,338.3	45.3
		000 tonnes	2,682.8	2,752.3	2,765.2	2,716.8	47.0
1201	Soya beans	US\$ million	3,646.7	5,243.0	7,529.9	5,671.3	16.8
		000 tonnes	14,074.9	15,218.3	14,424.6	12,903.3	17.1
1511	Palm oil and its fractions	US\$ million	2,024.1	2,900.8	4,389.5	3,716.2	19.5
		000 tonnes	4,272.2	4,408.2	4,555.4	5,351.0	19.2
1801	Cocoa beans, whole or broken, raw or roasted	US\$ million	2,267.0	2,882.2	3,576.2	4,319.6	54.8
		000 tonnes	1,334.5	1,458.7	1,453.4	1,503.4	53.9
2204	Wine of fresh grapes, incl fortified	US\$ million	3,039.7	3,723.7	3,620.6	3,253.8	23.8
		000 tonnes	1,227.3	1,330.6	1,272.2	1,310.8	28.8
Total agricultural imports		US\$ million	89,060.4	110,541.6	133,052.2	111,525.3	

Note: WTO definition of agricultural products.

Source: UN Comtrade database. Viewed at: <http://comtrade.un.org/>.

6. Agriculture also differs among member States in terms of farm size, both in area and in economic terms, and principal products. The average economic size of holdings, as measured by the gross margin per holding, was highest in the Netherlands and was 100 times more than the lowest, in Romania (Table IV.5). The degree of specialization in agriculture also varies among member States: in Ireland the top three products account for over 71% of the value of production, while in France they account for less than 42%.

7. The structure of holdings in some member States reflects the large number of small holdings in those States. Over three quarters of holdings in Bulgaria, Hungary, Romania, and Slovakia have an annual gross margin of less than €1,200 while in the Netherlands very few farms are so small.

**Table IV.5**  
Structure of farming in individual member States, 2007 and 2009

	GVA agriculture to total GVA 2009 <sup>1</sup>	Employment in agriculture to total employment 2009	No. of agriculture holdings 2007	Agricultural area per holding 2007	Average gross margin per farm 2007	Value of output of agricultural goods 2009	Main products
	%	%	'000	ha	€	€million	
<b>EU</b>	1.6	5.1	13,700	12.6	13,560	308,458	Vegetables, milk, cereals
<b>Austria</b>	1.8	5.3	165	19.3	20,040	5,518	Milk, cattle, forage plants
<b>Belgium</b>	0.7	1.5	48	28.6	84,360	6,819	Pigs, vegetables, cattle
<b>Bulgaria</b>	8.5	7.1	493	6.2	2,640	3,144	Cereals, industrial crops, milk
<b>Cyprus</b>	2.1	3.9	40	3.6	9,600	634	Fruits, milk, vegetables
<b>Czech Republic</b>	2.3	3.1	39	89.3	49,440	3,531	Cereals, milk, industrial crops
<b>Denmark</b>	1.0	2.5	45	59.7	96,120	7,928	Pigs, milk, cereals
<b>Estonia</b>	2.3	4.0	23	38.9	9,120	507	Milk, cereals, pigs

Table IV.5 (cont'd)

	GVA agriculture to total GVA 2009 <sup>1</sup> %	Employment in agriculture to total employment 2009 %	No. of agriculture holdings 2007 '000	Agricultural area per holding 2007 ha	Average gross margin per farm 2007 €	Value of output of agricultural goods 2009 €million	Main products
<b>Finland</b>	2.6	4.6	68	33.6	29,040	3,367	Milk, vegetables, cereals
<b>France</b>	1.7	2.9	527	52.1	64,320	57,447	Cereals, wine, cattle
<b>Germany</b>	0.9	1.7	370	45.7	59,400	40,486	Milk, pigs, forage plants
<b>Greece</b>	2.9	11.9	860	4.7	8,640	9,241	Vegetables, fruit, milk
<b>Hungary</b>	3.3	4.6	626	6.8	3,840	5,370	Cereals, pigs, vegetables
<b>Ireland</b>	0.9	5.0	128	32.3	23,280	4,727	Cattle, milk, forage plants
<b>Italy</b>	1.7	3.7	1,679	7.6	17,880	39,365	Vegetables, fruits, milk
<b>Latvia</b>	3.2	8.7	108	16.5	3,720	781	Cereals, milk, forage plants
<b>Lithuania</b>	3.3	9.2	230	11.5	3,000	1,692	Cereals, milk, pigs
<b>Luxembourg</b>	0.3	1.3	2	56.9	62,160	247	Milk, cattle, forage plants
<b>Malta</b>	1.8	1.4	11	0.9	5,880	123	Vegetables, milk, pigs
<b>Netherlands</b>	1.7	2.5	77	24.9	133,560	19,489	Vegetables, milk, pigs
<b>Poland</b>	3.6	13.3	2,391	6.5	4,320	16,941	Cereals, milk, pigs
<b>Portugal</b>	2.2	11.2	275	12.6	7,920	6,406	Vegetables, fruits, wine
<b>Romania</b>	7.1	29.1	3,931	3.5	1,200	12,658	Cereals, forage plants, vegetables
<b>Slovakia</b>	3.9	3.6	69	28.1	8,640	1,664	Cereals, milk, cattle
<b>Slovenia</b>	2.4	9.1	75	6.5	7,080	1,031	Forage plants, milk, cattle
<b>Spain</b>	2.5	4.2	1,044	23.8	24,720	35,968	Vegetables, fruits, pigs
<b>Sweden</b>	1.7	2.2	73	42.9	29,640	3,705	Milk, forage plants, cereals
<b>United Kingdom</b>	0.9	1.1	300	53.8	37,680	19,669	Milk, cattle, cereals

Note: Data for Bulgaria are for 2006, for Germany for 2008, for Austria and Portugal for 2007 and for the UK for 2005.

Source: Eurostat database: <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home>.

## (ii) Agriculture policies

8. Since 2007, funding for agriculture policies in the EU has been provided through the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD). The EAGF covers funding for direct payments to farmers and market intervention measures (the first pillar of the CAP). The EAFRD covers funding for rural development programmes (the second pillar of the CAP), which includes assistance to less-favoured areas, investment aids for agriculture and forestry, and payments under environmental programmes.

9. In the 1992-2003 period, there was a significant shift in the structure of support in the EU away from intervening in the market to direct payments linked to the number of livestock and crop area. Since 2003, reform has focussed on moving to a system of direct payments decoupled from prices and production. However, market price support (as defined by the OECD) continues to

represent a large, though declining, portion of transfers to producers.<sup>4</sup> In the past export subsidies and intervention purchases, along with relatively high tariffs kept domestic prices well above world market price levels for many commodities. As export subsidies and intervention have been reduced, the gap between international and domestic prices has narrowed. However, the reforms of the CAP have not reduced MFN tariffs which remain relatively high.

10. In 2007, the 21 different Common Market Organizations (CMO) were replaced by a single one covering all sectors under the CAP and the separate management committees by a single committee. To some extent, the introduction of a single CMO and a single management committee was for legal and administrative reasons as the Regulation still provides for different support measures for different products.<sup>5</sup>

11. The Health Check of the Common Agricultural Policy, agreed to by the EU agriculture ministers in November 2008, continued the direction of reform seen in the 2003 Mid Term Review. The Health Check made further reductions in the role of the CAP in the market, extended the systems of support that are decoupled from agricultural prices or production, and increased the emphasis on the second pillar of the CAP. The process of reform in the EU is expected to continue with the focus now on the 2013 and subsequent reform of the CAP.<sup>6</sup>

(a) Domestic support

*Direct payments*

12. In the 2003 reform of the CAP, the EU introduced the Single Payment Scheme of direct payments that, to a large extent, replaced the previously existing systems where direct payments were linked to animal numbers for beef cattle, sheep, and goats and crop areas for cereals, oilseeds, and starch potatoes. The reforms were extended in subsequent stages to cover sugar, hops, olives, tobacco, cotton, fruits and vegetables, and wine. The 2008 Health Check carried the reforms a stage further by ending most of the remaining direct payments that were linked to production.

13. The Single Payment Scheme applies to the EU 15 member States, plus Malta and Slovenia. Each member State can apply the SPS using:

- a historical, approach where each farmer receives payment entitlements for direct payment based on the total of animal number or crop area payments received during the 2000-02 reference period;
- a regional approach where the total amount of animal number or crop area payments paid out in the region in the 2000-02 reference period divided by the number of eligible hectares they relate to, forms the basis for the entitlement to Single Payment Scheme payments. Each farmer receives a payment proportionate to her or his eligible area; or

---

<sup>4</sup> The OECD defines Market Price Support (MPS) as "the annual monetary value of gross transfers from consumers and taxpayers to agricultural producers arising from policy measures that create a gap between domestic market prices and border prices of a specific agricultural commodity, measured at the farm gate level. MPS is also available by commodity." See OECD (2010), p. 40.

<sup>5</sup> Council Regulation (EC) No 1234/2007, 22 October 2007.

<sup>6</sup> DG Agriculture and Rural Development online information. Viewed at [http://ec.europa.eu/agriculture/cap-post-2013/index\\_en.htm](http://ec.europa.eu/agriculture/cap-post-2013/index_en.htm).

- hybrid models where a member State can use different methods in different regions within the country or calculate Single Payment Scheme payments based on a combination of the historical and regional approaches.<sup>7</sup>

14. In order to qualify for Single Payment Scheme payments, farmers are required to keep the land in good agricultural and environmental condition but they are not required to produce any agricultural product on their land.

15. Each Member state may also keep up to 10% of the total amount available for direct payments for quality/marketing, environmental or risk management programmes, or to assist farmers in disadvantaged areas or types of farming in the dairy, rice, beef and veal, goat, or sheep sectors (Article 68 payments).<sup>8</sup>

16. At present, Member states are also able to reserve some of the funds for direct payments for production-linked direct payments but, from 2012, this flexibility will apply only to suckler cows, sheep and goats, and cotton (where 35% of the cotton component of the Single Payment Scheme must remain coupled to production) while transitional support for fruits and vegetable production will continue until budget year 2014 at the latest.

17. With the exception of Malta and Slovenia, the countries that acceded to the EU after 2004, apply the Single Area Payment Scheme (SAPS) which involves payment of uniform amounts per hectare of claimed agricultural land. Malta and Slovenia decided to apply the Single Payment Scheme. The payments under the SAPS are decoupled from prices and production. The Member States using the SAPS system can do so until end-2013. The new Member States can also apply Complementary National Direct Payments subject to authorisation from the European Commission and within specific limits.

#### *Internal Market Supports*

18. As stated above the OECD definition of market price support measures includes all measures that are designed to raise the domestic price of agricultural products and include market access measures, such as tariffs and tariff quotas, as well as export subsidies.<sup>9</sup> In this section, internal market support measures are defined as those that work inside the customs territory to increase prices by reducing or controlling supply or by encouraging consumption. In the EU, such measures have included intervention, aids to private storage, production quotas, export subsidies, and other programmes that restrict supply (such as market withdrawal programmes) plus consumer subsidies that encourage consumption (such as the school milk programme).

19. The use of internal market support programmes has been reduced considerably over the past 20 years as intervention prices and the quantities that can be taken into intervention have been reduced. With the implementation of the 2008 Health Check, intervention has been restricted to:

- wheat, at €101.31 per tonne, for up to 3 million tonnes;
- butter, at €2,217.51 per tonne, for up to 30,000 tonnes;

---

<sup>7</sup> For an overview of the implementation of direct payments in the member States, see Europa online information. Viewed at: [http://ec.europa.eu/agriculture/markets/sfp/pdf/ms\\_en.pdf](http://ec.europa.eu/agriculture/markets/sfp/pdf/ms_en.pdf).

<sup>8</sup> Article 68 of Council Regulation (EC) No 73/2009, 19 January 2009, which replaced Article 69 of EC Regulation (EC) No 1782/2003.

<sup>9</sup> OECD (2010a), p. 40.

- skimmed milk powder, at €1,746.90 per tonne, for up to 109,000 tonnes; and
- beef and veal, whenever the average market price in a member State or region falls below €1,560.00 per tonne for two consecutive weeks.<sup>10</sup>

20. Intervention prices have also been set for several other products including: durum wheat, barley, maize, and sorghum (at the same price as wheat); and paddy rice (at €150 per tonne) but the quantity that may be bought into intervention has been set at zero. Intervention prices and quantities were also set for sugar, but these ceased to apply from end September 2010. The Commission may decide to continue public intervention for durum wheat, barley, maize, sorghum, paddy rice, sugar, butter and skimmed milk powder beyond the limits set out above if the "market situation and, in particular, the development of market prices, so requires."<sup>11</sup> In 2009, a total of 76,367 tonnes of butter and 256,982 tonnes of skimmed milk powder were bought into intervention and released in 2010 as prices increased.<sup>12</sup> In addition, 1,568,000 tonnes of cereals were bought into intervention in marketing year 2008/09 and 5,875,000 tonnes in 2009/10.

21. Production quotas for dairy continue to exist. Milk quotas were increased by 2% in 2008 and are subject to 1% annual increases from 2009 to 2013 (except for Italy where there was a single 5% increase in 2009). The goal is to achieve a gradual removal of quotas by 2015. In a majority of member States quotas no longer restrict production, although in some milk deliveries still exceed their yearly quota. In quota year 2009/10 overall EU milk deliveries were 7% below quota. Production quotas on sugar have been reduced since 2005, which has resulted in cessation of production in five member States and major reductions in others. Sugar production is now concentrated in seven member States.

22. Support for fruits and vegetables is provided through producer organisations and their operational programmes. Since the start of 2008, the producer organisations have had more flexibility to choose from among different instruments, including crisis prevention and management measures such as market withdrawal (where products are withdrawn from the market); non-harvesting (where no commercial produce is taken); and green harvesting (total harvesting of non-marketable products before normal harvesting). Producer organisations can also choose from among measures that support crisis management such as promotion and communication, training, harvest insurance, and support for setting up mutual funds.<sup>13</sup> In addition, they may also implement measures related to planning of production, product quality, marketing and promotion, training and environmental actions. Producer organisations' operational programmes are 50% financed from the EU budget, except for market withdrawals for free distribution to charitable organisations and foundations, penal institutions, and schools that are 100% funded from the EU budget.

23. Market intervention measures for wine are being phased out in line with the final stage of reform that entered into force in August 2009.<sup>14</sup> The reform included: a grubbing up scheme to remove up to 175,000 ha from production; an end to restrictive planting rights from the start of 2016

---

<sup>10</sup> Commission Regulations (EU) No 1234/2007 and 1272/2009.

<sup>11</sup> Council Regulation (EC) No 72/2009, Article 13(3).

<sup>12</sup> European Commission document COM(2010) 727 final, 8 December 2010. Viewed at: [http://ec.europa.eu/agriculture/milk/quota-report/com-2010-727\\_en.pdf](http://ec.europa.eu/agriculture/milk/quota-report/com-2010-727_en.pdf).

<sup>13</sup> Council Regulation (EC) No 1182/2007.

<sup>14</sup> Europa press release IP/09/1214, "CAP Reform: final stage of EU wine reform to enter into force on 1<sup>st</sup> August", 31 July 2009. Viewed at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1214&format=HTML&aged=0&language=EN&guiLanguage=en>.

(2018 in some member States); and the phasing out of distillation for industrial and potable alcohol by 2012.<sup>15</sup>

24. Although it is not specifically intended to increase domestic prices, the requirement to achieve a 10% share for renewable energy in petrol and diesel by 2020 will require greater production of ethanol and biodiesel and demand for feedstocks to make them. This increase in demand will probably be met by increased production as well as increased imports, will require some land to be diverted from other crops, and is likely to have an impact on world markets, particularly for oilseeds.<sup>16</sup>

#### *Rural development*

25. Under the Rural Development policy 2007-13 each member State drew up a national strategy plan for rural development that assigned programmes to three objectives:

- improving competitiveness of the agriculture and forestry sector by supporting restructuring, development, and innovation;
- improving the environment and the countryside by supporting land management; and
- encouraging diversification of the rural economy and improving the quality of life in rural areas.

26. In addition, some funding must be used to support "Leader" community projects (highly individual projects designed and executed by local partnerships to address specific local problems).

27. In its national strategy plan, a member State was able to choose from among a wide variety of measures set out for each objective in the Council Regulation on rural development. Funding had to be distributed across each of the three objectives and Leader projects. In addition, the national strategy plan had to be submitted to the Commission to assess its consistency with the objectives and to improve coherence in rural development across the EU.<sup>17</sup> All national strategy plans were agreed by end-2008 with total funding of about €150 billion for 2007-13, with an average EU contribution of 60%.

28. In their national strategies, all member States have devoted more than half of total funding to the objectives of improving competitiveness and the environment, both of which are open only to the agriculture and forestry sectors. The choice of measures varies widely from one country to another although almost all include training, farm modernization, agri-environment payments, setting-up of young farmers, and agriculture and forestry infrastructure. Across all member States, agri-environmental payments represent 23% of funding, followed by modernisation of agricultural holdings (11%), and payments to farmers in areas with handicaps (7%).<sup>18</sup>

#### (b) Market access

29. Like domestic support, market access in the EU has also been changing over the past few years. Most of the changes have been the result of bilateral trade agreements or preferential

<sup>15</sup> Council Regulation (EC) No 479/2008, 29 April 2008.

<sup>16</sup> Blanco Fonseca et al (2010).

<sup>17</sup> Council Decision 2006/144/EC, 20 February 2006, and Council Regulation (EC) No 1698/2005, 20 September 2005.

<sup>18</sup> Directorate General for Agriculture and Rural Development (2010), pp. 134-150.

arrangements under the Generalized System of Preferences (Chapter II(4)(i)). Tariff quotas operated by the EU have changed as a result of negotiations under GATT Articles XXIV.b and XVIII.

### *Tariffs*

30. In 2011, the EU had 1,998 tariff lines for agricultural products (WTO definition) with an average rate of 15.2%, considerably higher than tariffs for non-agricultural products which average 4.1%. Not only is the average tariff on agricultural products higher than for non-agricultural products, but tariff rates also vary widely from one product to another with a standard deviation of 18.9 for agriculture products compared to 4.1 for non-agriculture tariff lines. Furthermore, tariffs also vary within the HS chapters that cover agricultural products, particularly for dairy products, live animals, and tobacco, which, along with grains, are also the HS Chapters with the highest average tariffs (Table III.3 and Chapter III(1)(iv)).

31. The EU applies a large number of non-*ad valorem* tariffs to agriculture goods, most of which are specific duties but others are compound duties (an *ad valorem* duty plus a specific duty), mixed (an *ad valorem* or a specific duty) or more complicated forms (such as those in the Meursing Table applied to some processed products). In addition, particularly for fresh fruits and vegetables, it applies seasonal tariffs that vary depending on the date. The large number of non *ad valorem* tariffs for agricultural products accounts for changes in the average tariffs for agricultural products from one year to another. As agriculture prices vary so does the *ad valorem* equivalent. The average tariff on agricultural products was 15.2% in 2011, down from 18.6% in 2006 (Chapter III(1)(iv)).

32. In response to fluctuations in world prices, the EU has, within the limits of its bound tariffs, changed its MFN applied tariffs. It reduced tariffs on cereals to zero in January 2008 in response to high world prices, and reintroduced them at the end of October 2008. For wheat, the tariff is based on the difference between world prices and 155% of the intervention price, up to the bound rate of €5 per tonne for high quality wheat and €148 per tonne for high quality durum wheat<sup>19</sup> with similar systems for other cereals. The resulting duty has been set at zero for: durum wheat and high quality soft wheat since 1 July 2010; maize since 17 August 2010; and sorghum and rye since 19 October 2010. In February 2011, the Commission announced that the in-quota tariff for low and medium quality soft wheat and feed barley would be suspended until end-June 2011.<sup>20</sup> Such changes in duties in response to world market prices can reduce predictability and exacerbate fluctuations in world market prices.

33. In late 2009, the EU announced that it had concluded negotiations with Latin American suppliers of bananas and would be changing the market access arrangements for bananas by reducing the MFN tariff on imports of bananas from €76 per tonne in eight stages to €14 per tonne in 2017 (at the earliest or 2019 at the latest). Since 1 January 2008, all ACP exports of bananas to the EU have qualified for duty- and quota-free access under separate trade and development agreements.<sup>21</sup>

---

<sup>19</sup> Government of Canada online information, "Wheat Report". Viewed at: [http://www.canadainternational.gc.ca/eu-ue/policies-politiques/reports\\_wheat-ble\\_rapports.aspx?lang=eng](http://www.canadainternational.gc.ca/eu-ue/policies-politiques/reports_wheat-ble_rapports.aspx?lang=eng).

<sup>20</sup> WTO document TN/AG/S/11, 15 November 2004 provides an overview of the tariff forms used by the EU and some other WTO Members at that time.

<sup>21</sup> Europa Press release, "The EU-Latin America Bananas Agreements – Questions and Answers", 15 December 2009. Viewed at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/557>.

*Tariff quotas*

34. The EU notified 114 separate tariff quotas as being in operation in the calendar year 2009 and marketing year 2008/09.<sup>22</sup> These included several cases where two or more quotas covered the same or similar products, for example there are eight tariff quotas for rice covering paddy rice, broken rice, husked rice, and milled rice, including three separate quotas for semi-milled and wholly milled rice. This is further complicated by the changing number, product coverage, and quantities of different tariff quotas applied by the EU as it took account of the WTO commitments of acceding countries. In addition, some quotas are so small it is hard to consider them as commercially meaningful, such as quotas for 1,300 tonnes of millet, 4,504 tonnes of chemically pure fructose, or 7 tonnes of rice. The Commission noted that changes to quotas were the result of EU enlargements and subsequent GATT Article XXVIII negotiations, and stated that tariff quotas are market access openings and an assessment of them should take this into account.

35. The methods used to administer and allocate tariff quotas vary widely; some are allocated to supplying countries while others are open to all potential suppliers; the validity of licences to import inside a quota vary from a few weeks to one year; and quotas are administered in different ways from licences on demand, to historical importers, to first-come-first-served.<sup>23</sup>

36. Fill rates vary widely from one tariff quota to another. In the last notification for marketing year 2008/09 and calendar year 2009, 39 tariff quotas were completely used while 20 had no imports at all.

*Special Agricultural Safeguard*

37. In its Uruguay Round commitments, the EU reserved the right to use the Special Agricultural Safeguard (SSG) on 539 tariff lines. However, actual use of the SSG has been on a limited range of products. The price-based SSG has been made operational for chicken, turkey, and sugar products almost continuously, with some egg products added for marketing years 2007/08 and 2008/09. The EU has calculated trigger volumes for fruit and vegetables on a regular basis but the volume-based SSG has never been implemented.

(c) Export subsidies

38. The export subsidy regime in the EU has not changed substantially over the past few years. Under its WTO commitments, the EU can use export subsidies for 20 different product groups, of which 10 actually received subsidies in the 2007/08 marketing year, the most recent year for which a notification has been made.<sup>24</sup> The amount of export subsidy varies from one product to another and can vary from one market to another but, in response to domestic reforms and higher world prices for agricultural products, some products no longer receive export subsidies.

39. As at February 2011, export subsidies continue to be available for cereals, beef and veal, poultry meat, pig meat, eggs, sugar, and some processed goods but they have not been used on cereals since July 2006 or on sugar since October 2008. In marketing year 2007/08, sugar products received most export subsidies in terms of both the quantity of subsidized exports and the value of the subsidies, followed by pig meat, and in terms of the quantity of subsidized exports, wine (Chart IV.1). In January 2009, in response to low world prices, export subsidies were reintroduced for dairy

<sup>22</sup> WTO document G/AG/N/EEC/67, 18 January 2011.

<sup>23</sup> The administration and allocation of tariff quotas are found in the EU notifications to the Committee on Agriculture G/AG/N/EEC/1 and addenda, G/AG/N/EEC/3 and Corr.1 and addenda, G/AG/N/EEC/14 and addenda, and G/AG/N/EEC/15 and addenda.

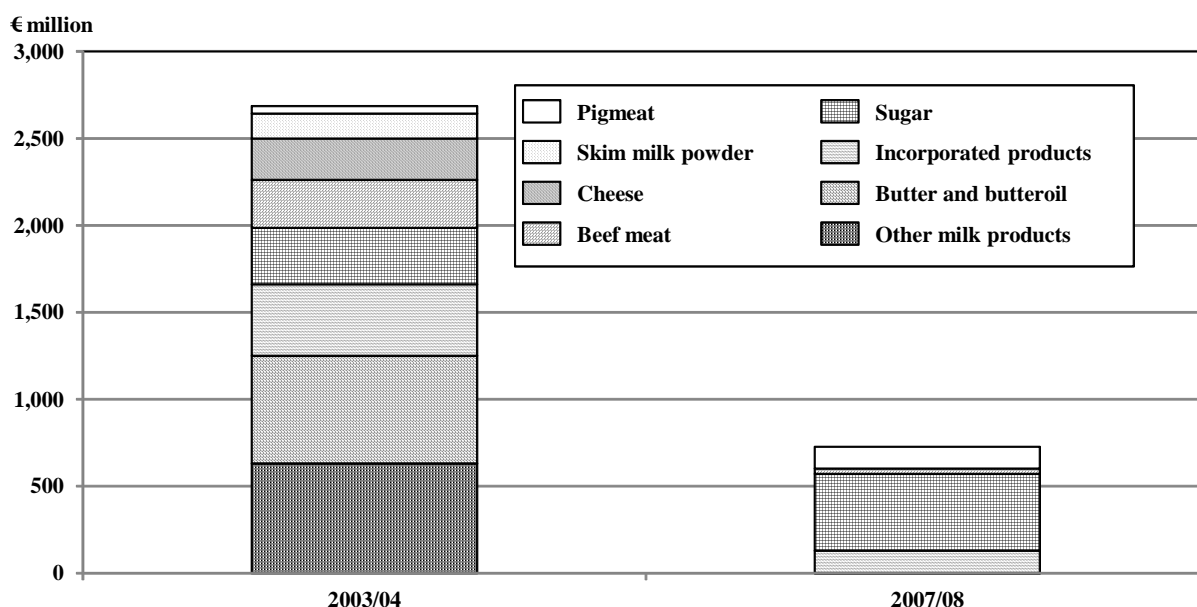
<sup>24</sup> WTO document G/AG/N/EEC/61, 15 October 2009.



products in response to low world prices but were removed in October of the same year.<sup>25</sup> The application of export subsidies can exacerbate swings in world prices and change the terms of trade to the detriment of other exporters. However, the Commission noted that budget spending on export subsidies has fallen to less than one-tenth the level of the early 1990s. They also stated that there is no correlation between the use of export subsidies by the EU and its share in the world market, and that the reintroduction of export subsidies in 2009 for dairy products did not fully bridge the gap between EU and prevailing world market prices at that time.

### Chart IV.1

#### Export subsidies in the European Union, 2003/04 and 2007/08



Source: WTO notifications.

#### (iii) Domestic support levels

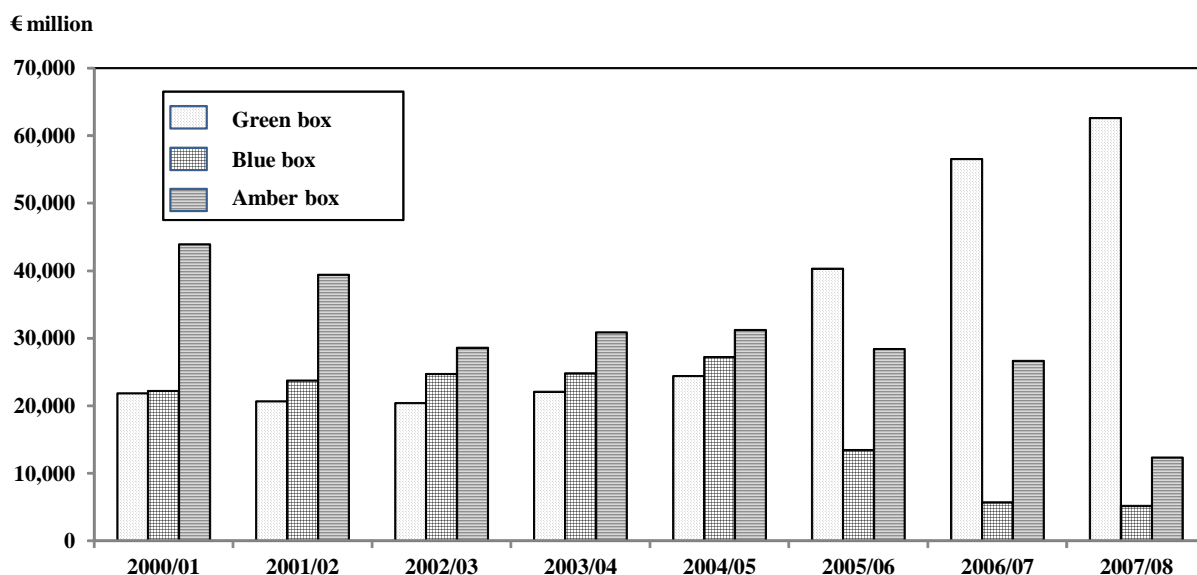
40. Based on notifications to the WTO Committee on Agriculture (the most recent of which is for the marketing year 2007/08), the structure of domestic support in the European Union has changed considerably over the past few years as a result of the changes to the Common Agricultural Policy. To some extent, the notifications, particularly for market price support, do not reflect the real economic value of support because the methodology used to calculate the aggregate measurement of support (AMS) is based on a fixed external reference price used in the Uruguay Round. As the administered prices have been reduced over the years, in some cases they are now below the fixed external reference price, which means that the AMS figure reported in notifications suggests negative support. In the EU, the fixed external reference price is used to calculate the level of support provided for cereals, sugar, dairy, and beef. For most other products, the level of support notified is the value of direct payments.

41. Although the AMS is not a measure of the economic value of support, it is clear that there has been a significant change in the structure of support over the past few years. Since marketing year 2000/01, Green Box support has increased nearly three-fold, to €62.6 billion, while Blue and Amber

<sup>25</sup> Council Regulations (EU) No. 948/2010 and 953/2010, 21 October 2010.

Box support have both declined by three-quarters, to about €5.2 billion and €12.4 billion respectively (Chart IV.2).

**Chart IV.2**  
**Domestic support in the European Union, 2000/01-2007/08**



Note: The chart does not include de minimis support.

Source: WTO notifications.

42. Support provided through the Amber Box has decreased over the past decade as direct payments under the Single Payment Scheme have replaced intervention purchases and payments linked to the number of livestock and crop area. As a result of reforms of the CAP, support for beef, olive oil, and fruits and vegetables, as measured by the current total AMS, has either declined sharply or ceased altogether. However, up to marketing year 2007/08, support for cereals, dairy, and sugar remained significant (Chart IV.3).

43. Support provided through the Blue Box, which covers direct payments to farmers based on animal numbers or crop area under production-limiting programmes, also declined considerably in the 2004/05 to 2007/08 period (Chart IV.3) and will continue to decline, as the Health Check in 2008 required that remaining Blue Box support should be integrated into the Single Payment Scheme, although member States may maintain current levels of coupled support<sup>26</sup> for some animal premia payments. From 2003, some new payment schemes were introduced in other areas that allowed partial decoupling of support for some products including: protein crops, rice, cotton, olives, hops, energy crops, nuts, and bananas. The amount provided for these products was small relative to total Blue Box subsidies but in some cases it was significant compared with the value of production of the product concerned: for example, the value of cotton production in 2005/06 was €1,231.2 million and Blue Box support to cotton in the following year was €255 million.<sup>27</sup> Under the Health Check, coupled support for most of these products has been stopped or is being phased out, the main exceptions being cotton and bananas.<sup>28</sup>

<sup>26</sup> Council Regulation (EC) No 73/2009, whereas No. 40 to 45.

<sup>27</sup> WTO documents G/AG/N/EEC/59 of 2 March 2009 and G/AG/N/EEC/64 of 4 February 2010.

<sup>28</sup> Council Regulation (EC) No 73/2009, Articles 52 and 53.

44. Under the 2003 Mid Term Review and subsequent reforms, price-support in the Amber Box and production-linked direct payments in the Blue Box declined, while income support through the Green Box, mostly the Single Payment Scheme, increased (Chart IV.3). Support provided for general services has remained fairly constant over the past ten years, but in 2007/08 there was a big increase in spending on extension and advisory services to €1,114 million from €347 million in the previous year. Support for Structural assistance programmes has been relatively constant; according to the authorities, the apparent increase in spending on investment aids in 2007-08 was due to the notification covering the transition to a new programming period when expenditure typically tends to increase.

45. In its annual publication on agricultural policies in OECD countries, the OECD measures the value of transfers to agricultural producers through the Producer Support Estimate (PSE) and associated indicators. The methodology for calculating these indicators is different from that used to calculate the AMS, and the two sets of data are not compatible or comparable. The methodology used by the OECD is evolving and was revised for the 2007 Monitoring and Evaluation report resulting in several changes, including the estimates of support of specific commodities.<sup>29</sup> The total PSE is "the annual monetary value of gross transfers from consumers and taxpayers to agricultural producers, measured at the farm gate level, arising from policy measures that support agriculture, regardless of their nature, objectives or impacts on farm production or income. It includes market price support, budgetary payments and budget revenue foregone, i.e. gross transfers from consumers and taxpayers to agricultural producers arising from policy measures based on: current output, input use, area planted/animal numbers/receipts/incomes (current, non-current), and non-commodity criteria." Thus, the PSE includes estimates for the value of protection provided by market access measures, such as tariffs and tariff quotas, and includes direct payments to producers that are coupled to prices or production as well as direct payments decoupled from prices and production.<sup>30</sup>

46. The EU authorities noted that the PSE does not take changes in market intervention measures (such as intervention prices, export subsidies, or tariffs) directly into account. The value of these measures is measured indirectly through the differences between domestic and international prices for different commodities. Therefore, reductions in administered prices may not be fully reflected in a change in the PSE.

47. The composition of the PSE in the EU has changed over the years (Table IV.6). In 2000, transfers to specific commodities in EU-15 (as measured by the Single Commodity Transfer), mostly through market price support measures like intervention prices and tariff protection, made up over half of the total PSE. In 2009 market price support in EU-27 was less than a third of the total PSE as the Single Payment Scheme replaced both market price support and payments linked to production. Over the same period world prices increased and the difference between international and internal EU prices declined. The convergence in prices reduces the PSE, which uses the difference between them in calculating the transfer from consumers to producers. However, despite the decline in product-specific support overall, it remains significant in some sectors, particular sugar, poultry, and beef and veal.

48. In 2009, the PSE for the EU-27 was 24% of gross farm receipts, compared to the average for all OECD countries of 22%. Although the relative level of support in the EU is close to the OECD average and though support has declined since 2004, when it was €10 billion for EU-25, the large size of the agriculture sector in the EU means that the value of support for producers, at €7 billion in 2009, represented over half of the total value of support to producers for all OECD countries combined.

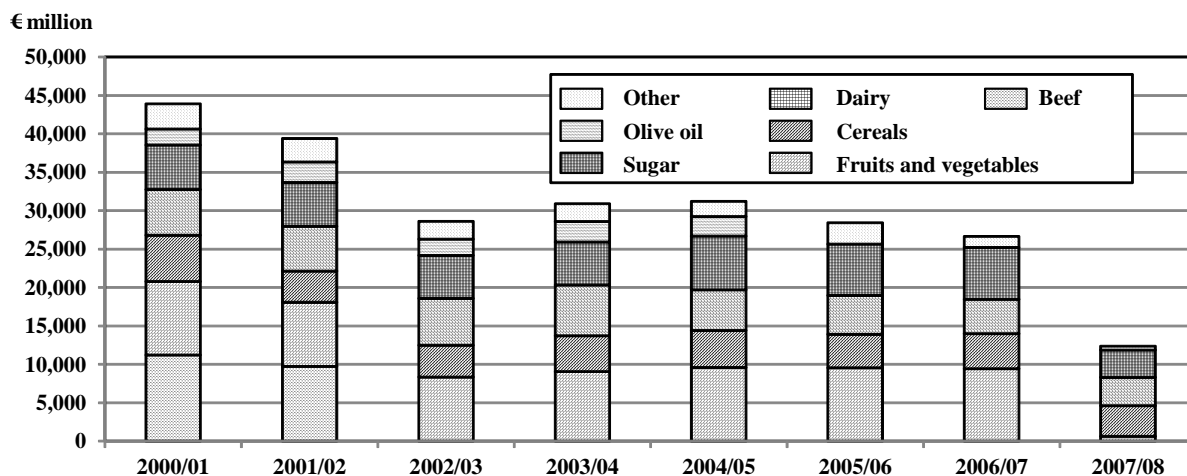
---

<sup>29</sup> OECD (2007).

<sup>30</sup> OECD (2010a).

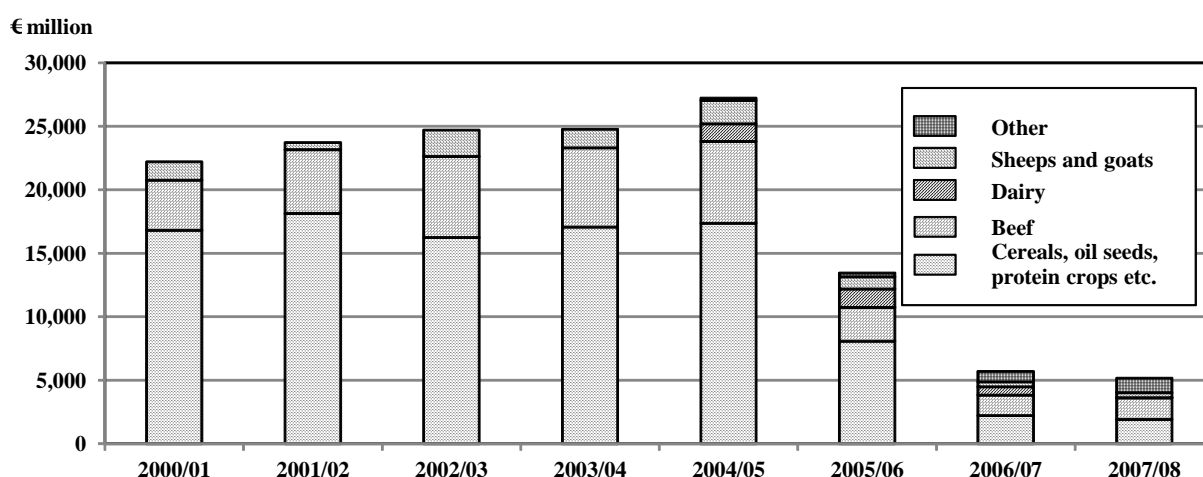
**Chart IV.3**

**a) Amber box support in the European Union, 2000/01-2007/08**

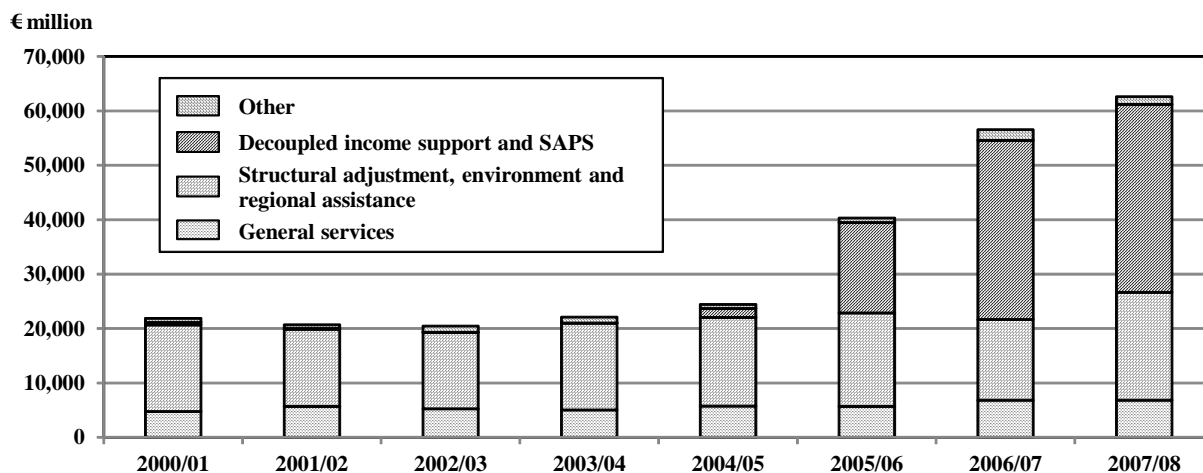


Note: Does not include de minimis.

**b) Blue box support in the European Union, 2000/01-2007/08**



**c) Green box support in the European Union, 2000/01-2007/08**



Source: WTO notifications.

49. In total, during the ten years to 2009, taxpayers and consumers in the EU have transferred nearly €1 trillion to agricultural producers (Table IV.6), which represents a high level of support and keeps production and exports higher, and imports lower, than would otherwise be the case. However, the comprehensive reform of domestic support and export subsidies in the CAP has improved transparency and reduced trade and production distortions. According to the EU authorities, studies have shown that complete liberalization of the CAP (that is, removing direct payments, market measures, all import tariffs and export refunds) would not dramatically lower production in the EU but would have a severe impact on farm income and the territorial balance.<sup>31</sup> However, other studies indicate that the CAP, even after the reforms of the past 20 years, continues to have negative effects both within and outside the EU.<sup>32</sup>

**Table IV.6****Total producer support estimate and single commodity transfer values for selected commodities, 2000-09**

(€million or % of gross farm receipts for respective products)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
<b>Producer Support Estimate</b>										
€million	94,709	90,073	98,289	98,134	109,727	99,736	99,008	93,689	92,795	86,980
of which MPS	50,650	42,480	50,648	49,701	53,510	43,370	36,982	31,463	25,645	20,925
PSE as % gross farm receipts	33	30	34	34	33	30	29	24	22	24
<b>Single Commodity Transfers</b>										
<b>Common wheat</b>										
€million	1,041	50	13	141	1	1	0	-1	0	2
of which MPS	951	0	0	141	0	0	0	0	0	0
SCT as % gross farm receipts	9	0	0	1	0	0	0	0	0	0
<b>Rapeseed</b>										
€million	17	12	6	5	4	3	2	2	3	2
of which MPS	0	0	0	0	0	0	0	0	0	0
SCT as % gross farm receipts	1	1	0	0	0	0	0	0	0	0
<b>Refined sugar</b>										
€million	3,136	2,608	2,866	3,083	3,802	3,555	1,428	1,762	1,430	496
of which MPS	3,090	2,591	2,859	3,083	3,795	3,549	1,404	1,732	1,394	428
SCT as % gross farm receipts	55	53	53	65	65	56	33	49	45	15
<b>Milk</b>										
€million	15,314	11,369	17,240	16,463	17,608	11,748	8,300	2,207	1,057	410
of which MPS	14,805	10,990	16,979	16,254	15,039	10,077	7,394	1,913	688	-50
SCT as % gross farm receipts	41	28	46	45	41	28	21	5	2	1
<b>Beef and veal</b>										
€million	15,019	15,101	17,966	15,666	16,833	13,444	12,693	10,765	8,121	8,149
of which MPS	9,545	8,505	10,158	7,934	8,589	9,814	10,548	8,768	5,876	6,093
SCT as % gross farm receipts	60	65	69	61	60	55	52	44	31	34
<b>Pig meat</b>										
€million	3,125	3,762	2,336	2,814	3,975	1,661	1,600	-381	2,837	938
of which MPS	3,093	3,734	2,330	2,804	3,931	1,652	1,592	-452	2,778	856
SCT as % gross farm receipts	12	13	10	12	14	6	5	-1	8	3
<b>Poultry meat</b>										
€million	2,267	2,394	2,552	2,586	4,431	3,435	2,875	4,881	4,643	4,926
of which MPS	2,252	2,386	2,550	2,586	4,415	3,431	2,871	4,807	4,578	4,863
SCT as % gross farm receipts	27	26	30	31	43	33	28	37	34	38

Note: EU-15 for 2000-03, EU-25 for 2004-06, and EU-27 from 2007.

Source: OECD.

<sup>31</sup> Nowicki et al (2009).

<sup>32</sup> Matthews (2010); Huan-Niemi et al, (2009); and OECD (2009) and (2010).

## (2) TRADE IN SERVICES

### (i) Introduction

50. The Directive on Services in the Internal Market (the Services Directive) was adopted in December 2006, and the EU member States were provided a three-year transitional period to transpose the Directive into national legislation. However, several member States missed the end-2009 deadline, and work to implement the Directive continued throughout 2010.<sup>33</sup> Although the vast majority of the member States have chosen to implement the general principles and obligations of the Directive through a single act, implementation of the general principles has been carried out through several acts in France and Germany. In addition, all member States have had to amend or abrogate existing legislation to ensure conformity with the provisions of the Directive.<sup>34</sup>

51. The Services Directive does not harmonize national legislation applicable to the services sector, but obliges member States to screen their authorization schemes to ensure that they are maintained only if non-discriminatory, justified by an overriding reason relating to public interest, and proportionate.<sup>35</sup> The Directive extends to all services except those specifically excluded from its scope, i.e: financial services; electronic communication services and networks; transport services, services of temporary work agencies; healthcare and pharmaceutical services; audiovisual and broadcasting services; gambling activities; certain social services; private security services; and services by notaries and bailiffs appointed by an official act of government. Key services sectors such as financial services, telecommunications, and transport were not included as these have been liberalized under other rules. The Commission has not drawn up concrete plans to cover the other excluded services. Services activities are in any event always subject to the EC Treaty provisions, notably the fundamental freedoms of establishment (Article 43) and free movement of services (Article 49). The Services Directive applies only to EU (EEA) citizens and legal entities established in the EU (EEA), and does not oblige member States to consider changes applicable to non-EU services suppliers.

52. The global financial crisis had a significant impact on EU(27) trade in commercial services with the rest of the world. Overall, both imports and exports declined by approximately 16% in value between the third quarter of 2008 and the first half of 2009, and remained well below pre-crisis levels throughout 2009 and the first three months of 2010 (Tables IV.7 and IV.8). However, with a strong and sustained recovery taking place during the rest of 2010, the value of EU imports and exports of services was back at pre-crisis levels by the third quarter of 2010. Trade performance varied considerably across the services sectors, though. While the decline, and subsequent recovery, was particularly sharp for transportation, travel, and financial services, the impact on trade in other types

---

<sup>33</sup> Estonia, Lithuania, and Finland adopted laws to implement the Services Directive in December 2009. Slovenia, Belgium, Italy, Slovakia, and Poland passed their laws in March 2010, followed by Latvia (April), Portugal (May), Cyprus (July), and Ireland (in November 2010). During 2010, the Commission was monitoring the implementation by the member States, of both the new legal frameworks adopted in order to implement the Services Directive as well as their efforts to establish operational "Points of Contact", notably the online portals providing businesses with information about the requirements and procedures to be complied with, and the "Internal Market Information Systems" facilitating administrative cooperation between the authorities of the member States.

<sup>34</sup> Member States have been engaged in a process of mutual evaluation, including evidence-based "peer review", to assess the implementation of Services Directive. The Commission summarized the results of the mutual evaluation process in a communication dated 27 January 2011 (COM(2011) 20 final). For more information, see [http://ec.europa.eu/internal\\_market/services/services-dir/implementation\\_en.htm](http://ec.europa.eu/internal_market/services/services-dir/implementation_en.htm).

<sup>35</sup> In cases where an enterprise located in one member State uses its own workforce to carry out work in another member State, the "hard core" of terms and conditions applicable to those employees is defined by the legislation of the host member State.

of services appears to have been much more muted. Although the growth path was not linear, trade in communication services actually expanded significantly between the third quarter of 2008 and the third quarter of 2010, by more than 30% for exports, and just over 20% for imports.

**Table IV.7**  
EU(27) exports of commercial services, 2008-10  
(€billion)

	2008 Q3	2008 Q4	2009 Q1	2009 Q2	2009 Q3	2009 Q4	2010 Q1	2010 Q2	2010 Q3
Commercial services	136.6	135.4	111.9	117.2	121.3	122.4	114.4	131.0	140.2
Transportation	36.2	34.0	26.7	26.8	27.3	27.3	27.7	32.5	34.1
Travel	24.4	16.2	12.8	17.6	22.6	15.2	13.6	18.9	25.1
Other commercial services	75.8	85.1	72.4	72.5	71.8	79.8	73.0	79.6	80.9
Communications services	3.0	3.3	3.1	3.0	3.4	3.5	3.5	4.0	4.0
Construction services	4.2	5.2	4.0	4.0	4.2	4.5	3.6	4.3	4.2
Insurance services	3.8	3.2	4.3	3.9	4.3	2.5	4.1	3.7	4.6
Financial services	11.7	12.8	9.9	9.8	9.9	11.4	10.5	11.7	11.3
Computer and information services	7.3	8.8	7.6	7.1	7.0	8.4	7.4	9.0	8.9
Royalties and license fees	6.6	8.1	7.2	6.5	6.5	6.9	7.4	6.7	7.2
Other business services	38.1	42.2	35.5	37.3	35.4	41.2	35.6	39.0	39.2
Personal, cultural and recreational services	1.1	1.5	0.8	1.0	1.2	1.5	1.0	1.3	1.5
Services not allocated	0.1	0.1	0.0	0.4	-0.4	0.1	0.1	0.1	0.1

Source: Eurostat. BOP statistics. Viewed at: <http://epp.eurostat.ec.europa.eu/portal/page/portal/balance-of-payments/data/database>.

**Table IV.8**  
EU(27) imports of commercial services, 2008-10  
(€billion)

	2008 Q3	2008 Q4	2009 Q1	2009 Q2	2009 Q3	2009 Q4	2010 Q1	2010 Q2	2010 Q3
Commercial services	117.9	113.4	98.7	99.7	106.2	103.6	101.9	110.7	119.2
Transportation	29.5	27.0	21.9	21.4	22.1	22.8	24.3	27.4	28.6
Travel	31.1	19.8	18.2	21.4	27.8	19.1	18.4	21.7	29.1
Other commercial services	54.0	64.1	54.8	54.4	53.5	58.0	55.8	58.4	58.5
Communications services	3.1	3.6	3.2	3.1	3.4	3.4	3.4	3.6	3.7
Construction services	2.0	2.5	2.0	2.3	2.1	2.3	1.9	2.2	2.5
Insurance services	1.6	2.3	2.1	1.9	1.8	1.8	2.1	2.1	2.3
Financial services	4.5	4.8	3.7	4.1	4.4	4.0	4.2	4.9	4.6
Computer and information services	2.7	3.7	3.3	3.0	3.0	3.4	3.6	3.2	3.5
Royalties and license fees	10.4	12.0	10.6	9.5	10.2	10.5	11.1	10.5	10.3
Other business services	28.0	33.7	28.4	29.2	27.2	31.1	27.8	30.4	30.1
Personal, cultural and recreational services	1.7	1.6	1.6	1.3	1.5	1.4	1.7	1.6	1.6
Services not allocated	3.2	2.4	3.7	2.4	2.8	3.7	3.5	3.2	3.0

Source: Eurostat. BOP statistics. Viewed at: <http://epp.eurostat.ec.europa.eu/portal/page/portal/balance-of-payments/data/database>.

## (ii) Financial services

53. The Financial Services Action Plan (1999-2005), designed to create a single market for financial services in the EU, originally comprised 42 legislative measures to harmonize the framework in the member States governing securities, banking, insurance, mortgages, and other forms of financial transactions. In December 2005, the Commission tabled a white paper setting out its

policy and objectives for the following five years, i.e. consolidating the progress achieved, completion of existing measures, enhancing supervisory co-operation and convergence, and removing the remaining barriers to integration. The 13 "Post-FSAP Directives" cover amendments to Directives adopted under the FSAP as well as new initiatives, notably with respect to payment services in the internal market, electronic money institutions, and the Insurance Solvency II project.

(a) Banking

54. The legal basis for establishment of a financial services supplier continues to be Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast), and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast).<sup>36</sup> Regulation of the banking system in the EU is based on the principle of home-country control in relation to prudential supervision together with the principle of a "single passport". Banks are thus regulated in accordance with the legal and institutional framework in the member State where the (parent) bank is incorporated. For a bank conducting business in another member State, the supremacy of the supervisory authority of its "home" country will be recognized by the "host" country. The single passport allows a bank licensed to do business in one member State the opportunity to do business in any other member State, whether through the establishment of a branch or cross-border provision of its services. Non-EU credit institutions may avail themselves of the single passport provided they establish a subsidiary in an EU member State. The subsidiary may subsequently provide services cross-border within the EU or open branches in other EU member States, under the supervision of the regulatory authority of the home country of the subsidiary.<sup>37</sup>

55. Concerning the implementation of the Post-FSAP Directives, 15 member States had transposed the Payments Services Directive into national law by the end of 2009, and a further 11 completed the process during 2010.<sup>38</sup> The purpose of the Payment Services Directive, adopted in November 2007<sup>39</sup>, is to ensure that electronic payments within the EU become as efficient, easy and secure as domestic payments within a member State. The Directive reinforces the rights protection of all users of payment services, and ensures that all euro or domestic electronic payment orders are effected within a maximum of one day.<sup>40</sup> The Directive also provides the legal foundation for the Single Euro Payments Area, an initiative of the European banking industry, offering an integrated

---

<sup>36</sup> From a trade perspective, Directive 2002/65/EC of 23 September 2002 concerning the distance marketing of consumer financial services is also relevant. The directive, which applies to the provision of "any service of a banking, credit, insurance, personal pension, investment or payment nature", establishes a regulatory framework for transactions that are not conducted face-to-face, e.g. services provided via the internet, email or by telephone, within an EU Member State or across the EU. The directive is implemented on a "country of origin" basis. Thus, the supervisory authority of a member State is responsible for the implementation and enforcement of the Directive only in respect of the suppliers established on the territory of that member State.

<sup>37</sup> Non-EU credit institutions may also provide financial services through branches in the EU. However, as these branches will be treated under national rules in the absence of a harmonized EU framework, such "direct" branches may not benefit from the single passport to provide services in other EU Member States (other than the one in which the branch is located).

<sup>38</sup> Poland is set to implement the Directive in 2011.

<sup>39</sup> Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007.

<sup>40</sup> The annual costs of operating fragmented national payments systems within the EU may have amounted to 2-3% of GDP in the past. Although the Payments Services Directive generally provides a fully harmonized payments regime, it contains 23 optional provisions leaving a certain margin of discretion to the member States. A "transposition group" has been set up to assist in the implementation and evaluate the approaches chosen.



market for payments services with no distinction between cross-border and national payments within the euro area.

56. In order to level the playing field between e-money institutions and banks that also issue e-money, the EU amended the electronic money directive in 2009 through Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions (EMD2). The new directive adopts a simpler, technology-neutral definition of e-money, and applies to all electronic money issuers: credit institutions, electronic money institutions, and post office giro institutions entitled under national law to issue electronic money. The EMD2 also establishes a new prudential regime, with lower initial capital requirements of €350,000 (down from €1 million in the original e-money directive). In addition, while the original e-money directive provided for certain EU cross-border passport rights for electronic money institutions, the new directive improves the passporting regime and, in particular, extends the passport rights to enable an electronic money institution to operate through a branch or agent in another EU member State, in addition to the freedom to provide services cross-border.

(b) Insurance

57. The main legislative and policy developments for the insurance industry since the last Trade Policy Review of the EU concern the implementation of Insurance Solvency II. The project was adopted in July 2007, and the "Solvency II Directive" was published in December 2009.<sup>41</sup> According to the European Commission, the rationale for this Directive was to facilitate the development of a Single Market in insurance services, until now hampered by the different regulatory requirements introduced by many EU member States.<sup>42</sup> For the first time, economic risk-based solvency requirements are introduced across all member States. Insurance and reinsurance businesses may calculate their Solvency Capital Requirement either using an approved internal model or subject to a European standard formula approach.<sup>43</sup> The enterprises are also obliged to conduct Own Risk and Solvency Assessments (ORSAs) to demonstrate, *inter alia*, that they maintain an effective risk management system with proper identification of prospective risks. In addition, the Directive establishes reporting requirements on the insurers both in terms of public disclosure (annual solvency and financial condition reports) and of their periodic (non-public) reports to the supervisory authority. These requirements are applied at the individually regulated entity level as well as at the group level.

58. The Solvency II Directive stresses the need for convergence not only in the use of common tools but also regarding supervisory practice. In this context, the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) was designated a key function as an advisor to the Commission and the European Parliament, and in conducting peer reviews and comparing regulatory practice to ensure consistent implementation and application of the Solvency II regime.<sup>44</sup> On 1 January 2011, CEIOPS was replaced by the newly established European Insurance and Occupational Pensions Authority (EIOPA). Accordingly, the Commission proposed a limited set of amendments to the Solvency II Directive stemming from the EIOPA Regulation (1094/2010/EC) in

---

<sup>41</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009, on the taking-up and pursuit of the business of insurance and reinsurance ( OJ L 335, of 17 December 2009).

<sup>42</sup> European Commission online information, "Solvency II: Frequently Asked Questions". Viewed at [http://ec.europa.eu/internal\\_market/insurance/docs/solvency/solvency2/faq\\_en.pdf](http://ec.europa.eu/internal_market/insurance/docs/solvency/solvency2/faq_en.pdf).

<sup>43</sup> The new rules are designed to capture the real risks run by any particular insurer, resulting in solvency requirements that are more risk-sensitive and sophisticated than in the past.

<sup>44</sup> CEIOPS was established by the Commission through Decision 2004/6/EC of 5 November 2003, subsequently repealed and replaced by Decision 2009/79/EC, and made up of high-level representatives of the supervisory authorities in EU member States. The Commission and representatives of Norway, Iceland, and Liechtenstein have participated as observers.

January 2011. The proposed amendments cover more specific tasks for EIOPA such as ensuring harmonized technical approaches in the use of ratings in relation to the solvency capital requirements, and extending the implementation date by two months to provide better alignment with the end of the financial year for the majority of insurance and reinsurance undertakings. The proposal also empowers the Commission to specify transitional measures in certain areas, if deemed necessary to avoid market disruption and allow a smooth transition to the new regime under Insurance Solvency II.

59. Insurance and reinsurance businesses will continue to be supervised at member State level. If a third-country insurer establishes an authorized subsidiary in an EU member State, that subsidiary will itself be entitled to provide services to clients in other member States (single passport), since it is an EU undertaking. However, third-country insurers with a head office outside the European Union are required to establish a local branch in order to pursue direct business in individual EU member States if they wish to pursue their business through a commercial presence (Mode 3). The supply of cross-border direct insurance and reinsurance (Mode 1) remains a matter for the member States, in compatibility with their WTO obligations.

60. An important aspect of the Solvency II Directive is the power granted to the European Commission to determine whether third-country solvency regimes are equivalent to those applied in the EU. Equivalence under Solvency II is not a single determination in relation to a third-country's solvency regime, but three separate decisions concerning reinsurance (Article 172), calculation of group solvency (Article 227), and parent undertakings outside the Community (Article 260).

61. In the case of reinsurance, where a third-country solvency regime has been found equivalent to that provided in Solvency II, reinsurers from that jurisdiction will be treated in exactly the same manner as EU reinsurers. In particular, they will not be required to pledge assets to cover unearned premiums and outstanding claims provisions in relation to such reinsurance contracts (Article 173). However, if a third-country solvency regime is not deemed equivalent, then it is up to the individual EU member State to determine the treatment of reinsurers based in that third country, which could be required, for example, to comply with additional requirements, such as the posting of collateral in relation to the risks they reinsure in the European Union.

62. EIOPA (previously CEIOPS) has been tasked with identifying and assessing third-country regimes that could be included in a positive equivalence finding to be adopted by the Commission.<sup>45</sup> The complexity of the solvency regimes of some third countries means that this could be a time-consuming task.<sup>46</sup> According to the present timetable, the Commission is committed to publishing

---

<sup>45</sup> The starting point for such considerations would be whether a third-country's supervisory regime is fully risk based, or steps have been taken to move towards a risk-based system. However, it is also recognized that systems that are not risk-based in the same manner as Solvency II could offer similar levels of protection to the policyholders and beneficiaries.

<sup>46</sup> The approach for assessing the solvency regime of the United States remains to be determined. CEIOPS advised the Commission to include Switzerland and Bermuda in the "first wave" of equivalence assessments, as well as Japan (for reinsurance). Further equivalence assessments are to be carried out after the first wave.

decisions on equivalence by July 2012.<sup>47</sup> The Insurance Solvency II regime is to be operational and applicable to the insurance industry from 1 January 2013.<sup>48</sup>

(c) Response to the global financial crisis

63. As the turmoil in the financial markets unfolded in the second half of 2008, EU member States took urgent measures to safeguard and restore stability in their financial systems. Governments acted under national law. The Commission is of the view that the crisis demonstrated clearly that the absence of an EU framework hampered the ability of the member States to deal with the problems, particularly in relation to cross-border banks within the EU.

64. The Commission published guidance to the member States in October and December 2008 to ensure that support to financial institutions in response to the financial crisis does not unduly distort competition by allowing beneficiary banks to have access to capital and funding without differentiating beneficiary banks according to their risk profiles. In December 2008, the Commission also adopted a temporary framework for state-aid measures to support access to finance applicable horizontally to all sectors. The temporary framework was modified in 2009, and replaced by a new temporary framework in December 2010. Between October 2008 and October 2010, the Commission approved aid schemes of 22 member States pursuant to the temporary framework. The maximum volume of Commission-approved measures from the beginning of the crisis until 1 October 2010, including the schemes and ad hoc interventions, amounts to €4,590 billion, or some 40% of EU-27 GDP for 2009 (Chapter III(3)(iii)(c)).<sup>49</sup> In its assessments, the Commission has evaluated all measures against the criteria for compliance with state-aid rules, in particular the principle of non-discrimination, to preserve the proper functioning of the internal market.

65. Following changes to financial instruments accounting rules (IAS 39) by the International Accounting Standards Board (IASB), the Commission adopted amendments to the accounting standards on 15 October 2008. The changes allowed companies, in rare circumstances, to reclassify assets held for trading as assets held until maturity, so that price fluctuations would not be reflected in their financial statements for these assets. As the appropriate treatment of impaired assets of banks was considered essential in restoring confidence in the financial markets and the long-term viability of the banking sector, the Commission provided Guidance on the Treatment of Impaired Assets in the EU Banking Sector on 25 February 2009 after extensive discussions with the member States and on account of recommendations by the European Central Bank. The key principles to be followed in such interventions included (i) full transparency and disclosure of impairments prior to government intervention; (ii) a coordinated approach to the identification of assets eligible for asset relief measures based on common principles; (iii) adequate burden-sharing of the costs (between the shareholders, the creditors, and the State) and remuneration (to the State); and (iv) appropriate restructuring, including measures to remedy distortions to competition with a view to the long-term viability and normal functioning of the European banking industry. Assistance could, for example, take the form of asset purchase, swaps, insurance, guarantees or a combination of such measures. The

---

<sup>47</sup> The current Solvency II Directive does not foresee any transitional regime for third-country equivalence. Should the Directive be amended, a third country eligible for inclusion in the transitional regime would be likely to receive the same benefits from equivalence as it would have with a positive equivalence finding. In the absence of a Commission decision on equivalence, or transitional measures, the treatment of a third-country reinsurer will remain within the competence of each member State.

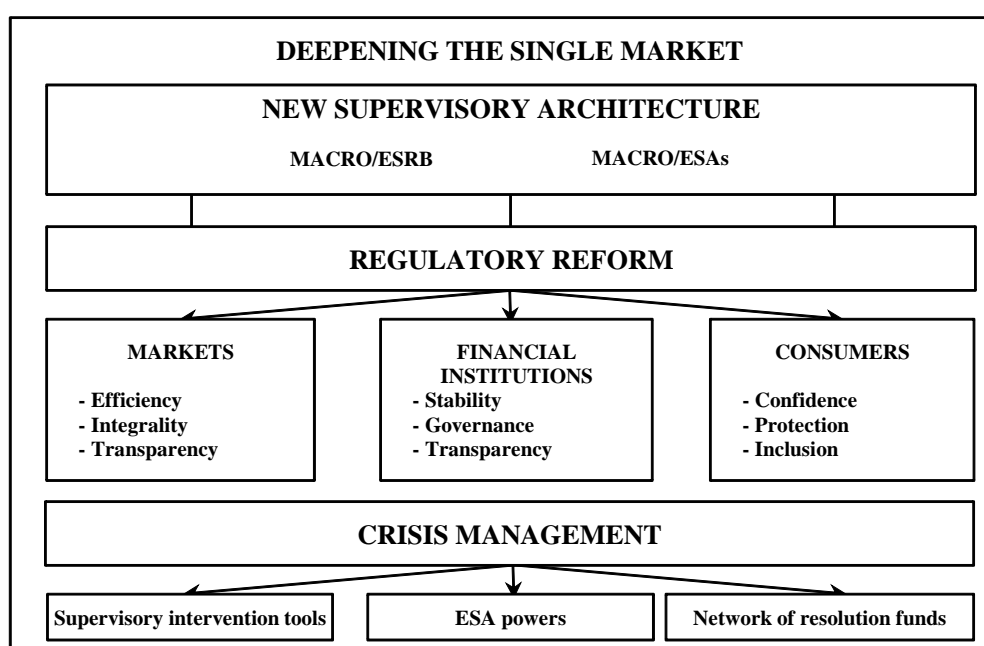
<sup>48</sup> Very small insurers, i.e. those with gross annual premium income below € million or gross technical reserves not exceeding €25 million, are excluded from the scope of the Directive.

<sup>49</sup> European Commission document COM(2010) 701final, 1 December 2010. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0701:FIN:EN:PDF>.

measures would be elaborated and implemented by the member States, but subject to assessment and approval by the Commission.

66. A schematic overview of the Commission's policy initiatives in the aftermath of the financial crisis is presented in Chart IV.6. The EU legislative response to the financial crisis has been based on the following principles: all activities of systemic importance should be regulated and supervised; the finance industry needs to be better capitalized and with less leverage; and unintended incentives in the financial sector must be eliminated. In this context, some of the new regulatory initiatives have implications for the supply of financial services into the EU.

**Chart IV.4**  
**Schematic representation of policy initiatives**



Source: European Commission.

67. The new regulations on credit rating agencies (CRAs) introduced mandatory registration for all CRAs operating in the EU.<sup>50</sup> Since several credit rating agencies have their headquarters and several subsidiaries outside the EU, the regulation introduces an endorsement regime allowing CRAs established and registered in the EU to endorse credit ratings issued in third countries, provided the latter comply with requirements that are as stringent as the requirements provided for in the Directive. Additionally, a certification system was introduced for smaller CRAs from third countries with no presence or affiliation in the EU. Such certification is possible after determination by the Commission of the equivalence of the legal and supervisory framework of a third country to the requirements of the Directive. The equivalence mechanism envisaged does not grant automatic access to the EU but offers the possibility for small CRAs from a third country to be assessed on a case-by-case basis and be granted an exemption from some of the organizational requirements for CRAs active in the EU, including the requirement of physical presence in the EU.

<sup>50</sup> Regulation (EC) No 1060/2009 of 16 September 2009.

68. Another regulation with implications for third countries is the Directive on Alternative Investment Fund Managers (AIFM), adopted in 2010.<sup>51</sup> It is expected to be transposed into national legislation by summer 2013. The Directive does not regulate Alternative Investment Funds (AIFs), which can therefore continue to be regulated and supervised at the national level, but regulates the activities of AIF managers (AIFMs). After a long and protracted negotiation, the specific rules that were adopted regarding third-country managers and funds foresee the progressive extension of passporting rights to EU AIFMs marketing non-EU AIFs, and to non-EU AIFMs marketing EU- and non-EU AIFs.

69. In specific areas, the Commission, the European Central Bank, and EU member States have taken a leading role in shaping a coordinated global response through the G20, the Financial Stability Board, and international institutions such as the IMF and the Bank for International Settlements. New capital and liquidity requirements are being introduced to strengthen the resilience of the banking sector in facing future adverse conditions. Following agreement by the Group of Governors and Heads of Supervision of the central banks (Basel Committee) in September 2010, the new higher standards were endorsed at the G20 summit in November 2010. The "Basel III" framework is to be transposed into domestic legislation by 1 January 2013 and, to allow the additional requirements to be applicable and phased in gradually between the beginning of 2013 and 1 January 2019.<sup>52</sup> The Commission intends to table the necessary legislative proposals, i.e. a revised Capital Requirements Directive and other relevant amendments, in June 2011. Systemically important banks will be required to have loss-absorbing capacity beyond the standards set by Basel III.<sup>53</sup> The Financial Stability Board and the Basel Committee continue to work on an integrated approach to these institutions.<sup>54</sup>

70. The Commission has outlined a number of additional regulatory measures to be a future EU framework for crisis management in the financial sector.<sup>55</sup> A central element would give powers and tools for authorities to manage the resolution of failed banks. Contributions from the financial sector could be channelled into resolution funds. The funds could be used to finance the orderly winding down or restructuring of a troubled institution, for example through the establishment of a temporary

---

<sup>51</sup> European Parliament legislative resolution of 11 November 2010 on the proposal for a directive of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC (COM(2009)0207 – C7-0040/2009 – 2009/0064(COD)).

<sup>52</sup> Compared to "Basel II", the new fully phased-in framework will raise the minimum common equity requirement for banks from 2% to 4.5% and the minimum Tier 1 capital ratio from 4% to 6%, while also applying a more stringent definition of banks' capital. In addition, Basel III introduces a new capital conservation buffer (2.5%, to be phased in from 2016), a non-risk based leverage ratio, a liquidity coverage ratio, and a net stable funding ratio. Depending on the national circumstances and at the discretion of the national authorities, banks may also be required to hold a counter-cyclical buffer (0-2.5%) of common equity or other fully loss-absorbing capital, to be built up in periods of excessive credit growth and drawn upon in times of financial stress.

<sup>53</sup> Large, complex or systemic interconnected institutions, whose disorderly failure could cause severe disruption to the overall financial system and harm economic activity.

<sup>54</sup> Combinations of capital surcharges, contingent capital, and bail-in debt are being considered as additional measures applicable to SIFIs. The Financial Stability Board has reportedly drawn up a world-wide list of SIFIs, but no such list is publicly available. According to the *Financial Times*, the list comprises 30 global financial institutions. Of those, 12 banks and 4 insurance groups are headquartered in EU member States (*Financial Times*, "Thirty Financial Groups on Systemic Risk List", 29 November 2009).

<sup>55</sup> See European Commission documents COM(2010) 301, 2 June 2010. Viewed at: [http://ec.europa.eu/internal\\_market/finances/docs/general/com2010\\_en.pdf](http://ec.europa.eu/internal_market/finances/docs/general/com2010_en.pdf); COM(2010) 254, 26 May 2010. Viewed at: [http://ec.europa.eu/internal\\_market/bank/docs/crisis-management/funds/com2010\\_254\\_en.pdf](http://ec.europa.eu/internal_market/bank/docs/crisis-management/funds/com2010_254_en.pdf); and COM(2010) 579, 20 October 2010. Viewed at: [http://ec.europa.eu/internal\\_market/bank/docs/crisis-management/framework/com2010\\_579\\_en.pdf](http://ec.europa.eu/internal_market/bank/docs/crisis-management/framework/com2010_579_en.pdf).

bridge bank to carry on its business, asset separation (bad bank), or debt write down. For the protection of consumers, some 40 deposit guarantee schemes are operated in the EU at present, covering differing groups of depositors and deposits. Directive 94/19/EC on Deposit Guarantee Schemes was amended in March 2009 as an emergency measure to raise the coverage level and standardize the payout delay.<sup>56</sup> Following a clause contained in the 2009 Directive, the Commission made a proposal in July 2010 for a thorough revision of the Directive on Deposit Guarantee Schemes. The proposed text confirmed the €100,000 figure, among other measures.

71. The Commission also intends to revise the Investor Compensation Schemes Directive<sup>57</sup>, the Market Abuse Directive<sup>58</sup>, the Markets in Financial Instruments Directive (MiFID)<sup>59</sup>, and the Insurance Mediation Directive<sup>60</sup>, and the introduction of European rules to protect insurance policy holders will be examined in a white paper on insurance compensation schemes. The Commission has also presented two recommendations on remuneration principles in the financial services sector and for directors of listed companies.<sup>61</sup>

72. Overhauling the EU's supervisory architecture, three new European supervisory authorities (ESAs) and a European Systemic Risk Board (ESRB) have been established with effect from 1 January 2011.<sup>62</sup> The three supervisory authorities – the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA), and the European Insurance and Occupational Pensions Authority (EIOPA) – have taken over all the functions of the previous committees, and been given additional competencies, including to (i) develop proposals for technical requirements to define more clearly common standards for the application of legislative acts, respecting the improved regulation principles; (ii) resolve cases of disagreement between national supervisors, in instances where legislation requires them to cooperate or to agree; (iii) contribute to ensuring consistent application of existing and future EU technical rules (including through peer reviews); and (iv) play a coordinating role in emergency situations.

73. For the ESAs to work effectively, the existing financial services Directives have been, or will be amended to lay down the precise scope for the ESAs to exercise some of their new powers. The areas needing amendments are, broadly: (i) defining the appropriate areas in which the authorities will be able to propose technical requirements as an additional tool for supervisory convergence, and with a view to developing a single rulebook to ensure strengthened ability, equal treatment, lower compliance costs, and the prevention of regulatory arbitrage; (ii) detailing how the authorities will

---

<sup>56</sup> Directive 2009/14/EC of 11 March 2009. The coverage level was raised in stages, from 20,000 to at least €50,000 by June 2010, and to a uniform level of €100,000 by the end of 2010, with depositors to be reimbursed by the guarantee scheme within seven calendar days in the case of a failing bank. In addition to financial stability considerations, potential distortions to competition arising from actions by individual member States seem to have played a role in the EU decision. In its opinion of 18 November 2008, the European Central Bank emphasized "that any increase in the coverage exceeding the latter of the above mentioned amounts (i.e. €50,000 and €100,000) should be preceded by close coordination at the EU level, as substantial differences between national measures may have a counter-productive effect and create distortions in the single market." (Opinion of 18 November 2008 at the request of the Council of the European Union on a proposal for a Directive of the European Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (CON/2008/70)).

<sup>57</sup> Directive 1997/9/EC.

<sup>58</sup> Directive 2003/6/EC.

<sup>59</sup> Directive 2004/39/EC, amended by Directives 2006/31/EC, 2007/44/EC, and 2008/10/EC.

<sup>60</sup> Directive 2002/92/EC.

<sup>61</sup> C(2009) 3159 and C(2009) 3177 of 30 April 2009.

<sup>62</sup> The Commission made the original proposal on 23 June 2009. On 22 September 2010, the European Parliament, following agreement by all member States, voted through the new supervisory framework proposed by the Commission. This was confirmed by the ECOFIN Council on 17 November 2010.

settle disagreements between national supervisors in a balanced manner, in the areas where common decision-making processes or cooperation procedures already exist in sectoral legislation; and (iii) general amendments considered necessary for the existing Directives to operate in the context of the new ESAs, e.g. by renaming the level 3 committees as the new Authorities and ensuring the appropriate gateways for the continued exchange of information.

74. Specifically, the London-based EBA has taken over all existing and ongoing tasks and responsibilities from the Committee of European Banking Supervisors (CEBS), and has broad competences, including supervisory coordination, and the provision of advice to the EU institutions in the areas of banking, payments and e-money regulation as well as on issues related to corporate governance, auditing, and financial reporting. It is to play a key role in cross-border coordination under the crisis management framework, notably in the development and coordination of recovery and resolution plans. The Paris-based ESMA is responsible for ensuring the integrity, transparency, efficiency, and orderly functioning of securities markets, as well as enhancing investor protection, and as such, will have the authority to examine certain financial products and may, if necessary, temporarily ban them. From 1 July 2011, ESMA will have exclusive supervisory powers over credit rating agencies, and is also likely to be granted supervisory power over trade repositories under the proposed regulation on OTC derivative markets. The main responsibilities of the EIOPA, located in Frankfurt, are to ensure transparency of markets and financial products, and the protection of insurance policyholders as well as members and beneficiaries of pension schemes. Also based in Frankfurt, the ESRB, as an independent EU body responsible for the macro-prudential oversight of the financial system within the EU, will, *inter alia*, monitor market developments, assess risks to the stability of the entire financial system, and issue risk warnings and recommendations when necessary.<sup>63</sup>

### (iii) Transport

75. Recognizing the importance of an efficient transport system for the free movement of people and goods, European Union transport policy aims to complete the EU internal market.<sup>64</sup> In 2001, the Commission published a white paper, setting out an agenda for European transport policy up to 2010, and emphasizing the need to manage transport by achieving a better balance between modes. Much has been achieved since then. Further market opening has taken place in aviation, road, and rail transport. The Single European Sky programme has been launched. Safety and security of all transport modes has increased. New rules on working conditions and on passenger rights have been adopted, and protection of the environment is a recognized goal. Trans-European transport networks have encouraged the construction of high-speed railway lines, and contributed to territorial cohesion. International ties and cooperation have been strengthened.

76. Nevertheless, EU transport policy faces significant challenges, given its geographical scope (almost the whole continent of Europe) and population served (500 million citizens). There are clear concerns over the future use of global resources such as oil, and there is general agreement on the

---

<sup>63</sup> The General Board consists of about 60 members including the President and the Vice-President of the European Central Bank (ECB); the Governors of the national central banks of the member States; one member of the European Commission; the Chairpersons of the EBA, the EIOPA, and the ESMA; the Chair and the two Vice-Chairs of the Advisory Scientific Committee (ASC); the Chair of the Advisory Technical Committee (ATC); as well as others without voting rights. Fourteen of those members form the Steering Committee.

<sup>64</sup> For the transport sector itself, competition and state-aid rules for firms operating in rail, road, and inland waterway transport were introduced at the outset the European integration process. Although the EU is moving towards a level playing field in an increasingly integrated transport market, some taxation and subsidies issues remain to be addressed.

need to reduce world greenhouse gas emissions. In this context, the Commission is preparing to adopt a new white paper, looking again at developments in the transport sector, future challenges for transport, and at policy initiatives to be considered in the period 2010-20.

77. Starting with the 1992 Maastricht Treaty, the EU has been working on the establishment and development of a trans-European infrastructure network in the area of transport (TEN-T).<sup>65</sup> The network covers infrastructure of all modes of transport, as well as the traffic management systems, and the positioning and navigation systems, necessary to operate them. The TEN-T should be interoperable in all its components, and allow for connection with the transport networks of the EFTA member states, states that are candidates for EU membership, and states in the eastern and southern neighbourhood. The first Guidelines for the development of TEN-T were established in 1996<sup>66</sup>, and amended to respond to evolving circumstances.<sup>67</sup> According to EU estimates, investment in TEN-T from inception until 2013 will total approximately €800 billion, of which about one third from EU sources.<sup>68</sup> However, the development of TEN-T has been marked by cost increases, persisting bottlenecks, and delays in the implementation of projects, particularly cross-border sections. A review process started in February 2009, and will lead to the overhaul of the TEN-T policy.<sup>69</sup>

(a) Road transport

78. At present, road transport relations between individual member States and third countries (except Switzerland) are governed by bilateral agreements. Negotiations to establish a common road transport market between the EU and its south-eastern European neighbours (Albania, Bosnia and Herzegovina, Croatia, FYROM, Montenegro, Serbia, and Kosovo) are ongoing. In parallel to the adoption of EU legislation (the *acquis*) by south-east European partners, markets will be opened progressively under a quota system. The quota will be additional to any quotas established under existing bilateral agreements with individual EU member States, agreements that are to remain in force.

79. The internal EU legislation applicable to road transport services establishes common rules regarding access to the profession and to the market, sets minimum standards for working time, driving time, and rest periods for professional transport providers, and covers vehicle taxation (minimum annual tax) and common rules on tolls and user charges for heavy goods vehicles. New road transport regulations were adopted in December 2009, but previous legislation will remain applicable until 3 December 2011.

80. For road passenger transport, cross-border carriage of passengers by coach and bus will be governed by Regulation No. 1073/2009, with application from 4 December 2011.<sup>70</sup> Within the EU, any operator in the possession of a valid EU licence, issued in the member State of establishment, is granted free access to the entire EU market for international road passenger transport.<sup>71</sup> The

<sup>65</sup> Treaty on the Functioning of the European Union (TFU), Title XVI, Articles 170-172.

<sup>66</sup> Decision No. 1692/96/EC of the European Parliament and of the Council of 23 July 1996.

<sup>67</sup> Decisions Nos. 1346/2001/EC, 884/2004/EC and 661/2010/EU.

<sup>68</sup> See Annex 3 of "TEN-T Policy Review – background papers", Commission Staff Working Document COM(2010) 613. Funding from EU sources includes both EU grants (some €98.5 billion for the period 1996-2013) and guarantees (about €133 billion in total for the same period).

<sup>69</sup> European Commission online information. Viewed at: [http://ec.europa.eu/transport/infrastructure/tent\\_policy\\_review/tent\\_policy\\_review\\_en.htm](http://ec.europa.eu/transport/infrastructure/tent_policy_review/tent_policy_review_en.htm).

<sup>70</sup> The regulation replaces Council Regulation (EEC) 684/92 and Council Regulation (EC) No. 12/98.

<sup>71</sup> The regulation governs transportation between member States or transit through a member State. Passenger transport between a member State and a third country is subject to bilateral agreement between the two countries.



regulation covers regular services (requiring national authorization by a competent authority), special regular services (e.g. transport of schoolchildren) performed under a contract between the organizer and the transport operator, and occasional services carried out under cover of a journey form.<sup>72</sup> Own-account transport is exempt from the authorization scheme, but requires a certificate issued by the member State where the vehicle is registered. The regulation also covers cabotage operations. On 30 November 2010, the European Parliament and Council agreed on a set of basic passenger rights, with additional rights for passengers travelling a distance of more than 250 kilometres. The European Parliament and the Council formally adopted the regulation on 16 February 2011.<sup>73</sup> This means that after application of the legislation in 2013, EU legislation will protect passengers travelling by all transport modes.

81. For goods transport, Regulation (EC) No. 1072/2009 simplified and streamlined the rules to minimize the administrative burden on the road haulage industry, and harmonized rules applicable to cabotage. Within the EU, cabotage was opened up progressively under Regulation No. 3118/93 of 25 October 1993. However, as the regulation referred to cabotage operations carried out by non-resident transport operators on a "temporary" basis, a more harmonized approach was necessary. Regulation 1072/2009 clarifies the notion of "temporary" as meaning the provision of a maximum of three cabotage operations within a period of seven days following the unloading at the end of the international journey. The cabotage provisions of the regulation entered into force on 14 May 2010. The same provisions apply for all member States except for Bulgaria and Romania, whose hauliers face restrictions in some member States until 1 January 2012.

82. According to EU estimates<sup>74</sup>, international road freight transport consists mostly of bilateral traffic between EU member States (82%), leaving 15% to be accounted for by cross-trade (third-party traffic), and 3% to cabotage. For the EU as a whole, the cabotage penetration rate is no more than 1%. Extra-EU international road freight transport accounts for approximately 5% of total EU international freight transport, but is relatively important for Bulgaria, Sweden, Estonia, Latvia, and Finland (and to some extent for Denmark and Lithuania).<sup>75</sup>

(b) Rail transport

83. The Commission has taken an active role in restructuring the rail transport market and enhancing the importance of railways relative to other modes of transport. Initiatives have focused on opening the rail transport market to competition within and between EU member States, improved interoperability and safety of national networks, and the development of rail transport infrastructure. The First Railway Package (2001) gave rail freight operators access to the Trans-European Rail Freight Network on a non-discriminatory basis.<sup>76</sup> The Second Railway Package (2004) accelerated the liberalization of rail freight services, opening the market for freight by rail between EU member States from 1 January 2006, and for domestic rail freight from 1 January 2007. The Third Railway Package (2007) introduced open access rights, including cabotage, for international rail passenger

<sup>72</sup> Public passenger transport services are governed by Regulation (EC) No. 1370/2007.

<sup>73</sup> Regulation (EU) No. 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No. 2006/2004, OJ L55/11.

<sup>74</sup> European Commission online information. Viewed at: [http://ec.europa.eu/transport/road/doc/2009\\_road\\_freight\\_vademecum.pdf](http://ec.europa.eu/transport/road/doc/2009_road_freight_vademecum.pdf). The data refers to 2006.

<sup>75</sup> Data for international transport by carriers resident within the EU. Road freight transport by non-EU registered hauliers on EU territory is not covered in EU statistics.

<sup>76</sup> The 2001 package also clarified the rules for issuing licences and safety certificates to railway undertakings, the allocation and pricing of railway infrastructure, the roles and responsibilities of the regulatory bodies in the member States, and the separation of accounts between subsidized and non-subsidized activities.

services by 2010. It also strengthens rail passengers' rights under Regulation 1371/2007 on rail passenger rights and obligations, which entered into force on 3 December 2009.<sup>77</sup> The regulation provides passenger protection through information requirements, liability for passengers and their luggage, reimbursement and re-routing as well as compensation and assistance in the case of delays, missed connections, and cancellations, with special requirements for passengers with reduced mobility. The regulatory framework governing interoperability and safety was amended with the adoption of Directives 2008/57/EC and 2008/110/EC.<sup>78</sup> Furthermore, a regulation on rail freight corridors was adopted on 20 October 2010.<sup>79</sup>

84. On 22 July 2010, a plan was adopted for the deployment of the European Rail Traffic Management System (ERTMS). The ERTMS network is expected to cover 30,000 km by 2020.

85. In accordance with the "Guidelines for transport in Europe and neighbouring regions",<sup>80</sup> the EU favours extending the major trans-European transport axes to neighbouring countries. The Commission encourages the implementation of EU-compliant rules on railway safety and interoperability in the western Balkans.

(c) Maritime transport

86. In January 2009, the Commission presented a communication outlining the strategic goals and recommendations for EU maritime policy until 2018.<sup>81</sup> In addition to human resources, seamanship, and maritime know-how, the communication also addresses improved environmental performance, maritime transport safety, security, maritime surveillance, and maritime transport as a key element of EU energy security. In intra-EU seaborne trade, the aim is to establish a "European maritime transport space without barriers" by reducing unnecessary administrative formalities, duplicated cross-border controls, and all other factors hampering the potential growth of short-sea shipping. Committed to open and fair competition in shipping, as well as to quality shipping, the EU will work to further these objectives with its partners in international fora such as the IMO, ILO, WTO, and WCO, and through a strong and growing network of bilateral maritime transport agreements.

87. Directive 2010/65/EU on reporting formalities for ships arriving in and/or departing from ports of EU member States was adopted in October 2010.<sup>82</sup> The adoption of the Directive is part of the efforts to promote short-sea shipping in the EU by identifying and eliminating obstacles in order to facilitate maritime transport and reduce administrative burdens for shipping companies. The Directive simplifies and harmonizes the reporting formalities required by legal acts of the EU and by EU member States by rationalizing the use of different forms and by setting up a "single window" for transmitting electronic forms.

<sup>77</sup> Regulation (EC) No. 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations.

<sup>78</sup> Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (OJ L191, 18 July 2008) and Directive 2008/110/EC of the European Parliament and of the Council of 16 December 2008 amending Directive 2004/49/EC on safety on the Community's railways (OJ L 345, 23 December 2008).

<sup>79</sup> Regulation No. 913/2010 of the European Parliament and of the Council of 20 October 2010 concerning a European rail network for competitive freight (OJ L 276, 20 October 2010).

<sup>80</sup> European Commission document COM(2007) 32, 31 January 2007. Viewed at: [http://www.central2013.eu/fileadmin/user\\_upload/Downloads/Document\\_Centre/OP\\_Resources/01\\_com2007\\_0032en01.pdf](http://www.central2013.eu/fileadmin/user_upload/Downloads/Document_Centre/OP_Resources/01_com2007_0032en01.pdf).

<sup>81</sup> European Commission document COM(2009) 8 final, 21 January 2009. Viewed at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0008:FIN:EN:pdf>.

<sup>82</sup> Directive 2010/65/EU of the European Parliament and of the Council on reporting formalities for ships arriving in and/or departing from ports of the member States and repealing Directive 2002/6/EC.

88. The Commission intends to promote alignment of substantive competition rules applicable to the maritime transport sector. All joint price fixing for services to and from the EU (EEA) is currently illegal following the abolition of the block exemption for liner shipping conferences, effective since 30 October 2008. The EU liberalized cabotage operations for companies from other member States on 1 January 1993.<sup>83</sup>

89. The European Parliament and the Council has adopted Regulation (EU) No. 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway.<sup>84</sup> From 18 December 2012, when the provisions of this regulation become applicable, maritime passengers will benefit from this set of provisions.

(d) Air transport

90. The completion of the Single European Sky (SES) initiative and its associated SES Air Traffic Management Research (SESAR) programme is aimed at reorganizing airspace according to air traffic patterns, setting common technical and procedural rules, and fostering the development of a harmonized European air traffic management (ATM) system over the next 30 years. The original Single European Sky (SES I) package came into force in 2004 with a focus on dealing with air traffic management congestion and safety. With an increased emphasis on the environment and cost efficiency in recent years, supplemented by a call for a less prescriptive regulatory approach ("better regulation"), the updated Single European Sky (SES II) package was adopted in 2010 to tackle the performance and sustainability of the aviation system. At the same time, SESAR development has progressed on the basis of a three-phased approach: (i) the definition phase (2004-08), to deliver an ATM master plan defining the content, development, and deployment of the next generation of ATM systems<sup>85</sup>; (ii) the development phase (2008-13), to develop the new equipment and standards to ensure, through the regulatory mechanisms of the single European sky, the replacement of the existing ground and airborne systems, and interoperability with those outside Europe; and (iii) the deployment phase (2014-20), to consist of large-scale production, procurement, and implementation of the new ATM infrastructure and of the corresponding aircraft equipment. Key performance targets are to enable a three-fold increase in capacity, improve safety by a factor of ten, reduce by 10% the environmental impact per flight, and to cut ATM costs by 50%.<sup>86</sup>

91. As the EU and the United States together account for around 60% of the global market for aviation services, it has been estimated that the removal of all barriers between the two sides could create up to 80,000 new jobs and economic benefits worth some €12 billion. An expanded "open skies" agreement between the European Union and the United States was signed on 24 June 2010.<sup>87</sup> The new agreement strengthens cooperation on security and on environmental matters, harmonizing the rules regarding aircraft emissions, fuel, and noise. The Joint Committee meets at least once a year to review the implementation of the agreement, including developments towards legislative changes referred to in it. The Joint Committee may also consider the implications, and develop proposals, for third countries to accede to the agreement.

---

<sup>83</sup> Council Regulation No. 3577/92/EEC of 7 December 1992. Transitional arrangements applied for France, Italy, Portugal, Spain, and Greece.

<sup>84</sup> Regulation (EU) No. 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No. 2006/2004.

<sup>85</sup> This phase was led by Eurocontrol, the European Organization for the Safety of Air Navigation, and was co-financed by the Commission (€30 million from the budget for trans-European networks). See European Commission (2007c).

<sup>86</sup> European Commission (2007b).

<sup>87</sup> The first EU-US Open Skies agreement was signed in April 2007 and entered into force in 2008.

92. Extending the benefits of the single aviation market to other countries is a key EU objective built on three pillars, i.e. (i) updating member States' bilateral agreements to ensure legal certainty and to put all EU airlines on equal footing for flights to countries outside the EU; (ii) establish a common aviation area with neighbouring countries in the Mediterranean and the south-east<sup>88</sup>; and (iii) setting up open aviation areas with other international partners, for example, Canada, Brazil, China, India, Australia, New Zealand, and Chile.<sup>89</sup>

93. Air transport is today the most advanced sector with regard to protection of passenger rights. EU legislation on air passengers' rights comprises Regulation (EC) No. 261/2004, Regulation (EC) No. 1107/2006, and Regulation (EC) No. 889/2002.<sup>90</sup> The overall regulatory background on air passenger rights also includes other legislation, notably Regulation No. 1008/2008 on common rules for the operation of air services in the Community (which includes provisions on price transparency); Directive 96/67, which defines the conditions for access to the ground handling market at European airports, and Regulation No. 2111/2005 on safety issues; and Regulation No. 80/2009 on computerized information systems (CRS), which, despite its business-to-business scope, also has some influence on the information provided by travel agents to their customers.

94. The Commission is currently engaged in a "fitness check" to evaluate whether Regulation Nos. 1008/2008 and 80/2009 (and a regulation on insurance requirements) are still fit for their purposes. The result of this check should be available towards the end of 2011 or in early 2012. The Commission is also working on an "airport package" consisting of the rules regarding slots and ground handling.

---

<sup>88</sup> An agreement establishing the European Common Aviation Area (ECAA) was signed in June 2006. The non-EC ECAA partners (Albania, Bosnia and Herzegovina, Croatia, FYROM, Montenegro, Serbia, the UN Interim Administration Mission in Kosovo (UNMIK), Iceland, and Norway) will adopt EU air transport laws and regulations, while air transport between the EU and its ECAA partners is liberalized gradually. ECAA partners fully implement the EU's aviation rules, and ECAA airlines will have open access to the enlarged EU single market. In addition, the EU has signed air agreements with Morocco (2006), Georgia (2010), and Jordan (2010), while negotiations continue with Israel, Lebanon, and Ukraine (February 2011) (European Commission, 2011). The Commission is also working on updating the bilateral air services agreements to bring them into conformity with EU law, specifically to include the acceptance by third countries of the notion of EU designation.

<sup>89</sup> The EU and Canada signed a comprehensive aviation agreement in December 2009. The Commission was granted a mandate to negotiate a comprehensive air transport agreement with Brazil in 2010; the agreement was initialled in March 2011. A joint declaration on cooperation was signed at the EC-China aviation summit in 2005. The Commission proposed opening comprehensive aviation negotiations with China in March 2005. A joint action plan for closer cooperation in the future was agreed with India in 2005. In September 2005, the Commission proposed opening comprehensive aviation agreements with India. The Commission received authorization to negotiate comprehensive air transport agreements with Australia and New Zealand in June 2008. The Commission proposed to open comprehensive aviation negotiations with Chile in September 2005.

<sup>90</sup> Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No. 295/91, OJ L 46, 17 February 2004, pp. 1-8; Regulation (EC) No. 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (OJ L 204, 26 July 2006, pp. 1-9); and Regulation (EC) No. 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No. 2027/97 on air carrier liability in the event of accidents (OJ L 140, 30 May 2002, pp. 2-5).

**(iv) Telecommunications and postal services****(a) Telecommunications**

95. Liberalization of the telecommunications sector began in the 1980s in the value-added services, and the public network monopolies were ended in the majority of member States in 1998. Since then, focus has been on enforcement and adjustment of the regulatory framework. However, even though competition has increased and consumers benefit from lower prices and higher standards of service, the EU market for telecommunications services has remained fragmented as the EU framework has not been implemented in a uniform manner by national regulators. Few operators provide pan-European services, and the packaging of these services differ from one member State to another to satisfy variations in national requirements.

96. The present rules governing the telecoms sector in the EU were agreed in 2002, i.e. the "Framework" Directive and the "Specific" Directives.<sup>91</sup> As the sector is changing rapidly, the Commission proposed a telecoms reform package in November 2007. After two years of discussion, agreement was reached on the Telecoms Reform on 4 November 2009. The package was published in the *Official Journal* on 18 December 2009. The transposition of the revised regulatory framework into national legislation by the 27 member States should be completed by May 2011.

97. The main elements of the reform package concern the strengthening of consumer protection and user rights as well as enhancing regulatory independence, co-operation, and consistency. In the future, consumer contracts must stipulate minimum service quality levels, and compensations or refunds if these levels are not met: the duration of the initial contract cannot exceed 24 months; contracts with a maximum duration of 12 months should be available; and customers should be able to switch operator, while keeping their fixed or mobile number, in one working day.<sup>92</sup> The new rules include provisions to protect privacy in the handling of user data and to safeguard the fundamental rights and freedoms of citizens in accessing or using services or applications through telecom networks. Additional measures are being put in place to reinforce the independence and powers of the national regulators who, if necessary, will be able to order functional separation of the networks and services branches of telecom operators in countries where significant market power (SMP) operators continue to own the communication networks. The reforms also aim at better management of the radio spectrum to facilitate access to wireless broadband services in rural areas where investment in new fibre infrastructure is not considered economically viable.

98. Responsibility for the management, implementation, and development of the telecoms regulatory framework has been shared among the Communications Committee, the Radio Spectrum Committee, the Radio Spectrum Policy Group, and the European Regulators Group (ERG). As part of the reforms, the ERG has been replaced by a new body, BEREC – the Body of European Regulators of Electronic Communications. Building upon, but expanding the earlier somewhat loose

---

<sup>91</sup> Directive 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services together with Directives 2002/19/EC (access), 2002/20/EC (authorization), 2002/22/EC (universal service), and 2002/58/EC (privacy and electronic communications). The framework is complemented and supported by Regulation (EC) No. 717/2007 on roaming on public mobile communications networks within the Community.

<sup>92</sup> Regulation (EC) No. 544/2009 of 18 June 2009 also amends Regulation (EC) No 717/2007 to reduce the retail price ceilings for regulated roaming calls to €0.39 for calls made from 1 July 2010, and €0.35 from 1 July 2011, and €0.15 (2010) and €0.11 (2011) for calls received. The retail charge for roaming SMS messages is not to exceed €0.11 per message. In addition, operators are obliged to offer their customers a cut-off limit on the monthly roaming charges (€0 has been the default maximum since 1 July 2010) and to notify the customer when 80% of the agreed limit has been reached.

cooperation between the national regulators in the ERG, the principal role of BEREC is to promote fair competition and improved consistency in the regulation of the European telecoms sector. As a rule, BEREC decisions will be taken by a two-thirds majority of the heads of the 27 national telecoms regulators. Administrative and professional support is provided by a new, independent supranational Office located in Riga (Latvia). The Commission proposed merging the agency in charge of network security (ENISA – the European Network and Information Security Agency) with BEREC, but this was not accepted by the European Parliament and the Council. ENISA will continue as a separate agency at least until 2013, when the present arrangement will be reviewed.

99. The new rules provide the Commission with the authority to monitor regulatory remedies proposed by a national regulator, e.g. in relation to termination rates or conditions of access to the network of a dominant operator. In close cooperation with BEREC, the Commission will review draft measures proposed by national regulators and, in case of disagreement, issue recommendations obliging the national regulators to amend or withdraw the proposed remedies if the measures are considered a barrier to the single market or contrary to Community law.

100. Although the demand for high-speed services is rising rapidly, the deployment of Next Generation Access (NGA) Networks is still at an early stage of development in Europe, where the Internet is still predominantly accessed via copper telephone lines and TV cable networks.<sup>93</sup> The regulatory environment must therefore simultaneously stimulate substantial private-sector investment in high-speed networks while fostering competition in the market for broadband services. On 20 September 2010, the Commission issued a recommendation on regulated access to NGAs.<sup>94</sup> The recommendation aims at consistency in the decisions of the national regulatory authorities throughout the EU single market as the authorities design and impose access obligations appropriately adjusted for investment risk. The recommendation should also be seen in the broader context of the "Digital Agenda for Europe", presented by the Commission in May 2010.<sup>95</sup>

(b) Postal services

101. In view of the importance of the changes contemplated, but also the size of the market and number of countries involved, the European Union has been at the forefront of global efforts to reform the postal sector. The Third Postal Directive represents a last legislative step in the EU postal reform (phased-in over time), and set the end of 2010 as the cut-off point for 16 member States (95% of EU postal markets in terms of volume) to abolish any remaining reserved areas in the postal sector. The other 11 member States may make use of a two-year transition period, thereby delaying full market opening to the end of 2012.<sup>96</sup>

102. Despite the timelines set by the Third Postal Directive, adopted in 2008, a number of member States have already abolished the reserved areas, e.g. Finland (1991), Sweden (1993), the United Kingdom (2006), Germany (2008), Estonia (2009), and the Netherlands (2009). Others had also already liberalized gradually. From 1996 to 2006, the reserved area was reduced three times, the last

<sup>93</sup> The Commission notes that while the penetration rate for Fibre-to-the-Home (FTTH) networks was at 1% in Europe in July 2009, it had reached 12% in Japan and 15% in Korea.

<sup>94</sup> Recommendation No. 2010/572/EU, published in OJ L 251 on 25 September 2010.

<sup>95</sup> COM(2010) 245 final/2 of 26 August 2010, replacing COM(2010) 245 final dated 19 May 2010. The Digital Agenda, in turn, is a cornerstone among seven initiatives under the Europe 2020 strategy for smart, sustainable and inclusive growth.

<sup>96</sup> Article 3(1) of the Third Postal Directive, and "Information of Member States that intend to postpone the implementation of Directive 2008/6/EC until 31 December 2012 in order to continue to reserve services to universal service provider(s)", OJ C 265, 18 October 2008, p. 26.

one exempting from competition only mail items weighing less than 50 grams and costing less than 2.5 times the basic tariff.<sup>97</sup>

103. As a result of regulatory changes and market developments, according to the Commission<sup>98</sup>, the traditional postal operators in the EU have modernized, restructured, and moved towards more market-driven and customer-oriented supply of services, greater efficiency and service quality. For example, evidence suggests that greater competition has led to relatively greater mail volumes, the development of new value-added services, and downward pressure on bulk prices.<sup>99</sup> This contrasts with the situation at the beginning of the 1990s, where, according to a study prepared for the European Commission, postal services were provided in many member States by "inefficient loss-making postal entities with a considerable lack of customer attention, resulting in substantial heterogeneity of service quality", and where "postal monopolies often covered delivery of letter post items up to 2 kg and sometimes included even express services".<sup>100</sup>

104. Actual competition in the letter-post market has emerged only slowly because the largest part of this market in terms of volume was reserved for the designated universal service provider(s) in a given member State. It stemmed more from the full liberalization of specific segments of the addressed mail segments – for example direct mail (e.g., Italy, Netherlands) or intra-city mail (Spain) – than from the reserved area's reduction from 100 to 50 grams.<sup>101</sup> Market shares of new entrants have increased, but remain low, even where postal markets have been fully liberalized, although, in various instances, competitors have been able to establish profitable operations on a smaller scale. In the United Kingdom, where there is no reserved area, competition has developed in the upstream market through access to the network of a designated universal service provider, with competitors accounting for 34% of the volume of addressed mail.<sup>102</sup>

105. Despite the gradual market opening, the majority of universal service providers in member States have remained state-owned.<sup>103</sup> While not mandated in the Postal Directives, further advances in terms of privatization have occurred in recent years: the German government reduced its shareholding in the German universal service provider, and the Dutch government sold its remaining 10% share and gave up its "golden share" in TNT.<sup>104</sup>

106. The evolution of the EU postal regime also highlights the importance of regulation, including the role of independent national regulatory authorities in monitoring market developments while preventing the introduction of regulatory barriers to market entry, and tackling abusive market practices of postal operators with significant market power.

107. The process of gradual market opening as laid down in the EU Postal Directives is not an end in itself nor the main objective of EU postal reform. The directives also cover various other aspects of the postal markets, with the objective of developing common rules for the growth of the EU internal postal market and improving service quality. For example, it requires all member States to provide a universal postal service for all users, comprising a minimum of one delivery and collection not less

---

<sup>97</sup> Article 7(1) of the First Postal Directive (97/67/EC) as amended by the Second Postal Directive (2002/39/EC).

<sup>98</sup> European Commission (2008b).

<sup>99</sup> Ecorys (2008).

<sup>100</sup> ITA Consulting and WIK-Consult (2009).

<sup>101</sup> ITA Consulting and WIK-Consult (2009).

<sup>102</sup> Postcomm (2011).

<sup>103</sup> European Commission document COM(2008) 884, 22 December 2008. Viewed at: [http://ec.europa.eu/internal\\_market/post/doc/reports/report\\_en.pdf](http://ec.europa.eu/internal_market/post/doc/reports/report_en.pdf).

<sup>104</sup> ITA Consulting and WIK-Consult (2009), p. XI.

than five working days a week, and provides that all users be permanently provided with a postal service of specified quality throughout the territory at an affordable price. It requires tariffs for universal services to be cost-based, transparent, and non-discriminatory. Cross-subsidies from the reserved area to the competitive area are only allowed if this is necessary to ensure the fulfilment of universal service obligations. Universal service providers have to apply transparent and separated cost accounting principles, and provide separate accounts for reserved and non-reserved universal services and non-universal services. Member States also have to establish regulatory authorities independent from postal operators and bodies exercising ownership control, which in most cases are the state authorities. The Directives also provide that member States may establish a compensation fund to ensure that universal service is provided, should the universal service obligation constitute an unfair financial burden for the designated universal service provider.<sup>105</sup>

---

<sup>105</sup> WTO document S/C/W/319, "Postal and Courier Services", Background Note by the Secretariat, 11 August 2010.



---

---

## REFERENCES

ADE (2010), *Evaluation of the Intellectual Property Rights Enforcement Strategy in Third Countries, Final Report*, Volume 1 - Main report, November. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc\\_147053.pdf](http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_147053.pdf).

Anderson, R.D. (2011, forthcoming), "Systemic Implications of Deeper Transatlantic Convergence in Competition /Antitrust Policy," in Simon J. Evenett and Robert M. Stern, eds., *Systemic Implications of Transatlantic Regulatory Cooperation and Competition*, World Scientific Publishing Company, Inc.

Blanco Fonseca M., A. Burrell, H. Gay, M. Henseler, A. Kavallari, R. M'Barek, I. Pérez Domínguez, A. Tonini (2010), *Impacts of the EU Biofuel Target on Agricultural Markets and Land Use, a Comparative Modelling Assessment*, JRC Reference Reports. Viewed at: [http://ec.europa.eu/energy/renewables/studies/doc/land\\_use\\_change/study\\_jrc\\_biofuel\\_target\\_iluc.pdf](http://ec.europa.eu/energy/renewables/studies/doc/land_use_change/study_jrc_biofuel_target_iluc.pdf)

Centre for the Analysis of Regional Integration at Sussex (undated), *Mid-term Evaluation of the EU's Generalised System of Preferences*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/may/tradoc\\_146196.pdf](http://trade.ec.europa.eu/doclib/docs/2010/may/tradoc_146196.pdf).)

Curran, L. and S. Zignago, "Evolution of EU and its Member States' Competitiveness in International Trade", Document du travail du CEPII No. 2009-11, June. Viewed at: <http://www.cepii.fr/anglaisgraph/workpap/pdf/2009/wp2009-11.pdf>.

Directorate General for Agriculture and Rural Development (2010), *Rural Development in the European Union Statistical and Economic Information Report 2010*, December. pp 134-150. Viewed at: [http://ec.europa.eu/agriculture/agrista/rurdev2010/RD\\_Report\\_2010.pdf](http://ec.europa.eu/agriculture/agrista/rurdev2010/RD_Report_2010.pdf).

Ecorys (2008), *Main Developments in the Postal Sector (2006-2008), Final Report*, September. Viewed at: [http://ec.europa.eu/internal\\_market/post/doc/studies/2008-ecorys-final\\_en.pdf](http://ec.europa.eu/internal_market/post/doc/studies/2008-ecorys-final_en.pdf).

European Central Bank (2005), "Competitiveness and the Export Performance of the Euro Area", Occasional Paper Series No. 30, June. Viewed at: <http://www.ecb.int/pub/pdf/scpops/ecbocp30.pdf>.

European Commission (2006a), *Global Europe: competing in the world*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc\\_130376.pdf](http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130376.pdf).

European Commission (2006b), *Guidance document on certain key questions related to import requirements and the new rules on food hygiene and on official food controls*, January. Viewed at: [http://ec.europa.eu/food/international/trade/interpretation\\_imports.pdf](http://ec.europa.eu/food/international/trade/interpretation_imports.pdf).

European Commission (2007a), *A new Animal Health Strategy for the European Union (2007-2013) where 'Prevention is better than cure'*. Viewed at: [http://ec.europa.eu/food/animal/diseases/strategy/docs/animal\\_health\\_strategy\\_en.pdf](http://ec.europa.eu/food/animal/diseases/strategy/docs/animal_health_strategy_en.pdf).

European Commission (2007b), *SESAR: Modernizing air traffic management in Europe*, Brussels.

European Commission (2007c), *State of progress with the project to implement the new generation European air traffic management system (SESAR)*, Brussels.

European Commission (2008), *Vademecum: Community law on State aid*, 30 September. Viewed at: [http://ec.europa.eu/competition/state\\_aid/studies\\_reports/vademecum\\_on\\_rules\\_09\\_2008\\_en.pdf](http://ec.europa.eu/competition/state_aid/studies_reports/vademecum_on_rules_09_2008_en.pdf).

European Commission (2009a), "DG Competition's review of guarantee and recapitalisation schemes in the financial sector in the current crisis", 7 August. Viewed at: [http://ec.europa.eu/competition/state\\_aid/legislation/review\\_of\\_schemes\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/review_of_schemes_en.pdf).

European Commission (2009b), DG Economic and Financial Affairs, *The EU's response to support the real economy during the economic crisis: an overview of Member States' recovery measures*, European Economy Occasional Papers 51, July. Viewed at: [http://ec.europa.eu/economy\\_finance/publications/publication15666\\_en.pdf](http://ec.europa.eu/economy_finance/publications/publication15666_en.pdf).

European Commission (2009c), DG Trade, *Study on the protection of geographical indications for products other than wines, spirits, agricultural products or foodstuffs*, November. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2009/december/tradoc\\_145630.pdf](http://trade.ec.europa.eu/doclib/docs/2009/december/tradoc_145630.pdf).

European Commission (2009d), *What is Europe's Trade Policy?* Viewed at: [http://trade.ec.europa.eu/doclib/docs/2009/may/tradoc\\_143154.pdf](http://trade.ec.europa.eu/doclib/docs/2009/may/tradoc_143154.pdf).

European Commission (2010a), DG Taxation and Customs Union, *Consultation Paper – Review of EU legislation on customs enforcement of intellectual property rights*. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/common/consultations/customs/ipr\\_2010\\_03\\_consultation\\_paper\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/customs/ipr_2010_03_consultation_paper_en.pdf).

European Commission (2010b), *Product Market Review 2009: Microeconomic consequences of the crisis and implications for recovery: European Economy 11/2009*. Viewed at: [http://ec.europa.eu/economy\\_finance/publications/european\\_economy/2009/pdf/ee11\\_2009\\_en.pdf](http://ec.europa.eu/economy_finance/publications/european_economy/2009/pdf/ee11_2009_en.pdf).

European Commission (2010c), *Report on EU Customs Enforcement of Intellectual Property Rights: Results at the EU Border – 2009*. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_controls/counterfeit\\_piracy/statistics/statistics\\_2009.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/statistics_2009.pdf).

European Commission (2010d), *Taxation Trends in the European Union: Data for the EU Member States, Iceland, and Norway*. Viewed at: [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/gen\\_info/economic\\_analysis/tax\\_structures/2010/2010\\_full\\_text\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_structures/2010/2010_full_text_en.pdf).

European Commission (2010e), *The Rapid Alert System for Food and Feed (RASFF): Annual Report 2009*, Luxembourg. Viewed at: [http://ec.europa.eu/food/food/rapidalert/docs/report2009\\_en.pdf](http://ec.europa.eu/food/food/rapidalert/docs/report2009_en.pdf).

European Commission (2010f), *Trade, Growth and World Affairs: Trade Policy as a Core Component of the EU's 2020 Strategy*. Viewed at: [http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc\\_146955.pdf](http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_146955.pdf).

European Commission (2011), *Interim Forecast February 2011*, February. Viewed at: [http://ec.europa.eu/economy\\_finance/publications/european\\_economy/forecasts\\_en.htm](http://ec.europa.eu/economy_finance/publications/european_economy/forecasts_en.htm).

European Communities (2009a), *Internal Market Scoreboard*, No. 19, July. Viewed at: [http://ec.europa.eu/internal\\_market/score/docs/score19\\_en.pdf](http://ec.europa.eu/internal_market/score/docs/score19_en.pdf).

European Communities (2009b), *Internal Market Scoreboard*, No. 20, December. Viewed at: [http://ec.europa.eu/internal\\_market/score/docs/score20\\_en.pdf](http://ec.europa.eu/internal_market/score/docs/score20_en.pdf)

Eurostat (2011), *European Economic Statistics: 2010 edition*. Viewed at: [http://epp.eurostat.ec.europa.eu/portal/page/portal/publications/recently\\_published](http://epp.eurostat.ec.europa.eu/portal/page/portal/publications/recently_published).

Harhoff, D. (2009), *Economic Cost-Benefit Analysis of a Unified and Integrated European Patent Litigation System*, February. Viewed at: [http://ec.europa.eu/internal\\_market/indprop/docs/patent/studies/litigation\\_system\\_en.pdf](http://ec.europa.eu/internal_market/indprop/docs/patent/studies/litigation_system_en.pdf).

HM Treasury (2006), *Gowers Review of Intellectual Property*, December. Viewed at: <http://www.official-documents.gov.uk/document/other/0118404830/0118404830.pdf>.

Huan-Niemi E., L. Kerkelä, H. Lehtonen, and J. Niemi, (2009), "Implications of Trade Liberalization and Domestic Reforms on EU Agricultural Market"s, *International Food and Agribusiness Management Review*, Volume 12, Issue 4.

Hunton & Williams (2009) *Study on Online Copyright Enforcement and Data Protection in Selected Member States*, European Commission, DG Internal Market and Services. Viewed at: [http://ec.europa.eu/internal\\_market/iprenforcement/docs/study-online-enforcement\\_en.pdf](http://ec.europa.eu/internal_market/iprenforcement/docs/study-online-enforcement_en.pdf).

Hunton & Williams (2010) *Study on Online Copyright Enforcement and Data Protection in Selected Member States*, European Commission, DG Internal Market and Services. Viewed at: [http://ec.europa.eu/internal\\_market/iprenforcement/docs/study-online-enforcement\\_042010\\_en.pdf](http://ec.europa.eu/internal_market/iprenforcement/docs/study-online-enforcement_042010_en.pdf).

IMF (2010a), *Euro Area Policies: 2010 Article IV Consultation-Staff Report; Staff Supplement; Public Information Notice on the Executive Board Discussion; and Statement by the Executive Director for Member Countries*, IMF Country Report No. 10/221, July. Viewed at: <http://www.imf.org/external/pubs/ft/scr/2010/cr10221.pdf>.

IMF (2010b), *Regional Economic Outlook: Europe, Fostering Sustainability*, May, Washington, D.C.

Institute for Information Law of the University of Amsterdam (2006), *The Recasting of Copyright & Related Rights for the Knowledge Economy*, November. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/docs/studies/etd2005imd195recast\\_report\\_2006.pdf](http://ec.europa.eu/internal_market/copyright/docs/studies/etd2005imd195recast_report_2006.pdf).

ITA Consulting GmbH and WIK-Consult GmbH (2009), *The Evolution of the European Postal Market since 1997: Final Report*, Study for the European Commission, DG Internal Market and Services, August. Viewed at: [http://ec.europa.eu/internal\\_market/post/studies\\_en.htm](http://ec.europa.eu/internal_market/post/studies_en.htm).

Jenny F. (2009), *Responses to the economic and financial crisis: whither competition?*. Viewed at: [http://idei.fr/doc/conf/pos/transparents\\_2010/slides\\_jenny.pdf](http://idei.fr/doc/conf/pos/transparents_2010/slides_jenny.pdf).

Kalinova, Blanka, Angel Palerm and Stephen Thomsen (2010), "OECD's FDI Restrictiveness Index: 2010 Update", *OECD Working Papers on International Investment*, No. 2010/3. Viewed at: <http://www.oecd.org/dataoecd/32/19/45563285.pdf>.

KEA (2006), *The economy of culture in Europe*, study prepared for European Commission, DG Education and Culture, October. Viewed at: [http://ec.europa.eu/culture/key-documents/doc873\\_en.htm](http://ec.europa.eu/culture/key-documents/doc873_en.htm).

Larch, M. (2005), *Stuck in a Rut? Italy's Weak Export Performance and Unfavourable Product Specialization*, ECFIN Country Focus, 12 May. Viewed at: [http://ec.europa.eu/economy\\_finance/publications/publication11329\\_en.pdf](http://ec.europa.eu/economy_finance/publications/publication11329_en.pdf).

London Economics (2010), *Analysis of developments in the fields of direct investment and M&A - 2010 Report* (Part II), 15 October. Viewed at: [http://ec.europa.eu/internal\\_market/capital/reports/index\\_en.htm](http://ec.europa.eu/internal_market/capital/reports/index_en.htm).

Matthews, A. (2010), *How Might the EU's Common Agricultural Policy Affect Trade and Development After 2013, An Analysis of the European Commission's November 2010 Communication*, ICTSD Issue Paper No.29, Geneva.

Max Planck Institute for Intellectual Property and Competition Law (2011), *Study on the Overall Functioning of the European Trade Mark System*, Munich, February. Viewed at: [http://ec.europa.eu/internal\\_market/indprop/docs/tm/20110308\\_allensbach-study\\_en.pdf](http://ec.europa.eu/internal_market/indprop/docs/tm/20110308_allensbach-study_en.pdf).

Nowicki, P., V. Goba, A. Knierim, H. van Meijl, M. Banse, B. Delbaere, J. Helming, P. Hunke, K. Jansson, T. Jansson, L. Jones-Walters, V. Mikos, C. Sattler, N. Schlaefke, I. Terluin and D. Verhoog (2009) *Scenar 2020-II – Update of Analysis of Prospects in the Scenar 2020 Study* – Contract No. 30–CE-0200286/00-21. European Commission, Directorate-General Agriculture and Rural Development, Brussels.

OECD (2002), *The Size of Government Procurement Markets*, Paris.

OECD (2007), *Agricultural Policies in OECD Countries Monitoring and Evaluation 2007*, Paris.

OECD (2009), *OECD Economic Surveys: European Union*, Paris.

OECD (2010a), *Agricultural Policies in OECD Countries At a Glance*, Paris.

OECD (2010b), *Economic Surveys: Euro Area*, December, Paris.

OECD (2010c), *Economic Surveys: Germany*, Paris.

OECD (2011), *Disaggregated Impacts of CAP Reforms, Proceedings of an OECD Workshop*, Paris.

OHIM (2010), *Annual Report 2009*, April. Viewed at: [http://oami.europa.eu/en/Annual\\_Report\\_2009/content/pdfs/AR2009\\_EN.pdf](http://oami.europa.eu/en/Annual_Report_2009/content/pdfs/AR2009_EN.pdf).

Picard, R.G., T.E. Toivonen and M. Grönlund (2003), *The contribution of Copyright and Related Rights to the European Economy, based on data from year 2000*, prepared for the European Commission, DG Internal Market, October. Viewed at: [http://ec.europa.eu/internal\\_market/copyright/docs/studies/etd2002b53001e34\\_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/studies/etd2002b53001e34_en.pdf).

PIM (Partners in Marketing) (2009), *La contribution économique de l'industrie du droit d'auteur et des droits voisins en Belgique*, étude commandée par Arthena, Juillet. Viewed at: [http://ec.europa.eu/avpolicy/docs/other\\_actions/col\\_2009/assoc/arthena\\_annex\\_fr.pdf](http://ec.europa.eu/avpolicy/docs/other_actions/col_2009/assoc/arthena_annex_fr.pdf).

Postcomm (2011), *The building block for a sustainable postal service*, March. Viewed at: <http://www.psc.gov.uk/documents/1812.pdf>.

TERA Consultants (2010), *Building a Digital Economy: The Importance of Saving Jobs in the EU's Creative Industries*, study commissioned by the International Chamber of Commerce/BASCAP initiative, March. Viewed at: [http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/Building%20a%20Digital%20Economy%20-%20TERA\(1\).pdf](http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/Building%20a%20Digital%20Economy%20-%20TERA(1).pdf).

WTO (2009), *Trade Policy Review: European Communities*, Geneva.

**APPENDIX TABLES**



**Table A1.1**  
**Destination of exports, 2000 and 2005-09**  
 (€million and %)

	2000	2005	2006	2007	2008	2009
Total (€million)	849,521.2	1,054,965.2	1,161,094.7	1,241,495.7	1,308,416.0	1,137,809.8
	(per cent)					
America	38.0	32.1	31.6	29.5	27.7	25.9
United States	28.0	24.0	23.2	21.1	19.1	18.0
Other America	10.0	8.2	8.4	8.4	8.6	7.9
Canada	2.5	2.3	2.3	2.1	2.0	2.0
Brazil	2.0	1.5	1.5	1.7	2.0	1.9
Mexico	1.7	1.6	1.6	1.7	1.7	1.4
Europe	17.6	18.1	17.6	17.7	17.3	20.8
EFTA	11.9	11.4	11.2	11.3	11.1	11.3
Switzerland	8.6	7.9	7.7	7.6	7.6	7.9
Norway	3.1	3.2	3.3	3.5	3.3	3.3
Other Europe	5.5	6.4	6.0	6.0	6.0	9.2
Turkey	3.8	4.2	4.3	4.2	4.1	3.9
Commonwealth of Independent States (CIS)	4.0	7.7	9.1	10.4	11.5	8.5
Russian Federation	2.7	5.4	6.2	7.2	8.0	5.8
Ukraine	0.6	1.3	1.6	1.8	1.9	1.2
Africa	8.0	8.3	8.0	8.4	9.2	9.5
South Africa	1.4	1.7	1.7	1.7	1.5	1.4
Algeria	0.7	1.0	0.9	0.9	1.2	1.3
Egypt	1.0	0.8	0.8	0.8	1.0	1.1
Morocco	0.9	1.1	0.9	1.0	1.1	1.0
Middle East	7.1	8.4	7.8	7.9	8.2	8.2
United Arab Emirates	1.4	2.4	2.2	2.2	2.4	2.2
Saudi Arabia	1.4	1.5	1.5	1.6	1.6	1.7
Asia	24.0	23.6	23.5	23.7	23.3	24.5
China	3.0	4.9	5.5	5.8	6.0	7.2
Japan	5.4	4.1	3.9	3.5	3.2	3.2
Six East Asian Traders	9.8	8.4	8.2	8.0	7.7	7.8
Korea, Rep. of	2.0	1.9	2.0	2.0	2.0	1.9
Singapore	1.9	1.7	1.7	1.7	1.7	1.8
Hong Kong, China	2.4	1.9	1.9	1.7	1.6	1.7
Other Asia	5.8	6.2	6.0	6.4	6.4	6.4
India	1.6	2.0	2.1	2.4	2.4	2.4
Australia	1.9	2.0	1.8	1.8	1.9	1.9
Other	1.3	1.8	2.4	2.6	2.8	2.6

Source: WTO Secretariat estimate based on UNSD, Comtrade database SITC Rev.3 data.

**Table AI.2**  
**Structure of exports, 2000 and 2005-09**  
(€million and %)

	2000	2005	2006	2007	2008	2009
Total (€million)	849,521.2	1,054,965.2	1,161,094.7	1,241,495.7	1,308,416.0	1,137,809.8
	(per cent)					
Total primary products	12.0	12.5	13.8	13.8	15.0	14.0
Agriculture	6.9	6.3	6.4	6.3	6.6	7.0
Food	5.8	5.2	5.2	5.2	5.5	5.8
Agricultural raw material	1.1	1.1	1.2	1.1	1.1	1.2
Mining	5.1	6.3	7.4	7.5	8.5	7.0
Ores and other minerals	0.6	0.8	0.9	1.0	1.0	1.0
Non-ferrous metals	1.2	1.2	1.5	1.6	1.6	1.3
Fuels	3.3	4.2	4.9	4.9	5.9	4.7
Manufactures	81.9	82.5	81.5	81.3	79.9	77.9
Iron and steel	2.0	2.9	2.9	3.0	3.2	2.6
Chemicals	13.0	14.9	15.2	15.1	14.7	17.0
5429 Medicaments, n.e.s.	2.2	3.2	3.5	3.5	3.4	4.0
Other semi-manufactures	8.7	8.1	8.1	8.0	7.6	7.2
Machinery and transport equipment	44.6	44.1	42.9	43.2	42.9	39.7
Power generating machines	3.3	2.8	2.7	2.8	3.1	3.4
Other non-electrical machinery	11.4	12.4	13.0	13.8	14.1	12.9
Office machines & telecommunication equipment	10.6	8.9	7.8	7.0	6.3	5.8
Other electrical machines	4.7	4.6	4.8	4.9	4.8	4.8
Automotive products	8.8	9.8	9.8	9.9	9.7	7.6
7812 Motor vehicles for the transport of persons, n.e.s.	5.6	6.0	5.9	5.7	5.3	4.2
Other transport equipment	5.9	5.5	4.8	4.8	5.0	5.1
7924 Aeroplanes >15,000 kg unladen	1.9	2.1	1.6	1.4	1.5	1.8
7932 Ships, boats, etc. (excl. pleasure craft, tugs)	0.6	0.6	0.7	0.8	0.7	0.7
Textiles	2.0	1.5	1.5	1.4	1.2	1.2
Clothing	1.6	1.5	1.4	1.5	1.5	1.4
Other consumer goods	10.1	9.5	9.5	9.1	8.8	8.9
Other	6.1	4.9	4.8	4.8	5.0	8.1
Gold	0.4	0.2	0.1	0.2	0.1	0.5

Source: WTO Secretariat estimate, based on UNSD, Comtrade database SITC Rev.3 data.



**Table A1.3**  
**Origins of imports, 2000 and 2005-09**  
 (€million and %)

	2000	2005	2006	2007	2008	2009
Total (€million)	992 659.7	1,179 898.0	1,351 409.9	1,433 869.7	1,550 474.6	1,222 958.5
	(per cent)					
America	28.4	21.6	20.9	20.8	20.2	20.7
United States	20.8	13.9	13.0	12.7	12.0	13.1
Other America	7.6	7.7	7.9	8.1	8.2	7.6
Canada	1.9	1.5	1.5	1.6	1.5	1.4
Brazil	1.9	2.0	2.0	2.3	2.3	2.1
Europe	13.9	15.5	15.2	15.0	15.0	17.6
EFTA	11.3	11.6	11.4	11.0	11.3	11.9
Switzerland	6.4	5.7	5.4	5.5	5.2	6.1
Norway	4.8	5.7	5.9	5.3	5.9	5.6
Other Europe	2.5	3.9	3.7	4.0	3.6	5.6
Turkey	1.9	3.1	3.1	3.3	3.0	3.0
Commonwealth of Independent States (CIS)	7.7	11.9	13.2	12.9	14.6	11.9
Russian Federation	6.4	9.5	10.4	10.1	11.2	9.4
Kazakhstan	0.4	0.9	1.0	0.9	1.1	0.8
Africa	8.6	9.4	9.3	9.1	10.1	8.7
Libyan Arab Jamahiriya	1.3	1.7	1.9	1.9	2.2	1.6
Algeria	1.7	1.8	1.8	1.5	1.8	1.4
South Africa	1.5	1.4	1.4	1.5	1.4	1.2
Nigeria	0.6	0.7	0.8	0.7	1.0	0.9
Middle East	5.3	5.7	5.1	4.7	4.9	3.9
Saudi Arabia	1.6	1.9	1.7	1.3	1.4	0.9
Asia	34.6	35.5	35.5	36.6	34.4	36.5
China	7.5	13.6	14.4	16.2	16.0	17.6
Japan	9.3	6.3	5.7	5.5	4.8	4.6
Six East Asian Traders	11.7	9.9	9.7	9.2	8.1	8.4
Korea, Rep. of	2.7	2.9	3.0	2.9	2.5	2.6
Chinese Taipei	2.9	2.0	2.0	1.8	1.6	1.4
Malaysia	1.8	1.4	1.3	1.3	1.1	1.2
Singapore	1.8	1.6	1.4	1.3	1.0	1.2
Thailand	1.4	1.1	1.1	1.2	1.1	1.2
Other Asia	6.1	5.7	5.7	5.8	5.5	6.0
India	1.3	1.6	1.7	1.9	1.9	2.1
Indonesia	1.2	0.9	0.9	0.9	0.9	1.0
Other	1.6	0.6	0.8	0.9	0.8	0.8

Source: WTO Secretariat estimate, based on UNSD, Comtrade database SITC Rev.3 data.

**Table AI.4**  
**Structure of imports, 2000 and 2005-09**  
(€million and %)

	2000	2005	2006	2007	2008	2009
Total (€million)	992,659.7	1,179,898.0	1,351,409.9	1,433,869.7	1,550,474.6	1,222,958.5
	(per cent)					
Total primary products	28.2	33.8	36.2	35.5	39.4	33.4
Agriculture	8.4	7.7	7.3	7.7	7.6	8.3
Food	6.1	6.0	5.7	6.0	6.1	7.0
Agricultural raw material	2.3	1.7	1.6	1.6	1.4	1.3
Mining	19.8	26.0	28.8	27.8	31.8	25.1
Ores and other minerals	1.8	2.0	2.3	2.5	2.4	1.6
Non-ferrous metals	2.3	2.0	2.9	3.0	2.3	1.7
Fuels	15.7	22.1	23.7	22.3	27.1	21.8
3330 Crude oils of petroleum and bituminous minerals	10.8	14.6	15.4	14.4	17.3	13.2
3432 Natural gas, in the gaseous state	1.8	2.2	2.6	2.3	3.2	2.5
Manufactures	65.2	62.5	59.7	60.7	56.2	59.3
Iron and steel	1.2	1.9	2.2	2.9	2.8	1.5
Chemicals	6.8	8.1	8.0	8.3	8.0	9.1
Other semi-manufactures	5.7	5.4	5.1	5.5	5.0	4.9
Machinery and transport equipment	35.9	32.0	29.7	29.2	26.6	27.9
Power generating machines	2.4	1.8	1.5	1.6	1.6	2.0
Other non-electrical machinery	5.0	4.3	4.2	4.6	4.3	3.8
Office machines & telecommunication equipment	16.0	13.8	13.2	12.3	11.0	11.7
Other electrical machines	4.6	3.8	3.7	3.7	3.4	3.7
Automotive products	3.4	3.8	3.8	3.9	3.4	3.1
Other transport equipment	4.5	4.5	3.2	3.1	2.9	3.7
Textiles	1.7	1.5	1.4	1.4	1.2	1.3
Clothing	4.4	4.5	4.4	4.3	4.1	5.0
Other consumer goods	9.4	9.2	8.9	9.1	8.5	9.7
Other	6.6	3.8	4.1	3.8	4.4	7.3
Gold	0.8	0.3	0.3	0.4	0.3	0.6

Source: WTO Secretariat estimate, based on UNSD, Comtrade database SITC Rev.3 data.

**Table AII.1**  
**Status of dispute-related WTO matters involving the EU, September 2008-January 2011**

Subject of dispute	Raised by/against (WTO document series)	Request for consultations	Panel established/ Panel report circulated	AB report circulated <sup>a</sup>	Other developments
<b>As respondent</b>					
Seizure of generic drugs in transit	Brazil (WTO/DS409)	12.05.2010	No	n.a.	None
Seizure of generic drugs in transit	India (WTO/DS408)	11.05.2010	No	n.a.	None
Anti-dumping measures on certain footwear	China (WTO/DS405)	04.02.2010	18.05.2010	n.a.	None
Measures prohibiting the importation and marketing of seal products	Norway (WTO/DS401)	05.11.2009	No	n.a.	None
Measures prohibiting the importation and marketing of seal products	Canada (WTO/DS400)	02.11.2009	No	n.a.	None
Definitive anti-dumping measures on certain iron or steel fasteners	China (WTO/DS397)	31.07.2009	23.10.2009/ 03.12.2010	n.a.	None
Certain measures affecting poultry meat and poultry meat products	United States (WTO/DS389)	16.01.2009	19.11.2009	n.a.	None
Expiry reviews of anti-dumping and countervailing duties imposed on imports of PET	India (WTO/DS385)	04.12.2008	No	n.a.	None
Tariff treatment of certain information technology products	Chinese Taipei (WTO/DS377)	12.06.2008	23.09.2008/ 16.08.2010	n.a.	Recommendation to bring measure into conformity on 21.09.2010
Tariff treatment of certain information technology products	Japan (WT/DS376)	28.05.2008	23.09.2008/ 16.08.2010	n.a.	Recommendation to bring measure into conformity on 21.09.2010
Tariff treatment of certain information technology products	United States (WT/DS375)	28.05.2008	23.09.2008/ 16.08.2010	n.a.	Recommendation to bring measure into conformity on 21.09.2010
Measures affecting trade in large civil aircraft	United States (WT/DS316)	06.10.2004	20.07.2005/ 30.06.2010	No	Panel report under appeal on 21.07.2010
Measures affecting the approval and marketing of biotech products	Argentina (WT/DS293)	14.05.2003	29.08.2003/ 29.09.2006	n.a.	Settled or terminated (withdrawn, mutually agreed solution) on 19.03.2010
Measures affecting the approval and marketing of biotech products	Canada (WT/DS292)	13.05.2003	29.08.2003/ 29.09.2006	n.a.	Settled or terminated (withdrawn, mutually agreed solution) on 15.07.2009

Table AII.1 (cont'd)

Subject of dispute	Raised by/against (WTO document series)	Request for consultations	Panel established/ Panel report circulated	AB report circulated <sup>a</sup>	Other developments
Measures affecting the approval and marketing of biotech products	United States (WT/DS291)	13.05.2003	29.08.2003/ 29.09.2006	n.a.	Authorization to retaliate requested (including Article 22.6 arbitration) on 17.01.2008
<b>As complainant</b>					
Provisional anti-dumping duties on certain iron and steel fasteners	China (WT/DS407)	07.05.2010	No	n.a.	None
Taxes on distilled spirits	Philippines (WT/DS396)	29.07.2009	19.01.2010	n.a.	None
Measures related to the exportation of various raw materials	China (WT/DS395)	23.06.2009	21.12.2009	n.a.	None
Certain taxes and other measures on imported wines and spirits	India (WT/DS380)	22.09.2008	No	n.a.	None
Measures affecting financial information services and foreign financial information suppliers	China (WT/DS372)	03.03.2008	No	n.a.	Settled or terminated (withdrawn, mutually agreed solution) on 4.12.2008
Tax exemptions and reductions for wine and beer	Canada (WT/DS354)	29.11.2006	No	n.a.	Settled or terminated (withdrawn, mutually agreed solution) on 17.12.2008
Continued existence and application of zeroing methodology	United States (WT/DS350)	02.10.2006	04.06.2007/ 01.10.2008	04.02.2009	Report(s) adopted, with recommendation to bring measure into conformity on 02.06.2009
Definitive countervailing measures on olive oil	Mexico (WT/DS341)	31.03.2006	23.01.2007/ 04.09.2008	n.a.	Implementation notified by respondent on 11.12.2008
Measures affecting imports of automobile parts	China (WT/DS339)	30.3.2006	26.10.2006/ 18.07.2008	15.12.2008	Implementation notified by respondent on 31.08.2009
Measures affecting imports of retreaded tyres	Brazil (WT/DS332)	20.06.2005	20.01.2006/ 12.06.2007	03.12.2007	Report(s) adopted, with recommendation to bring measure into conformity on 20.08.2009; Article 21.3(c) arbitration report (29.08.2008)
Continued suspension of obligations in the EC — Hormones Dispute	Canada (WT/DS321)	08.11.2004	17.02.2005/ 31.03.2008	16.10.2008	Report(s) adopted, with recommendation to bring measure into conformity on 14.11.2008
Continued suspension of obligations in the EC — Hormones Dispute	United States (WT/DS320)	08.11.2004	17.02.2005/ 31.03.2008	16.10.2008	Report(s) adopted, with recommendation to bring measure into conformity on 14.11.2008
Laws, regulations and methodology for calculating dumping margins (zeroing)	United States (WT/DS294)	12.06.2003	19.03.2004/ 31.10.2005	18.04.2006	Article 21.5 Panel report (17.12.2008); Article 21.5 AB report (14.05.2009), authorization to retaliate requested (including Article 22.6 arbitration) (18.02.2010)

n.a. Not applicable.

a AB refers to Appellate Body.

Source: WTO Secretariat.

**Table AIII.1**  
**Applied preferential tariffs by HS sector, 2011**  
 (%)

	HS 01-97	HS 01-24	HS 25-97
MFN	4.83	10.10	3.63
Standard GSP	2.62	7.15	1.58
GSP+	0.52	2.48	0.07
GSP-EBA	0.01	0.00	0.01
Albania	0.11	0.47	0.00
Algeria	1.12	5.84	0.05
Andorra	0.03	0.06	0.03
Bosnia and Herzegovina	0.12	0.53	0.00
CARIFORUM	0.01	0.00	0.01
Chile	0.54	2.75	0.03
Croatia	0.11	0.47	0.00
Egypt	0.02	0.10	0.00
EPA <sup>a</sup>	0.01	0.00	0.01
European Economic Area	1.50	7.87	0.04
FYROM	0.07	0.29	0.00
Israel	0.20	0.81	0.03
Jordan	0.46	1.95	0.00
Lebanon	0.10	0.34	0.03
Mexico	0.60	2.93	0.03
Moldova	0.09	0.44	0.00
Montenegro	0.12	0.54	0.00
Morocco	1.06	5.53	0.03
Papua New Guinea	0.01	0.00	0.01
San Marino	0.02	0.06	0.00
Serbia	4.76	9.71	3.63
South Africa	0.87	3.86	0.04
Switzerland	1.34	6.89	0.03
Tunisia	1.12	5.87	0.03
Turkey	0.46	2.32	0.03

a Burundi, Botswana, Côte d'Ivoire, Cameroon, Fiji, Ghana, Haiti, Kenya, Comoros (excluding Mayotte), Lesotho, Madagascar, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe.

Note: Averages are based on *ad valorem* duties and *ad valorem* part of non-*ad valorem* duties only.

Source: WTO Secretariat estimates based on data provided by the Commission.

**Table AIII.2**  
**Summary of the main legislation of intellectual property rights, 2011**

Intellectual property rights	Main legislation
<p><b><u>Copyright and related rights</u></b> Various Directives. These Directives must be implemented through national law.</p>	<p>Directive 2006/116/EC, 12 December 2006: term of protection of copyright and certain related rights Directive 2001/84/EC, 27 Sept 2001: resale right for the benefit of the author of an original work of art Directive 2001/29/EC, 22 May 2001: harmonization of certain aspects of copyright and related rights in the information society Directive 96/9/EC, 11 March 1996: legal protection of databases Council Directive 93/83/EEC, 27 Sept 1993: coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission Directive 2006/115/EC, 12 December 2006: rental right and lending right and certain rights related to copyright in the field of intellectual property Council Directive 91/250/EEC, 14 May 1991: legal protection of computer programs (see Directive 2009/24/EEC) Council Decision 2000/278/EC, 16 March 2000 on the approval, on behalf of the European Community, of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty</p>
<p><b><u>Protection of layout designs</u></b></p>	<p>Council Directive 87/54/EEC, 16 Dec 1986: legal protection of topographies of semiconductor products</p>
<p><b><u>Patents</u></b></p>	<p>European Patent Convention (EPC) (most recently revised in December 2007) Directive 98/44/EC, 6 July 1998: legal protection of biotechnological inventions Regulation (EC) No 469/2009, 6 May 2009: supplementary protection certificate for medicinal products Regulation (EC) No 1610/96, 23 July 1996: creation of a supplementary protection certificate for plant protection products Regulation (EC) No 1902/2006 amending Regulation (EC) No 1901/2006 on medicinal products for paediatric use and amending Regulation (EEC) No 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No 726/2004 Regulation (EC) No 816/2006, 17 May 2006: compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems National laws of the EU member States: national patent systems exist alongside and in parallel to the European patent system</p>
<p><b><u>Trade marks</u></b></p>	<p>Directive 2008/95/EC, 22 October 2008: to approximate the laws of the member States relating to trade marks Council Regulation (EC) No 207/2009, 26 February 2009: on the Community trade mark Council Regulation (EC) No 1992/2003, 27 October 2003 amending Regulation (EC) No 40/94 on the Community trade mark to give effect to the accession of the European Community to the Protocol relating to the Madrid Agreement concerning the international registration of marks adopted at Madrid on 27 June 1989 Commission Regulation (EC) No 2082/2004, 6 December 2004, amending Regulation (EC) No 216/96 laying down the rules of procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) Commission Regulation (EC) No 355/2009, 31 March 2009 amending Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) and Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark National laws of the EU Member States on trade marks: national trade mark systems exist in parallel to the Community trade mark system</p>
<p><b><u>Industrial designs</u></b></p>	<p>Design Directive 98/71/EC on the legal protection of designs Council Regulation (EC) No. 6/2002 on Community designs Commission Regulation (EC) No 2246/2002, 16 December 2002 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) in respect of the registration of Community designs Council Decision (2006/954/EC), 18 December 2006 approving the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999 National laws of the EU Member States: national industrial design systems exist in parallel to the Community design system</p>

Table AIII.2 (cont'd)

Intellectual property rights	Main legislation
<p><b><u>Plant varieties</u></b></p>	<p>Council Regulation (EC) No. 2100/94, as amended by Council Regulation No. 15/2008            Commission Regulation (EC) No 1238/95, 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards the fees payable to the Community Plant Variety Office            National laws of the EU Member States: national systems work in parallel with the Community system</p>
<p><b><u>Geographical indications</u></b></p> <p>Community regulations, national laws of the EU Member States, and the Appellation System of certain EU Member States.</p>	<p>Wines: - Council Regulation (EC) No. 1234/2007 establishing a common organization of agricultural markets, and on specific provisions for certain agricultural products (single CMO Regulation)            Commission Regulation (EC) No. 607/2009, effective 1 August 2009, laying down certain detailed rules regarding protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products<sup>a</sup>            Spirits: - Regulation (EC) No. 110/2008 of the EP and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks            Agricultural and foodstuff products: Council Regulation (EC) No. 510/2006 on the protection of PDO/PGI for agricultural and foodstuff products; and Commission Regulation 1898/2006 laying down detailed rules of implementation of Council Regulation (EC) No. 510/2006            Regulation (EC) No 207/2009, 26 February 2009, on the Community trade mark</p>
<p><b><u>Undisclosed test or other data</u></b></p>	<p>Directive 2001/83/EC: on the Community code relating to medicinal products for human use, as amended by Directive 2004/27/EC            Regulation No. 276/2004 laying down Community procedures for the authorisation and supervision of medicinal products            National procedural laws also apply</p>
<p><b><u>Enforcement</u></b></p> <p>Community regulations and national laws of the EU Member States.</p>	<p>Council Regulation (EC) No 1383/2003, 22 July 2003: customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights            Commission Regulation No. 1891/2004, 21 October 2004: provisions to implement Council Regulation No. 1383/2003            Directive 2004/48/EC of 29 April 2004: IPR Enforcement Directive, to approximate laws of EU Member States regarding the civil measures for the enforcement of all IPRs</p>

<sup>a</sup> WTO document IP/N/1/EEC/G/5, 26 January 2010. See also: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:193:0060:0139:EN:PDF>.

*Source:* WTO Secretariat, and information provided by the authorities. EU online information: [http://ec.europa.eu/internal\\_market/copyright](http://ec.europa.eu/internal_market/copyright); [http://ec.europa.eu/internal\\_market/indprop](http://ec.europa.eu/internal_market/indprop); [http://ec.europa.eu/internal\\_market/iprenforcement](http://ec.europa.eu/internal_market/iprenforcement); <http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property>, and WIPO online information: <http://www.wipo.int/wipolex/en/outline/eu.pdf>.

**Table AIII.3**  
**Term of protection of major intellectual property rights, 2011**

Type of rights	Term of protection	Competent agency at the EU level
<b>Copyright</b> Authors' right	<p>Life of the author plus 70 years irrespective of the date the work was lawfully made available to the public.</p> <p>In the case of joint authorship the term should be calculated after the death of the last surviving author.</p> <p>In the case of anonymous or pseudonymous works, 70 years after the work is lawfully made available to the public.</p> <p>If the pseudonym does not leave any doubt as to the identity of the author, then protection is for the life of the author plus 70 years irrespective of the date the work was lawfully made available to the public.</p>	Copyright is protected without registration
Work published in volumes	Protection runs from the time the work was lawfully made available to the public.	
Works that have not been lawfully made available to the public within 70 years from their creation	Protection should be terminated.	
Cinematographic or audiovisual works	Protection expires 70 years after the death of the author. <sup>a</sup>	
Performers	Protection expires 50 years after the date of the performance. However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.	
Producers of phonograms	Protection expires 50 years after the fixation is made. However, if the phonogram has been lawfully published within this period, the rights expire 50 years from the date of the first lawful publication. If no lawful publication has taken place, and the phonogram has been lawfully communicated to the public within this period, the rights will expire 50 years from the date of the first lawful communication to the public.	
Producers of a film <sup>b</sup>	Protection expires 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights will expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.	
Broadcasting organizations	Protection expires 50 years after the first transmission of a broadcast whether transmitted by wire or over the air, including by cable or satellite.	
Photographs <sup>c</sup>	<p>Life of the author plus 70 years no matter when it was lawfully made available to the public.</p> <p>In the case of joint authorship, the term should be calculated after the death of the last author.</p> <p>In the case of anonymous or pseudonymous works, 70 years after the work is lawfully made available to the public.</p> <p>If the pseudonym does not leave any doubt as to the identity of the author then protection is for the life of the author plus 70 years no matter when the work was lawfully made available to the public.</p>	

Table AIII.3 (cont'd)



Type of rights	Term of protection	Competent agency at the EU level
<p><b>Patents</b> Any inventions, in all field of technology, that are new, involve an inventive step, and are susceptible of industrial application</p> <p>Exceptions are inventions whose commercial exploitation would be contrary to the public order or morality, plant or animal varieties, or essentially biological process for the production of plants or animals, and methods for treatment of the human or animal body surgery and therapy and diagnostic methods practised on the human or animal body</p>	20 years from the date of filing, and may be extended for pharmaceutical or plant protection products for a maximum of 5 years	EPO (European Patent Office) for European patent
<p><b>Trade marks</b> Any signs represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings</p>	10 years from the date of filling of application, may be renewed for an indefinite number of 10-year periods	OHIM (Office for Harmonization in the Internal Market), for Community trade marks
<p><b>Industrial designs</b> Designs that are new and have individual character. A design is considered new if no identical design (i.e., one whose features differ only in immaterial details) has been made available to the public. It has individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public</p>	Registered design: one or more periods of 5 years, up to a maximum of 25 years. Unregistered design: 3 years after publication	OHIM for Community designs
<p><b>Plant varieties</b> Plant varieties which are distinct, uniform, stable, and new</p>	Plant varieties for 25 years, wine and tree species for 30 years. Protection may be extended for 5 years.	CPVO (Community Plant Variety Office)
<p><b>Geographical indications</b></p>	For GIs protected as Community collective trade marks: 10 years from the date of filling of application, may be renewed for an indefinite number of 10 year periods. For GIs protected as PDO/PGI, the term of protection is indefinite, unless the geographical indication is cancelled.	OHIM for Community collective trade marks European Commission: DG Agriculture and DG Trade
<p><b>Undisclosed test or other data</b></p>	8-11 years of data and marketing protection	EMA (European Medicines Agency) grants market authorization

- a The principal director of a cinematographic or audiovisual work is considered the author. The author of the screenplay and/or the author of a dialogue are designated as co-authors.
- b The term "film" designates a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.
- c Photographs are protected under Community law only if they are the author's own intellectual creation. Member States may provide protection for other photographs.

Source: WTO secretariat; and EU online information: [http://ec.europa.eu/internal\\_market/copyright/documents/documents\\_en.htm#directives](http://ec.europa.eu/internal_market/copyright/documents/documents_en.htm#directives).