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Aspects of the European Community's Industrial Policy

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In recent years, the debate on industrial policy has assumed considerable proportions within the European Community. This debate, though, is not confined to the Community, where a variety of conceptions of the role of the authorities in the industrial sphere coexist. It has taken on an external dimension, analogous to the debate between the United States and Japan, particularly on issues such as industrial targeting.

This article does not provide an exhaustive description of all aspects of the European Community's industrial policy, but instead analyzes its foundations and its objectives and the relative importance of the various means of attaining these objectives. This approach demonstrates the difference between the power and aims of industrial institutions in the Community and the power and aims of industrial institutions in the individual European states and in the major competitor countries of the Community, the United States, and Japan.

I. BACKGROUND TO THE INDUSTRIAL POLICY OF THE EUROPEAN COMMUNITY

The Treaty of Rome,¹ which established the European Economic Community (EEC), makes no mention of industrial policy as a field for specific intervention.² This does not mean that the Community does not consider industrial development

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The authors write strictly in their personal capacities. Their opinions may not be attributed to the Commission of the European Communities.

1. Treaty Establishing the European Economic Community, March 25, 1957, 298 U.N.T.S. 11 (1958) [hereinafter cited as EEC Treaty].

2. This article does not deal with questions relating to the coal and steel industries, which fall within the purview of the Treaty Establishing the European Coal and Steel Community, April 15, 1951, 261 U.N.T.S. 140 (1957) [hereinafter cited as ECSC Treaty]. This Treaty confers special powers on the Commission for dealing with problems in both sectors.

to be one of its chief objectives, but rather, that it intends such development to be based mainly on private initiative and believes that intervention by the authorities should effect only the general environment in which firms operate. Articles 2 and 3 of the Treaty of Rome provide:

The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it.³

For the purpose set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein

(a) the elimination, as between Member States, of customs duties and of quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;

(b) the establishment of a common customs tariff and of a common commercial policy towards third countries;

(c) the abolition, as between Member States, of obstacles to freedom of movement for persons, services and capital;

(d) the adoption of a common policy in the sphere of agriculture;

(e) the adoption of a common policy in the sphere of transport;

(f) the institution of a system ensuring that competition in the common market is not distorted;

(g) the application of procedures by which the economic policies of Member States can be coordinated and disequilibria in their balances of payments remedied;

(h) the approximation of the laws of Member States to the extent required for the proper functioning of the common market;

(i) the creation of a European Social Fund in order to improve employment opportunities for workers and to contribute to the raising of their standard of living;

(j) the establishment of a European Investment Bank to facilitate the economic expansion of the Community by opening up fresh resources;

(k) the association of the overseas countries and territories in order to increase trade to promote jointly economic and social development.⁴

These articles, describing the Community's basic objectives and the means by which they are to be attained, help explain the Community's stand with respect to industrial affairs. Until an industrial common market is a reality and Member States' policies are less divergent, any interventionist action will only marginally influence firms.

Compared with their American and Japanese counterparts, European firms are relatively disadvantaged by the environment in which they operate. First, while the Community's "domestic" market is larger than that of Japan or the U.S., it is much less homogeneous. This is evidenced by regulatory disparities, differing systems of standards reflected in different product specifications or higher administrative costs, and differing tax systems. Altogether these differences result in

3. EEC Treaty, *supra* note 1, at art. 2.

4. *Id.* at art. 3.

what a report commissioned by the European Parliament has termed the cost of a non-united Europe.⁵ Frontier formalities alone cost Community firms an estimated 12,000 million European Currency Unit (ECU) per year.⁶ Second, the legal and fiscal environment of the European Community places as many handicaps on European companies as on their non-European competitors. Examples of these handicaps include the lack of a single European legal structure, the lack of harmonized tax arrangements, and the fact that it is often impossible to set off losses and profits between companies in the same group which are located in different Member States. All these adverse factors have had a very real effect: cooperation between European firms has been, and still is, limited.

The fact is that since the Community's inception, industrial structures in Europe have evolved much more by the approximation of national structures than by interpenetration. Community policies have affected industry much more by improving the conditions for its development in individual Member States than by creating industrial sectors which are European in the proper sense. There is nothing paradoxical about this. Such is the imbalance between the Community's power to act in the industrial sphere and the power possessed by the Member States and their chief competitors.⁷

These preliminary points enable the reader to identify both the nature and priorities of Community action in the industrial sphere. By its nature, EEC industrial policy is noninterventionist. Concepts such as industrial targeting are of no significance at the Community level. The priorities of Community action in the industrial sphere relate chiefly to the environment in which firms operate. The goal is to remove the handicaps on European industry relative to its competitors.

The Communication to the Council of Ministers of the Community in 1981 entitled *A Community Strategy to Develop Europe's Industry* summarizes the principles underlying action taken by the Commission of the European Communities in the industrial domain.⁸ The Communication stresses the need for a

5. See Albert and Ball, *Towards the Recovery of the European Economy in the 1980s* (July 7, 1983) (unpublished report presented to the European Parliament).

6. Commission's Communication to the Council, *Evaluation of the Functioning of the Internal Market*, 1983 COM 80 final. The ECU was established as an accounting unit by Council Reg. 3180/78, 21 O.J. EUR. COMM. (No. L 379) 1 (1978). One ECU equals approximately U.S. \$.83.

7. Public expenditures in aid of industry vary between one and three percent of gross national product depending upon the country; the entire Community budget, 70 percent of which goes to agriculture, is less than 1.5 percent of gross domestic product. Of the 30 percent of the budget accounted for by "nonagricultural" expenditure, only a small fraction goes to industry; the bulk of it goes to regional and social policies. Recent calculations have established that expenses directly related to industry amount to less than two percent of the Community's total budget.

8. Commission's Communication to the European Council, *Community Industrial Strategy*, 1983 COM 150 final. The European Council is the name given to regular meetings of the leaders of the Member States' governments. It is not a Community institution as such. For a discussion of the importance of an effective Community industrial policy in the context of its external economic policy, see Davignon, *THE FUTURE OF WORLD TRADE: FREEDOM OR PROTECTIONISM?* 35 (1983). For a more general analysis of national industrial strategies in the international context, see the contributions by Hager, *Industrial Policy, Trade Policy, and European Social Democracy*, in *NATIONAL INDUSTRIAL STRATEGIES AND THE WORLD ECONOMY* 236 (J. Pinder ed. 1982); Pinder, *Causes and Kinds of Industrial Policy*, in *NATIONAL INDUSTRIAL STRATEGIES AND THE WORLD ECONOMY*, *supra*, at 41; Pinder, *Policy and the International Economy*, in *NATIONAL INDUSTRIAL STRATEGIES AND THE WORLD ECONOMY*, *supra*, at 265.

European industrial strategy to promote economic recovery in the Community. The objectives of this proposed strategy and the means by which they are to be attained provide a perfect illustration of the kind of action that the Commission is able to take in the industrial sphere.

The objectives are: first, to promote recovery in productive investment in the Community; second, to create all the conditions necessary to improve the competitiveness of European firms; and third, to supplement existing, defensive actions with future-oriented policies designed to capitalize on the Community's common market.

The Community has taken action in the industrial sphere in specific sectors, of which perhaps the best known examples are shipbuilding, textiles, motors, and machine tools.⁹ But the documents describing these schemes clearly show that they are not "sectoral plans." Rather, they are examples of the application of "horizontal" or general policies to particular sectors. Through these schemes the Commission intends to use the policy tools under its control in a manner suitable to the specific circumstances of particular sectors.

II. ACTION AFFECTING THE COMMUNITY'S ECONOMIC AND FINANCIAL ENVIRONMENT

It is clear to the Commission that the paramount requirement for restoring the competitive capacity of Community industry is a recovery in productive investment.¹⁰ It bases this view on the serious decline in the rate of investment over the last ten years. This decline, although it has affected all large industrial countries, has been particularly serious for the Community because of the relative obsolescence of its production facilities. The Commission has proposed a number of steps to increase investment. The Commission's objective is to improve the macroeconomic climate in order to restore investor confidence and make long term decision making feasible, to create conditions which will improve the propensity to invest, and to make possible improvements in firms' competitiveness and profitability.

Suggested methods for attaining these objectives include recommendations to the Member States designed to harmonize their economic policies according to

9. In view of the severe crisis through which the shipbuilding industry was, and still is, passing, the Community aimed to use competition and control of government aid to ensure that uncoordinated or inconsistent action by national governments did not aggravate the problems. The textile industry presented different problems. Given the tendency of individual countries toward protectionism because of the strength of international competition in the industry, it was important to achieve orderly trade relations with the countries that are the chief exporters to the Community. This was accomplished through the so-called Multi-Fiber Textile Agreement. See Arrangement Regarding International Trade in Textiles, 25 U.S.T. 1001, T.I.A.S. 7840 (extended). It was also necessary to make certain that the international arrangements were accompanied by sufficient efforts to rationalize the industry's structures within the Community. For the motor and machine tool industries, where Community manufacturers face very stiff competition from Japan, the main objective was to obtain a sufficiently clear picture of developments in the industry and of its future potential, so as to more closely align the structures of these industries with the trend of general economic developments. Work on all these points was brought together in 1982 and 1983, and a review of all these aspects now makes it possible to take stock of the present shape of the industrial policy of the European Community.

10. Commission's Communication to the Council, *Initiatives for Promoting Investment*, 1983 COM 641 final.

guidelines laid down by the Commission and specific proposals for attaining specific objectives. For example, based on a critical review of existing arrangements in Member States, the Commission has devised what it believes to be the most effective fiscal and financial measures for improving the propensity to invest and has called upon the Member States to choose the most suitable methods for their situations.¹¹ The Commission has also suggested that measures are needed to extend the common market in certain fields. For example, further development of the European Monetary System, promotion of the role of the ECU,¹² and further financial integration within the Community are still needed.¹³

III. ACTION AFFECTING THE COMMUNITY LEGAL AND FISCAL ENVIRONMENT

During the first phase of the construction of a united Europe, production structures in the Member States evolved primarily on a national basis. In most Member States there were multiple amalgamations which resulted in the creation of a small number of large groups in industries where economies of scale are of paramount importance. At the national level, it is difficult for this process to be taken beyond its present stage. The Europe-wide group is, therefore, the next logical step, since it would provide the market size and homogeneity needed for firms to operate efficiently. As the table below demonstrates, however, cooperation between firms in different Community countries has been limited.

Cooperation Between Firms in the Community (Examples of Successes and Failures)

Sectors	Successes	Failures
Electronics and Computers	Olivetti-Hermès	Unidata Saint-Gobian-Bull Olivetti
Aircraft and Space	Airbus Industrie & Ariane-Espace	
Chemicals	Agfa-Gevaert Akzo-Enka	
Energy	Eurodif	
Automobiles	Iveco	Fiat-Citroën
Tires		Dunlop-Pirelli
Steel		Estel-Hoogovens VFW-Fokker

11. Commission's Communication to the Council, *Tax and Financial Measures in Favor of Investment*, 1983 COM 218 final.

12. The European Monetary System was established by Council Reg. 3181/78, 21 O.J. EUR. COMM. (No. L 379) 2 (1978).

13. Commission's Communication to the Council, *Financial Integration*, 1983 COM 207 final.

This poor record induced the Commission to make the facilitation of cooperation between firms in the Community the subject of one of its schemes for improving business competitiveness.¹⁴ The various proposals now being discussed are not new, indeed some are more than ten years old. The emphasis placed on their importance to the economy, however, is new. These proposals include a number of directives which, if adopted, would remove certain tax obstacles to cooperation and would lead to harmonization of tax arrangements relating to mergers and similar arrangements. Furthermore, the Commission has proposed the creation of a flexible legal structure, the European Cooperation Grouping, to facilitate a variety of agreements between firms.¹⁵

The maintenance of undistorted competition, one of the fundamental principles of a free market economy, lies at the heart of the European Community. It is also a fundamental instrument of Community industrial policy.¹⁶ Thus, Articles 85 and 86¹⁷ of the EEC Treaty lay down basic rules governing the conduct of public and private undertakings within the Community, and attempt to balance the legitimate desire of undertakings to cooperate in the effective use of production factors and the need to ensure that economic efficiency and the interests of consumers do not suffer. If consumers are to reap the benefits of competition, firms must be encouraged to adopt new production methods or techniques which will enable them to cut costs as well as to market new or better quality products.

14. Commission's Communication to the Council, *Community Measures to Improve International Competitiveness of European Firms*, 1983 COM 578 final.

15. See 17 O.J. EUR. COMM. (No. C 14) 30 (1974) (and Bull. Eur. Comm. Supp. 1/74), amended by 21 O.J. EUR. COMM. (No. C 103) 4 (1978). The amended text is currently before the Council. The European Cooperation Grouping is not, of course, the only example of action with regard to companies at the Community level. For example, various Directives have been adopted on matters as diverse as safeguards in the formation of public limited liability companies, see Dir. 77/91, 20 O.J. EUR. COMM. (No. L 26) 1 (1977), mergers of these companies, see Dir. 78/855, 21 O.J. EUR. COMM. (No. L 295) 36 (1978), and group accounts, see Dir. 83/349, 26 O.J. EUR. COMM. (No. L 193) 1 (1983). It is hoped that the harmonization of company law will result in greater interpenetration of national markets and will afford investors the security of equal guarantees for their investment throughout the Community. On the politics of integration and legislation in the harmonization of company law, see Timeruns, *Die europäische Rechtsangleichung im Gesellschaftsrecht*, 48 RABELS ZEITSCHRIFT 1 (1984). The Community has also wanted to ensure that the interests of employees are safeguarded, particularly in transnational undertakings. The draft Vredeling Directive, 23 O.J. EUR. COMM. (No. C 297) 3 (1980), amended by 26 O.J. EUR. COMM. (No. C 217) 3 (1983), is currently before the Council. In 1977 the Council adopted Dir. 77/187, 20 O.J. EUR. COMM. (No. L 61) 26 (1977), in the interests of safeguarding employees' rights on the transfer or partial transfer of undertakings. See also Dir. 75/129, 18 O.J. EUR. COMM. (No. L 48) 29 (1975) (on collective redundancies); Dir. 80/987, 23 O.J. EUR. COMM. (No. L 283) 23 (1980) (on the protection of employees in the event of the insolvency of their employer). On the harmonization of accounting law in the Community, see Niessen, *Zur Angleichung des Bilanzrechts in der Europäischen Gemeinschaft*, 48 RABELS ZEITSCHRIFT 84 (1984).

16. See EEC Treaty, *supra* note 1, at art. 3(f); COMM'N OF THE EUR. COMM., TWELFTH REPORT ON COMPETITION POLICY 9 (1982) [hereinafter cited as TWELFTH REPORT]. See generally D. SWANN, COMPETITION AND INDUSTRIAL POLICY IN THE EUROPEAN COMMUNITY 134-61 (1983); Jacquemin, *European Industrial Policies and Competition*, in ECONOMIC POLICIES OF THE COMMON MARKET 22 (P. Coffey ed. 1979); Hodges, *Industrial Policy and Technological Policy*, in LES COMMUNAUTÉS EUROPEENNES EN FONCTIONNEMENT 440 (1981).

17. EEC Treaty, *supra* note 1, at arts. 85-86.

Article 85(1) prohibits agreements¹⁸ between undertakings "which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market."¹⁹ As the Court of Justice observed in case 56/65, *Société Technique Minière v. Maschinenbau Ulm*, it is enough that the government could have an effect—whether direct or indirect, actual, or potential—on trade between Member States.²⁰ It is clear, though, that the Court applies a rule of reason so that agreements whose effect on competition is de minimis will fall outside the scope of Article 85(1).²¹ Similarly, if the effect on trade between Member States is scarcely appreciable or nonexistent, Article 85(1) will not apply.²² The terms of Article 85(3) also temper Article 85(1) by providing for the exemption of agreements from Article 85(1) prohibitions²³ if they "contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit."²⁴ The exemption is subject to two conditions. First, no restrictions other than those indispensable to the attainment of the beneficial objectives may be imposed on an undertaking. Second, application of the exemption must not result in the elimination of competition among the undertakings with respect to a substantial part of the products in question. Furthermore, the general principle of proportionality will be applied; even if an agreement has beneficial effects, an exemption will not be granted if the same results could be achieved by measures which are less restrictive of trade.²⁵

Article 86 is the other Treaty provision on competition applicable to undertakings. It prohibits undertakings occupying dominant positions within the common market, or a substantial part of it,²⁶ from using their positions to affect trade between Member States in an abusive manner. Occupation of a dominant position

18. The word "agreements" is used as a general term in this context and may also mean decisions of associations of undertakings or concerted practices.

19. EEC Treaty, *supra* note 1, at art. 85(1).

20. 1966 E. Comm. Ct. J. Rep. 235, 249.

21. *See id.* at 250; *Volk v. Vervaecke*, 1969 E. Comm. Ct. J. Rep. 295, 302; *Bequelin Import Co. v. SAGL Import Export*, 1971 E. Comm. Ct. J. Rep. 949, 960.

22. *See Bequelin Import Co.*, 1971 E. Comm. Ct. J. Rep. 949. In *Hugin v. Commission*, 1979 E. Comm. Ct. J. Rep. 1869, 1899, the Court treated this as an essentially jurisdictional requirement, defining in the sphere of competition the boundary between the areas of Community and national law.

23. *See supra* note 14.

24. EEC Treaty, *supra* note 1, at art. 85(3).

25. *Cf. Cooperatieve Stremsel-en Kleurselabriek v. Commission*, 1981 E. Comm. Ct. J. Rep. 851 (approving Decision 80/234, *Rennet*, 23 O.J. EUR. COMM. (No. L 51) 19 (1980)). On the principle of proportionality *see S. SCHERMERS, JUDICIAL PROTECTION IN THE EUROPEAN COMMUNITIES* ¶¶ 96-99 (3d ed. 1983); *Schmithoff, The Doctrines of Proportionality and Non-Discrimination*, 2 EUR. L. REV. 329 (1977); H. IPSEN, EUROPÄISCHES GEMEINSCHAFTSRECHT 512-13 (1972); Ipsen, *Inhalt und Grenzen Gemeinsch. afrechtlicher Einwirkungen auf die Marke als Eigentum*, in NATIONALER MARKENSCHUTZ UND FREIER WARENVERKEHR IN DER EUROPÄISCHEN GEMEINSCHAFT 203-04 (W. Hefermehl ed. 1979).

26. The market for sugar in Belgium and Luxembourg or in southern Germany (FRG), for example, was held to be a substantial part of the common market for sugar: "[T]he pattern and volume of the production and consumption of the said product as well as the habits and economic opportunities of vendors and purchasers must be considered." *Cooperatieve Suiker Unie UA v. Commission*, 1975 E. Comm. Ct. J. Rep. 1663, 1977; *see also id.* at 1991-93.

is not on its own enough to bring conduct within the scope of Article 86.²⁷ The undertaking must also be engaged in conduct which is an abuse of that position and may affect trade between Member States. In *Hugin v. Commission*,²⁸ the Court of Justice reaffirmed the Commission's position that the conduct in question must be an abuse of an undertaking's dominant position. However, the Court did not require proof that the abusive activity affected trade between Member States.²⁹

The general principle of the maintenance of free and fair competition cannot be completely divorced from the social and economic consequences of the current recession and the attendant difficulties of overcapacity in individual firms and entire industries. The Commission may be able to approve agreements restraining competition which relate to all or most of an entire industrial sector as long as the agreements are intended to coordinate a reduction in overcapacity and impose no other restriction on the decision making power of the undertakings concerned.³⁰ The Commission has given valuable guidance regarding the application of the various headings of Article 85(3) to these agreements.³¹ It may also be possible for a number of small firms to enter into reciprocal specialization agreements to close down excess capacity. In any event, the Commission wants to make certain that effective competition in the Community is still possible after any agreed rationalization and that unacceptable activities, such as price fixing, quota fixing, or market sharing, do not accompany arrangements to reduce capacity. The message is clear: although the social and economic needs of industry must be taken into account in assessing proposed reorganization schemes, such needs may not be used to disguise elimination of competition in involved sectors.³²

One of the ways that industry is encouraged to adapt to the changing economic and technological environment is through the proper use of mergers, joint ventures, and research and development agreements. A certain amount of control over mergers can be exercised under Article 86.³³ It is significant, however, that the Council of Ministers has not yet approved the draft regulation on the control

27. See *Deutsche Grammophon Gesellschaft mbH v. Metro-SB-Grossmarkte GmbH & Co. KG*, 1971 E. Comm. Ct. J. Rep. 487, 501; *Hoffman-La Roche & Co. AG v. Centrafarm Vertriebsgesellschaft Pharmazeutischer Erzeugnisse mbH*, 1978 E. Comm. Ct. J. Rep. 1139, 1167.

28. 1979 E. Comm. Ct. J. Rep. 1869.

29. To a certain degree the Court's finding on this point is open to criticism because it was clear that Hugin distributors in other Member States had refused to supply Lipton with spare parts for cash registers. The Court relied on the fact that supplies had always been obtained through Hugin in Sweden, rather than through dealer to dealer contacts in the various Member States, and that Lipton's business was confined to the United Kingdom. The Court seemed to indicate that the requirement that trade between Member States be affected was a purely jurisdictional point. This view does not, however, fit too happily with the analysis, developed by the Court both in relation to Article 85, see *supra* note 15, and Article 30, see *Procureur du Roi v. Dassonville*, 1974 E. Comm. Ct. J. Rep. 837, 852, of actions having a direct or indirect, actual, or potential effect on trade between Member States.

30. See Twelfth Report, *supra* note 13, at 43.

31. *Id.* at 43-45.

32. This requirement follows from the terms of Article 85(3) itself.

33. See, e.g., *Europemballage Corp. & Continental Can Co. v. Commission*, 1973 E. Comm. Ct. J. Rep. 215.

of concentrations.³⁴ Various Member States oppose the power to veto proposed mergers which the draft regulation bestows on the Commission.³⁵

The Commission's attitude toward joint ventures is one of guarded encouragement. A joint venture undertaking new activities, using new technology, or marrying the technological skills of the parent companies may well increase competition, as the pooling of resources brings a stronger firm into the marketplace. However, in assessing whether Article 85(1) is applicable to a joint venture of this kind, the Commission will need to discover whether competition between the participating undertakings is, or is intended to be, restricted to an appreciable extent. Certainly where the participating undertakings were clearly actual competitors, Article 85(1) will apply if there are appreciable effects on competition that affect trade between Member States.

The question of a possible exemption under Article 85(3) will then, of course, arise. Any exemption granted will normally be for a limited number of years and will require submission of periodic reports by the undertakings involved.³⁶ Particular attention is likely to be paid to any unqualified prohibitions on mutual competition or any restriction on supply and purchasing which go further than is necessary for the joint venture.

The Commission also encourages research and development agreements. Like the agreements restraining trade within entire industries, research and development agreements must maintain effective competition and use the least restrictive methods of combination, even when the objective of the agreement is clearly desirable. As part of its efforts to assist industry, the Commission has published a draft regulation to exempt *en bloc* certain categories of research and development agreements.³⁷ Where the circumstances justify it, the Commission actively favors projects relating to joint research and development,³⁸ or the joint production of component parts,³⁹ or even joint distribution⁴⁰ or marketing⁴¹ of products.

Member States may also encourage the restructuring of industries or the devel-

34. 16 O.J. EUR. COMM. (No. L 92) 1 (1973). The proposal has been amended twice. See 25 O.J. EUR. COMM. (No. L 36) 3 (1982); 27 O.J. EUR. COMM. (No. C 51) 8 (1984).

35. See V. KORAN, COMPETITION LAW OF BRITAIN AND THE COMMON MARKET 228 (3d ed. 1982); cf. ECSC Treaty, *supra* note 2 at art. 66 (confers similar veto power on the Commission).

36. See, e.g., Sopelem/Vickers, 21 O.J. EUR. COMM. (No. L 70) 47 (1978), renewed for ten years, 24 O.J. EUR. COMM. (No. L 391) 1 (1981). It may be observed, however, that the practice of giving exemptions for only a limited period of time, see Art. 8 of Reg. 17, 1959-62 O.J. EUR. COMM. English Special Edition 87, while understandable and, indeed, necessary from the point of view of controlling the activities of the undertakings concerned, does very little to promote long-term legal certainty for joint ventures. Those who invest large amounts of capital in a project may feel entitled to more than a five year assurance that the Commission will not prohibit their venture.

37. 27 O.J. EUR. COMM. (No. C 16) 3 (1948) (based on Reg. 2821/71, 14 O.J. EUR. COMM. (No. L 285) 46 (1971)). The Commission may continue to grant individual exemptions which fall outside the block exemption Regulation even after the latter comes into force. The block exemption agreement relating to certain types of specialization has existed for some years. See Block Exemption Regulation, Reg. 2779/72, 15 O.J. EUR. COMM. (No. L 292) 3 (1972).

38. See, e.g., Bayer/Gist-Brocades, 19 O.J. EUR. COMM. (No. L 30) 13 (1976); Vacuum Interruptors, 20 O.J. EUR. COMM. (No. L 48) (1977), renewed, 23 O.J. EUR. COMM. (No. L 383) 1 (1981).

39. See, e.g., Amersham/Buckler, 25 O.J. EUR. COMM. (No. L 39) 25 (1982).

40. See *id.*; Langenscheidt/Hachette, 25 O.J. EUR. COMM. (No. L 314) 34 (1982).

41. See, e.g., Sopelem/Vickers, 21 O.J. EUR. COMM. (No. L 70) 47 (1978).

opment of new technologies through the granting of state aid. Such grants are governed by Articles 92 through 94 of the EEC Treaty.⁴² In recent years the pressure on Member States to utilize this method has increased dramatically. Although aid may stimulate economic growth by reducing the number of unemployed and causing industrial restructuring, it all too easily may be used as a means of protectionism, conferring competitive advantages on national producers and effectively transferring the burden of the difficulties of a recession onto competing industries elsewhere in the Community. Thus, the activity of the Commission in supervising the grant of state aid is of paramount importance to the maintenance of equal conditions of competition and the unity of the common market.

In many ways, the Commission's regulatory powers discourage proposals from Member States which would serve only national interests. To ensure that competition is not distorted to an unacceptable extent by state aid, the Commission will need to determine: first, that the aid promotes a development which is in the interest of the Community as a whole; second, that the development cannot be achieved without the aid; and third, that all the effects of the aid are in keeping with the importance of the objective. In its assessment of state aid, the Commission takes into account the seriousness of the current economic crisis, particularly the need to restructure certain industries, combat rising unemployment, and achieve a fair regional balance in development. A distinction is drawn, though, between short- and medium-term aid to industries hit particularly hard by the current crisis⁴³ and longer term aid for the promotion of new technologies and the proper utilization of energy resources. With regard to the latter, the Commission is most concerned with promoting the development of small and medium size enterprises. When the restructuring industries are hit by a crisis, it is essential that aid policies of the Member States do not simply shift problems to other locations within the Community. It is also important that approved aid be transparent and capable of control and that the recipient industry be expected to operate viably on its own within a reasonable time of aid being granted.

Control at the Community level is generally exercised by the Commission. Insofar as it affects trade between Member States, state aid which distorts or threatens to distort competition is, with few exceptions, incompatible with Community law.⁴⁴ There are certain types of state aid, however, that are compatible with Community law.⁴⁵ From time to time the Council may also find other types of aid compatible with Community law.⁴⁶ Although under Article 93 it is the

42. EEC Treaty, *supra* note 1, at arts. 92-94.

43. Examples are the steel, shipbuilding, and textiles industries. See Twelfth Report, *supra* note 6, at 113-54.

44. See EEC Treaty, *supra* note 1, at art. 92(1); cf. ECSC Treaty, *supra* note 2, at arts. 54-56.

45. Under Article 92(2) of the EEC Treaty, aid of a social character, granted to individual consumers without discrimination as to the origin of the products concerned, is permitted. There are also two special categories of acceptable aid: that granted to relieve damage caused by natural disasters or exceptional occurrences and that compensating particular areas of the Federal Republic of Germany (West Germany) for the difficulties occasioned by the division of Germany.

46. Article 92(3) provides that aid to promote economic development in areas of high unemployment or abnormally low living standards, to promote the execution of an important project of

Member States that must notify the Commission of any intention to grant or alter aid, and it is the Commission that may require the abolition or alteration of aid that it finds to be incompatible with Community law,⁴⁷ the Council may be asked to adopt measures to permit otherwise unacceptable aid in exceptional circumstances.⁴⁸

IV. THE REMOVAL OF BARRIERS TO TRADE WITHIN THE COMMUNITY

The removal of barriers to trade within the Community is a *conditio sine qua non* for the realization of the aims of the Treaty. The principle of free movement of goods is complemented by free movement of workers,⁴⁹ the right of establishment for legal and natural persons,⁵⁰ the right to provide services throughout the Community,⁵¹ and the principle of the free movement of capital.⁵² A fully realized market is, of course, necessary if a coherent industrial strategy is to have any practical effect. The present discussion, though, deals with the three principal ways in which the internal market is opened up to intra-Community trade: (1) the use of the principle of the free movement of goods; (2) the Community program for harmonization of technical regulations (which permits firms to take advantage

common European interest (for example infrastructural developments such as the Channel tunnel), to remedy a serious disturbance in the economy of a Member State, or to assist the development of certain economic activities or areas where assistance does not adversely affect trading conditions to an extent contrary to the common interest may be acceptable. The requirement that any extension of categories be made by Council decision, with a qualified majority acting on a proposal from the Commission, ensures that such action will be undertaken only in the interest of the Community as a whole.

47. Noncompliance with such a Decision allows the Commission or any other Member State to bring the matter directly to the Court of Justice. This procedure constitutes an exception to the somewhat long-winded procedures of Articles 169 and 170. The Commission has warned potential recipients of illegally granted aid that they may have to refund that aid and it has repeatedly reminded the Member States that it will enforce compliance with their obligations under Article 93(3) of the Treaty. See 26 O.J. EUR. COMM. (No. C 318) 3 (1983).

48. See EEC Treaty, *supra* note 1, at art. 93(2)(iii). In doing so the Council may derogate from Article 92 or from its own regulations adopted (in implementation of the rules on State aid) under Article 94.

49. See EEC Treaty, *supra* note 1, at arts. 48-51; see generally D. WYATT AND A. DASHWOOD, *THE SUBSTANTIVE LAW OF THE EEC* 182-205 (1980); Leleux, *Recent Decisions of the Court of Justice in the Field of Free Movement of Persons and Free Supply of Services*, in *EUROPEAN LAW AND THE INDIVIDUAL* 79 (Jacobs ed. 1976).

50. See EEC Treaty, *supra* note 1, at arts. 52-58; see generally Leenen, *Recent Cases of Establishment and Provision of Services*, 17 COMMON MKT. L. REV. 259 (1978); Watson, *Freedom of Establishment and Freedom to Provide Services*, 20 COMMON MKT. L. REV. 767 (1983); Gormley, *Establishment and Services: Scope and Prospects* (UKAEL/UACES Conference papers, London, 1983.)

51. See EEC Treaty, *supra* note 1, at arts. 59-66; see generally Leenen, *supra* note 50; Watson, *supra* note 50; Gormley, *supra* note 50. For some examples from the company law harmonization program, see *supra* note 15.

52. See EEC Treaty, *supra* note 1, at arts. 67-73; see generally Petersen, *Capital Movements and Payments under the EEC Treaty after Casati*, 7 EUR. L. REV. 167 (1982); D. LASOK, *THE LAW OF THE ECONOMY IN THE EUROPEAN COMMUNITIES* 149-62 (1980).

of economies of scale); and (3) the adoption of a European standardization policy to prevent the appearance of new obstacles to trade between Member States.

The principle of the free movement of goods is established not merely in Article 3(a) of the Treaty, but also in Articles 9 through 17 which prohibit customs duties and charges having equivalent effect between Member States⁵³ and in Articles 30 through 36 which prohibit quantitative restrictions and measures having equivalent effect.⁵⁴ Both of these prohibitions have direct effect; that is, they can be relied upon by individuals before their national courts.⁵⁵ It may also be the case that in addition to binding the Member States and the Community institutions, Articles 30 and 34 of the Treaty⁵⁶ have certain effects on individuals.⁵⁷ The present discussion deals with the second prohibition, quantitative restrictions and measures having equivalent effect. This prohibition is less immediately linked with the customs duties and charges provision than with the other principal means by which the market is opened.

In this field, the Court of Justice has sought to reconcile the needs of an open market with social interests such as consumer protection and public health. Thus, while any measures that are capable of affecting trade between Member States⁵⁸ are theoretically prohibited under Articles 30 through 37 of the Treaty,⁵⁹ the Court has qualified the basic principle in two major ways.

53. See EEC Treaty, *supra* note 1, at arts. 9-17; see generally Barents, *Charges of Equivalent Effect to Customs Duties*, 16 COMMON MKT. L. REV. 415 (1978); Wooldridge & Plender, *Charges having an Effect Equivalent to Customs Duties: a Review of the Cases*, 3 EUR. L. REV. 101 (1978). On the distinction between customs duties and charges having equivalent effect, on the one hand, and internal taxation, see EEC Treaty, *supra* note 1, at art. 95, on the other, see *Denkavit Loire S.a.r.l. v. French State*, 1979 E. Comm. Ct. J. 1923.

54. See EEC Treaty, *supra* note 1, at arts. 30-36; see generally VerLoren van Themaat & Gormley, *Prohibiting Restriction of Free Trade within the Community*, 3 NW. J. INT'L L. BUS. 577 (1981); P. OLIVIER, *FREE MOVEMENT OF GOODS IN THE EEC* (1982). With regard to the competence of the Member States vis-a-vis the Community, see Deringer, *Zum Spannungsverhältnis zwischen den Freiheiten des Gemeinsamen Marktes und den nationalen Interessen der Mitgliedstaaten*, in *EUROPÄISCHE GERICHTSBARKEIT UND NATIONALE VERFASSUNGSGERICHTSBARKEIT* 95 (1981).

55. See *N.V. Algemene Transport-en Expeditie Onderneming van Gend en Loos v. Nederlandse Administratie der Belastingen*, 1963 E. Comm. Ct. J. Rep. 1, 12 (dealing with Article 12); *Iannelli & Volpi SpA v. Ditta Paolo Meroni*, 1977 E. Comm. Ct. J. Rep. 575, 577 (dealing with Article 30).

56. See B2 Encyclopedia of European Community Law (Simmonds ed. 1974) (Commentary on EEC Treaty, arts. 30-36); *Nordsee Deutsche Hochseefischerei GmbH v. Reederei Mond Hochseefischerei Nordstern AG & Co.*, 1982 E. Comm. Ct. J. Rep. 1095, 1111; *Dansk Supermarked A/S v. A/S Imerco*, 1981 E. Comm. Ct. J. Rep. 181, 195; *Wagenbaur, Beseitigung der mengenmassigen Beschränkungen zwischen den Mitgliedstaaten Vorbemerkung zu den Artikeln 30 bis 37*, in *KOMMENTAR ZUM EWG-VERTRAG* 244-245 (J. Pipkorn ed. 1983). The general view previously was that Articles 30-36 apply only to measures attributable to the State or to public-law bodies (although this was not to say that they did not have effects on individuals as well). See *van de Haar*, 1984 E. Comm. Ct. J. Rep. (not yet reported, at para. 12 of the judgment). It is not yet clear whether Articles 30-36 can be said to create new torts and thus be used in civil litigation between individuals.

57. See *Rewe-Zentral AG v. Direktor der Landwirtschaftskammer Rheinland*, 1984 E. Comm. Ct. J. Rep. (not yet reported, at para. 19 of the judgment); *Société Les Commissionnaires Reunis S.a.r.l. & S.a.r.l. Les Fils de Henri Ramel v. Receveur des Douanes*, 1978 E. Comm. Ct. J. Rep. 927, 945-47.

58. See, e.g., *Procureur du Roi v. Dassonville*, 1974 E. Comm. Ct. J. Rep. 837, 852.

59. EEC Treaty, *supra* note 1, at arts. 30-37.

The first qualification is contained in the first sentence of Article 36.⁶⁰ The Court has insisted that measures justified under this provision be proportionate to their purpose.⁶¹ It has also required that the measures, no matter how justified, not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.⁶²

The second major qualification to the free movement of goods principle is the rule of reason developed by the Court.⁶³ This rule essentially recognizes that there are certain interests or values, somewhat inelegantly referred to as mandatory requirements, that are worthy of protection even though they are not spelled out in Article 36. This rule of reason is not, however, an extension of the first sentence of Article 36, which the Court insists must be strictly interpreted.⁶⁴ Rather, because the interests it protects are general, it may be viewed as an application of the principles of equity in international law.⁶⁵

Despite its seemingly liberal stance in the development of the rule of reason, the Court could not simply give Member States *carte blanche* to claim that

60. EEC Treaty, *supra* note 1, at art. 36 provides:

The provisions of Articles 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property.

61. *See, e.g.*, Commission v. United Kingdom, 1983 E. Comm. Ct. J. Rep. 203, 236-38 (the UHT milk case); see also *supra* note 25.

62. *See, e.g.*, Commission v. United Kingdom 1982 E. Comm Ct. J. Rep. 2793, 2825-26 (the Newcastle disease case). On the need to avoid "beggar thy neighbor" attitudes within the Community, see Franzmeyer, *Europäische Industriepolitik im Spannungsfeld zwischen Wettbewerb und Beschäftigungsgarantie*, in *DAS EUROPA DER ZWEITEN GENERATION* 495 (Bieber ed. 1981).

63. *See* Procureur du Roi v. Dassonville, 1974 E. Comm. Ct. J. Rep. 837.

64. *See, e.g.*, Commission v. Ireland, 1981 E. Comm. Ct. J. Rep. 1625, 1638; Bauhuis v. The Netherlands State, 1977 E. Comm. Ct. J. Rep. 5, 15.

65. *See generally* the paper by Judge Lachs, Second Report of the International Committee on Legal Aspects of a New International Economic Order, International Law Association Conference (1982); Gormley, *New Castle Disease and the Free Movement of Goods*, 133 NEW L.J. 1037 (1983). In contrast to its interpretation of the EEC Treaty's Rules on Competition, see *supra* note 21, the Court of Justice does not apply a de minimis rule to the free movement of goods. *See* Prante, 1984 E. Comm. Ct. J. Rep. (not yet reported, at para. 20); van de Haar, 1984 E. Comm. Ct. J. Rep. (not yet reported, at para. 13); see also Pipkorn, *Das Verbot Massnahmen gleicher Wirkung wie mengenmassige Beschränkungen*, in *DER BEITRAG DES GERECHTSHOFES DER EUROPÄISCHEN GEMEINSCHAFT ZUR VERWIKLUNG DES GEMEINSAMEN MARKTES* 9, 15 (B. Fuss ed. 1981). But see Everling, *Zur neuen EuGh—rechtsprechung zum Wettbewerbsrecht*, 1982 EUR. R. 301, 304-05. (arguing that the judgments in Oebel, 1981 E. Comm. Ct. J. Rep. 1993, and Blesgen v. Belgian State, 1982 E. Comm. Ct. J. Rep. 124, can be seen as examples of the Court applying a de minimis principle in relation to the basic principle in *Dassonville*, 1974 E. Comm. Ct. J. Rep. 837); Waelbroeck, note on case 75/81 Blesgen, 1983 C.D.E. 241, 248-49. The most likely explanation for the somewhat unfortunately reasoned judgment in Blesgen is that the Court was influenced by the reasoning in U.S. case law having to do with the not altogether hard and fast distinction between "police power" and "regulation of commerce" measures. For a description of this doctrine, see L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 321-22, 340 (1978). The judgment in Oebel, and in the other cases involving Article 34, in the context of national measures applicable irrespective of the destination of goods may also be explained in the light of the U.S. cases. *See* L. TRIBE, *supra*, at 332-35.

particular circumstances warrant restriction of intra-Community trade of certain goods. Thus, the cases since *Cassis de Dijon*⁶⁶ have emphasized that the rule of reason will only be available where the restrictive measures apply equally to domestic and imported products.⁶⁷ Although the class of interests recognized by the Court under the rule of reason is not closed, the Court does appear to use the rule to protect interests analogous to those mentioned in Article 36. For example, the Court recognizes consumer protection,⁶⁸ restraint of unfair commercial practice,⁶⁹ effectiveness of fiscal supervision,⁷⁰ and environmental protection⁷¹ as "mandatory requirements" that may justify measures that are *prima facie* prohibited. Sometimes the Court has confused the question of whether a measure is *prima facie* capable of restricting intra-Community trade with the examination of alleged justifications.⁷² The better view is that a measure which relies on the rule of reason is *prima facie* prohibited by law, but is saved by application of the rule of reason.

Indeed, this analysis conforms with the Court's view that it is only insofar as measures are necessary to satisfy the so-called mandatory requirements that obstacles to movement within the Community resulting from disparities between national laws on the marketing of products will be acceptable. The general rule, therefore, is that of mutual acceptance of goods.⁷³

This does not, however, mean that a lowest common denominator standard is applied by the Court. If the standards with which a product complies in Member State "A" do not "suitably and satisfactorily" fulfill the objective of the rules of the importing Member State "B," then State "B" will be justified in applying its national rules—as long as they apply irrespective of the country of production and are neither arbitrarily discriminatory nor disguised restrictions on trade.⁷⁴ In

66. *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein*, 1979 E. Comm. Ct. J. Rep. 649 (*Cassis de Dijon*).

67. See *Commission v. Ireland*, 1981 E. Comm. Ct. J. Rep. 1625, 1639; *Walter Rau Lebensmittelwerke v. De Smedt PVBA*, 1982 E. Comm. Ct. J. Rep. 3961, 3972. Olivier, *supra* note 59, at 83, has rightly noted that as long as the Court maintains that the rule of reason will apply only to non-discriminatory measures and yet considers measures applicable to products irrespective of their destination as falling outside the scope of Article 34 (except where there is a resulting advantage for the domestic market or national production), it will be extremely difficult for the rule of reason to be used in the interpretation of Article 34.

68. See, e.g., *Dassonville*, 1974 E. Comm. Ct. J. Rep. 837; *Cassis de Dijon*, 1979 E. Comm. Ct. J. Rep. 649.

69. See *supra* note 68.

70. See, e.g., *Cassis de Dijon*, 1979 E. Comm. Ct. J. Rep. 649.

71. See *Kramer*, 1976 E. Comm. Ct. J. Rep. 1279.

72. This is in effect what happened in the heavily criticized judgment in *Blesgen v. State of Belgium*, 1982 E. Comm. Ct. J. Rep. 1211. See Arnulf, *Cassis de Dijon: Growth Stunted?*, 7 *Eur. L. Rev.* 393 (1982); cf. the likely explanation of the decision offered *supra* note 65.

73. See, e.g., *Cassis de Dijon*, 1979 E. Comm. Ct. J. Rep. 837.

74. See 23 O.J. EUR. COMM. (No. C 256) 2 (1980) (the Commission's Communication on the consequences of the *Cassis de Dijon* judgment) [hereinafter cited as Commission's Communication]; Mattera, *L'Arrêt Cassis de Dijon: Une Nouvelle Approche pour la Réalisation et le bon fonctionnement du Marché Intérieur*, 241 *REVUE DU MARCHÉ COMMUN* 505 (1980); Gormley, *Cassis de Dijon and the Communication from the Commission*, 6 *EUR. L. REV.* 454 (1981); see also Dashwood, *The Cassis de Dijon Line of Authority*, in *IN MEMORIAM J.D.B. MITCHELL* 145 (1983); Wagenbaur, *Woher Kommt, Wohin Führt "Cassis"—Eine Fallstudie*, in *RECHTSVERGLEICHUNG, EUROPARECHT UND STAATENINTEGRATION* 899 (1983).

any event, this sort of problem is precisely the sort that the Commission is seeking to remove by harmonizing national laws creating acceptable barriers.⁷⁵

Harmonization of technical regulations under Article 30 is another method by which the internal market is opening to intra-Community trade. Comparing the purposes of Article 30 of the Treaty with those of Article 100,⁷⁶ the legal basis for the general harmonization program, the Court noted:

the purpose of Article 30 is, save for certain specific exceptions, to abolish in the immediate future all quantitative restrictions on the imports of goods and all measures having an equivalent effect, whereas the general purpose of Article 100 is, by approximating the laws, regulations and administrative provisions of the Member States, to enable obstacles of whatever kind arising from disparities between them to be reduced.⁷⁷

It follows that when Directives have been adopted and are in force under Article 100 of the Treaty, Member States may no longer have recourse to Article 36 or to the rule of reason to justify national measures. When the Community takes action at the Community level, Community rules must be applied.⁷⁸

Harmonization has taken two forms. On the one hand, a system of total harmonization has obliged the Member States to substitute Community rules for their own rules and to require that products entering or exiting their territory comply with Community requirements. The system of so-called "optional" harmonization, on the other hand, merely obliges Member States to accept products which comply with the Community requirements, but leaves them free to adopt or maintain their own standards for products produced within their boundaries. The latter form is more appealing to producers who are not attempting to trade with other Member States. It also has the advantage of allowing national or regional peculiarities to remain. The Member States would not be borne down in a torrent of standardization for standardization's sake.⁷⁹

The Commission is presently reexamining the old approach of flooding Europe with harmonization Directives, in part because of the stimulus given to the idea of the mutual acceptance of goods by the *Cassis de Dijon*⁸⁰ judgment. Another reason for the reexamination is the often painstakingly slow pace of adoption of harmonization Directives. When considering the problem of technical barriers to trade, the Commission has thus started to think in terms of prevention rather than merely cure.

The Commission has recently become concerned about the proliferation of standards adopted by different national standards institutions that might resurrect, or indeed create, barriers to trade at the same time that Community law is trying to remove them. Such barriers are in many ways even more pernicious than the classic types of barriers to trade. Although products from other Member

75. See Commission's Communication, *supra* note 74.

76. EEC Treaty, *supra* note 1, at art. 100.

77. Commission v. Italy, 1981 E. Comm. Ct. J. Rep. 3019, 3033.

78. See, e.g., Simmenthal SpA v. Italian Minister for Finance, 1976 E. Comm. Ct. J. Rep. 1871, 1887.

79. See Mattera, *supra* note 74, at 513.

80. 1979 E. Comm. Ct. J. Rep. 649.

States which do not meet national standards usually cannot be kept off the market, the very existence of varying national standards is likely to disadvantage the competitive position of foreign products.⁸¹ Even though standards adopted by national organizations are not legally binding, foreign producers are likely to feel obligated to comply with them because consumers frequently refuse to purchase items that do not conform to national standards. Such national schemes can, of course, be distinguished from schemes adopted at the European or international levels which do not have potentially restrictive effects on intra-Community trade.

In order to tackle such new style barriers, the Commission has sought to ensure better cooperation between national standards institutions and to strengthen the two European standards organizations.⁸² To this end, it intends to move toward the removal of differences in national standards that are minor and nonessential, and, indeed, often exist solely because of a lack of exchange of information between the various bodies concerned.

The adoption of Directive 83/189⁸³ should be of great assistance here. It is hoped that this early warning system for proposed changes in standards will promote greater transparency in the internal market and will help prevent the erection of new technical barriers to trade. While the Directive on its own will not resolve all the barriers, it is hoped that it will strengthen the standardizing capacity of the two European standards organizations.⁸⁴

In addition, the Commission is reviewing its legislative policy in this area to draw a greater distinction between what should appear in legislative rules and what should be contained in standards. Legislative rules are to cover matters which are absolutely necessary for the protection of public safety and health, while standards are to deal with the technical requirements necessary to conform with the legislative rules. By proceeding in this manner, the Commission believes that its actions will be more politically acceptable. Since standards will contain only technical requirements, there is no delegation of legislative initiative or power to the private sector.⁸⁵

It is hoped that the methods of removing barriers to trade outlined above will ensure that the Community really does constitute a single market for goods and provide European industry with a vast and varied marketplace in which to offer its products on equal terms, irrespective of where the products are manufactured.

81. There are a number of reasons for this, not the least of which is that a manufacturer may far more easily adapt his production to domestic standards, in whose formulation he may have participated, than to the national standards of other Member States.

82. CEN (the European Committee for Standardization) and CENELEC (the European Committee for Electrotechnical Standardization)

83. 26 O.J. EUR. COMM. (No. L 109) 8 (1983).

84. The Directive strengthens CEN and CENELEC in two major ways: by making these bodies responsible for the operation of the information procedure in the field of standards set up by the Directive and by a political and technical agreement enabling them to undertake work resulting from the operation of the information procedure.

85. For an example of what is possible when legislative rules are contained in a Directive that makes general reference to standards for the technical requirements, see the Low Voltage Directive, Dir. 73/23, 16 O.J. EUR. COMM. (No. L 77) 29 (1973).

VI. CONCLUSION

The unique nature of the process of European integration and the different levels at which it has so far been successfully achieved make it difficult to appreciate the nature and relative importance of policies implemented by the Community institutions. This is particularly true with regard to industrial policy, which as a concept was almost nonexistent when the treaties were signed.⁸⁶ Despite the limited number of industrial policy instruments at the Commission's disposal and their very limited financial impact, from the point of view of the Member States, their combined effect favors the Community's economic recovery.

This explains the recent emphasis placed on initiatives aimed at reinforcing the Community's internal market and the introduction of industrial priorities in the implementation of the Community's policies. These initiatives, of course, extend beyond the limited fields discussed in the present article. In particular, it should be noted that they also extend to commercial and research policies. The very recent adoption of the European Scientific Programme for Research in Information Technologies is a case in point.⁸⁷

It is particularly important to remember, however, as the present article has attempted to show, that the real nature of the European Industrial Policy is neither to plan industrial development on a global scale within the Community nor to direct sectoral policy in an interventionist manner, but rather to use the construction of the European Community as a tool to create an environment for undertakings which is conducive to growth and progress.⁸⁸

86. Indeed, the EEC Treaty was more concerned with the removal of distortions to trade in the Common Market than with other forms of industrial policy. See Pinder, *supra* note 8, at 283.

87. See the Commission's proposal, 1983 COM 258 final; Council Decision 84/130, 27 O.J. EUR. COMM. (No. L 67) 54 (1984).

88. See EEC Treaty, *supra* note 1, at art. 2. According to Pinder, "it should be said, even if it is not everywhere a popular thing to say, that a more federal way of taking decisions on important matters of common concern is increasingly essential to the economic and political health of the Community." Pinder, *supra* note 8, at 286.