

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) INTRODUCTION

1. The EC's trade regime has remained largely unchanged since its last TPR in 2004. The 2006 tariff comprises 90% *ad valorem* and 10% non-*ad valorem* rates. Non-*ad valorem* rates apply on agricultural goods (WTO definition), many of which are also subject to tariff quotas. The average applied MFN tariff has increased slightly, to 6.9% from 6.5%, due to a downward trend in the import prices of certain agricultural products subject to non-*ad valorem* tariffs, the *ad valorem* equivalents (AVE) having increased accordingly. Tariff rates range from 0% to 427.9% (an AVE), with agricultural products still attracting the highest rates. The EC's wide network of preferential trade arrangements, together with the large number of countries eligible for unilateral preferences, has confined the application of its exclusively MFN tariff to nine WTO Members, which accounted for some 30% of its total merchandise imports in 2005.

2. Value-added tax and excise duties apply to imports and locally produced goods (VAT also applies to services) at the same rates; these rates are set by Member States and are not harmonized within the EC. The EC remains an important user of contingency trade remedies; between January 2004 and September 2006, it initiated three safeguard, 27 anti-dumping and two countervailing investigations. Under its Customs 2007 programme, the EC is improving customs administration through the implementation of electronic exchange systems to support the creation of a paperless customs environment. Customs controls are based on risk analysis using automated data processing techniques.

3. The EC maintains import licences on grounds of surveillance, quota management, and safeguards. Technical regulations, standards, and sanitary and phytosanitary measures have been under continued review by the Commission; in certain areas, they have not been fully harmonized among Member States. Products placed on the market of a Member State must comply with both national and EC legislation. The EC provides export subsidies for a number of agricultural products; they account for some 90% of total export subsidies notified by WTO Members.

4. New legislation on public procurement entered into force in 2004 with a view to making the legal framework simpler, more flexible and adapting it to the electronic era. There have been no major changes to the legal basis of competition policy in the EC, which seeks to address anticompetitive practices and enhance competitiveness throughout the EC. The intellectual property rights regime in the EC is governed by both Community-wide legislation and legislation of Member States. Since its last TPR, the EC has acceded to the Madrid Protocol; it has also been reviewing its patent policy.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Customs procedures and valuation

5. The EC's customs procedures, in place since 1992, are governed by its Customs Code (CC) along with its implementing provisions.¹ During the period under review, security- and safety-related procedures were added to the CC whilst preparations and consultations were undertaken for a major overhaul of the CC. The EC signed the International Convention on the Simplification and

¹ Council Regulations No. 2913/92 and No. 2454/93 respectively, as amended. For further details on the basis of the EC's CC, see WTO (2004).

Harmonization of Customs Procedures (Kyoto Convention), but had not ratified any of its chapters or annexes.²

6. Several amendments to the CC were introduced by Regulation No. 648/2005, most of them with the aim of increasing safety and security procedures while at the same time furthering trade facilitation. Implementing provisions for this Regulation were under discussion as at October 2006. After the adoption of such provisions, pre-arrival and departure declarations should be lodged at customs offices in advance of the goods in order for its risk to be analysed. Risk analysis is to be carried out through "automated data processing techniques". The Regulation also introduces the legal concept of an authorized economic operator (AEO), i.e. an economic operator that has: (i) an appropriate compliance record with customs requirements; (ii) a satisfactory system of managing commercial (and, where applicable, transport) records; (iii) proven financial solvency (when applicable); and (iv) appropriate security and safety standards (when applicable). It stipulates that Risk Information Forms are to be prepared and exchanged electronically amongst customs offices where routine control concerns exist. Also, action is being taken on a programme for post-clearance audits (i.e. examination of accounts and records), under the Customs 2007 programme.³ Council Decision No. 787/2004/EC provided funding for customs-related schemes that take into account the entrance of new Member States. In 2004, the EC signed an agreement with the United States to broaden and intensify cargo security on a reciprocal basis, ensuring equal treatment to both U.S. and EC ports and operators.⁴ Since its last TPR, the EC has also signed agreements on cooperation and mutual administrative assistance in customs matters with the People's Republic of China, and India.⁵

7. The EC Commission adopted two proposals to modernize the CC in November 2005, both of which were under consideration by the Council and the European Parliament as at October 2006.⁶ The first one proposes a complete overhaul and a reformulation of the CC, albeit maintaining its current bases, to take into account, *inter alia*, the use of new technologies. The proposal seeks, amongst other things, to: simplify the structure of the CC and provide more coherent terminology (the number of articles would be reduced as well as the number of main procedures), fewer provisions and simpler rules; reduce the number of import and export procedures; rationalize the customs guarantees system; extend the use of single authorizations throughout the EC, and provide the possibility for operators to centralize clearance of goods at a single customs office. The second proposal seeks the implementation of a paperless customs environment with interoperable, accessible, and interconnected automated customs systems throughout the EC; this will comprise all the IT systems necessary to ensure a fully functioning computerized customs environment of 25 (27 as of January 2007) national customs administrations.⁷ Other specific proposals include the centralization of clearance procedures, with a one-stop shop for customs and other procedures to be performed at the EC's external border, and the implementation of a single window electronic entrance point.

² World Customs Organization online information. Viewed at: <http://www.wcoomd.org/ie/En/Conventions/conventions.html>.

³ The Customs 2007 Cooperation Programme is to support the achievement of policy objectives such as the functioning of the internal market, including supply chain security and trade facilitation, strengthening security and safety, and supporting the modernization of the customs environment. For further details on Customs 2007, see WTO (2004). An assessment was carried out by the Commission in 2005 (EC working document SEC/200635).

⁴ *Official Journal* L 304/34 of 30 September 2004.

⁵ *Official Journal* L 375/47, of 23 December 2004, and *Official Journal* L 304/ 47 of 30 September 2004.

⁶ Proposals for a regulation laying down the Community Customs Code (COM (2005) 608 final), and for a decision on a paperless environment for customs and trade (COM (2005) 609 final). Both proposals were adopted on 30 November 2005.

⁷ EC working document TAXUD/477/2004-Rev.3.

8. As at February 2006, customs declarations, either paper-based or electronic, were lodged and processed on the basis of the 1992 CC.⁸ Although paper-based declarations are currently the rule (the above-mentioned proposals intend to reverse this), electronic declarations are already widely in use. Moreover, Regulation (EC) No. 648/2005 provides for the lodging of pre-arrival information, in the form of a summary declaration, to any customs office, in electronic form, with the exception of goods passing through territorial waters or airspace. Customs controls are based on risk analysis using automated data processing techniques and electronic exchange of risk information between customs offices on an EC-wide basis.⁹ All appeals against customs decisions have to be lodged in the Member State where the decision has been taken or applied for.

9. Customs valuation procedures in the proposals under consideration would maintain the same basis as in the current CC.¹⁰ As at January 2006, there was general satisfaction amongst the participating countries with the efficiency of the Customs 2007 programme. Nevertheless, the speed and extension of interconnected IT customs networks remains the principal challenge. In particular, several IT systems, e.g. TARIC and NCTS, together with new systems, will be brought under the electronic Customs initiative, which seeks to establish interoperability and access to the various electronic customs systems throughout the EC and the transmission of data. The use of NCTS has been compulsory since 1 July 2005.¹¹ These various IT initiatives are expected to contribute to trade facilitation, as operators will be able to carry out all customs procedures from their place of business. The measures should reduce operating costs for traders and increase savings for the EC. They are expected to generate €2.5 million per year in savings and revenues when fully implemented.¹²

(ii) Common Customs MFN Tariff

10. The EC tariff nomenclature, known as the Combined Nomenclature, is based on the International Convention on the Harmonized Commodity Description and Coding System.¹³ The EC's Common Customs Tariff schedule is published annually in its *Official Journal*; for 2006, it contains 9,843 lines. The EC applies several types of tariff; *ad valorem* rates are the most widely used (90%), followed by specific (6.4%), compound (2%), alternate (0.7%) and variable (0.9%).¹⁴ Some agricultural products are subject to tariff quotas (section (2)(vii) and (Chapter IV(2)(ii)(a)). *Ad valorem* tariffs are applied on the c.i.f. customs value.

11. The EC has bound all its tariff lines in the WTO (Schedule CXL) (Table III.1). The proportion of tariff lines with the same applied and bound rates is 98.4%. On three product categories, the autonomous (applied) tariffs present problems of consistency with the corresponding conventional (bound) tariffs (Table III.2); according to the general rules on the EC tariff¹⁵, "when autonomous rates of duty are lower than the conventional rates of duty, the autonomous duties, [...], are applicable".

⁸ For further details, see WTO (2004).

⁹ Regulation (EC) No. 1889/2005 also requires that all persons carrying €10,000 or more make a declaration when crossing the border and that the information be exchanged with other Member States if there are indications that it is related to illegal activities as defined in Directive 91/308/EEC.

¹⁰ For further details, see WTO (2004).

¹¹ For further details on the various customs-related IT schemes, see WTO (2004).

¹² EC Memo/05/453. Viewed at: <http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/05/453&format=HTML&aged=0&language=EN&guiLanguage=fr>.

¹³ For a detailed description of the EC's Combined Nomenclature, see WTO (2004).

¹⁴ For a description of the five types of rates used by the EC see WTO (2004).

¹⁵ European Union *Official Journal* L 286, 28 October 2005.

Table III.1
Structure of the EC MFN tariff, 2004-06
 (Per cent)

	2004	2006	2006 bound rate	U.R.
1. Bound tariff lines (% of all tariff lines)	100.0	100.0	100.0	100.0
2. Duty-free tariff lines (% of all tariff lines)	26.9	26.0	25.2	25.2
3. Non- <i>ad valorem</i> tariffs (% of all tariff lines)	9.9	10.0	10.0	10.0
4. Tariff quotas (% of all tariff lines)	3.3	3.4	3.4	3.4
5. Non- <i>ad valorem</i> tariffs with no AVEs (% of all tariff lines)	2.7	2.1	2.1	2.1
6. Simple average tariff rate	6.5	6.9	7.0	7.0
Agricultural products (WTO definition) ^a	16.5	18.6	18.6	18.6
Non-agricultural products (WTO definition) ^b	4.1	4.0	4.1	4.1
Agriculture, hunting, forestry and fishing (ISIC 1)	10.0	10.9	11.2	11.2
Mining and quarrying (ISIC 2)	0.2	0.3	0.3	0.3
Manufacturing (ISIC 3)	6.4	6.8	6.9	6.9
7. Domestic tariff "spikes" (% of all tariff lines) ^c	5.8	5.6	5.8	5.8
8. International tariff "peaks" (% of all tariff lines) ^d	8.6	9.0	9.3	9.3
9. Overall standard deviation of applied rates	11.5	14.0	14.0	14.0
10. "Nuisance" applied rates (% of all tariff lines) ^e	6.8	9.4	9.4	9.4

a WTO Agreement on Agriculture definitions.

b Excluding petroleum.

c Domestic tariff spikes are defined as those exceeding three times the overall simple average applied rate (indicator 6).

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

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

Note: The 2006 bound tariff rate is the "conventional" rate given by the EC, while the UR rate is the final bound rate extracted from the WTO database.

Source: WTO Secretariat calculations, based on EC *Official Journal* L286; and WTO estimates.

Table III.2
Items with problems of consistency between conventional and autonomous rates

	"Conventional" (bound) rate	"Autonomous" (applied) rate
21069010	8.3% + 78.3 €/100 kg/net	13% + 122.3 €/100 kg/net MAX 35 €/100 kg/net
37061099	6.5%	5 €/100 m
37069099	5.4%	3.5 €/100 m

Source: European Union *Official Journal* L286, 28 October 2005.

12. For analytical purposes, *ad valorem* equivalents (AVEs) of non-*ad valorem* tariffs have been calculated using average unit prices or "entry prices" of imports, where they exist. The computation of the average unit prices is based on 2005 (or 2004) data.¹⁶ The analysis covers some 9,741 tariff lines, i.e. some 102 non-*ad valorem* tariff lines, with no import or entry price, are excluded. The tariff lines excluded from the analysis are for agricultural products: 83 of the lines carry data on intra-EC trade, with no imports from non-EC Members. The analysis may, to a certain extent, be biased. For instance, the exclusion of some non-*ad valorem* tariff lines, as well as the use of 2005/04 data for the present analysis, is likely to introduce a downward bias in the estimate; world prices (in euros) of certain agricultural products might have fallen since then.¹⁷ The use of variable tariffs (with entry prices) is also a factor.

13. Subject to the preceding observations, the simple average applied MFN tariff is estimated at 6.9% in 2006 (up from 6.5% in 2004), with rates ranging from zero to 427.9% (Table III.3 and AIII.1). The increase in the average rate is due to a downward trend in import prices of certain agricultural products subject to non-*ad valorem* tariffs: the tariffs having remained unchanged, the downward

¹⁶ In the absence of imports of certain items in 2005, 2004 data are used where they exist.

¹⁷ AVEs used in the 2004 review of the EC were based on 2002 trade data; the overall average tariff was 6.5%. The use of 2004 trade data would have resulted in a higher overall 2004 average tariff of 6.8%.

trend has meant higher AVEs (i.e. higher nominal tariff protection) for the products. Some 81.5% of tariff lines carry rates lower than 10% (Chart III.1). The modal range (32.1% of all tariff lines) remains between zero (excluded) and 5% (included), and the modal rate is still zero. The relatively high coefficient of variation (2) depicts a wide dispersion within the rates, essentially in agriculture, mainly due to the imposition of non-*ad valorem* tariffs and the large dispersion/fluctuation of their AVEs.

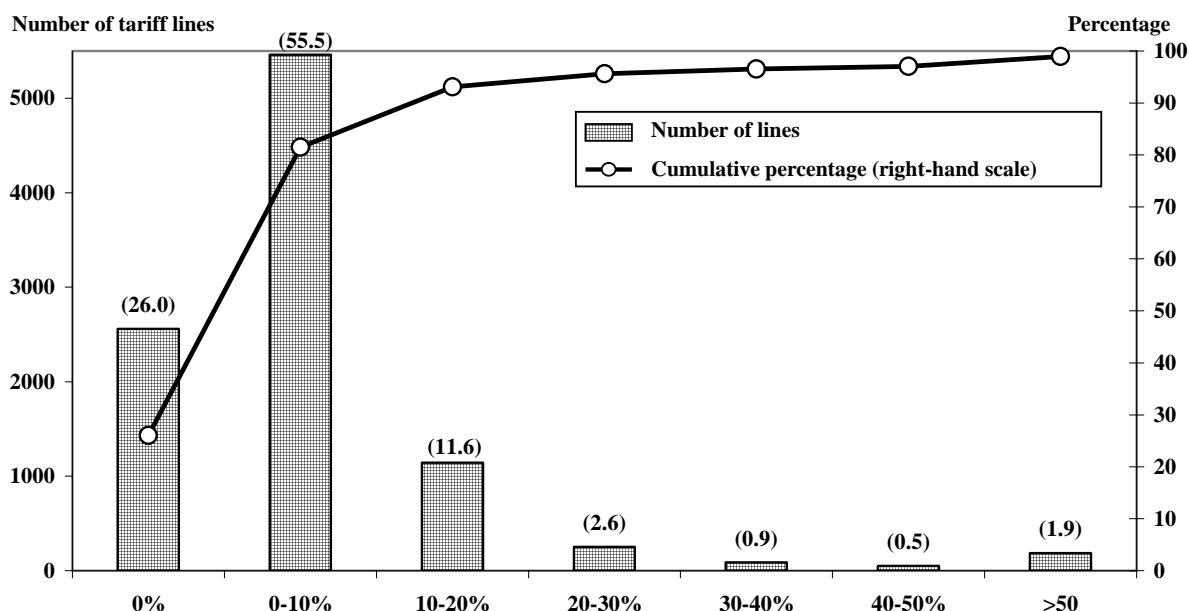
Table III.3
Structure of the EC MFN tariff by WTO sector, 2006

	All products: HS 01-97		WTO Agriculture		WTO non-agriculture ^a	
	Number of lines	%	Number of lines	%	Number of lines	%
Total	9,843	100.0	2,059	100.0	7,784	100.0
<i>Ad valorem</i>	8,854	90.0	1,107	53.8	7,747	99.5
Duty free	2,559	26.0	389	18.9	2,170	27.9
Dutable	6,295	64.0	718	34.9	5,577	71.6
<i>Non-ad valorem</i>	989	10.0	952	46.2	37	0.5
Spécific	633	6.4	628	30.5	5	0.1
Mixed	73	0.7	42	2.0	31	0.4
Compound	197	2.0	197	9.6	0	0.0
Other	86	0.9	85	4.1	1	0.0

a Includes petroleum.

Source: WTO Secretariat estimation, based on data provided by the European Community authorities.

Chart III.1
Breakdown of applied MFN tariffs, 2006



Note: The figures in brackets correspond to the percentage of total lines. They do not add to 100% since AVEs are not estimated for 102 lines.

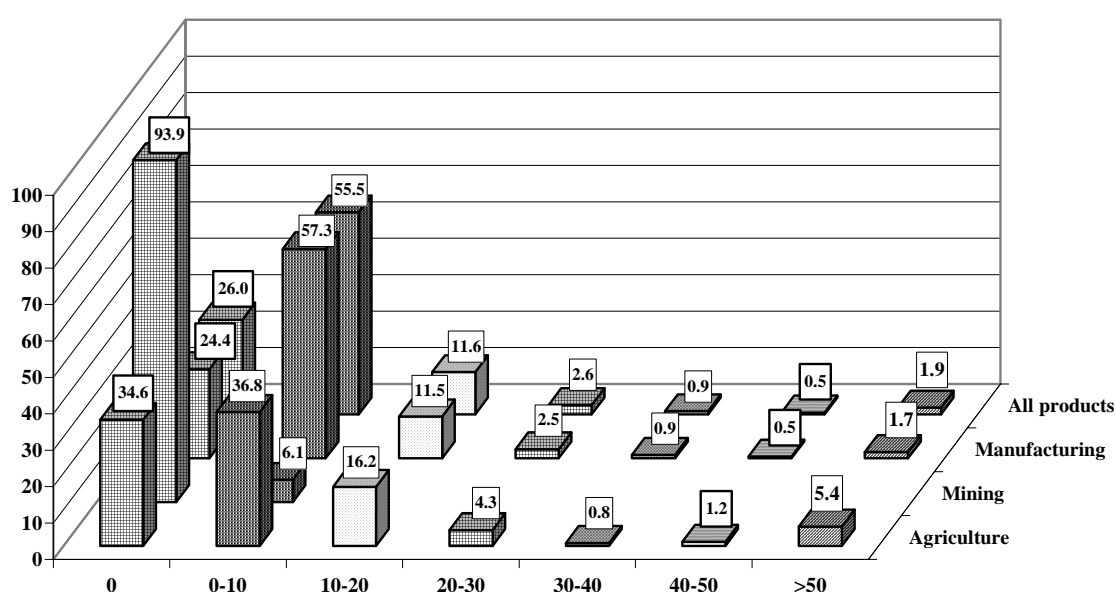
Source: WTO Secretariat calculations, based on EC *Official Journal* L286, 28 October 2005.

14. Agricultural products (WTO definition) are the most tariff-protected, with an average MFN tariff of 18.6% (more than twice the overall average MFN tariff). The average non-agricultural MFN tariff (excluding petroleum) is 4.0%. Agricultural products are also the most tariff-protected under the ISIC (Revision 2) definition, with an average rate of 10.9%, followed by manufactured products (with an average tariff of 6.8%), and mining and quarrying (0.3%) (Table III.1). Some 5.4% of all agricultural tariff lines are subject to rates higher than 50% (Chart III.2).

Chart III.2

MFN tariff distribution by ISIC sector^a, 2006

Number of lines



^a Labels are share of the total number of tariff lines, by sector. They do not add to 100% since AVEs are not estimated for 102 lines.

Source: WTO Secretariat calculations, based on EC *Official Journal* L286, 28 October 2005.

15. Product-wise, the zero rate still applies to, *inter alia*, bamboo, rattan, cotton linters, pharmaceutical products, pulp of wood, ore, slag and ash, printed books and newspapers, tin products, works of art, and civil aviation aircraft. Products with relatively high tariff protection are almost exclusively agricultural or processed food, including certain edible flours and meals of meat or meat offal (427.9%); certain *Agaricus* mushrooms (300.8%); certain frozen meat of bovine animals (276.9%); certain pineapple juices (209.8%); frozen edible offal of bovine animals (188.2%); live *Gallus domesticus* fowl (167.2%); and isoglucose (163.8%).

16. On aggregate, because of the relatively high protection of agricultural goods, the EC tariff schedule continues to show mixed escalation, with average rates of 8.9% for the first stage of processing, 5.0% on semi-processed goods and 7.5% on fully processed goods. At a more disaggregate (ISIC (Revision 2) two-digit) level, the tariff structure has also remained broadly unchanged since the last review of the EC, with mixed escalation in wood products; paper; food, beverages and tobacco; chemicals and plastics; and positive escalation in basic metal industries; textiles and apparel; non-metallic minerals; and fabricated metal (including machinery and equipment) industries (Table III.3 and Chart III.4).

Table III.4
Summary analysis of EC applied MFN tariffs, 2006

Analysis	No. of lines ^a	Applied 2006 rates					Imports 2005 (US\$ million)
		No. of lines used	Simple avg. tariff (%)	Tariff range (%)	Std-dev (%)	CV	
Total	9,843	9,741	6.9	0-427.9	14.0	2.0	1,461,431
By WTO definition^b							
Agriculture	2,059	1,957	18.6	0-427.9	27.1	1.5	78,001
Live animals and products thereof	331	295	27.3	0-427.9	39.9	1.5	5,843
Dairy products	155	123	42.4	1.6-134.4	28.8	0.7	693
Coffee and tea, cocoa, sugar, etc.	300	294	18.8	0-163.8	19.7	1.0	14,722
Cut flowers and plants	62	62	4.3	0-19.2	4.4	1.0	2,276
Fruit and vegetables	437	437	16.2	0-300.8	22.1	1.4	19,933
Grains	55	55	55.2	0-116.6	33.4	0.6	2,521
Oil seeds, fats, oils and their products	164	162	7.4	0-137.2	16.3	2.2	15,527
Beverages and spirits	272	253	15.2	0-209.8	22.7	1.5	6,496
Tobacco	30	30	19.7	5.2-74.9	20.8	1.1	2,321
Other agricultural products	253	246	6.1	0-122	14.7	2.4	7,667
Non-agriculture (excl. petroleum)	7,743	7,743	4.0	0-35.6	4.1	1.0	1,077,002
Fish and fishery products	381	381	10.5	0-26	6.6	0.6	17,679
Mineral products, precious stones and precious metals	513	513	2.4	0-13.8	2.9	1.2	111,991
Metals	1,024	1,024	1.8	0-10	2.3	1.3	100,101
Chemicals and photographic supplies	1,389	1,389	4.4	0-35.6	2.8	0.6	124,184
Leather, rubber, footwear and travel goods	283	283	4.8	0-17	4.7	1.0	32,838
Wood, pulp, paper and furniture	444	444	1.2	0-10	2.3	2.0	44,139
Textiles and clothing	1,269	1,269	8.0	0-12	3.2	0.4	98,806
Transport equipment	262	262	4.8	0-22	5.1	1.1	108,099
Non-electric machinery	952	952	1.7	0-9.7	1.4	0.8	177,787
Electric machinery	544	544	2.8	0-14	3.4	1.2	163,529
Non agricultural articles n.e.s.	682	682	2.4	0-14	1.9	0.8	97,850
By ISIC sector^c							
Agriculture, hunting, forestry and fishing	598	594	10.9	0-167.2	20.4	1.9	43,049
Mining	131	131	0.3	0-8.6	1.3	5.0	270,425
Manufacturing	9,113	9,015	6.8	0-427.9	13.5	2.0	1,086,408
By stage of processing							
Raw materials	1,202	1,197	8.9	0-167.2	18.6	2.1	371,061
Semi-processed products	2,917	2,911	5.0	0-207.2	8.2	1.6	175,750
Fully-processed products	5,724	5,633	7.5	0-427.9	15.0	2.0	856,345

a Tariff rates are based on a lower frequency (number of lines) since lines with no *ad valorem* equivalents are excluded.

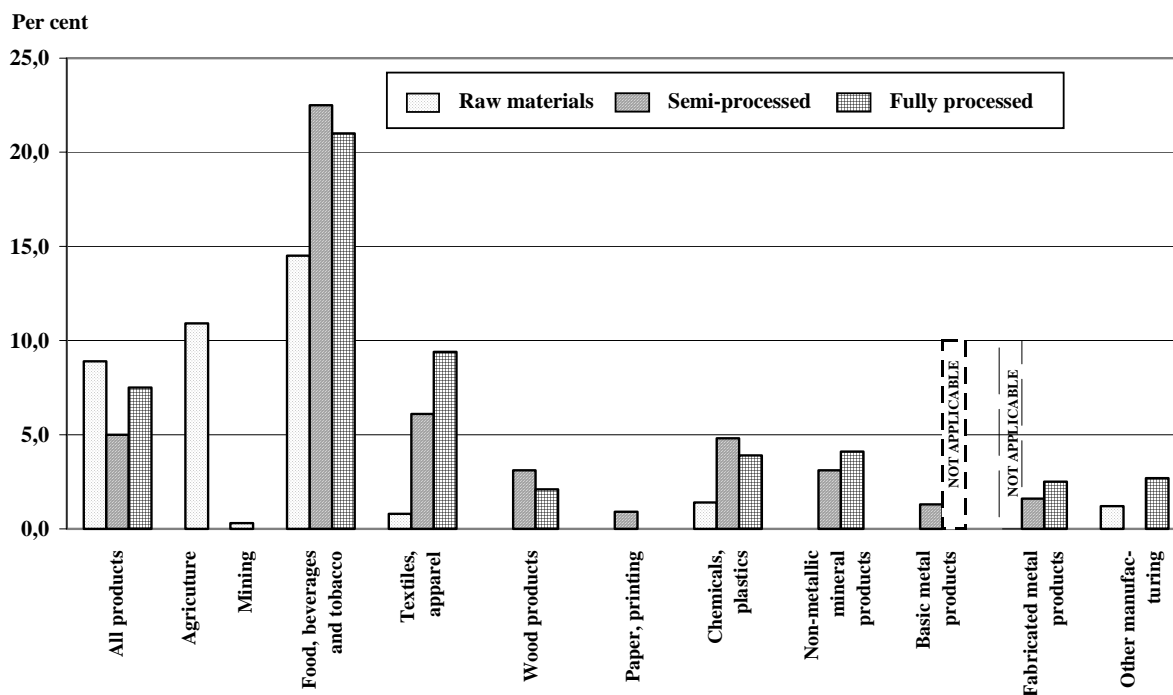
b Some 41 tariff lines are excluded from both WTO agriculture and non-agriculture definitions (essentially petroleum products).

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 EC *Official Journal* L286; imports data provided by the EC.

Chart III.3
Tariff escalation by ISIC 2-digit industry, 2006



Source: WTO Secretariat calculations, based on EC *Official Journal* L286, 28 October 2005; and WTO estimates.

(iii) Other duties and taxes

(a) Value-Added Tax

17. During the period under review there has been no fundamental change to the main VAT legislation at the EC level (The Sixth Directive).¹⁸ The VAT base is largely harmonized across the EC, but rates, derogations, and procedures differ across Member States. In practice, the contribution of VAT to the Member States' fiscal accounts varies: in 2003, it ranged from 6.1% of GDP (Italy) to 9.7% of GDP (Denmark).¹⁹ In the long run, the EC aims to establish a single harmonized VAT system, with the tax levied at the final place of consumption of goods and services, and a single set of procedures based on electronic returns.²⁰

18. The Sixth Directive allows Member States certain derogations in the implementation of VAT at national level (Article 27). This gives rise to variations in the way VAT functions across the EC (Table III.5). As at 31 December 2005, the following derogations were in force: Austria (3), Belgium (12), Cyprus (1), Denmark (7), Finland (1), France (11), Germany (18), Greece (7), Ireland (10), Italy (10), Luxembourg (7), Netherlands (16), Portugal (1), Spain (2), Sweden (1), and United Kingdom (13).²¹

¹⁸ Sixth Council Directive 77/388/EEC of 17 May 1977, as last amended by Council Directive 2006/18/EC of 14 February 2006.

¹⁹ DG Taxation and Customs Union (2005).

²⁰ DG Taxation and Customs Union (2006b).

²¹ DG Taxation and Customs Union (2006a).

Table III.5
National VAT rates in the EC

Country	Legal base (as amended)	Rates			
		Super Reduced	Reduced	Standard	Parking
Austria	Turnover Tax of 1994	-	10.0	20.0	12.0
Belgium	VAT Law of 3 July 1969	-	6.0	21.0	12.0
Cyprus	VAT Law of 7 July 2000 L.95(I)/2000	-	5.0/8.0	15.0	n.a.
Czech Republic	VAT Act of 2004	-	5.0	19.0	n.a.
Denmark	Danish VAT Act of 18 May 1994	-	-	25.0	n.a.
Estonia	VAT Law of 25 August 1993	-	5.0	18.0	n.a.
Finland	VAT Act of 30 December 1993	-	8.0/17.0	22.0	n.a.
France	Law 78/1239 of 29 December 1978	2.1	5.5	19.6	n.a.
Germany	The VAT Act of 21 February 2005	-	7.0	16.0 ^a	n.a.
	Law 1642 of 21 August 1986				n.a.
	1986 codified by Law 2859/2000 of				
	7 November 2000	4.5	9.0	19.0	
Greece	Act IXXIV on VAT of 1992	-	5.0	20.0	n.a.
Hungary	VAT Act of 1972	4.4	13.5	21.0	13.5
Ireland	PD 633 of 26 October 1972	4.0	10.0	20.0	n.a.
Italy	VAT Law of 26 October 1995	-	5.0	18.0	n.a.
Latvia	VAT Law of 5 March 2002 No IX-751	-	5.0/9.0	18.0	n.a.
Lithuania	Basic VAT Law of 5 August 1969	3.0	6.0	15.0	12.0
Luxemburg	VAT ACT XXIII of 1998	-	5.0	18.0	n.a.
Malta	VAT of 28 June 1968	-	6.0	19.0	n.a.
Netherlands	VAT Act of 11 March 2004	3.0	7.0	22.0	n.a.
Poland	DL 394B/84 of 26 December 1984	-	5.0/12.0	21.0	n.a.
Portugal	VAT Act No. 89/98 of 23 December 1998	-	8.5	20.0	n.a.
Slovenia	VAT Act No. 175/1998 of 1 January	-	-	19.0	n.a.
Slovakia	1998				
Spain	Law 37 of 29 December 1992	4.0	7.0	16.0	n.a.
Sweden	VAT (SFS 1994: 200) of 1 July 1994	-	6.0/12.0	25.0	n.a.
United Kingdom	VAT Act of 1994	-	5.0	17.5	n.a.

a Will be raised to 19% as of January 2007.

n.a. Not applicable.

Note: Further reductions are applied in some regions of Austria, Greece, France, Italy and Portugal.

Source: European Commission (2006), *VAT rates applied in the Member States of the European Community*. Viewed at: http://europa.eu.int/comm/taxation_customs/customs/index_en.htm.

19. Another salient feature of the EC's VAT regime is its exemptions schemes (Table III.6).²² The four main schemes are for: (i) intra-EC acquisitions by taxable persons; (ii) intra-EC distance sales (generally small non-businesses); (iii) small businesses operating within the Member State where they are located; and (iv) small quantities of particular goods imported for personal consumption (section (b) below).²³ These exemptions are generally applied as long as the transaction value is below the thresholds defined by each Member State subject to certain limits set out in EC legislation. Other more general VAT exemptions provided for by the Sixth Directive concern activities of public interest or where the application of VAT is difficult (e.g. postal services, hospital and medical care, financial services, insurance and reinsurance transactions), specific imports (e.g. goods that should enjoy VAT exemption in the exporting country, gas, and electricity), and goods in transit (e.g. goods placed in warehouses). Special rules apply to transactions involving motor vehicles less than six months old and with less than 6,000 km, where VAT is paid in the owner's Member State of residence.

²² Sixth Council Directive 77/388/EEC of 17 May 1977, as last amended by Council Directive 2006/18/EC of 14 February 2006, Articles 13-16, and Council Directive 69/169/EEC of 28 May 1969, Articles 2 and 7.

²³ DG Taxation and Customs Union (2006c).

Table III.6
VAT exemption thresholds in the EC

Country	Thresholds (euros)			
	Acquisitions by taxable persons ^a	Distance selling ^a	Small enterprises ^a	Small quantities ^d
Austria	11,000	100,000	22,000	600/175
Belgium	11,200	35,000	5,580	600/175
Cyprus	10,000	35,000	15,600	600/175
Czech Republic	10,018	35,034	30,731	600/175
Denmark	10,722	37,528	6,667	600/175
Germany	12,500	100,000	17,500	600/175
Estonia	10,226	35,151	16,000	600/175
Greece	10,000	35,000	9,000/4,000	600/175
Spain	10,000	35,000	..	600/175
France	10,000	100,000	76,300/27,000	600/175
Ireland	41,000	35,000	51,000/25,500	600/175
Italy	8,263	27,889	..	600/175
Latvia	10,778	36,952	17,200	600/175
Lithuania	10,138	36,207	29,000	600/175
Luxemburg	10,000	100,000	100,000	600/175
Hungary	10,000	35,000	15,860	600/175
Malta	10,000	35,000	14,600	600/175
Netherlands	10,000	100,000	..	600/175
Poland	10,000	35,000	10,000	600/175
Portugal	10,000	35,000	9,976/12,470	600/175
Slovenia	10,000	35,000	25,000	600/175
Slovakia	10,345	36,946	36,946	600/175
Finland	10,000	35,000	8,500	600/175
Sweden	10,071	35,809	..	600/175
United Kingdom	87,145	105,089	87,145	600/175

a Second subparagraph of Article 28(a)(i) of Directive 77/388/EEC, as amended.

b Article 28b, (2) of Directive 77/388/EE, as amended.

c Article 24(2) of Directive 77/388/EEC, as amended. This scheme is reserved for taxable persons established within the territory of the country.

d The first figure refers to intra-EC imports; the second refers to imports from third countries into the EC.

.. Not available.

Note: For Malta, €37,000 when the economic activity consists principally in the supply of goods. €24,300 when the economic activity consists principally in the supply of services with a low value added (high inputs), and €14,600 in other cases, namely service providers with a high value added (low inputs).

Source: DG Taxation and Customs Union (2006). *VAT in the European Community*. Viewed at: http://europa.eu.int/comm/taxation_customs/taxation/vat/traders/vat_community/index_en.htm and Council Directive 69/169/EEC of 28 May 1969, Articles 1 and 2.

20. During the period under review, the Council amended the Sixth Directive, granting Member States the right to apply reduced VAT rates until 31 December 2010 to specific labour-intensive activities, i.e. small service repair of bicycle, shoes and leather goods, renovation and repair of private dwellings, window cleaning in private households, and domestic care service and hairdressing.²⁴ In February 2006, a proposal was also presented to the Commission to bring the regime up to date and raise the maximum quantities and values under which imports for personal consumption are eligible for exemption of VAT.²⁵ The proposal also seeks to abolish quantitative limits for perfume, coffee and tea, and impose a quantitative limit on imported beer, whether from EC Member States or not.

21. In 2005, the Commission published a report on the results of consultations concerning the implementation of a one-stop scheme for persons liable for VAT in more than one Member State²⁶, an initial step in the simplification of the VAT system throughout the EC. A number of issues raised in the consultations were reflected in the subsequent legislative proposal, including a more extensive use

²⁴ Council Directive 2006/18/EC of 14 February 2006.

²⁵ Council Directive Proposal COM(2006), 76 final, 2006/0021 (CNS).

²⁶ EC working document TAXUD/D/1D (2005).

of the system (business-to-business (B2B) as well as business-to-consumer (B2C)); and provisions for repayments have been made more business-friendly. A regulation was also enacted to clarify provisions of the Sixth Directive and to ensure greater consistency in its interpretation.²⁷

(b) Excise duties

22. During the period under review, there was no major change to the excise duty system in the EC, which concerns alcoholic beverages, tobacco products, and energy products.²⁸ The base for excise duties has been harmonized throughout the EC, but the rates differ among Member States; while EC legislation establishes their minimum, they are set at national level. EC legislation on excise taxes does not discriminate between EC and non-EC products.

23. There are no limits on what private persons can take with them when they travel between EC countries, as long as the products are for personal use and not for resale. Excise duties and VAT are included in the product price in the Member State of purchase, and no further payment is due in any other Member State.²⁹ Each country can set guide levels for personal use, tobacco and alcohol.³⁰ Travellers who carry a larger quantity of these goods may be asked to prove they are intended for personal use. In May 2004, existing Member States were given the temporary option to set limits for exemptions from excise duties on goods travellers could bring from new Member States. Limits on tobacco products were imposed by Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy (only with respect to Slovenia), Sweden, and the United Kingdom.

24. Travellers entering the EC from a non-EC country may import goods in their personal luggage free of customs duties, VAT, and excise duties within specified limits (Table III.7).

Table III.7
Thresholds for excise duty exemptions on imports (for personal use) from non-EC countries, 2005

Tobacco products	200 cigarettes or 100 cigarillos or 50 cigars or 250 grams of tobacco
Alcoholic drinks	1 litre of spirits over 22 % volume or 2 litres of fortified wine or sparkling wine 2 litres of still wine
Perfume	50 grams
Eau de toilette	250 ml
Other goods	Up to a value of €175 ^{a b c}

a Within that limit, Finland applies a limit of 16 litres of beer per person.

b Member States may reduce this limit to €90 for travellers under 15 years.

c The value of personal effects imported temporarily or re-imported following their temporary export is not be taken into consideration for determining this amount.

Note: In this context, imports are regarded as having no commercial character if they take place occasionally and consist of goods for the personal or family use of the travellers, or of goods intended as presents. The limits laid down in the table above also apply for travellers coming from: the Canary Islands, the Channel Islands, Gibraltar or other territories where VAT and EC excise provisions do not apply.

Source: Directive 69/169/EEC and Article 46 of Regulation 918/83.

²⁷ Council Regulation No. 1777/2005 of 17 October 2005.

²⁸ See WTO (2004), for further details on the EC's excise duty legislation.

²⁹ Council Directive No. 92/12/EEC of 25 February 1992, Articles 8 and 9.

³⁰ Council Directive No. 92/12/EEC of 25 February 1992, Article 9. The guide levels may not be lower than: 800 cigarettes, 400 cigarillos, 200 cigars, 1 kg of smoking tobacco, 10 litres of spirit drinks, 20 litres of intermediate products, 90 litres of wines (including a maximum of 60 litres of sparkling wines), and 100 litres of beer.

25. In February 2006, a proposal was adopted to revise international travel allowances.³¹ The proposal includes an increase to €220 (€500 for air travellers) for goods brought into the EC, other than those specified in the regulations; the abolition of limits on perfume, coffee, and tea; the introduction of limits on the importation of beer; and a prerogative to Member States to reduce limits on tobacco products in order to support health policies. During the period under review, additional regulations were enacted to clarify rules and procedures for cooperation among Member States to ensure compliance with excise duties legislation.³²

(iv) Duty and tax exemptions and concessions

26. During the period under review, there were no changes to the EC legislation on duty and tax exemptions and concessions³³; and no changes are envisioned under the proposed CC. In addition to VAT and excise duty exemptions (section (iii) above), the CC still provides for customs duty relief on account of special circumstances³⁴; on re-imported Community goods; on products fished from the sea by Member State vessels; and on goods re-exported after inward processing under the drawback procedure, or because they are defective, or do not comply with the terms of the contract.³⁵ Furthermore, customs duties are suspended under various customs approved treatments, including: external transit; customs warehousing; inward processing; temporary importation; and free zones and free warehouse.

27. The EC is a signatory to the Convention on Temporary Admission and thus applies the VAT exemptions contained in the Convention.³⁶

(v) Rules of origin

28. EC rules of origin have not changed since its last TPR, nor have the procedures used to establish the origin of imports. Non-preferential rules of origin are contained in the CC and its implementing regulations, and preferential rules of origin in the implementing provision of the CC (for autonomous/non-reciprocal preferences) and the various trade agreements and arrangements concluded by the EC. The provision on cumulation continues to be applied under its three schemes: bilateral, diagonal, and full.³⁷

29. Consultations have been carried out with the private sector and customs offices on the changes to be implemented on preferential rules of origin, with a view to promoting their simplification. A Communication on the future of preferential rules of origin (COM(2005) 100) was adopted as a follow-up to the Green Paper put forward in December 2003. Three broad changes are

³¹ EC Press release IP/06/238 of 27 February 2006; and European Communities (2006).

³² Council Regulation No. 2073/2004 of 16 November 2004 and Council Directive No. 2004/106/EEC of 16 November 2004.

³³ For further details on VAT exemptions, see WTO (2004).

³⁴ Regulation No. 918/83 lists the goods that qualify for duty relief on account of special circumstances. These include personal property by private individuals; goods of negligible value imported by private individuals; articles imported for carrying out activities in the public interest; equipment belonging to a firm moving to the Community; selected products obtained by Community farmers; and tourist information material.

³⁵ CC Articles 124 to 128, and Articles 184 to 188.

³⁶ For further details on the Convention on Temporary Admission, see WTO (2004), Chapter III, footnote 41.

³⁷ For further details on the EC's rules of origin, see WTO (2004). The legal basis for non-preferential rules of origin are contained in Articles 22-27 of the CC, and Articles 35-65 and Annexes 9-11 of the IPC (Commission Regulation No. 2454/93). In the case of preferential rules of origin, the legal basis comprises Article 27 of the CC, Articles 66-123 of the IPC and the preferential agreements and arrangements signed by the EC.

contemplated in the Communication: (i) the replacement of all existing rules (many of which are specific to products and countries), by one, across-the-board rule based on value-added in the beneficiary country (i.e. a threshold of value-added, to be determined, would define origin) subject to an ongoing evaluation of its suitability; (ii) certifications of origin would be replaced by a statement on origin given directly by the exporter, with the appropriate country authorities retaining responsibility for carrying out registration and certification of origin controls; and (iii) enforcement of rules of origin would fall under the responsibility of the competent authorities in the beneficiary country.

(vi) Tariff preferences

30. The CC provides for the possibility of granting preferential tariffs unilaterally, or on a reciprocal basis, through trade agreements (Chapter II(5)(iii)).³⁸ The preferences consist of duty-free access for almost all non-agricultural products, and relatively low tariffs (compared with the MFN levels), generally under quotas (i.e. tariff quotas), on selected agricultural goods.³⁹

(vii) Import prohibitions, restrictions, and licensing

31. The EC implements trade and economic sanctions in accordance with resolutions of the United Nations Security Council (UNSC). For instance, the EC prohibited direct or indirect imports of rough diamonds, as well as round logs and timber products, from Liberia (whether of Liberian origin or not).⁴⁰ Furthermore, the EC has prohibited the importation of rough diamonds from Côte d'Ivoire, whether of Côte d'Ivoire origin or not. The EC has also implemented some other restrictions.⁴¹

32. The EC also restricts trade under treaties and international conventions to which it is a signatory. Since its last TPR, the EC has signed two treaties that may impose restrictive trade measures.⁴² These were: the WHO Convention on Tobacco control, and the Convention on the Conservation of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.⁴³ The EC implemented recommendations by the International Commission for the Conservation of the Atlantic Tunas (ICCAT) to impose trade sanctions upon Bolivia, Cambodia, Equatorial Guinea, Georgia, and Sierra Leone, and to lift sanctions earlier imposed upon Belize, Honduras, and Saint Vincent and the Grenadines.⁴⁴ Following a recommendation by ICCAT, the EC lifted trade sanctions on Cambodia,

³⁸ CC Article 20.

³⁹ See WTO (2004), for further details and an analysis of the EC's preferential trade regime.

⁴⁰ Council Common Position 2006/31/CFSP of 23 January 2006. Council Regulation (EC) No. 234/2004 of 10 February 2004 concerning certain restrictive measures in respect of Liberia and repealing Regulation (EC) No. 1030/2003 OJ L 40, 12.2.2004.

⁴¹ Council Regulation (EC) No. 314/2004 of 19 February 2004 concerning certain restrictive measures in respect of Zimbabwe OJ L 55, 24.2.2004; Regulation (EC) No. 1210/2003 of 7 July 2003 concerning the importation of cultural goods from Iraq; Council Regulation (EC) No. 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment OJ L 200, 30.7.2005; Council Regulation (EC) No. 1859/2005 of 14 November 2005 imposing certain restrictive measures in respect of Uzbekistan OJ L 299, 16.11.2005; Council Regulation (EC) No. 817/2006 of 29 May 2006 renewing the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No. 798/2004 OJ L 148, 2.6.2006.

⁴² For a summary of the treaties and conventions in force at the time of the last Review, see WTO (2004).

⁴³ Council Decision 2004/513/EC of 2 June 2004, and Council Decision No. 2005/75/EC of 26 April 2004.

⁴⁴ Council Regulations (EC) No. 826/2004, No. 827/2004, and NP 828/2004 of 26 April 2004.

Equatorial Guinea, and Sierra Leone.⁴⁵ The EC has also transposed into Community law conservation measures adopted by the Convention on the Conservation of Antarctic Marine Living Resources, which included some trade-related elements.⁴⁶ The EC continues to carry out import surveillance, controls, and prohibitions on, *inter alia*, technical, sanitary, phytosanitary, and environmental grounds. The EC is member of the Kimberley Process; Council Regulation (EC) No. 2368/2002 implemented the Kimberley Process certification scheme.

33. During the period under review the EC made two notifications concerning import licensing procedures.⁴⁷ The EC import licensing system is in place to manage imports of specific products subject to quantitative restrictions, safeguard measures or import surveillance. In addition, certain steel and agricultural products are subject to Community surveillance for statistical purposes, according to the Commission. As regards non-WTO Members, the EC maintains quantitative restrictions on certain steel imports from Russia, Ukraine, and Kazakhstan. Import licences are free.

34. The EC currently maintains 98 tariff quotas, of which 91 are on agricultural products.⁴⁸ These quotas are administered through import licences, and include beef, sheep, goats, chicken, turkey, milk products, eggs, potatoes, fruit and vegetables, wheat, barley, rice, maize, starch, mushrooms, sausages, sugar, and grape juice (Chapter IV(2)(ii)).

35. Following the phase-out of the WTO Agreement on Textiles and Clothing on 31 December 2004, the EC maintains no quotas or double-checking on textiles and clothing imports with WTO Members. However, for ten textile and clothing products originating in China, specific agreed levels have been set until the end of 2007. These ten products, i.e. cotton fabrics, T-shirts, pullovers, men's trousers, blouses, bed linen, dresses, brassieres, table and kitchen linen, and flax or ramie yarn, were subject to the most significant surge of imports into the EC in the first semester of 2005 or were considered sensitive by EC producers. The import quota regime is administered through a double-surveillance licence system, both in China (at the export point) and in the EC (at the import point). The MoU was incorporated into the EC's textile import regime.⁴⁹ Trade in the products not covered by the MoU is to remain unaffected and thus quota free.

36. During the period under review, the EC extended the bilateral agreement with Belarus on trade restrictions on textile and clothing products, including on economic outward processing traffic. The bilateral textile agreement with Ukraine was also extended, but double-checking requirements were ended; double-checking requirements were also ended for Viet Nam and the Russian Federation. A bilateral textile agreement with Serbia suspended all quantitative restrictions. On an autonomous basis, the EC continues to apply quantitative restrictions on imports of textile and clothing products from the Democratic People's Republic of Korea, Montenegro, and Kosovo.⁵⁰ In the light of global liberalization of trade in textile and clothing products, bilateral and other arrangements with Azerbaijan, Bosnia and Herzegovina, Kazakhstan, Laos, Tajikistan, and Turkmenistan and Uzbekistan were no longer extended.

⁴⁵ Council Regulation (EC) No. 919/2005 of 13 June 2005.

⁴⁶ Council Regulation (EC) No. 601/2004 of 22 March 2004.

⁴⁷ WTO documents G/LIC/N/3/EEC/7, G/LIC/N/3/EEC/7/Add.1, G/LIC/N/3/EEC/7/Corr.1, G/LIC/N/3/EEC/8, G/LIC/N/3/EEC/8/Add.1 and G/LIC/N/3/EEC/8/Corr.1.

⁴⁸ Commission Regulation No. 1719/2005 of 27 October 2005.

⁴⁹ Council Regulations No. 1084/2005 and 1478/2005 of 8 July and 12 September of 2005 respectively.

⁵⁰ For further details concerning bilateral agreements that imposed import restrictions, see WTO (2004).

(viii) Contingency trade remedies

37. During the period under review there were no major changes to the basic safeguard regulations applied by the EC on imports from WTO and non-WTO Members.⁵¹ No major changes were made to its basic anti-dumping (AD) legislation⁵²; and legislation on countervailing (CV) measures is unchanged.⁵³ Under EC regulations, imports should not be subject to more than necessary trade remedies. If the Council establishes that the combination of either anti-dumping or countervailing, and safeguard measures could lead to effects greater than "desirable" under the EC's trade defence policy, then the anti-dumping or countervailing measures may be amended, suspended, or repealed (partially/totally); nonetheless, other measures may be imposed if the Council deems it necessary.⁵⁴

(a) Safeguards

38. The phase-out period of the WTO Agreement on Textiles and Clothing ended on 31 December 2004, thus terminating the quota scheme and safeguard mechanism under this regime. The adjustment to the EC's textile safeguard regulations was undertaken in 2003.⁵⁵

39. According to official EC data, during the period 1 January 2004 to 30 September 2006, the EC initiated three safeguard investigations (on certain textile products, frozen strawberries, and farmed salmon), initiated one review of a safeguard measure (citrus fruits), imposed two definitive safeguard measures (on citrus fruits and farmed salmon), and revoked one measure (on farmed salmon).⁵⁶ As at September 2006, there were safeguard measures on citrus fruits, and surveillance measures on footwear and steel products. The safeguard investigation on strawberries was terminated without the imposition of measures. During the period under review, the EC made six safeguard notifications and six supplementary or corrigendum notifications to the WTO Committee on Safeguards⁵⁷; they related to farmed salmon, prepared or preserved citrus fruits and strawberries. In these three cases, the notifications referred only to the initiation of investigations, and to the results of the mid-term review in the case of preserved citrus fruits. The EC notified that it did not apply the temporary tariff quotas (the safeguard measure) on imports of farmed salmon from developing countries as their individual and collective imports were negligible.

⁵¹ Council Regulation (EC) No. 2200/2004 of 13 December 2004 amended Council Regulation (EC) No. 3285/94 by excluding textiles imports from the scope of the regulation, unless they are subject to Council Regulation (EC) No. 517/94, and in general, products from countries listed in Council Regulation No. 519/94. Council Regulation (EC) No. 519/94 of 7 March 1994, as last amended by Council Regulation (EC) No. 427/2003 of 3 March 2003; Council Regulation (EC) No. 517/94 of 7 March 1994, as last amended by Commission Regulation (EC) No. 931/2005 of 6 June 2005 and Council Regulation (EC) No. 3030/93 of 12 October 1993, as last amended by Commission Regulation (EC) No. 1478/2005 of 12 September 2005. See WTO (2004), for further details.

⁵² Council Regulation (EC) No. 384/96 of 22 December 1995, as last amended by Council Regulation (EC) No. 2117/2005 of 21 December 2005. For further details concerning the main AD legislative framework, see WTO (2004).

⁵³ Council Regulation (EC) No. 2026/97 of 6 October 1997, as last amended by Council Regulation (EC) No. 461/2004 of 8 March 2004.

⁵⁴ Council Regulation (EC) No. 452/2003 of 6 March 2003.

⁵⁵ For further details concerning the legal basis of the adjustment, see WTO (2004).

⁵⁶ DG Trade online information. Viewed at: http://europa.eu.int/comm/trade/issues/respectrules/anti_dumping/index_en.htm.

⁵⁷ WTO documents G/SG/N/7/EEC/3; G/SG/N/8/EEC/3 and Suppl.1; G/SG/N/10/EEC/3 and Suppl.1; G/SG/N/11/EEC/3 and Suppl.1 and Suppl.2; G/SG/N/6/EEC/4 and Corr.1, G/SG/N/13/EEC/1; and G/SG/N/6/EEC/2/Suppl.1.

40. The EC also notified the Committee on Safeguards that, since 1 May 2004, EC legislation on safeguards is applicable throughout the new Member States and that all existing previous national legislation lapsed on that date.⁵⁸ Accordingly, all safeguard measures maintained by new EC Member States lapsed, including special safeguard measures (SSGs) on agricultural products.⁵⁹

(b) Anti-dumping (AD) measures

41. The EC's AD legislation was amended in 2004.⁶⁰ The amendment imposed mandatory time limits for completion of review investigations (a target duration of twelve months, with a mandatory maximum of 15 months); amended the decision-making procedures for the adoption of definitive AD measures (a Commission proposal shall be adopted unless the Council decides by a simple majority to reject the proposal; this implies that abstentions count as positive votes); clarified what constitutes anti-circumvention practices, and who has the right to request the initiation of an investigation on circumventing practices; and clarified the rules on the possibility for exporters to be exempted from extended duties when circumvention takes place outside the EC.⁶¹ In general, any resolution concerning the application of AD measures may be challenged in the European Court of First Instance and in the DSB in the case of WTO Members.⁶²

42. According to EC data, from 1 January 2004 to 30 September 2006, 77 AD investigations were initiated and 39 definitive AD measures imposed.⁶³ Furthermore, the EC imposed provisional measures in 26 cases and terminated 18 cases without imposition of measures. The definitive AD measures applied were mostly *ad valorem* duties on specific textiles, chemicals, electronics, processed woods, bicycles, bricks, steel products, hand pallet trucks and their essential parts, trout, salmon, lever arch mechanisms, refrigerators, chamois leather, and plastic sacks and bags. During the same period, the EC made three AD notifications and three addendums or supplementary notifications to the WTO.⁶⁴

43. Most AD rates applied were *ad valorem*, at between zero and 82%. During the period, 40 AD measures expired after the five-year imposition period, 22 were repealed after their review, and 16 lapsed with the accession of the new EC Member States. As at 30 September 2006, 135 definitive measures were in place, of which 39 on imports from China, ten from Russia, and nine each from India and Thailand. The EC also applies AD measures against certain leather shoes from China and VietNam (excluding high-tech sport shoes)⁶⁵; the AD rates are set at 16.5% and 10.0% respectively (7 October 2006).

44. The number of AD notifications by the EC to the WTO has decreased significantly since the late 1990s; notifications of other contingency measures have decreased slightly (Table III.8). In

⁵⁸ WTO document G/SN/N/1/EEC/1/Suppl.2 of 1 November 2004.

⁵⁹ Four new EC Member States were imposing special safeguard measures on agricultural products: the Czech Republic (one), Hungary (two), the Slovak Republic (two) and Poland (three). WTO documents: G/AG/N/CZE/54 of 26 May 2004, G/AG/N/HUN/36 of 5 May 2004, G/AG/N/HUN/39 of 8 February 2005, G/AG/N/POL/61 of 17 February 2004, G/AG/N/POL/64 of 20 September 2004, G/AG/N/POL/65 of 31 January 2006, and G/AG/N/SVK/46 of 20 May 2005.

⁶⁰ Council Regulation No. 461/2004 of 8 March 2004.

⁶¹ For further details on EC anti-dumping procedures, see WTO (2004).

⁶² DG Trade online information. Viewed at: http://europa.eu.int/comm/trade/issues/respectrules/anti_dumping/index_en.htm.

⁶³ DG Trade (2005) and (2006a). Cases concerning several countries are counted as separate investigations/proceedings per country involved.

⁶⁴ WTO documents G/ADP/N/119/EEC and Add.1; G/ADP/N/126/EEC; G/ADP/N/132/EEC; G/ADP/N/1/EEC/2/Suppl.6 and Suppl.7.

⁶⁵ Council Regulation No. 1472/2006 of 5 October 2006.

particular, during 2000-04, the average number of initiations of AD investigations per year was significantly less (at 23), than during 1995-99, as was the average number of definitive measures (at 18).⁶⁶

Table III.8
Contingency measures notified by the EC

	Average 1995-99	2000	2001	2002	2003	2004	2005	2006 ^a
Anti-Dumping								
Initiation of investigations	37	31	27	20	7	29	24	24
Definitive measures	21	40	12	25	3	9	19	11
Countervailing								
Initiation of investigations	6	0	6	3	1	0	2	0
Definitive measures	1	11	0	3	2	2	0	0
Safeguards								
Initiation of investigations	0	0	0	1	2	1	2	0
Definitive measures	0	0	0	1	0	1	1	0

a To 30 September 2006.

Source: WTO Committees on Anti-Dumping Practices, Subsidies and Countervailing Measures, and Safeguards.

(c) Countervailing (CV) measures

45. Countervailing investigations procedures are similar to those for AD.⁶⁷ After accession on 1 May 2004, the new EC Member States' CV measures were replaced by the EC's. According to official data, from 1 January 2004 to 30 September 2006, the EC initiated two new countervailing investigations (on plastic sacks and bags imports from Malaysia and Thailand), and imposed two definitive CV measures (on cotton-type bed linens and graphite electrode systems imports from India), both *ad valorem* duties.⁶⁸ The investigation on plastic sacks and bags from Malaysia and Thailand was terminated without imposition of definitive measures.

46. The EC made five notifications during the period, including one addendum and one corrigendum, to the WTO Committee on Subsidies and Countervailing Measures.⁶⁹ As at September 2006, a total of twelve CV measures were in force, eight on imports from India. Most of the measures were *ad valorem*, at rates ranging from 0% to 32%, and were on chemicals, textiles, some electric systems, some steel products, and antibiotics. Nine CV measures were terminated, all due to automatic expiry after the five-year imposition period.

47. In October 2004, the EC requested consultations concerning alleged U.S. subsidies to its national air-transport industries. The EC considered this type of aid incompatible with the provisions of the SCM Agreement, and with Article III:4 of the GATT 1994. As at mid-2006, the complaint was under review by the Dispute Settlement Body.

⁶⁶ After accession to the EC on 1 May 2005, the ten new Member States' own AD measures lapsed and were replaced by existing EC measures.

⁶⁷ For further details on the EC's basic legislation on countervailing measures, see WTO (2004).

⁶⁸ DG Trade (2005) and (2006a).

⁶⁹ WTO documents: G/SCM/N/113/EEC and Add.1; G/SCM/N/122/EEC; G/SCM/N/130/EEC/Corr.1.

(ix) Technical barriers to trade (TBT)

48. Full harmonization of Standards and technical regulations in the EC has not been achieved.⁷⁰ Products placed on the market of a Member State must comply, where necessary, with relevant national and Community-wide legislation; compliance is established by means of conformity assessment procedures. Product regulations at the Community level are of two main types: those laying down detailed specific technical requirements (old-approach directives), and those limited to the setting up of essential requirements (new-approach directives) defined to meet health, safety, and environmental objectives. Under the new-approach directives, the use of "specific standards" (harmonized standards) confers presumption of conformity to these essential requirements. The new-approach directives cover a wider range of products than the old-approach directives.⁷¹

49. Under the new-approach directives, the manufacturer placing a product on the Community market assumes responsibility for compliance with Community legislation. The manufacturer must affix the "CE" marking on the product to indicate conformity with the applicable EC requirements, without which the product cannot be placed on the Community market. The steps a manufacturer must take in order to affix the "CE" marking depends upon the sector. Conformity assessment of industrial products is carried out by bodies designated by Member States in accordance with the Community procedure for the notification of bodies. However, for many products, the EC accepts the supplier's declaration of conformity of the product to the relevant legislation without any mandatory third party intervention. The harmonized standards, which confer presumption of conformity, are developed by European standardization bodies, i.e. the European Telecommunications Standards Institute (ETSI), the European Committee for Electrotechnical Standardization (CENELEC), and the European Committee for Standardization (CEN).⁷² These bodies have adopted the WTO Code of Good Practice for the preparation, adoption and application of standards.

50. In non-harmonized areas, Member States may legislate to provide increased transparency, and to prevent unjustified restrictions to trade; they are required to notify the European standards organizations of draft standards and the European Commission of draft technical regulations. Furthermore, the EC applies the principle of mutual recognition in the internal market. Hence, goods lawfully produced in one cannot be banned from sale on the territory of another, even if produced to meet technical or quality specifications different from those applied to locally produced goods, except in cases of overriding general interest (such as health, consumer, or environment protection), of which the Commission must be notified.

51. During the period under review, consultations were undertaken to revise the new approach. In particular, the standardization of existing informal requirements in the information and communication technology industry is a main issue. During the consultation process, recommendations were put forward: to continue making extensive use of EC TBT (harmonized regulations); to improve efficiency, coherence and visibility of European standards, and their regulatory framework, including the establishment of institutional mechanisms to finance the standardization process; and to continue to transpose international standards into the EC framework. An Action Plan for European Standardization was developed by the Commission in 2005 to

⁷⁰ See WTO (2004).

⁷¹ See WTO (2004).

⁷² The CEN and the CENELEC develop European standards in a consensual process with national committees (representing the EC Member States, Iceland, Norway, and Switzerland). About 85% of the work of the European standardization bodies is market-driven, with only 15% consisting of standards mandated by the Commission. A CEN standard is estimated to take an average of eight years for final clearance; a CENELEC standard takes three to four years and an ETSI standard over two years. There are plans to reduce these lead times.

implement the recommendations.⁷³ The Commission also presented a proposal to regulate financing of EC standardization, based on different types of grants to the European standardization bodies.⁷⁴

52. Under the WTO TBT Agreement, EC Member States made 54 notifications in 2004, 68 in 2005 and 62 in 2006 (up to October 2006) whilst the EC made 29, 24 and 35 notifications respectively (Table III.9). New regulations were adopted by the EC on civil aviation security, biometric products, laboratory blood tests, bananas, and poultry. All EC Member States have a national enquiry point for TBT requirements on non-harmonized areas.⁷⁵

Table III.9
WTO notifications of technical regulations by the EC and Member States, 1995-06

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006 ^a
Austria	0	0	2	1	2	0	0	0	0	0	0	0
Belgium	17	13	48	49	23	19	26	11	1	0	0	2
Cyprus	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	0	0	0
Czech Republic	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	8	16	5
Denmark	28	15	23	40	27	25	7	6	16	2	2	5
Estonia	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	0	0	1
Finland	4	7	5	5	3	5	3	5	0	2	0	4
France	1	2	15	20	21	7	9	7	14	5	15	6
Germany	2	3	3	3	3	0	0	0	0	2	0	0
Greece	0	0	0	0	0	0	0	0	0	0	0	0
Hungary	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	0	1	2
Ireland	0	0	1	0	0	0	0	0	0	0	0	0
Italy	0	0	0	0	0	0	0	1	2	3	1	0
Latvia	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	0	0	0
Lithuania	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	1	1	1
Luxemburg	0	0	1	2	1	0	0	0	0	0	0	0
Malta	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	0	0	0
Netherlands	33	0	287	91	48	46	40	15	4	7	1	5
Poland	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	0	0	1
Portugal	0	0	0	0	0	0	0	0	0	0	0	0
Slovenia	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	15	9	12
Slovakia	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	1	3	0
Spain	4	7	5	9	9	6	9	12	5	1	0	3
Sweden	5	30	22	18	9	15	8	17	9	7	19	13
United Kingdom	0	0	5	2	5	9	1	4	4	0	0	2
EC	31	46	20	36	34	16	7	17	21	29	24	35
Total	123	123	437	276	185	148	110	95	76	83	92	97

n.a. Not applicable.

a Up to October 2006.

Source: WTO Secretariat.

53. The EC has signed no new mutual recognition agreements (MRAs) since its last TPR. However, amendments are being introduced to some existing MRAs. In other cases, the removal of the requirement for third party certification requirements in the regulations applied by the Parties, for example in electro-magnetic compatibility, has removed the need for an MRA. Once adopted, the amendment to MRA with Switzerland will eliminate the need for formal decisions by the EC and Switzerland to recognize, change the scope of, or withdraw recognition of conformity assessment bodies in cases where both parties agree.⁷⁶ Moreover, Protocols to the Europe Agreements on Conformity Assessment and Acceptance of Industrial Products (PECA) have been agreed with

⁷³ European Commission (2005a).

⁷⁴ COM(2005) 377 final.

⁷⁵ WTO document G/TBT/ENQ/27 of 17 February 2006.

⁷⁶ For details on existing MRAs and their sectoral coverage, see DG Trade Newsletter No. 1, "Mutual Recognition Agreements", February 2006.

Romania and Bulgaria.⁷⁷ Technical meetings were held within the framework of agreements on conformity assessment and acceptance of industrial products (ACAAs) with Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the Palestinian Authority, Syria, Tunisia, and Ukraine. The ACAAs will be bilateral between the EC and the partner country, and will be limited to specific industrial subsectors as appropriate for each partner country; subsectors under discussion include electrical equipment, machinery, gas appliances, pressure equipment, construction products, medical devices, measuring instruments, toys, and pharmaceuticals. Preparatory work for the ACAAs is in the early stage of development. The EC considers ACAAs/PECAs an important pre-accession tool for candidate and potential candidate countries.⁷⁸

(x) Sanitary and phytosanitary (SPS) measures

54. EC legislation on SPS issues is implemented by Member States in coordination with the Commission. The common SPS regime aims to provide EC exporters with technical support in SPS-related issues in third countries; provide technical assistance to developing countries in institutional capacity-building on SPS matters; comply with WTO rules and rulings; and maintain EC SPS legislation in line with international guidelines. The EC and its Member States participate in most committees and task forces in the Codex Alimentarius Commission and other international organizations in the SPS field (World Organisation for Animal Health, International Plant Protection Convention). An EC-wide Community Animal Health Policy was envisaged for 2007; as at October 2006 a review of the policy was still in progress.

55. During the period under review there was only one minor change to the main legislation on food safety.⁷⁹ An amendment was passed to enlarge the Scientific Panel of the European Food Safety Authority (EFSA) so as to include experts in various areas of plant health, e.g. entomology, mycology, virology and bacteriology.⁸⁰ The EFSA remains the principal institution in charge of scientific analysis on all SPS matters at EC level. It focuses on risk assessment, whilst the Commission and Member States are responsible for risk management and the operation of food control systems. Risk assessment is carried out by one of the eight scientific panels on: (i) food additives, flavouring, processing aids, and materials in contact with food; (ii) additives and products or substances used in animal feed; (iii) plant health, plant protection products and their residues; (iv) genetically modified organism; (v) dietetic products, nutrition and allergies; (vi) biological hazards; (vii) contaminants in the food chain; and (viii) animal health and welfare.

56. Several regulations were enacted to implement SPS legislation. An extension of the transitional period to allow for the implementation of collection systems for animal by-products was granted to Cyprus until 1 January 2007; in the meantime, on-site burning of animal by-products is permitted.⁸¹ Another transitional measure was enacted to allow Member States to collect, transport, treat, use and dispose of some foodstuffs as long as these do not come into contact with any animal by-product; the measure is to be in place from 1 January 2006 to 31 July 2007.⁸² The use of organic

⁷⁷ All relevant conformity assessment procedures and requirements concerning Turkey are contained in the Agreement Establishing the Definitive Phase of the Customs Union.

⁷⁸ For further details on the EC's TBT regime, see WTO (2004).

⁷⁹ The main legislation on food safety is Commission Regulation No. 178/2002 of 28 January 2002. For further details, see WTO (2004).

⁸⁰ Commission Regulation No. 575/2006 of 7 April 2006.

⁸¹ Commission Decision 2005/62/EC of 27 January 2005.

⁸² Commission Regulation No. 197/2006 of 3 February 2006.

fertilizer and soil improvers (other than manure) was regulated to, *inter alia*, eliminate the possible use of animal tissues that might contain transmissible spongiform encephalopathy agents.⁸³

57. In order to help its exporters, the EC established data base on "trade-distorting" SPS measures in third countries.⁸⁴ These trade-distorting SPS measures relate to, *inter alia*, bovine spongiform encephalopathy, highly pathogenic avian influenza, certification, foot-and-mouth disease, food additives, classical swine fever, and listing of establishments. Under Article 7 of the Annex B to the WTO SPS Agreement, the EC and its Member States (EC-25) made 107 notifications in 2004, 44 in 2005 and eleven in 2006 (up to October 2006). Of these, eight (including addendums) were emergency SPS measures (Table III.10).

Table III.10
EC's emergency SPS measures

G/SPS/N/EEC/234	Temporary suspension of imports from Thailand of fresh meat of poultry, ratites, farmed and wild feathered game, poultry meat products and meat preparations consisting or containing meat of the above mentioned species, of raw material for pet food production obtained from poultry and of eggs for human consumption.	29 January 2004
G/SPS/N/EEC/235	Temporary suspension of imports from Cambodia, Indonesia, Japan, Laos, Pakistan, China (including Hong Kong), Korea, Thailand, and VietNam of fresh meat of poultry, ratites, farmed and wild feathered game, poultry meat products and meat preparations consisting or containing meat of the above mentioned species, of raw material for pet food production obtained from poultry and of eggs for human consumption.	9 February 2004
G/SPS/N/EEC/238	Temporary suspension of imports from the United States of live birds other than poultry including those accompanied by their owner, live poultry, ratites, farmed and wild feathered game birds and hatching eggs of these species and of fresh meat of poultry, ratites, wild and farmed feathered game, meat preparations and meat products consisting of, or containing meat of those species and of eggs for human consumption in response to an avian influenza outbreak in the United States (HS: 0105, 010631 to 010690, 0207, 0407, 0408, 1601, 160220 to 160239).	26 February 2004
G/SPS/N/EEC/240	Temporary suspension of imports of live birds other than poultry including those accompanied by their owner, live poultry, ratites, farmed and wild feathered game birds and hatching eggs of these species and of fresh meat of poultry, ratites, wild and farmed feathered game, meat preparations and meat products consisting of, or containing meat of those species and of eggs for human consumption in response to an avian influenza outbreak in Canada (HS: 0105, 010631 to 010690, 0207, 0407, 0408, 1601, 160220 to 160239).	24 March 2004
G/SPS/N/EEC/242	Suspension of imports of jelly mini-cups containing additives E 400, E 401, E 402, E 403, E 404, E 405, E 406, E 407, E 407a, E 410, E 412, E 413, E 414, E 415, E 417 and/or E 418 (ICS: 67.220). These additives present choking hazards.	7 April 2004
G/SPS/N/EEC/255	Suspension of imports of chemically defined flavouring substances for use in foodstuffs (ICS 67.220.20). These substances do not meet EC technical requirements.	16 February 2005
G/SPS/N/EEC/257	Suspension of imports of fruits of <i>Capsicum spp.</i> dried and crushed (CN 090420-90), curry powders (CN 091050), curcuma (CN 091030) ICS: 67.220.10 (spices and condiments) and palm oil (CN 15111090). These substances have been found to be carcinogens.	30 March 2005
G/SPS/N/EEC/277	Suspension of imports of chemically defined flavouring substances for use in foodstuffs (ICS 67.220.20, spices and condiments) and foodstuffs containing them. These substances do not meet EC technical requirements.	13 December 2005

Source: WTO documents.

58. Council Directive 2002/99/EC of 16 December 2002 deals with, *inter alia*, the prevention of the spread of transmissible diseases to animals, and veterinarian certification of animal products

⁸³ Commission Regulation No. 181/2006 of 1 February 2006 and 780/2004 of 26 April 2004.

⁸⁴ The database is available at: <http://mkacddb.cec.eu.int/sps/index.html>. See WTO (2004), for further details on the SPS requirements and procedures for animal products exports.

intended for human consumption. Several regulations established procedures for the implementation of the principal legislation on health concerning animal by-products not intended for human consumption. Several annexes were amended⁸⁵, i.e. Annex II, on hygiene requirements for the collection and transport of animal by-products; V, on the general hygiene requirements for the processing of animal by-products; VI on specific requirements for some animal by-products and for biogas and composting plants; VIII, on the requirements to place pet food, dog chews and technical products on the EC market; and XI, the list of countries from which animal by-products, not intended for human consumption, may be imported. In particular, imports of blood products from ungulates and other types (except from equidae) from Japan are now allowed as are imports of animal by-products for pharmaceutical use from Japan, the Philippines and Chinese Taipei.

59. The prohibition on certain substances having hormonal action for growth promotion has remained into force.⁸⁶ An amendment was introduced to the legislation on plastic materials and articles intended to come into contact with food.⁸⁷ Certain monomers were added to the Community list of permitted substances, as were some additives to the list monitored by EFSA after new information on their safety was made available. Also, the specific migration limit was reduced for PVC gaskets containing epoxidised soybean oil (ESBO), which are used to seal glass jars containing baby-food.

60. The restriction on the importation of Brazilian nuts in shells from Brazil has remained in place.⁸⁸ The Commission extended controls on Sudan dyes (Sudan I, II, III, and IV) to include imports of curcuma and virgin palm oil, as well as chilli, chilli products, and curries that may contained such dyes.⁸⁹ These dyes are not found naturally in food and have been classified as carcinogens by the International Agency for Research on Cancer.⁹⁰ As a consequence, EFSA and Member States have carried out systematic toxicological reviews on dyes since mid 2005.⁹¹ Council Directive 2005/94/EC sets out preventive and control measures relating to the surveillance, early detection, and control of avian influenza.

(xi) Government procurement

61. Total public procurement within the EC-25 in 2004 represented 16% of its GDP. The EC public procurement regime aims to increase competition and transparency, and to create opportunities, better quality, and valued services.⁹² During the period under review three new pieces of legislation were enacted which, as at mid 2006, provided the legal basis for public procurement procedures within the EC. Directive No. 2004/18/EC of 31 March 2004 consolidated, under one directive, the previous provisions on public work contracts, public supply contracts, and public services contracts. Directive N° 2004/17/EC of 31 March 2004 established public procurement procedures for specific sectors, i.e. water, energy, transport, and post services. These directives repealed existing legislation. Commission Decision No. 2005/15/EC set the rules for the applicability of Article 30 of Directive

⁸⁵ Commission Regulations: No. 92/2005 of 19 January 2005, 93/2005 of 19 January 2005, 416/2005 of 11 March 2005, 2067/2005 of 16 December 2005 and 208/2006 of 7 February 2006.

⁸⁶ See WTO (2004), for a description of EC legislation on the ban of the use of hormones for growth promotion purposes.

⁸⁷ Commission Directive 2005/79/EC of 18 November 2005.

⁸⁸ For a description of these restrictions, see WTO (2004).

⁸⁹ DG Health and Consumer Protection, Press release IP/05/385 of 4 April 2005.

⁹⁰ Commission document MEX/04/0121, on *Midday Express*, 21 January 2004.

⁹¹ Commission briefing MEMO/05/154, 11 May 2005.

⁹² SIMAP online information. Viewed at: http://simap.eu.int/A/2330efb7-0aab-b34c-04c0377ccce3f48d_en.html.

No 2004/17/EC. The main objectives of the new directives were to simplify the legal framework, to make it more flexible, and to adapt it to the electronic era.

62. The new directives introduced the following principal changes: (i) framework agreements (an agreement between one or more contracting entities and one or more suppliers, the purpose of which is to establish the terms governing contracts to be awarded during a given period of time); (ii) rules for selective tendering with negotiations; (iii) rules for a dynamic purchasing system based on open tendering (a wholly electronic system for commonly used goods/services); (iv) the possibility to reserve contracts to sheltered workshops and businesses where 50% or more of the labour force are disabled persons; (v) the possibility to have recourse to central purchasing bodies; (vi) clarifications on the use of social and environmental issues; (vii) mandatory exclusion of candidates under certain circumstances; and (viii) the use of electronic auctions. The procedures stipulated in the Directives are applied when the value of the purchase is at or above specified thresholds (Table III.11). Otherwise, the procedures followed are based on national law and principles stipulated in the EC Treaty such as non-discrimination, equal treatment, transparency, mutual recognition, and proportionality.

Table III.11
Minimum thresholds, mid 2006^a
(euros)

	Supplies	Services	Works
Public contracts, other than for utilities			
EC GPA contracting authorities	137,000	137,000	5,278,000
Other public sector contracting authorities	211,000	211,000	5,278,000
Contracts subsidized more than 50% by the contracting authority ^c	n.a.	211,000	5,278,000
Service designs contests:			
Central government authorities	n.a.	137,000	n.a.
Other authorities	n.a.	211,000	n.a.
Specific sectors ^d	n.a.	211,000	n.a.
Utilities^b			
All Sectors, except service design contests	422,000	422,000	5,278,000
Service designs contests	n.a.	422,000	n.a.

n.a. Not applicable.

a Threshold amounts do not include VAT.

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

c Contracts that are subsidized 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.

d Specific sectors refer to telecommunications (CPC Reference No. 752) and research and development.

Source: Commission Regulation (EC) No. 2083/2005 of 19 December 2005, amending Directives 2004/17/EC and 2004/18/EC.

63. Under the new Directive 2004/18, open and restricted procedures may be used at the authorities' discretion, whereas the Directive provides for an exhaustive list of the cases justifying the use of the negotiated procedure with a prior public notice (for instance, in exceptional cases, when the nature of the purchase does not permit prior overall pricing) and without public notice (such as when, for technical or artistic reasons, the contract may be awarded only to a particular operator). Competitive dialogue is to be used when the contract is particularly complex and cannot be awarded under the open or selective procedure. A contract is deemed to be "particularly complex" where the procuring entities cannot objectively define the technical means capable of satisfying their needs or are not objectively able to specify the legal and financial make-up of the project. Contracts for utilities may be awarded under open, restricted, or negotiated procedures. Given that, in the utilities

Directive, procuring entities may choose between open, restricted or negotiated procedure at their own discretion, it was not deemed necessary to introduce more flexibility (and thus a competitive dialogue).

64. The new directives provide for non-discriminatory treatment to suppliers across the EC and that procuring entities act in a transparent manner. However, to guarantee employment opportunities for handicapped workers, Member States may reserve certain contracts to businesses in which the majority of employees are handicapped. Public procurement contracts must be awarded either on the basis of the lowest price or the economically most advantageous tender. Procuring entities shall inform candidates and tenderers as soon as possible of decisions relating to the award of a contract, and, upon request, shall provide the reasons for their decisions (rejection of tenders, non-admittance to a dynamic system or rejection of a framework agreement); this information must be provided within 15 days from receipt of the written request.

65. For utility markets, i.e. water, energy (including exploration), transport, and postal services, which can be verified to be competitive (with open entry), procurement contracts may be exempted from the procedure set out in Directive 2004/17.⁹³ Exposure to competition is assessed on the basis of objective criteria, taking account of the specific characteristics of the sector concerned.⁹⁴ Furthermore, the new Directives provide for the exclusion of several types of contract from their scope for various reasons, such as defence, security, provision or exploitation of public telecommunication networks, provision of utilities by joint-ventures formed by procuring entities but not entirely subsidized by them, the acquisition or rental of land or other immovable property, arbitration and conciliation, employment, research and development where results accrue exclusively to the procuring entity, and services supplied under exclusive rights.⁹⁵

66. Specific measures to enhance competition in procurement were also introduced, e.g. online auction bidding (e-auctions). This type of auction can be used at the authorities' discretion if all aspects of the contract can be fully specified. Also, a completely electronic system of purchases of "commonly used" goods and services, called Dynamic Purchasing System, may be set up following open procedure rules. These measures are expected to increase the level of competition and efficiency in public procurement across the EC.

67. During the period under review, there were no changes to the provisions on procedures to appeal a purchasing authority's decision and damage award payments.⁹⁶ The EC is a signatory to the WTO Government Procurement Agreement (GPA): all EC Member States provide national treatment for goods or suppliers from the GPA signatory countries. During the period under review, the EC made one notification to the Committee on Government Procurement concerning its new thresholds.⁹⁷ In the framework of the ongoing review of the WTO GPA, the EC plays an active role; it has tabled several submissions on the text to the GPA Committee, as well as an initial offer.

68. According to Eurostat data, procurement advertised in the *Official Journal*, represented between 2.5% and 3.6% of GDP between 2001 and 2004 (Table III.12), 16.1% of total procurement in the EC-25 (€287.7 billion approximately).

Table III.12
Open procurement indicators, 2002-2004

⁹³ Directive 2004/17/EC, Article 30.

⁹⁴ Commission Decision 2005/15/EC.

⁹⁵ Directive 2004/17/EC, Articles 18-22, and Directive 2004/18/EC, Articles 10-16, 57 and 68.

⁹⁶ Council Directives 92/13/EEC and 89/665/EEC of 25 February 1992 and 21 December 1989 respectively. For further details, see WTO (2004).

⁹⁷ WTO Document GPA/W/295/Add.5, 30 January 2006.

	Value of procurement published in the OJ as a percentage of gross domestic product			Value of procurement published in the OJ as a percentage of total public procurement		
	2002	2003	2004	2002	2003	2004
Belgium	2.40	2.65	2.54	15.49	16.84	16.10
Czech Republic	n/a	n/a	0.37	n/a	n/a	1.43
Denmark	2.74	2.36	2.73	15.07	12.82	16.61
Germany	1.28	1.84	1.17	7.34	10.61	7.49
Estonia	n/a	n/a	2.86	n/a	n/a	21.65
Greece	5.76	4.97	4.13	39.79	35.25	36.43
Spain	3.04	3.59	2.99	22.83	26.71	21.61
France	3.16	3.80	2.78	20.49	23.76	16.15
Ireland	2.39	2.40	3.34	18.54	19.00	27.77
Italy	2.25	2.74	2.36	19.55	22.40	16.25
Cyprus	n/a	n/a	1.28	n/a	n/a	10.39
Latvia	n/a	n/a	1.77	n/a	n/a	10.80
Lithuania	n/a	n/a	2.28	n/a	n/a	18.95
Luxembourg	2.02	2.23	3.33	13.04	14.22	18.51
Hungary	n/a	n/a	1.29	n/a	n/a	6.50
Malta	n/a	n/a	0.32	n/a	n/a	1.64
Netherlands	1.90	1.80	1.76	8.55	7.94	7.47
Austria	2.50	2.65	3.27	15.70	16.49	19.74
Poland	n/a	n/a	2.58	n/a	n/a	16.18
Portugal	2.59	2.47	2.52	19.85	18.66	16.69
Slovenia	n/a	n/a	1.66	n/a	n/a	9.19
Slovakia	n/a	n/a	2.79	n/a	n/a	11.12
Finland	2.28	2.58	2.95	14.03	15.15	17.38
Sweden	3.92	3.70	3.40	20.10	19.10	18.89
United Kingdom	3.89	7.44	4.70	22.61	40.52	25.29
Total	2.64	3.58	2.68	16.59	21.88	16.11

Source: Eurostat (2006). *Public procurement advertised in the Official Journal*. Viewed at: epp.eurostat.cec.eu.int.

69. During 2004-05, the Commission handled 49 cases of infringement of the public procurement regime at EC level, up from 39 cases in 2002-03.⁹⁸

(3) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Registration and documentation

70. During the period under review, registration procedures and documentation for exports from the EC changed in accordance with its stricter security-related policy. All exports, except those put under the outward processing or transit procedures, must undergo specified procedures.⁹⁹ EC Regulation No. 648/2005 of 13 April 2005 established, amongst other things, that exporters are required to submit pre-departure information to Customs offices for risk analysis. This information may be submitted electronically or at the border office. Export procedures are to be facilitated for reliable traders, i.e. authorized economic Operators (AEO) (for further details on AEA see section (2)(i) above). The proposed Customs Code streamlines export procedures, including security-related declarations. Moreover, the EC's e-Customs initiative to implement a paperless customs

⁹⁸ SIMAP online information. Viewed at: http://europa.eu.int/comm/internal_market/public_procurement/infringements_en.htm.

⁹⁹ CC Article 161. For further details on export registration and documents, see WTO (2004).

environment, includes the Automated Export System project to implement inter-operability, and electronic exchange of export-related information between Member States (see also section (2)(i)).¹⁰⁰

71. Agreements with the United States established further documentation procedures for EC exports to the United States in particular, under the Container Security Initiative. Also, the World Customs Organization established a new general framework for security-related customs procedures in 2005.¹⁰¹ The elements set out in that framework have been incorporated in the CC and should be fully implemented between 2007 and 2009.

(ii) Export taxes, charges and levies

72. The EC does not apply taxes, charges or levies on exports (mid 2006).

(iii) Export prohibitions, restrictions, and licensing

73. During the period under review, there was no change to the EC's export regime, including export restrictions, except for the entry into force of a new regulation controlling the import and export of certain equipment that could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.¹⁰² Under existing regulations, exports are not subject to any quantitative restrictions. However, Member States may impose export restrictions, including export authorizations, on a temporary basis. Exports restrictions may not be imposed on agricultural products covered by common organizations of markets or processed agricultural products covered by regulations within the framework of Article 308 of the EC Treaty. Exports restrictions may be imposed by the Council, upon recommendation by the Commission based upon a request from a Member State. General rules for export of cultural goods from the Community are laid down in Council Regulation No. 3911/92.

74. The EC continued to impose prohibitions on arms exports within the scope of the Common Foreign and Security Policy (CFSP), which supplement the arms export licensing schemes applied by its Member States. Since its last TPR, the EC has adopted and amended several arms embargoes to implement UN Security Council Resolutions concerning e.g. Democratic Republic of Congo, Côte-d'Ivoire, Lebanon, and Sudan.¹⁰³ The embargoes cover the sale of arms, ammunition, military vehicles and equipment, paramilitary equipment, and spare parts. In the framework of the CFSP, restrictions can also be imposed on exports of goods other than arms and related materiel, in particular internal repression equipment. The UN arms embargoes are supplemented by other similar measures applied by the EC as regards Burma-Myanmar, Uzbekistan, and Zimbabwe. On the other hand, the EC lifted its arms embargoes against Libya in October 2004 and Bosnia and Herzegovina in January 2006. The EC also started consultations on the possibility of lifting its arms embargo against China.

¹⁰⁰ EC (2004).

¹⁰¹ WCO (2005).

¹⁰² Council Regulation (EC) No. 1236/2005. For further description of the main EC legislation on export restrictions, see WTO (2004).

¹⁰³ The following EC documents establish the arms sale prohibitions (as at October 2006): Common Position (CP) 1998/409/CFSP, CP 2002/402/CFSP; CP 2002/960/CFSP, CP 2003/495/CFSP, CP 2004/161/CFSP, CP 2005/440/CFSP, CP 2005/411/CFSP, CP 2005/792/CFSP, CP 2006/30/CFSP, CP 2006/31/CFSP, CP 2006/318/CFSP, CP 2006/625/CFSP. The following Regulations ban exports of internal repression equipment: Regulation (EC) No. 314/2004, Regulation (EC) No. 174/2005, Regulation (EC) No. 817/2006, Regulation (EC) No. 1859/2005.

75. There was no major change to the legislation governing dual-use items and technology during the period under review.¹⁰⁴ The Commission adopted a regulation to update Annexes I and IV of Regulation (EC) No. 1334/2000 (list of exports, and intra-EC transfers, of dual-use items and technology) to accommodate international treaties signed by Member States.¹⁰⁵

76. As at April 2006, the EC maintained export licences under the common market organization as well as under tariff-quota commitments with trading partners. An overview of products requiring export licences is provided in the EC's online customs tariff database (Taric).¹⁰⁶

(iv) Export subsidies

77. The EC provides export subsidies based on the provisions laid down in the individual common market organization for the product in question. For milk and milk products, for example, these are laid down in Council Regulation (EC) No. 1255/1999 of 17 May 1999. Export refunds are granted through the management committee for the product concerned.

78. During the period under review, the following products received export subsidies: wheat and wheat flour, coarse grains, rice, sugar, butter and butter oil, skim milk powder, cheese, other milk products, beef meat, pig meat, poultry meat, eggs, wine, fruits and vegetables (fresh), fruit and vegetables (processed), alcohol, and "incorporated products" (Chapter IV (2)(ii)). With the exception of those for coarse grains and sugar, they are mostly direct export subsidies. In value, export subsidies notified by the EC represent approximately 90% of all the WTO Members' notified export subsidies. The Commission indicates that the overall level of export subsidies granted by the EC is likely to fall, due to market reforms and the declining number of products eligible for such subsidies.

79. According to the Commission, the EC continues to base its position on the 2004 Framework Agreement and the Ministerial Declaration adopted in Hong-Kong, China, in December 2005, which stipulates that WTO Members agree to ensure the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect by the end of 2013.

(v) Export assistance

80. During the period under review, there were no changes to EC rules on assistance in the form of publicly provided export credits, insurance or guarantees.¹⁰⁷ All export assistance is provided at the Member State level, and is based on texts and principles elaborated mainly within the framework of the OECD. The EC has been a party to the OECD arrangement on guidelines for officially supported export credits since 1978. The EC undertook consultations with Brazil (along with other OECD members) with a view to establishing an understanding on export credit for civil aircraft.

¹⁰⁴ For further description of the legislation on dual-use goods and technologies, see WTO (2004).

¹⁰⁵ The new list of items under control since 11 April 2006 can be found in the Council Regulation No. (EC) 394/2006 published in *Official Journal* L 74, dated 13 March 2006. An updated list of national measures implemented in conformity with EC Regulation 1334/2000 has been published in the *Official Journal* C 270, dated 29 October 2005.

¹⁰⁶ Taric online information. Viewed at: http://ec.europa.eu/taxation_customs/common/databases/taric/index_en.htm.

¹⁰⁷ See WTO (2004), for a description of EC rules on export assistance.

(vi) State-trading enterprises

81. During the period under review, the EC notified the WTO that no state-trading enterprises in the meaning of GATT Article XVII existed in the EC.¹⁰⁸

(4) MEASURES AFFECTING PRODUCTION AND TRADE**(i) State-owned enterprises**

82. State-owned enterprises (SOEs) abound throughout the EC and participate in various activities (Table AIII.2). Many of these SOEs are actively engaged in trade, including in energy and utilities. In general, their portfolios of operations vary along with the degree of public ownership and the level of the public institutions that own them, i.e. states, municipalities, other SOEs. EC rules regarding companies do not make any distinction based on ownership structure. As established by Article 86 of the EC Treaty, the competition rules and the prohibition of discrimination on the grounds of nationality apply fully to state-owned enterprises.

83. No EC regulations provide guidelines for activities carried out by EC SOEs, apart from those normally established for any business. There are no legal community restrictions on SOEs' activities, apart from those common to all firms.

84. According to an OECD study, the privatization of EC SOEs produced mixed results as most have not achieved the level of competitiveness initially envisioned.¹⁰⁹ Some of the issues mentioned were: government influence on the internal decisions of the partly privatized SOEs, and in some cases, internal decisions remaining highly sensitive to political pressures; the business culture of many SOEs remaining civil-service oriented; a lack of a clear distinction between the roles of the State as regulator and as owner of a competing business; and the loss of government guarantees in favour of SOEs – this loss has made private investment in those companies more risky, thus raising the cost of capital. These factors have contributed to the under-performance of many partly privatized SOEs, in terms of profit margins, returns on equity and on investment, compared with competing private enterprises.

(ii) Competition policy and regulatory issues

85. During the period under review, there were no major changes to the legal basis with regard to the main areas of competition policy in the EC, i.e. anti-trust issues, mergers, monopolies and state aid. The fundamental principles in competition law are stipulated in Articles 4, 16, 36, 73, and 81-89 of the EU Treaty. Pursuant to Article 4 of the Treaty, EC Member States are required to adopt economic policies "in accordance with the principle of an open market economy with free competition". In general, competition policy in the EC seeks to enforce regulations on anticompetitive practices, enhance competitiveness throughout the EC, and address anticompetitive problems in liberalized sectors. In particular, enforcement is focused on eliminating cartels and abuses of dominant position. Efforts are being made to enforce regulations on mergers that have cross-border implications, and to rectify decisions that lead to incompatible state-aid as well as its reimbursement.

¹⁰⁸ G/STR/N/8/EEC; G/STR/N/9/EEC; G/STR/N/10/EEC; G/STR/N/11/EEC, of 11 October 2006.

¹⁰⁹ OECD (2005b). A survey conducted by the OECD on mostly EC SOEs concluded that governance within the SOEs was not entirely transparent. The questionnaire upon which this survey was based was sent to countries in the European Economic Area and Canada (OECD, 2005d).

(a) Anti-trust

86. EC basic anti-trust legislation remains unchanged.¹¹⁰ The Treaty prohibits anti-competitive agreements between undertakings that may affect trade between Member States¹¹¹, except for those exempted as being beneficial on balance to economic efficiency and consumer interest.¹¹² The exemption applies automatically to any agreement satisfying the relevant criteria; therefore, the Commission no longer grants individual exemption decisions. The Commission can also grant block exemptions, based on Article 81(3) of the Treaty.

87. The Commission has revised its rules on access to files by parties involved in anti-trust cases (and mergers).¹¹³ The revision clarifies both the extent and exercise of the right to access such files. In 2005, the Commission began a review of Article 82 of the EC Treaty (abuse of dominant position in the market) and its exclusionary effects, i.e. anti-competitive behaviour that tends to drive competitors out of the market. To this end, it published a discussion paper on exclusionary abuses in December 2005.¹¹⁴ The paper deals with the general framework for analysis of exclusionary abuses, and proposes an approach for five main categories of abuse, i.e. predation, single branding, rebates, tying and bundling, and refusal to supply; it proposes to move to an economic-effects-based approach. The review process expected to conclude with the issuing of guidelines in 2007 or 2008.

88. The Commission has initiated an in-depth inquiry, expected to conclude early 2007, into the electricity and gas markets due to possible restrictions or distortions to competition.¹¹⁵ Several outstanding issues were found, including high levels of market concentration, vertical foreclosure, lack of market integration at EC level, lack of transparency, and non-competitive prices (e.g. price distortions though regulated tariffs set at relatively low levels). Initiatives are currently under consideration to address these concerns (October 2006) through, *inter alia*, competition advocacy (need for further regulation, including structural adjustments) and enforcement of EC competition law both at the EC and national levels.¹¹⁶ The Commission also initiated a review to examine the level of competition in retail banking (including its payment networks) and in insurance services; the enquiry conclusions were expected by end 2006.¹¹⁷

89. The enforcement of anti-trust regulations is carried out by the Competition DG in coordination with national authorities. In fact, Article 15 of Council Regulation N° 1/2003 requires national competition authorities to transmit information and submit copies of judgements to the

¹¹⁰ Anti-trust legislation is governed by the EC Treaty and Council Regulation No. 1/2003 of 16 December 2002, as amended by Council Regulation No. 411/2004 of 26 February 2004.

¹¹¹ No definition of these undertakings is provided by the Treaty; however, the term is understood to encompass a wide range of legal forms, including companies, partnerships, cooperatives, nationalized industries, and other kinds of public corporations, and individuals engaged in the production and distribution of goods and services.

¹¹² Article 81(1) 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, for further obligations unrelated to the subject of the contract. Article 82 prohibits, as incompatible with the common market, the abuse of a dominant position, without exception.

¹¹³ Commission Notice 2005/C 325/07 of 22 December 2005.

¹¹⁴ DG Competition (2005). Further information on the Article 82 review is available on: DG Competition online information. Viewed at: http://ec.europa.eu/comm/competition/antitrust/others/article_82_review.html.

¹¹⁵ DG Competition (2006a).

¹¹⁶ DG Competition (2006c).

¹¹⁷ DG Competition, Press release IP/05/719 of 13 June 2005.

Commission; the information is available online. Moreover, the network of competition authorities liaises on anti-trust surveillance with the Competition DG.

90. Since October 2005, new rules have been applied to the motor vehicle industry, as location clauses, contained in vertical agreements between manufacturers and car dealers, no longer benefit from the block exemption under Regulation 1400/2002. The clauses, which had limited dealers from opening outlets, even within the EC, were intended to provide an adjustment period after the new rules came into force in 2002.¹¹⁸ In a separate case, a €9.5 million fine was imposed on Peugeot for obstructing exports of new cars from the Netherlands to other EC Member States during 1997-03.¹¹⁹

91. A Regulation on a new block exemption for air transport was adopted by the Commission on 2 October 2006.¹²⁰ The regulation phases out previous exemptions for consultations on slot allocations and on passenger tariffs for intra-EC flights with a sunset period until 31 December 2006. Consultations on passenger tariffs for flights between the EC and third countries benefit from an exemption subject to a reporting requirement. In maritime transport, the block exemption allowing liner shipping companies to enter into consortium agreements covering the regular and scheduled transport of cargo, chiefly by container, to or from one or more EC ports has been prolonged until 25 April 2010.¹²¹ This exemption covers joint services of liner shipping consortia with a market share below 35%. Exempted activities include: fixing timetable or ports of call, the exchange, sale or cross-chartering of space or slots, pooling vessels, use of joint operation officers, provision of containers, use of computerized data, temporary capacity adjustments, use of port terminals, participation in cargo, revenue or net revenue pools, and joint marketing and related activities. The block exemption for liner shipping conferences has been repealed on routes to and from the EC. By October 2008, after a two-year transitional period, liner shipping conferences will have to be abolished on these routes. The scope of the competition enforcement rules, Regulation 1/2003, has been extended to tramp shipping.¹²²

92. As part of the Lisbon Agenda, the review of institutional constraints (within the EC) has continued on professional services, i.e. lawyers, notaries, architects, engineers, pharmacists, and accountants. The review found that national regulations and/or conventions were allowing some forms of anti-competitive practice in the exercise of these professions, i.e. price fixing, restrictive advertising regulations, high entry requirements, and reserved rights and regulations constraining governing business structure and multi-disciplinary practices. Moreover, the review found progress in some EC Member States towards eliminating disproportionate restrictions to competition, although much work needs to be done to reduce the effects of anti-competitive practices in the Community.¹²³

93. Open consultations were launched on a policy document aimed at identifying the main obstacles to a more efficient system of damages claims by individuals or companies that suffer losses due to infringement of EC anti-trust laws.¹²⁴ The policy document also set out different options and possible actions to improve such damages actions, which had been found to in "total underdevelopment"; obstacles such as access to evidence and quantification of damages had been

¹¹⁸ DG Competition, Press release IP/05/1208 of 30 September 2005.

¹¹⁹ DG Competition, Press release IP/05/1227 of 5 October 2005.

¹²⁰ Regulation 1459/2006, OJ L272 of 3.10.2006 p.3.

¹²¹ Commission Regulation No. 611/2005 of 20 April 2005; Press release IP/05/477 of 25 April 2005.

¹²² IP/06/1249 of 25/9/2006.

¹²³ COM (2005) 405 final.

¹²⁴ DG Competition, Press release IP/05/1634 of 20 December 2005 and COM(2005) 672 final.

highlighted.¹²⁵ The consultations were completed in spring 2006, and the results were published on the Commission's website.¹²⁶

94. The total number of anti-trust cases decreased from 262 in 2003 to 158 in 2004 and 105 in 2005.¹²⁷ The number of cases initiated by the Commission decreased from 97 in 2003 to 58 in 2004 and 39 in 2005; and the number of cases closed increased from 319 in 2003 to 391 in 2004, to decrease to 244 in 2005. Five decisions were taken by the Commission against unlawful horizontal agreements in 2005, with €683 million imposed in fines.

(b) Mergers

95. The EC's regulation on merger control seeks to avoid a situation in which competition is significantly impeded, in particular by the creation or strengthening of a dominant position, as a result of mergers and acquisitions.¹²⁸ Under the Merger Regulation, the Commission assesses proposed concentrations on the basis of whether a dominant position is created or strengthened. In general, the Commission only examines mergers with a Community dimension, i.e. mergers that would create business with a worldwide turnover of €5 billion and a Community-wide turnover of €250 million. Such mergers must be notified to the Commission before they are put into effect. Most cases are approved within the initial scrutiny period of 25 days.

96. The guidelines established by the EC for horizontal mergers did not change during the period under review.¹²⁹ The specifications for the determination of the relevant market for purposes of merger regulations also remained unchanged. Specific guidelines on vertical mergers are under consideration. During the period under review, the Commission published three notices to clarify and specify issues related to EC merger regulations.¹³⁰ These dealt with the rationale for referral of some merger deals for Commission scrutiny, and the clauses related and necessary to concentration in merger deals, particularly on intellectual property rights, as well as simplified procedures in cases not suspected of competition concerns.

97. The number of mergers notified to the Commission increased from 212 in 2003 to 249 in 2004 and 313 in 2005.¹³¹ The Commission took 246 final decisions in 2004 and 308 in 2005; of these, 7 cases in 2004 and 5 in 2005 required in-depth investigations. Ten transactions were approved in 2004 and six in 2005, with only one block in 2004.

¹²⁵ COM(2005) 672 final.

¹²⁶ European Commission online information. Viewed at: http://ec.europa.eu/comm/competition/antitrust/others/actions_for_damages/gp_contributions.html.

¹²⁷ Competition DG (2006b).

¹²⁸ The main regulation governing merger control in the EC is Council Regulation No. 4064/89, 21 December 1989. It was revised by Council Regulation No. 139/2004 of 20 January 2004, implemented by Commission Regulation No. 802/2004 of 7 April 2004. For further details, see WTO (2004).

¹²⁹ For a description of the horizontal guidelines, see WTO (2004). The guidelines were published in *Official Journal*, OJ C 31/5 of 5 February 2004.

¹³⁰ Commission Notices 2005/C 56/02, 2005/C 56/03 and 2005/C 56/04, all of 5 March 2005.

¹³¹ DG Competition online information. Viewed at: <http://europa.eu.int/comm/competition/mergers/cases/>.

(c) State aid

98. In 2006, the EC adopted new guidelines on regional aid provided by its Member States (national regional aid).¹³² The new 2007-13 guidelines cover aid such as direct investment grants and tax reduction for companies. State aid under these new guidelines covers four areas: geographic areas with below the EC average GDP per capita (27.7% of the EC population)¹³³, "statistical-effect" regions (3.6% of total EC population), economic development and low population density areas (4.0%), and other areas to which additional discretionary funding is allocated under Article 87(3)(c) of the EC Treaty (6.7% of the EC population). The guidelines include a safety provision to ensure that no EC Member State loses more than 50% of its previous entitlement. State aid to areas with below the EC average GDP per capita varies between regions where average GDP per capita is less than 75% of the EC average, and regions where it is less than 45% of the EC average. In general, EC policy aims to assist Member States in better targeting state aid so that it is conducive to the objectives of the Lisbon Agenda.

99. New guidelines were also adopted to provide help to companies in financial difficulty.¹³⁴ The new guidelines clarify how state aid supports a rescue and restructuring operation in favour of individual firms. In particular, the guidelines establish new minimum thresholds of financial burden the companies themselves must bear: 50% for large companies, 40% for medium-size undertakings and 25% for small enterprises. The guidelines establish an across-the-board ten year limit for such aid. Moreover, the Commission enacted two other regulations.¹³⁵ The first establishes transparency requirements concerning the financial relations between Member States and public business, and specifies the public undertakings required to maintain separate accounts from those of the State. The second regulation sets procedures for granting state aid in the form of public service compensation for businesses providing services of general economic interest.

100. Block exemption regulations currently apply to state aid to small and medium-size enterprises, for training and for employment.¹³⁶ In mid 2006, the Commission was considering an extension of notification exemption to 2013 for *de minimis* state aid totalling €150,000. This aid would apply to all sectors, except road transport, primary agricultural production and fisheries.

101. In 2005, the latest year for which data are available, there were around 764 registered cases relating to state aid; 84 of these were initiated by the Commission. There were 21 cases found to be incompatible with the internal market principles. In 2004, around €62 billion were granted throughout the EC in state aid (excluding aid to railways), representing about 0.6% of EC GDP.¹³⁷ In 2004, state aid (excluding aid to railways) varied widely between Member States, from 0.4% of GDP or less in Belgium, the Czech Republic, Estonia, Greece, Latvia, Luxemburg, the Netherlands and the United Kingdom, to 1.5% or more in Cyprus, Malta, Poland, and Finland (Table III.13). In terms of state aid granted (excluding aid to agriculture, fisheries, and transport), Estonia, Lithuania, and Latvia accounted for the lowest levels (0.09%, 0.13% and 0.16% of GDP respectively), and Malta, Cyprus,

¹³² The guidelines cover regional aid for investment, operations (in exceptional circumstances) and creation of new small enterprises (Commission Notice 2006/C 54/08, published in the *Official Journal*, OJ C 54/13 of 4 March 2006). For further details on the previous guidelines, see WTO (2004).

¹³³ Statistical-effect regions are those with less than 75% of the EC-15 average GDP per capita but more than 75% of the EC-25 GDP per capita.

¹³⁴ Commission Notice 2004/ C 244/02, Published in the *Official Journal*, OJ C 244/2 of 1 October 2004.

¹³⁵ Commission Directive No. 2005/81/EC of 28 November 2005 and Commission Decision 2005/842/EC of 28 November 2005.

¹³⁶ See WTO (2004), for further details on block exemptions.

¹³⁷ COM (2005) 624 final of 9 December 2005, *State Aid Scoreboard – Autumn 2005 update*.

and Poland for the highest (2.71%, 1.06% and 1.01%). Germany granted the highest amount of aid (€7 billion), followed by France (€9 billion) and Italy (€7 billion). Sector-wise, around 65% of state aid was channelled to manufacturing activities and various service subsectors, some 24% to agriculture and fisheries, 9% to coal, and 2% to transport (Table III.13). There are wide differences in sectoral allocation of state-aid across Member States. For example, in Estonia and Lithuania 24% and 16% of their state-aid was granted to manufacturing (respectively), and 76% and 81% to agriculture; in Italy and the United Kingdom sectoral allocation was almost exactly the opposite.

Table III.13
State aid in the EC, 2004

Country	Total aid as % of national GDP		% of total aid by sector ^a							Total aid (€million)
	Excluding railways	Excluding agriculture, fisheries and transport	M	S	A	F	C	T	OM	
Austria	0.61	0.22	32	4	63	0	0	0	0	1.427
Belgium	0.34	0.24	65	4	26	0	0	2	2	972
Cyprus	1.48	1.06	35	24	29	0	0	0	12	184
Czech Rep.	0.41	0.19	37	5	47	6	4	0	0	352
Denmark	0.71	0.52	71	2	20	1	0	6	0	1.375
Estonia	0.39	0.09	24	0	76	0	0	0	0	35
Finland	1.66	0.38	22	1	74	0	0	3	0	2.483
France	0.54	0.39	54	7	26	1	10	2	0	8.915
Germany	0.78	0.69	66	4	12	0	18	0	0	17.236
Greece	0.29	0.20	66	3	28	2	0	0	1	473
Hungary	1.26	0.87	63	1	31	0	5	0	0	1.015
Ireland	0.65	0.27	33	8	58	0	0	0	0	951
Italy	0.52	0.40	72	5	16	2	0	6	0	7.037
Latvia	0.39	0.16	25	15	60	0	0	0	0	44
Lithuania	0.68	0.13	16	0	81	1	0	0	3	122
Luxemburg	0.31	0.17	48	8	45	0	0	0	0	78
Malta	3.10	2.71	87	0	13	0	0	0	0	134
Netherlands	0.39	0.18	47	0	45	0	0	8	0	1.813
Poland	1.47	1.01	51	0	31	0	17	0	1	2.873
Portugal	1.09	0.83	13	61	24	1	0	0	2	1.475
Slovenia	0.96	0.53	46	1	45	0	6	0	2	250
Slovakia	0.64	0.63	98	0	2	0	0	0	0	212
Sweden	0.99	0.80	75	4	12	0	0	7	2	2.745
United Kingdom	0.32	0.25	71	0	18	2	1	2	6	5.442
EC-25	0.60	0.44	59	5	23	1	9	2	1	61.617
EC-15	0.57	0.43	59	5	22	1	9	2	1	56.410
10 new M.S.	1.09	0.70	53	2	33	0	11	0	1	5.207

a M: manufacturing; S: services (including tourism, finance, media and cultural services); A: agriculture; F: fisheries; C: coal; T: transport, excluding railways; and OM: other non-manufacturing.

Note: Due to rounding of figures, the percentages of total aid by sector do not generally add up to 100.

Source: COM (2005) 624 final, *State Aid Scoreboard*; and calculations by the WTO Secretariat.

102. In 2004, around half of EC Member States awarded more than 90% of their state aid for non-sector specific objectives. Excluding allocations to agriculture, fisheries and transport, around 76% of EC state aid (€34.6 billion) was aimed at horizontal objectives (an increase of 7% over the 2000-02 period). The four main objectives were environment and energy savings (25% of total aid), regional economic development (18%), research and development (12%) and medium and small enterprises (12%). During 2002-04, grants were the main instrument of state aid to the manufacturing and services sectors (47.9% of total state aid), followed by tax exemptions (32.4%); guarantees accounted for 10.3%, soft loans represented 5%, tax deferrals 3.1%, and equity participation 1.3%.

More than 800 measures were covered by block exemptions relating to state aid to medium and small enterprises, employment, and training.

103. Transitional periods for new Member States are still in place.¹³⁸ During 2002-04, Bulgaria and Romania, both set to accede to the EC in January 2007, awarded annual state aid of around €65 million (0.36% of GDP), and around €81 million (1.35% of GDP) respectively.¹³⁹ Moreover, an extension was granted until 31 March 2005 for the provision of temporary state aid of up to 6% of the contract value for the construction of liquefied natural gas ship-carriers on the grounds of alleged unfair competition from Korean shipyards.¹⁴⁰

(iii) Intellectual property rights

104. There was no major change to EC intellectual property legislation during the period under review.¹⁴¹ The intellectual property rights (IPR) regime in the EC is governed by both Community-wide legislation and legislation in the Member States, Member States' legislation takes into account Community legislation, and commitments under international agreements, including the European Patent Convention, World Intellectual Property Organization (WIPO) conventions and treaties, and the WTO TRIPS Agreement. Intellectual property legislation is considered fundamental to the achievement of the Lisbon objectives.

(a) Industrial property

Trade marks and industrial designs

105. The accession of the EC to the Madrid Protocol took effect on 1 October 2004. Trade mark owners from Member countries of the Madrid Protocol are able to designate the EC in their application for international trade mark registration. If not refused by the Office for Harmonization in the Internal Market (OHIM), protection is effective in all 25 EC Member States as if it had been applied for or registered directly with OHIM. The owners may also use a trade mark application filed or registered at OHIM as the basis for an international application under the Madrid Protocol.¹⁴² The Commission also enacted a Regulation to amend rules for the implementation of existing EC trade-mark legislation.¹⁴³ This amendment introduced procedural changes and addressed, *inter alia*, the division of applications and of registrations of trade marks, the revocation of decisions, the improvement and clarification of the opposition procedure, and the specific nature and means of the electronic submission procedure.

106. The Commission put forward a proposal to amend Council Regulations Nos. 6/2002 and 40/94 to give effect to the EC's accession to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs.¹⁴⁴ The Commission presented another proposal to amend Directive 98/71/EC on legal protection of designs.¹⁴⁵ This proposal prohibits legal protection of designs for component parts of a complex product used to restore an original appearance. In effect, it is intended to harmonize the internal market through full liberalization of the market for spare

¹³⁸ For further details on the transitional arrangements see WTO (2004).

¹³⁹ COM (2006) 130 final of 27 March 2006, *State Aid Scorecard- Spring 2006 update*.

¹⁴⁰ Council regulation No. 502/2004 of 11 March 2004, amending Council Regulation No. 1177/2002 of 27 June 2002.

¹⁴¹ See WTO (2004), for further details on EC legislation on IPRs.

¹⁴² For further details on the EC's accession to the Madrid Protocol, see WTO (2004).

¹⁴³ Commission Regulation No. 1041/2005 of 29 June 2005.

¹⁴⁴ COM (2005) 689 final of 22 December 2005.

¹⁴⁵ COM (2004) 582 final of 19 September 2004.

parts.¹⁴⁶ The European Economic and Social Committee (EESC) published an opinion reinforcing the aforementioned view and stated that to do otherwise would lead to a *de facto* product monopoly on the secondary market.¹⁴⁷ The EESC also stated that the proposal for legislation would benefit from a clearer demonstration of its compatibility with the WTO TRIPS Agreement.

107. Application fees payable to the Office for the Harmonization in the Internal Market (OHIM) for trade mark protection have been lowered¹⁴⁸; the fee for Community trade mark (CTM) protection was lowered from €70 to €00, whilst the CTM registration fee was reduced from €1,100 to €850. The CTM renewal fee was reduced from €2,500 to €1,500; a special discount of €150 may be granted if the process is done electronically. These reductions were possible as the OHIM increased productivity and efficiency by streamlining procedures, reducing bureaucracy, implementing an austere financial management plan, cooperating with Member States' intellectual property authorities, and introducing new information technology.¹⁴⁹

108. During 2002-05, total trade mark applications registered with the OHIM increased at an annual average rate of 9%, with designs increasing significantly after 2003 (Table III.14).

Table III.14
Statistics on trade marks and designs, 2000-06

	2000	2001	2002	2003	2004	2005	2006 ^a
Trade marks							
Applications	57,377	48,903	45,218	57,666	58,862	58,666	16,706
Registered trade marks	34,752	38,528	35,883	34,302	34,432	59,725	17,997
Opposition to trade marks	11,500	12,879	9,802	9,939	10,721	17,311	3,462
Cancelled and surrendered	53	93	104	145	142	150	84
Designs							
Single applications	..	..	..	4,998	6,884	8,382	1,573
Multiple applications	..	..	..	5,470	7,187	8,425	1,632

.. Not available.

a Up to 31 March 2006.

Source: Office for Harmonization of the Internal Market online information. Viewed at <http://oami.eu.int/en/office/stats.htm>.

Patents

109. Procedures for filing patents can be carried out at the national and international levels.¹⁵⁰ Within the Community, 7.2% of patents filed were estimated to be worth more than €10 million, and 16.8% a value higher than €3 million. About 68% of the patents yield less than €1 million, and 8% less than €30,000.¹⁵¹ The Commission launched a review of its patent policy, as part of a general effort to harmonize the internal market, by focusing on three main issues: possible introduction of a Community patent, improvements to the current system, and the determination of possible areas for harmonization.¹⁵² Further to a comprehensive consultation exercise launched on 16 January 2006, a public hearing on the contemplated reforms was held on 12 July 2006. More than 2,500 submissions were received; the results of both the consultation and the hearing will be reflected in an action plan likely to be adopted by the end of 2006.

¹⁴⁶ COM (2004) 582 final, pp. 10.

¹⁴⁷ *Official Journal* 2005/ C 286/03 of 17 November 2005.

¹⁴⁸ Commission Regulation N° 1687/2005 of 14 October 2005.

¹⁴⁹ Commission, Press Release IP/05/1289 of 17 October 2005.

¹⁵⁰ See WTO (2004), for a description of the procedures at these levels.

¹⁵¹ DG Internal Market (2005).

¹⁵² Commission, Press Release IP/06/38 of 16 January 2006.

110. The proposal for a single EC patent was originally presented in 2000 and a common political approach was reached in 2003.¹⁵³ Disagreement over translation requirements and jurisdictional issues has so far prevented final agreement on the introduction of the EC patent. Another pending issue was the reform of the European Patent Convention, to which the EC is not party, while all of its Member States are. Some of these Member States have been engaged in the establishment of a European Patent Litigation Agreement (EPLA); three issues need to be addressed before they become party to such an Agreement: the text of the Agreement would have to be brought into line with EC legislation, the relationship with the EC Court of Justice would have to be clarified, and a mandate would have to be granted by the Council to the Commission to take part in the ongoing negotiations (with a possible view of EC accession to the EPLA).¹⁵⁴ EC legislation covers some of the areas under consideration in the ongoing EPLA negotiations, e.g. Council Regulation No. 44/2001 on recognition and enforcement of judgements, and Directive No. 2004/48/EC on enforcement of intellectual property rights through civil procedures.

111. In 2005, a proposal for legislation concerning the patentability of computer-implemented inventions failed.¹⁵⁵ The proposal aimed to harmonize the provisions of national patent law dealing with inventions that rely on computers for their performance.

112. Regulation No. 816/2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems was adopted on 27 May 2006. With this Regulation, the EC has created a legal basis for the granting of compulsory licences for export purposes, as foreseen by the WTO General Council Decisions of 30 August 2003 and 6 December 2005.¹⁵⁶

113. According to information compiled by the Trilateral website of the European Patent Office (EPO), the Japanese Patent Office, and the United States Patent and Trade Mark Office, the proportion of patents by bloc of origin remained stable during 2003-04 (Table III.15); the EPO received 116,791 patent applications in 2003 and 123,706 in 2004. First-time applicants to the EPO originating in European Patent Convention Member States (as opposed to applicants that first applied for patent protection at national level) represented around 24% of all direct patent applications to EPO. A large share of the applications related to electricity- and physics- based technologies (around 39% of all patent applications).

Table III.15
Patent applications at the European Patent Office by bloc of origin, 1998-04
(Per cent)

Year	EPO States	Japan	United States	Others
1998	50	17	29	4
1999	50	16	28	5
2000	49	17	28	5
2001	49	18	28	6
2002	50	15	28	6
2003	50	16	27	7
2004	50	17	26	8

Source: The Trilateral Offices online information. Viewed at: www.trilateral.net.

¹⁵³ See WTO (2004), for further details.

¹⁵⁴ European Commission (2006f).

¹⁵⁵ Common Position (EC) No. 20/2005 of 7 March 2005.

¹⁵⁶ European Commission, Press Release IP/06/550 of 28 April 2006.

114. The Community Plant Variety Office received 2,517 applications in 2003, 2,656 in 2004 and 2,733 in 2005, as well as 1,701, 1,867 and 2,178 titles respectively; most of the applications and titles corresponded to ornamental varieties (around 65% of all applications and 63% of all titles).¹⁵⁷

115. In 2005, the Commission adopted a report on patents related to gene sequence and on the patentability of inventions concerning stem cells.¹⁵⁸ The Commission has not taken a position on Member States' interpretations on the preferable type of protection for gene sequence, nor has it taken a definitive position on the patentability of embryonic pluripotent stem cells (those capable of becoming other cells, excluding human beings); the report concludes that (as at 2005), further harmonization in this area could not be provided. On the other hand, totipotent stem cells (those capable of evolving into a human being), are excluded from any consideration on moral grounds.

(b) Geographical indications

116. Council Regulation No. 510/2006 of 20 March 2006 repealed Council Regulation N° 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, as a consequence of a Panel Report by the Dispute Settlement Body (DSB) on the protection of trade marks and geographical indicators by the EC.¹⁵⁹ The new legislation, i.e. Council Regulation No. 510/2006, addressed the following issues: (i) clarification and simplification of the registration procedure (ii) a better definition of responsibilities between Member States and the Commission; (iii) the need to clarify that the provisions under Council Regulation No. 2081/92 on equivalence and reciprocity did not apply to GIs corresponding to geographical areas located in other WTO Members; (iv) opening registration directly to producer groups in third countries and not through their national administration; and (v) clarifying the procedures concerning amendments to specifications, objections, or cancellation in the event of failure to respect specifications.¹⁶⁰

117. The EC maintains a shortlist of regional quality products. However, the list has not been updated since 2004; and thus, does not yet contain geographical indications from the new Member States.

(c) Copyright and related rights

118. In 2005, the Commission made a recommendation on collective cross-border management of copyright and related rights for legitimate online music services.¹⁶¹ The recommendation brought forward two options that could foster EC-wide licensing of digital music and an invitation to strengthen national legislation for the management of legitimate online services, as well as the relationship between collective rights managers, on the one hand, and right holders or commercial users, on the other hand. It also provided general guidelines for dispute settlement, accountability, and distribution of royalties.

¹⁵⁷ CPVO online information. Viewed at: <http://www.cpvo.eu.int/>.

¹⁵⁸ Commission Press release IP/05/960 of 18 July 2005.

¹⁵⁹ See WTO (2004), for a detailed description of the EC legislation on the protection of geographical designation of origin and indications. The DSB report on the EC's protection of trade marks and geographical indications followed complaints lodged by the United States and Australia (WT/DS174 and WT/DS290). The DSB report was adopted on 20 April 2005.

¹⁶⁰ COM(2005) 698 final/2. Brussels.

¹⁶¹ Commission Recommendation 2005/737/EC of 18 May 2005.

(d) Enforcement

119. Commission Regulation No. 1891/2004 of 21 October 2004 lays down provisions to implement Council Regulation No. 1383/2003, which concerns IPR enforcement at the EC's external borders. It established, amongst other things, definitions of who may represent holders of a right, as well as proof of ownership of an IPR; it also set time limits and procedures for the exchange of information between Member States and the Commission.¹⁶² On 26 April 2006, the Commission adopted a proposal for a directive of the European Parliament and the Council on criminal measures aimed at ensuring IPR enforcement. The proposed measures are aimed at establishing more effective alignment of criminal law, and improving European cooperation. The Council and European Parliament have started the discussion of such a proposal.¹⁶³

120. According to data from the Commission, trade in counterfeited and pirated goods has increased significantly since 2003.¹⁶⁴ The number of articles seized in 2004 totalled 103.5 million, an increase of 12% with respect to 2003 and almost 1,000% with respect to 1998. At 22,311, the number of procedures in 2004 were more than double those of 2003. In 2004, most intercepted goods were of mass-production type, e.g. 41.6 million cigarettes, 18.5 million audio CDs, games, software, DVDs, etc., and 18.1 million toys and games. In 2004, most IPR infringements concerned trade marks (74% of all cases) and copyrights and related rights (14%); a large share of the articles seized came from the People's Republic of China (54% of all articles). The total value of the seized goods was estimated at over a € billion.

121. Directive 2004/48/EC on IPR enforcement was adopted on 29 April 2004; it had to be transposed by Member States by 29 April 2006. The directive, based on "good practice" found in Member States laws, brought national legislation on sanctions and remedies closer into line across the EC. Member States were also required to appoint national correspondents to cooperate with other Member States and the Commission. Enforcement in the new Member States also produced significant results. For example, during the first quarter of 2004, approximately 300,000 face and body lotions were seized in Hungary, 10,000 car parts in Malta, 400,000 batteries in Lithuania, and Estonia intercepted eleven shipping vessels full of counterfeit clothes. According to official data, in 2004, most of the counterfeited and pirated articles in the new Member States were seized in Hungary, Slovenia, and the Czech Republic.

122. The significant increase in counterfeited and pirated articles confiscated at the EC borders since 2003 prompted the Commission to adopt a short-term plan.¹⁶⁵ This includes: the creation of a business-Customs working group to consider possible further EC counterfeiting regulations; the creation of a task force of Member State experts to improve anti-counterfeiting controls; the creation of a new electronic system of secure real-time data transmission; the promotion of further memoranda of understandings with trade representatives (e.g. airlines) in order to improve exchange of information; and the promotion of an amendment to the WTO TRIPS Agreement with a view to motivating exporting countries to apply anti-counterfeiting measures.

123. In November 2004, the Commission adopted a strategy to improve IPR enforcement in third countries.¹⁶⁶ The strategy proposed the identification of priority countries and the implementation of measures such as technical assistance, awareness raising, and political dialogue. The EC is also

¹⁶² This is Council Regulation 1383/2003 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 (OJ L 328 , 30/10/2004 pp. 0016 – 0049).

¹⁶³ COM(2006) 168 final of 26.04.2006.

¹⁶⁴ Taxation and Customs Union online information. Viewed at http://europa.eu.int/comm/taxation_customs/customs/customs_controls/counterfeit_piracy/index_en.htm.

¹⁶⁵ Commission Press release IP/05/1247 and MEMO/05/364 both of 11 October 2005.

¹⁶⁶ Commission Press release IP/04/1352 of 10 November 2004.

reviewing the IPR chapter of its bilateral agreements to address enforcement concerns, and has appointed IPR experts in the EC delegations in various third countries. In 2005, it launched a survey covering IPR enforcement in some 40 countries; the results of the survey were announced in October 2006.¹⁶⁷

¹⁶⁷ The survey was viewed at: http://ec.europa.eu/trade/issues/sectoral/intell_property/survey2006_en.htm.