The Large Civil Aircraft Industry: Applying Legal Policy-Making Tools to Accommodate a Changing Industry

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Changes in the large civil aircraft industry and the world economy during the past decade are forcing countries which participate in this industry to adopt new industrial policies. These policy changes reflect the realization that national policies which were once successful are now either ineffective or too costly to implement. Today, solutions to many of the problems which the world’s leading large civil aircraft manufacturers face require policy-making on an international level.

The focus of this note is on the activities of Airbus Industrie (AI or Airbus) and the Boeing Company. The two competitors currently dominate the world market for widebody commercial aircraft and represent trends typical of the industry as a whole. Both AI and Boeing are experiencing immense changes in business strategies and market positions, and both rely heavily on exports for successful business operations.

This note first examines the emergence of AI and identifies some of the legal and policy instruments which the European governments have employed to make AI a successful competitor. After a brief discussion of the growing difficulties with subsidy policies, the note considers European Community legislation for a common European industrial policy and the creation of a European Export Bank as possible alternative solutions for maintaining AI’s competitiveness. The note finally argues that international industrial agreements are necessary legal tools for effective regulation of the manufacture and sale of large civil aircraft.

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1. The note primarily re-examines Community legislation which was proposed in 1975. See infra notes 43–57 and accompanying text. These proposals offer alternative policy approaches to some of the difficulties inherent in the large civil aircraft industry.

2. The two primary international agreements which this note examines are the Agreement on Trade in Civil Aircraft, Apr. 12, 1979, 31 U.S.T. 619, T.I.A.S. No. 9620 [hereinafter cited as Civil Aircraft Agreement], and the commonline agreement which is an exchange of letters signed by France, the United Kingdom, the United States, and West Germany in the latter half of 1981. The primary elements of the commonline are agreements on minimum interest rates on direct credits for the
national agreements currently in force show that the AI member countries and the United States are capable of dealing with certain pressing problems in the industry on an international level. Because the fierce competition between AI and Boeing and the internationalization of the industry have rendered purely national industrial policies insufficient, further cooperative international industrial agreements are necessary.

I. IDENTIFYING THE REASONS FOR AIRBUS INDUSTRIE’S SUCCESS

A. Airbus Industrie’s Emergence as a Competitor

AI’s entry into the world market changed dramatically the shape of the large civil aircraft industry. France and the Federal Republic of Germany (FRG or West Germany) registered AI as a groupement d’intérêt économique (GIE) in December, 1970. AI’s first aircraft, the A300, made its maiden voyage in October, 1972. By 1975, however, airlines had placed only 40 orders for the new aircraft. This slow start for AI was to be expected given the shock of high oil prices and general hard economic times in the early and mid-1970s.

Although no new orders were placed for the A300 in 1976, AI sold or took options on 56 aircraft during the period of April, 1977 to April, 1978. This accounted for about 20 percent of the world market for widebody jets. With the exception of some small declines in 1980 and 1982, AI’s share of the widebody market has increased annually since 1976.

AI’s success did not result in a downturn of Boeing’s business. Boeing experienced record years from 1978 through 1981 measured by jet airplane orders. Rather, it was Boeing’s own American competitors, McDonnell Douglas and
Lockheed, which bore the brunt of Al's incursion into the world civil aircraft market. In the development of new civil aircraft, the lines for the competition between Boeing and Al were drawn by the middle of 1983.

It is difficult to identify all the reasons for Al's rapid success in the late 1970s and early 1980s. Some of the causes stemmed from purely business or economic advantages, which are beyond the scope of this note. The focus here is on the legal and policy instruments employed by European governments to make Airbus a viable world competitor in the large civil aircraft industry.

B. Legal Characteristics Benefit Airbus Industrie

Al's organization into a GIE has increased its ability to compete in several ways. The GIE became a type of business association in French commercial law through the Ordonnance of September 23, 1967. The 1967 Ordonnance augments the traditional consortium arrangement by incorporating many of the benefits of both a société (corporation) and an association (typically a non-profit organization) in a single legal entity. Thus, under the 1967 Ordonnance, the

10. In world market shares of units produced from 1970 to 1979, Boeing's market share was 60 percent, McDonnell Douglas was 20.7 percent, and Lockheed was 4.6 percent. From 1980 to 1982, Boeing's market share was 62.9 percent, McDonnell Douglas was 20 percent, and Lockheed's was 1.6 percent. For those respective periods, Al's share increased from 7.3 percent to 10.2 percent. See Boeing Co., supra note 6.

11. Some of the main features of Al products which have lured sales away from U.S. manufacturers are the fuel-efficiency of Al aircraft, the advanced wing design, and freight room. The economic and business factors are even more important when identifying the reasons behind Boeing's success. Because Boeing is not state-owned, government does not have the direct leverage over the company's management and operations as is often the case in Europe. Nevertheless, there are at least two governmental policies which have been important to Boeing's success over the years.


Boeing's foreign customers also receive loans and credit guarantees from the Export-Import Bank (Exim Bank). The Exim Bank provides direct fixed-rate loans to eligible foreign customers of Boeing. The Exim Bank also provides guarantees which back up fixed-rate export loans from private sources of funding. The chief source of private funding is the Private Export Funding Corp. (PEFCO), owned by 54 commercial banks, seven industrial companies, and one investment banking firm. PEFCO offers fixed-rate export loans, protected by the Exim Bank's financial guarantees, to Boeing's customers.

Although support from the Exim Bank is important for individual Boeing customers, the amounts in Exim Bank loans going to Boeing-related purchases are not overwhelming. For the period of October 1976 through September 1977, loans going to Boeing customers amounted to about 9 percent of all Exim Bank loans for that period. See Export-Import Bank of the United States, 1977 Annual Report 31-36 (1978). For the period of October 1981 through September 1982, Boeing loans were about 5 percent of all loans disbursed. See Export-Import Bank of the United States, 1982 Annual Report 36-42 (1983). There are, in addition, loan guarantees to Boeing customers from the Exim Bank.


13. The Ordonnance's stated purpose is to assist the French economy in adapting to "new dimensions of an expanded and unified market implying, from the perspective of many enterprises, a transformation of their structures and diversification of their methods." Ord. No. 67-821, supra note 3 (translations are the author's).
GIE allows two or more natural or legal persons to join their resources to increase the profitability of the separate enterprises constituting the consortium. On the other hand, the members are jointly and severally liable for all debts of the GIE, and such debts are paid independently by the individual members.

The general policy underlying the creation of GIEs nicely fits Al's own objectives. The legislative report accompanying the 1967 Ordonnance noted that the GIE serves the dual interests of preserving enterprise autonomy and pooling resources to achieve a common goal. This policy favors the Al member states which specialize in one aspect of production of a large commercial aircraft. By facilitating specialization on the part of individual consortium companies, the GIE enables European manufacturers to increase the speed of joint production of a commercial airliner. This does not translate into lower production costs, however.

One of the most innovative factors of the GIE is the members' freedom to determine their GIE's operation and structure. The functions and structure of the GIE are fleshed out through the constitutive contract or articles of association. Thus, for example, the articles of association can establish the nature of control over the GIE's management and accounting. This element alone gives Al more flexibility in its structure and management than Boeing, which is forced to abide by the strict rules of American corporate law.

The voting methods of the GIE members can also be detailed in the articles of association themselves. This is particularly important for Al; its members currently make decisions by an 81 percent majority vote. This method of voting marks a considerable improvement over the Concorde project which required a unanimous decision to initiate action.

Airbus also benefits from having fewer disclosure requirements than does an

15. Ord. No. 67-821, supra note 3, at art. 4; see also Airbus Industrie, supra note 8.
17. The division of labor for an A300, for example, is roughly as follows:

<table>
<thead>
<tr>
<th>Manufacturer</th>
<th>Production</th>
</tr>
</thead>
<tbody>
<tr>
<td>MBB and VFW</td>
<td>most of the fuselage and vertical tail</td>
</tr>
<tr>
<td>British Aerospace</td>
<td>wings</td>
</tr>
<tr>
<td>CASA</td>
<td>horizontal tail section</td>
</tr>
<tr>
<td>Aérospatiale</td>
<td>cockpit, part of the center fuselage, assembly</td>
</tr>
</tbody>
</table>

18. See infra notes 74-77 and accompanying text.
19. There are certain administrative registration requirements, particularly the registration of the articles of association. Additionally, the Ordonnance requires the GIE to have a mechanism for calling a general meeting of members and to have one or more directors. A GIE usually has four organs of control: directors, a board of control, general meetings of members, and auditors.
22. Airbus Industrie, supra note 8.
23. Ball, supra note 17.
American corporation. Since the members of the GIE can create, within certain limits, the type of organizational and operational structure they desire, they can exclude from their articles of association disclosure provisions typically required of public corporations. For example, AI does not have to publish its accounts unless the members so decide. Furthermore, French law does not prevent the parties from agreeing on a secret règlement intérieur for the internal operations of the GIE. As long as the original articles of association are not formally modified, such internal agreements, though binding only on the GIE members, do not become a part of the public record.

The GIE members are not the only ones who benefit from such privacy. The participating governments are partially sheltered from the criticism of taxpayers who feel that the individual governments are spending too much to support Airbus. Without publication of AI’s accounts, the use of individual subsidies made by the governments is difficult to determine and, thus, not open to public scrutiny. The aggregate amounts of governmental contributions, however, can be determined through budgetary and other official reports.

Another legal advantage of the consortium arrangement is immunity from possible antitrust restrictions. Government officials in Europe have been unwilling to impose antitrust limitations on AI’s organizational structure. Antitrust restrictions are an ever-present concern in the United States, and would probably preclude any joint venture between two of the three leading American civil aircraft manufacturers. Even joint ventures between American and foreign manufacturers might run afoul of U.S. antitrust laws.

24. The articles of association and certain modifications thereof are published in the Bulletin officiel des annonces civiles et commerciales (B.O.D.A.C.) through a registration process with French commercial courts. Ord. No. 67-821, supra note 3, at art. 6; see also 2 G. LAGARDE, DROIT COMMERCIAL 707 (2d ed. 1980). There are no provisions in French law requiring notice of the GIE’s formation in a legal journal.

25. 2 G. LAGARDE, supra note 24, at 708. For an excellent summary of the GIE, see 2 M. JUGLART & B. IPPOLITO, DROIT COMMERCIAL, 1100-1140 (2d ed. 1975).

26. See War in the Air, ECONOMIST, Aug. 27, 1983, at 12, 13, which takes the position that under normal market conditions, AI would have collapsed long ago. There were attempts in the late 1970’s to revamp some of AI’s accounting procedures. These changes involved the drafting of some preliminary financial statements, but in 1982 the French equivalent of the General Accounting Office reported that any financial statements issuing from AI were incomplete, insufficient, and inaccurate. Rapport au Président de la République sur l’Activité, la Gestion et les Résultats des Entreprises Publiques, Journaux Officiels, No. 5033 (1982).


28. A good example of the American antitrust problem with joint ventures is found in the Toyota/General Motors joint manufacturing of an automobile. McDonnell Douglas did develop a partnership with Fokker of the Netherlands for design and development of a new generation of 150 seat aircraft, the MDF100. These plans for a new aircraft were dropped in late 1983. The tendency of American aircraft manufacturers to enter into limited partnerships or subcontracting with foreign rather than domestic manufacturers is also illustrated by the fact that the Boeing 767 has major subassemblies provided by Italian and Japanese manufacturers. See id. at 406, 424. See infra text accompanying notes 65-67 for a discussion on the general internationalization of the entire industry.
C. The Policy Tool of Governmental Financial Support

In addition to creating a flexible legal entity for Airbus, the European governments have supported AI's success through subsidies and export credits. Their funding levels have been high. In 1980 the German government provided a budget of some DM 500 million of development credits and financial support for its civil aircraft industry, with the intention of repeating such annual expenditures through 1984. Of this total, some 68 percent went to AI-related activities, with approximately 40 percent of this amount going to the development of the then-new A310. The French government's budget also provides for heavy investment in AI's development. The fiscal year 1983 authorizations for A300-600 and A310 development amounted to FFr 960 million. Total authorizations for A320 development amounted to FFr 500 million. These two items accounted for 52 percent of the 1983 French budget for civil aviation programs. Such governmental support, whether in the form of a credit or subsidy, is critical to AI's success, particularly in the 1980s when development costs alone for a new commercial airliner can amount to over one billion dollars.

II. Problems with National Industrial Policies Affecting Airbus Industrie

Historically, Europeans have had a difficult time competing against American industry because of their "cooperative" rather than "unitary" approach. The Europeans organize major projects by linking together independent national manufacturers rather than creating one entity. This approach usually results in national manufacturers and governments insisting that they maintain their own identities regardless of whether the venture's competitiveness might suffer as a result.

The creation of AI represents evolution from the traditional cooperative approach towards a more unitary approach in competing with the Americans.

29. An important consideration is that most of the AI members are state-owned companies. As of August 1983, two of the AI members, Société Nationale Industrielle Aérospatiale (France) and Construcciones Aeronáuticas SA (Spain), were wholly owned by their respective governments. These two partners together had a 42.1 percent share of AI. British Aerospace (BAe), which accounted for another 20 percent of AI, was once wholly owned by the British Government. The situation changed in 1979 when the British Government reduced its share to 48.43 percent. Deutsche Airbus holds the remaining 37.9 percent of AI. The Airbus Alliance, ECONOMIST, Aug. 27, 1983, at 59. The German concern of Messerschmitt-Bölkow-Blohm (MBB), which is not state-owned, currently owns Deutsche Airbus.


31. The A310 (basic version) is a medium-haul jet which can accommodate 210 to 265 passengers.

32. The A300-600, a modified version of the A300, is a medium-haul jet which can accommodate 230 to 345 passengers.

33. The A320 is AI's new program which is still on the drawing boards. The aircraft is targeted at the 150-seat jet market.

34. 37 INTERAVIA 1142 (1982).

GIE's organizational form unifies the separate European manufacturers under one legal entity. As the 1980s began, however, it became apparent that the European governments were once again asserting their own identities. Deficits and growing unemployment required a more cautious approach, at least financially, toward international ventures on the part of the separate consortium members. This pull back from the unitary approach is most evident in the area of direct governmental financial support for Airbus.

A. Difficulties with Subsidy Policies

As early as 1980, the German Government was concerned that the high cost of AI programs would lead to ever-increasing budgetary outlays by the government. At that time, the German Government wanted its subsidies to be redirected to the financing of new aircraft development rather than to the balancing of unequal cost differentials. The recent controversy among the consortium partners as to the status of the new A320 further illustrates the reluctance of the German Government to spend for future AI projects. After debating the issue of whether the new aircraft should be a twin-aisle or single-aisle jet, the German Government began questioning the form of production financing that the consortium members should follow. The German Government has required that AI take a closer look at the risk involved in designing and marketing an entirely new aircraft in the face of strong competition from Boeing. Tighter German budgets and more conservative spending have led to its more cautious approach toward participation in a new Airbus project.

The British Government is also re-evaluating its position on the subsidies question. Before it makes any commitments to financing the A320 project, the British Government is following the Germans in closely scrutinizing the profitability of a new project, but such a finding is only the first step. British Aerospace (BAe) must also show that the project deserves governmental support before other candidates on the government's list. Significant British involve-

36. See Bonn Uneasy About Cost of Airbus Program: An Interview with State Secretary Martin Gruner, supra note 30.
38. After about two years of negotiations, the German Government decided in February 1984 to commit $566 million to the A320 project. See infra note 41. The German Government is being cautious even though it will presumably recoup a large portion of its support through royalties on aircraft sold. By the beginning of 1982, the German Government had already received DM 130 million from its original development contributions to the A300 project. To meet contractual obligations with the government, however, Deutsche Airbus has been forced to borrow from private lenders at high interest rates. Bulloch, Philipp, & Rek, West German Aerospace, 37 INTERAVIA 334, 342 (1982).
39. Because of the restrictive financing posture of the British Government, BAe has been forced to present the government with a package of options for participation in the new A320 project. First, there is the possibility of no governmental support, which would effectively mean no British participation in the new aircraft program. Second, BAe could go after 20 percent of the project, which would entail British responsibility for the wings and tail. This option would require 400 million pounds. The third option of 30 percent participation would entail development of the nose and forward fuselage section, final assembly, and flight testing. This large share would require 600 million pounds, an amount which BAe could conceivably raise through its own sources but would necessitate government support for at least the interest payments. 37 INTERAVIA 407 (1982).
ment in aerospace projects other than AI may make this second hurdle the more difficult one to overcome. Like Germany and France, Britain is coming to believe that its generous industrial policies of the 1970s are ill-suited to the tight budgets of the 1980s.

A move toward less unitary action by the European governments hurts AI's competitive posture and defeats many of the advantages gained by having the flexible legal structure of the GIE. The implication of a less unitary approach is illustrated by attempts of AI to launch the A320. Airbus hoped to begin production of the new model not long after the French had placed an initial order for it in June, 1981. Production of the new aircraft has yet to begin. The major roadblock to its development continues to be the lack of an agreement on subsidies and export credits which consortium members are to contribute. Without firm commitments from the consortium members of financial support for the new aircraft, the A320 program is not feasible.

While the Europeans have been bickering over which country is to bear the primary financial risk in a new venture, Boeing has introduced two new aircraft, the 767 and 757.

Excessive governmental involvement in the management and operations of individual aerospace concerns presents another difficulty with current subsidy policies. The German Government used its leverage of subsidies and loans earmarked for AI development to restructure the entire industry, despite the fact that the participants in the German aerospace industry are private concerns. Such a

40. Another significant British participant in the aerospace industry is Rolls-Royce, which is involved in the construction of some of the engines for the AI aircraft.

41. After about two years of negotiations, the German Government finally committed itself in February 1984 to the A320 by granting $566 million in aid. This amount matches the French commitment to the project. N.Y. Times, Feb. 23, 1984, at D11, col. 5 (city ed.) The money will be repaid at the rate of about one million dollars per A320 sold until 600 aircraft are sold. German Cabinet Ratifies Funds To Assist A320 Development, AVIATION WK. SPACE TECH., Feb. 27, 1984, at 35. A week later the British Government decided to commit $365 million to the A320 project. One-fifth of this amount will be repaid at a fixed interest rate beginning in 1990. The remaining amount will be repaid through a levy on each aircraft sold. British Government Underwrites A320 Share, AVIATION WK. SPACE TECH., Mar. 5, 1984, at 30.

42. The two dominant German aerospace manufacturers are Messerschmitt-Bölkow-Blohm (MBB) and die Vereinigten Flugtechnischen Werke GmbH. (VFW). Although Bonn wanted to unite the two for a stronger German presence in the industry, this move was made impossible when VFW joined the Dutch concern of die NV Koninklijke Nederlandse Vliegtuigenfabriek Fokker (Fokker) in 1969. A short-haul jet project failed for VFW in 1977. The failure of the project cost the German Government some DM 280 million. In order to keep VFW in business, the German Government was forced to give the manufacturer an additional DM 110 million. See Up the Airbus: German Aerospace is Flying High, BARRON'S, June 30, 1980, at 9.

With this additional financing to keep VFW afloat, the German Government started to use its leverage to force a merger between VFW and MBB. This would, of course, entail a break between Fokker and VFW. From 1977 through 1980 the German Government tried to exert pressure on VFW to merge with MBB. The German Government finally restructured the aerospace industry through a merger between MBB and VFW in late 1980. But to achieve this result, Bonn temporarily cut off development funding for the A310 project and suspended any decision on additional financial guarantees linked to AI. The amounts involved were significant. See MBB and VFW: The Longest Drawn-Out Shotgun Marriage, 36 INTERAVIA 103 (1981), which reports that the German Government withheld DM 300 million for A310 development and an increase in loan guarantees from DM two billion to almost DM three billion.
governmental role is understandable given the government's own financial risk in the venture. This involvement, however, often leads to a stronger assertion of national identity on the part of the manufacturers than before the subsidy was given, which runs counter to any unitary approach and defeats many of the advantages which the GIE structure was meant to create.

B. A European Common Industrial Policy

The European governments involved in AI must rely on their own policy-making institutions to resolve the controversial issue of governmental financial support for the consortium. Resolving the conflicts with national industrial policies is critical if AI is to maintain its competitiveness against Boeing. A delay of one or two years could be catastrophic for sales and the development of a new aircraft, especially in light of Boeing's unrelenting production rate.

One possible solution for reconciling these divergent views is the legal tool of European Community legislation. The Community attempted unsuccessfully to pass legislation on a common European industrial policy for large civil aircraft before Airbus met with its first successes in the latter half of the 1970s. Such attempts are worth re-examining because they embody policy changes which could help the European large civil aircraft industry to avoid some of the obstacles inherent in subsidization. The proposed European legislation would also move Airbus beyond the limits of its consortium structure to a fully unitary approach in its competition with Boeing.

In March, 1975, the European Council passed a resolution which sets out two interrelated policy objectives for the European Community. Foremost in the Council's mind was ensuring the competitiveness of the European aerospace industry against leading American manufacturers. The Council noted that the primary difficulty in meeting American competition was the large expenditures necessary for launching new aircraft programs. The Council admitted that the high cost of aircraft development made new programs "dependent on action by public authorities." The Council also sought to avoid the duplication of efforts. The member states were called to "coordinate their policies . . . to achieve the promotion of an improved industrial structure."

The resolution recognized the importance of joint governmental support in the

43. 18 O.J. EUR. COMM. (No. C 59) 2 (1975) (Information and Notices) [hereinafter cited as Council Resolution].
44. The Council recognized in its resolution that "the aeronautical industry is important for the economic and technological position of the Community in the world; whereas there are problems facing the industry in meeting external competition." See Council Resolution, supra note 43, at 1. American competition at this time came from Boeing, McDonnell Douglas, and Lockheed.
45. See id.
46. Id. With the policies of this Council resolution in mind, one can better appreciate the value of the GIE to the AI members. The policies which the Council had in mind are the same as those which the GIE was meant to achieve. Nonetheless, the GIE had its obvious limitations insofar as it was a creation of French, and not Community, law.
financing of aircraft programs and sales. Unfortunately, the resolution does not delve into the details of harmonizing such aid from various governments. Joint aid for aircraft production, however, represents a major concession on the part of the member states. To place such important funding on the Community level would represent a major step toward unifying the large civil aircraft industry in Europe.

The 1975 resolution was followed in the same year by a Proposal for a Council Decision Concerning the Creation of a Common Policy in the Civil Aircraft and Aviation Sector, prepared by the European Commission. The Commission's proposal covers a wide range of objectives going far beyond the Council's 1975 resolution. Article 1(a) of the proposal reaffirms the need for "the establishment of a common programme for all activities in connection with the manufacture of large civil transport aircraft including those carried out in collaboration with manufacturers in third countries." Following the suggestions of the 1975 resolution, the proposed program includes common methods of financing research, development, and production tooling. Unlike the 1975 Council resolution, the Commission's proposal lays down a schedule for instituting the common financing policy in the industry.

The European Parliament's amendments to this proposal focused mainly on Article 3 (common air transport policy) and Article 4 (mechanics of policy adoption). The Parliament recommended that the Commission and Council first

47. Point II of the resolution reads as follows:

Member States recognize that in order to ensure a market for aircraft produced in the Community, the demands of competition require, among other things, that competitive prices be charged and sustained. To this end, and in observance of the Treaty's provisions on State aid, the Governments concerned shall, wherever a program is carried out jointly in several Member States, undertake to examine whether it is possible to grant and harmonize aid.


49. The Commission agreed that:

Whereas to this end it is necessary to establish a common policy for the aircraft industry, such policy to consist in particular of: the establishment of a common program for the development, manufacture and marketing of large civil transport aircraft, including activities carried out in collaboration with third country manufacturers; the establishment of a common basic research program; the common financing of research, development and production tooling for specific programs; a Community system of financial support for marketing; and the harmonization of national laws, regulations and administrative provisions dealing with certification of airworthiness, environmental nuisance, norms and standards....

50. 19 O.J. EUR. COMM. (No. C 178) 10 (1976) (Information and Notices)
concentrate on a common industrial policy for the aerospace sector. Once this was established, a common air transport policy dealing with specific air routes, schedules, and the like could be enacted.\textsuperscript{54} The Parliament did not recommend any amendments to Articles 1 and 2 of the Commission’s proposal despite the radical impact which these two articles would have on traditional state practice in this industry. The Parliament, serving as the Community’s supranational representative institution, was understandably satisfied with the unitary approach to financing proposed by these articles. A common scheme for financing the entire European large civil aircraft industry would obviously be a major step toward European unification which the Parliament is dedicated to promoting.

The Economic and Social Committee (ESC), in its opinion on a common policy for this industry,\textsuperscript{55} appears to be the most realistic in its recommendations. The ESC, in Point 4 of its opinion, recognized that there are relatively technical parts of a common industrial policy for this sector which can be put into effect fairly quickly.\textsuperscript{56} One of these technical provisions is financing arrangements. The ESC recommended financial alignment in the areas of sales finance (terms, rates, repayment periods), credit insurance, and insurance against exchange risks.\textsuperscript{57}

C. Weaknesses of Proposed Legislation and One Alternative

Despite possible advantages of a European common industrial policy for the large civil aircraft industry, proposed Community legislation suffers from a number of practical weaknesses. The necessary unanimous consensus for enactment of such legislation is not likely in the near future, because not all ten members of the Community share the strong interest of Britain, France, and West Germany in this industry.\textsuperscript{58} Common research and financing carry the additional burden of a heavy cost when one considers that new aircraft development alone can easily exceed one billion dollars. Finally, Community members will probably be unwilling to yield the large degree of autonomy that the legislation requires. A successful national aerospace industry still brings with it a large degree of prestige, which would be diminished with a Community project.

An alternative to a common industrial policy in this area is the establishment of a European equivalent of the U.S. Export-Import Bank. The idea of a European Export Bank has remained alive within the Community since 1976.\textsuperscript{59} For Airbus, this alternative would provide the significant benefit of a coordinated approach to financing exports in competition with Boeing products.

Admittedly, this proposal addresses only export financing. Because of its

\textsuperscript{54} Id. at 9.

\textsuperscript{55} 19 O.J. EUR. COMM. (No. C 131) 1 (1976) (Information and Notices).

\textsuperscript{56} Id. at 5 (Point 4.2).

\textsuperscript{57} Id. at 6 (Point 4.2.7). The ESC also mentions the possibility of a European Export Bank to handle the financing in the aircraft industry (Point 4.2.8). See text accompanying notes 59–61.

\textsuperscript{58} The jurisdictional bases for enactment of a common Community industrial policy in the large civil aircraft sector are Articles 84(2) and 235 of the Treaty of Rome. Both require unanimous approval by the European Council.

limited scope, however, this alternative has a number of practical advantages over a common industrial policy. The financial burden probably would not be as great on the Community coffers as that accompanying a common industrial policy, because the export bank proposal does not call for the common financing of such expensive areas as research, development, and production tooling. Moreover, Community members would be giving up less autonomy than under a sectoral industrial policy, because the European Export Bank proposal limits Community cooperation to export financing and does not extend it to areas of traditional national decision-making such as research and development. Because of these factors, achieving even a unanimous consensus for a European Export Bank would be less difficult than agreement on a common industrial policy. There also appears to be a new current of support for a European Export Bank. Community members will probably start taking this alternative more seriously if AI's success in the aircraft industry begins to slide in the mid-1980s.

III. INTERNATIONAL AGREEMENTS AS LEGAL TOOLS FOR POLICY-MAKING

A. Increasing Internationalization and Growing Reliance on Exports

National policies on both sides of the Atlantic have been partially responsible for two strongly competitive manufacturers of large civil aircraft. Purely national industrial policies, however, no longer suffice to solve all the difficulties facing the industry. Both Europeans and Americans are aware of their international competition for sales to the world's airlines and that sales markets for large commercial aircraft are becoming more internationalized.

From 1955 to 1970, approximately 65.9 percent of Boeing orders came from U.S. customers, leaving 34.1 percent from non-U.S. customers. From 1970 to 1982, this ratio reversed itself with 40.6 percent of the orders coming from U.S. customers and 59.4 percent from non-U.S. customers. The European aerospace industry currently finds itself in the same situation. Seventy percent of AI sales...
are to customers outside consortium member countries, even though AI has a strong market among consortium member airlines.\textsuperscript{64}

Another element of the internationalization of the large civil aircraft industry is widespread international subcontracting, now common for most major American and European aircraft programs. For example, Boeing's 767 contains major subassemblies provided by Italian and Japanese manufacturers.\textsuperscript{65} Boeing also recently announced agreements with three large Japanese companies to study prospects of designing and building an aircraft to compete with the new A320.\textsuperscript{66} On the European side, AI claims that over one-third of the dollar value of an A300 or A310 is in American-produced equipment.\textsuperscript{67}

The industry's participants thus have a strong incentive to keep trade barriers as low as possible because of this internationalization of the industry. This is not the only incentive which shapes policy choices. Competition is extremely fierce in this industry, because Boeing and AI are selling similar products to customers in virtually the same markets. This intense competition causes the individual national manufacturers and governments to be highly suspicious of their competitors for fear that the other side might somehow gain an advantage in the industry. Thus, there are conflicting forces affecting policy-making in this industry: one toward free trade, the other toward disruptive tactics to gain a competitive edge.

This increasing competition and internationalization of the industry requires policy-makers to change past industrial policies. First in the area of tariffs, both the American and European manufacturers now view high tariffs as a threat to their respective large civil aircraft industries, but for very different reasons. Since the late 1970s, Boeing and other American manufacturers have been forced to realize that the Europeans, along with the Canadians and Japanese, are intent on developing strong large civil aircraft industries of their own. This raises the possibility of the future use of protective tariffs by these countries as a tool to aid their own manufacturers which compete against Boeing. Thus, the U.S. seeks to eliminate all tariffs before such protectionism can take hold.\textsuperscript{68}

On the other hand, the Europeans want to ensure the viability of their own manufacturers by opening up the world markets as much as possible. A first step in this direction was the removal of the pre-1979 U.S. ad valorem duty of five percent on airplanes and parts thereof.\textsuperscript{69} They also sought to remove the fifty

\textsuperscript{64} See Airbus Industrie, \textit{supra} note 8. This figure includes orders up to January 1983.
\textsuperscript{65} \textit{Hearings, supra} note 27, at 406.
\textsuperscript{67} See Airbus Industrie, informational pamphlet distributed by sales office in New York.
\textsuperscript{68} This danger of future use of protective tariffs is underlined in \textit{Trade Agreements Reached in the Tokyo Round of Multilateral Trade Negotiations: Communication from the President of the United States}, 96th Cong., 1st Sess. 25 (1979). This fear of possible protective tariffs was expressed at the Tokyo Round despite the fact that many of the foreign tariffs erected against U.S. products were often waived before 1979.
percent ad valorem duty on the cost of repair parts, materials, and expenses of repairs, purchased or performed in a foreign country on a U.S. civil aircraft.  

As long as the industry remains competitive, another U.S. goal must be the prohibition of governmental subsidization of research and development, marketing, and manufacture of large civil aircraft. Boeing does not enjoy such direct governmental support, but heavy governmental subsidization is critical to AI.  

European policies of heavy subsidization lead to other difficulties which American policy-makers must face. Overzealous involvement by European governments to ensure, for example, successful marketing of AI aircraft disadvantages Boeing. There have been accusations that the French Government has aided the marketing of AI products, particularly in the Middle East, through the use of a head of state to promote a new aircraft. Testimony at congressional hearings has also revealed evidence suggesting that European governments supporting AI have tied aircraft purchases to such political agreements as trade agreements, the awarding of landing rights, and the sale of military equipment. Such governmental involvement obviously threatens Boeing's market share.  

Governmental subsidization also requires Boeing to face a market where the competitor's product is being priced under cost. Boeing recently alleged that the European governments subsidize more than one quarter of the price of each Airbus. Boeing bases this allegation on the theory that both itself and AI start at approximately the same point when it comes to the design and development of a new aircraft. These initial start-up costs range from one to three billion dollars. AI, however, cannot be expected to have the same economies of scale as Boeing. Boeing estimates that by the time the 500th unit is built, the number of man-hours per aircraft is one-fourth the amount needed at the beginning of the production cycle. AI incurs the additional costs of production across borders and of a slower method of overall production than Boeing's. It also sells far fewer aircraft than does the American firm. By the end of December, 1983, total Airbus deliveries reached 240 aircraft. In addition, AI's indirect costs (administrative, quality control, miscellaneous charges) account for more than 70 percent of the total production costs. Such indirect costs for Boeing account for only 28 percent

70. See generally 19 U.S.C. § 1466. This section was amended by the Agreement on Trade in Civil Aircraft and enacting legislation. See discussion infra and the Trade Agreements Act of 1979, Pub. L. No. 96-39, 93 Stat. 144.

71. See supra notes 29–34 and accompanying text. The problem of heavy governmental subsidization on the part of the Europeans, and the other practices which grow out of subsidy policies, continues to be a concern of American policy makers. See, e.g., Hearings, supra note 27, at 404.

72. A good account of some of the alleged political leverage the French Government exerts on purchasers of AI products is given in J. Newhouse, The Sporty Game 900–99 (1982). Newhouse believes, however, that Boeing is often too hasty to draw conclusions that the French Government is directly influencing the purchasing strategies of Middle East nations. Id. at 39.


75. Id.

Despite these differences in production costs, AI still manages to sell its products at a price competitive with Boeing. Boeing therefore concludes that AI's prices reflect hidden subsidies.

Only international cooperation can effectively resolve such problems as protective tariffs or exertion of undue influence by governments on aircraft purchasers. The United States and the European governments supporting AI have used two types of international agreements for policy-making in the industry. Although these agreements are not a panacea for all of the industry's ills, they do provide some framework for cooperation between the two competitors. Wholly apart from their success as legal tools, these agreements illustrate the need perceived by the countries involved to move beyond the national level to the international level when analyzing and formulating policies in this industry.

B. The Agreement on Trade in Civil Aircraft

The most far-reaching formulation of a coherent industrial policy in the area of large civil aircraft through the use of a major treaty arose from the Tokyo Round of the multilateral trade negotiations within the framework of the General Agreement on Tariffs and Trade (GATT). On April 12, 1979, the United States, the European Economic Community, and other GATT members signed the Agreement on Trade in Civil Aircraft (Civil Aircraft Agreement).

Virtually all of the policy issues which have arisen because of the increasing competitiveness and internationalization of the industry have been addressed in either the Civil Aircraft Agreement or subsequent multilateral negotiations.

Article 2 of the Civil Aircraft Agreement takes the major step of eliminating by January 1, 1980 all customs duties and other charges levied on products used in

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77. 36 INTERAVIA 851 (1981).
78. As of January 1, 1982, the official parties to the Civil Aircraft Agreement were: Austria, Belgium, Canada, Denmark, EEC, France, Greece, Ireland, Japan, Luxembourg, the Netherlands, Norway, Romania, Sweden, Switzerland, the United Kingdom, the United States, and West Germany.
79. Civil Aircraft Agreement, supra note 2. The signatories noted in the preamble that they were "mindful of the importance in the civil aircraft sector of their overall mutual economic and trade interests" and also recognized that "many Signatories view the aircraft sector as a particularly important component of economic and industrial policy." Id. at preamble. U.S. obligations under the Civil Aircraft Agreement were codified in the U.S. Code through enactment of the Trade Agreements Act of 1979, Pub. L. No. 96-39, 93 Stat. 144.
80. See infra text accompanying notes 95–102. This note deals specifically with Articles 2, 3, 4, 5, 6, and 8. Article 1 specifies that the Civil Aircraft Agreement covers:
   (a) all civil aircraft,
   (b) all civil aircraft engines and their parts and components,
   (c) all other parts, components, and sub-assemblies of civil aircraft,
   (d) all ground flight simulators and their parts and components,

   whether used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification or conversion of civil aircraft.

Civil Aircraft Agreement, supra note 2, at art. 1.

Article 7 prohibits encouragement of action by regional and local governments which would be inconsistent with the Civil Aircraft Agreement. Article 9 deals with the formalities of the entry into force of the Civil Aircraft Agreement. Id. at art. 9.
the manufacture, repair, maintenance, rebuilding, modification, or conversion of civil aircraft. Article 3 applies the GATT Agreement on Technical Barriers to Trade\(^8\) to trade in civil aircraft. Article 5 prohibits quantitative restrictions and licensing requirements applied to exports and imports in a manner inconsistent with applicable provisions of the GATT.

Article 4 addresses the problem of direct governmental influence on the purchase of large civil aircraft. Article 4 sets down the general policy that purchasers of civil aircraft should be free to select suppliers on the basis of commercial and technological factors.\(^8\) In pursuit of this policy, the signatories to the Civil Aircraft Agreement undertake certain obligations. First, the signatories agree not to require airlines, aircraft manufacturers, or other entities engaged in the purchase of civil aircraft to procure civil aircraft from any particular source. Signatories are also prohibited from exerting "unreasonable pressure" on manufacturers and purchasers to encourage particular sales.\(^8\) Second, the signatories agree that the purchase of products covered by the Civil Aircraft Agreement should be made only on competitive price, quality and delivery basis. Certain requirements for procurement contracts are stipulated.\(^8\) Third, the signatories agree to avoid attaching inducements of any kind to the sale or purchase of civil aircraft from any particular source which would discriminate against suppliers from any signatory.\(^8\)

All of the Article 4 obligations address U.S. (and thus Boeing's) concerns over the involvement of European governments in the promotion and sale of Al aircraft, by limiting the influence which governments can exert over potential purchasers of Al aircraft. The U.S. acting alone would not have been able to promulgate this policy through its own national laws.

Article 6 addresses the troublesome issue of the role governmental subsidies should be allowed to play in the industry.\(^8\) The first paragraph of Article 6 deals specifically with injuries to a signatory's civil aircraft industry caused by subsidies of another signatory.\(^8\) Yet Article 6 does contain some apparent weak-

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\(^8\) Agreement on Technical Barriers to Trade, Apr. 12, 1979, 31 U.S.T. 405, T.I.A.S. No. 9616.
\(^8\) Id. at art. 4.1.
\(^8\) Id. at art. 4.2.
\(^8\) Id. at art. 4.3.
\(^8\) Id. at art. 4.4.
\(^8\) See, for example, the preamble to the Civil Aircraft Agreement, where the signatories specifically noted their desire "to eliminate adverse effects on trade in civil aircraft resulting from governmental support in civil aircraft development, production, and marketing while recognizing that such governmental support, of itself, would not be deemed a distortion of trade." Civil Aircraft Agreement, supra note 2, at preamble.
\(^8\) Article 6.1 of the Civil Aircraft Agreement reads:

Signatories note that the provisions of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (Agreement on Subsidies and Countervailing Measures) apply to trade in civil aircraft. They affirm that in their participation in, or support of, civil aircraft programs they shall seek to avoid adverse effects on trade in civil aircraft in the sense of Articles 8.3 and 8.4 of the Agreement on Subsidies and Countervailing Measures. They also shall take into account the special factors which apply in the aircraft sector, in particular the widespread governmental support in this
nesses. The signatories accept no affirmative duty to avoid the distorting effects of government subsidies and similar support. The governments merely agree to "seek to avoid" such impacts. The lack of affirmative duty stands in contrast to the duties in other provisions of the Civil Aircraft Agreement. Furthermore, as stated in the Preamble, the signatories recognize that this is an industrial sector with a traditionally high level of governmental involvement, particularly in the financing of projects. Some governmental involvement in the civil aircraft industry appears to be permitted under Article 6 as a "special factor" for the signatories to take into account.

Article 6.2 of the Civil Aircraft Agreement addresses the issue of pricing aircraft under cost. If Boeing's allegations against Airbus are true, AI-supporting governments are in violation of Article 6.2 since the parties agree there that pricing of civil aircraft will be based on a reasonable expectation of recoupment of all costs. This is another policy goal which the U.S. could not have achieved through its own national laws alone. Only by international agreement could the U.S. achieve the prohibition of pricing under cost.

C. Review and Enforcement Under the Civil Aircraft Agreement

The changing nature of the large civil aircraft industry necessitates regular review of the Civil Aircraft Agreement's terms to ensure their adequacy in covering the major policy issues in this industry. Article 8 provides for this review by establishing a Committee on Trade in Civil Aircraft composed of representatives of all signatories. The Committee is required to meet at least annually to give the signatories an opportunity to review performance under the Civil Aircraft Agreement. Any signatory can request the Committee to review area, their international economic interests, and the desire of producers of all Signatories to participate in the expansion of the world civil aircraft market.

Id. at art. 6.1.

88. See, e.g., id. at art. 2.1 (eliminating customs duties), art. 4.2, (prohibition of unreasonable pressure on purchasers), art. 5.1 (prohibition of application of quantitative restrictions).

89. Article 6.2 of the Civil Aircraft Agreement reads as follows:

Signatories agree that pricing of civil aircraft should be based on a reasonable expectation of recoupment of all costs, including non-recurring program costs, identifiable and pro-rated costs of military research and development on aircraft, components, and systems that are subsequently applied to the production of such civil aircraft, average production costs, and financial costs.

Id. at art. 6.2.

90. Article 8 of the Civil Aircraft Agreement, gives the signatories a chance through the Committee to consult on any matters relating to the operation of this Agreement, including developments in the civil aircraft industry, to determine whether amendments are required to ensure continuance of free and undistorted trade, to examine any matter for which it has not been possible to find a satisfactory solution through bilateral consultations, and to carry out such responsibilities as are assigned to [the Committee] under this Agreement, or by the Signatories.

Id. at art. 8.
action by another signatory if such action adversely affects the former's "trade interests in civil aircraft manufacture, repair, maintenance, rebuilding, modification or conversion."91 The Committee is then required to convene within thirty days and to reach a resolution of the issues involved "as promptly as possible and in particular prior to final resolution of these issues elsewhere."92 The Committee may issue rulings and recommendations. The Committee's resolution does not prejudice the rights of the signatories under the GATT or multilateral instruments negotiated under the auspices of the GATT as these instruments affect trade in civil aircraft. In addition to these dispute resolution provisions, Article 8.8 applies the provisions of Articles XXII and XXIII of GATT and the provisions of the Understanding related to Notification, Consultation, Dispute Settlement and Surveillance to any disputes relating to matters covered by the Civil Aircraft Agreement.

As long as fierce competition between Boeing and AI continues, there is a significant benefit in having a permanent committee to examine performance of Agreement obligations. Either party can bring a complaint of a particular alleged violation to the Committee on Trade in Civil Aircraft. In its short history, the Committee has already served as a forum for negotiations on alleged treaty violations by Boeing's competitors.93 If a negotiated settlement cannot be reached or is unsuccessful, a signatory can always impose countervailing duties under GATT if the procedural requirements are met.94

D. The Commonline Agreement

The Civil Aircraft Agreement leaves a number of unanswered questions, such as the degree of subsidization which will be tolerated, allowable terms of financing, and the extent to which any governmental involvement in the sale of aircraft will be permitted. Further negotiations to answer these specific questions are necessary if the international regulatory framework is to continue to address the industry's current and future problems.

An example of this second tier of negotiations is the commonline agreement. The commonline entered into force in October, 1981 as an exchange of letters by France, the United Kingdom, the United States, and West Germany.95 The com-

91. Id. at art. 8.7.
92. Id.
93. Hearings, supra note 27, at 409. The Committee on Civil Aircraft has also been helpful as a forum for extending the scope of the Civil Aircraft Agreement. See, e.g., 20 U.S. Export Wk. (BNA) 180 (Nov. 1, 1983) (describing the Committee's recent work in extending the ban on duties to more items of aircraft equipment).
94. 19 U.S.C. §§ 1671–1677 (1982). U.S. procedures require, in part, a finding by the Secretary of the Treasury or other administering authority that a subsidy is being used in a product which is being imported into the U.S., and a finding by the International Trade Commission that the industry is materially injured, threatened with material injury, or materially retarded because of the imports. The Civil Aircraft Agreement requires that consultations among the Committee members be initiated if a signatory imposes countervailing duties without first seeking consultations with the other signatories. Civil Aircraft Agreement, supra note 2, at art. 8.6.
95. The information on the commonline terms found in the text is taken primarily from a copy of the U.S. letter sent to one of the European participants to the agreement. The reasons why the commonline agreement was never officially put into treaty form have to do with European Commu-
monline's scope was purposely limited to the particularly troublesome area of financing in order to provide the participating countries the opportunity to agree upon specific details of financing arrangements. Agreement was reached in the establishment of a minimum 12 percent interest rate for officially supported funds used in aircraft purchases. The parties also agreed to set a maximum ten-year repayment period for export credits.

The specific nature of these agreements complements the broad scope of the Civil Aircraft Agreement. Narrow agreements aid in defining the limits of the broader GATT treaty, thereby facilitating compliance with the Civil Aircraft Agreement. Specific international agreements such as the monline also bind nations to particular details of an industrial policy without a full-blown treaty under GATT. The entire membership of GATT need not become involved in an issue when only a handful of countries have something at stake. Narrowly focused multilateral agreements also permit the nations involved to accommodate as nearly as possible the interests of each participant, due to the small number of participating countries and the narrow scope of the issues involved.

The monline has yet to become, however, an institutionalized policy-making tool. The difficulties which the four countries encounter in modifying nity law. Since transportation policy is an exclusive area of competence of the Community, such an agreement, if it were in the form of a treaty, probably would have to be negotiated by the European Commission on behalf of the entire EEC.

96. Denominated in dollars.

97. The 10-year repayment period was a major concession to the United States. The United States wanted to extend this period, since the other countries find it difficult to meet such long repayment periods in their financing arrangements. This does seem to be a worthwhile concession, however, especially in light of the fact that the monline forced the European governments in certain cases to increase their interest rates by as much as 4.5 percentage points. See Agreement Nears on Export Subsidies, AVIATION WK. SPACE TECH., May 30, 1983, at 217.

98. In the area of financing particularly, where interest rates fluctuate continually, it is important that nations have appropriate policy-making tools to accommodate such change. To the author's knowledge, there have been no reported violations of the monline terms despite this absence of treaty formality.

99. There are a number of examples in the monline itself of such accommodation of interests of particular countries. The repayment of officially supported financing in Europe is traditionally spread over the entire life of the financing. The U.S. practice is to spread the repayment over only the later maturities of the financing. To accommodate this difference without necessitating change in these practices, the parties to the monline agreed to establish different ceilings on the permitted amount of officially supported fixed-interest rate financing for each aircraft purchased. The monline also allowed Germany and France to loan money at interest rates slightly below the basic rate of 12 percent, so the German and French Governments could use their respective currencies instead of the dollar as a component of their financing arrangements. Currencies other than the dollar were used to avoid the foreign exchange risks involved in foreign currency contracts.

100. Although the monline is a rather recent agreement and is not institutionalized, agreement dealing specifically with financing terms in the subsonic aircraft industry dates back to May 1975. At that time, the members of the OECD concluded what later became known as the Standstill Agreement. In their declaration of 1975, the members agreed that "for exports of subsonic aircraft and helicopters, they will not grant softer terms than their current practices." American and Foreign Practices in the Financing of Large Commercial Aircraft Sales: Hearing Before the Subcomm. on Trade of the House Comm. on Ways and Means, 95th Cong., 2d Sess. 67 (1978) (statement of John L. Moore, Jr.). The OECD members interpreted the Standstill Agreement to require terms not exceeding 90 percent financing and 10-year maturities. Twelve-year maturities were allowed in the case of leases. Id.
financing terms alone are some indication of this fact.\textsuperscript{101} Furthermore, countries involved in the large civil aircraft industry have yet to apply the narrow multilateral approach to issues other than financing. Nevertheless, the commonline agreement has proved to be a valuable tool in setting industrial policy on an issue extremely important in the civil aircraft industry.\textsuperscript{102}

**IV. Conclusion**

Fluctuations in the health of the world economy make it difficult to predict precisely future changes in the large civil aircraft industry.\textsuperscript{103} Some fundamental trends, however, are evident. The policies responsible for the great success of AI in the 1970s are no longer appropriate for the tight budgets of the 1980s. These budgetary restrictions imposed by the separate participating European governments have, in turn, adversely affected the unitary approach to competition against Boeing which AI's legal structure encouraged. European legislation on this matter would act to reinforce this unitary approach. Economic and structural difficulties within the Community itself and the simple divergence of interests among the member states, however, make such legislation unlikely in the near future. On the other hand, the formation of a European Export Bank does represent one possible compromise solution. Such an institution would allow the European manufacturers to compete against the Americans who are aided by the Export-Import Bank.

The fierce competition between AI and Boeing will continue to define the manufacturing side of the industry for some years to come. There will perhaps be some minor changes in the make-up of the competitors,\textsuperscript{104} but the major battle for

\textsuperscript{101} The four countries agreed to hold to the commonline terms until September 30, 1982. They also agreed to semi-annual review of these commonline terms. By that date, however, the parties were unable to reach agreement on modifications to the terms, and simply decided to extend the commonline to December 31, 1982. Mann, *U.S. Agrees to Lengthen Pact On Export Subsidies*, **AVIATION WK. SPACE TECH.**, Oct. 4, 1982, at 36. In January 1983, the four countries could not agree to modifications and, as an alternative, again extended the terms until the parties were able to discuss further modifications at a Paris meeting the following month. **AVIATION WK. SPACE TECH.**, Feb. 14, 1983, at 15. The Paris meeting produced no commonline modifications, so the parties extended the agreement’s deadline further to April 1983. *U.S., Airbus Nations Extend Subsidy Pact*, **AVIATION WK. SPACE TECH.**, Mar. 14, 1983, at 265. The parties ultimately extended the commonline without modification until September 1983. **AVIATION WK. SPACE TECH.**, July 11, 1983, at 13.

\textsuperscript{102} The fact that the four countries to the commonline have extended their agreement so many times is some indication of the value placed on this policy-making tool. In reference to the financing terms established in the commonline, Exim Bank president and chairman William H. Draper III said after the parties extended the commonline the first time, “Nobody wanted to just go to anarchy.” Mann, *U.S. Agrees to Lengthen Pact On Export Subsidies*, **AVIATION WK. SPACE TECH.**, Oct. 4, 1982, at 36.

\textsuperscript{103} The effect of these fluctuations is reflected in the debate over the need for a 150-seat aircraft. Both Airbus and Boeing have hesitantly made commitments in this area. See *N.Y. Times*, Nov. 28, 1983, at D1, col. 3 (city ed.); Putka, *Boeing Rise Bucks Market Trend on Buy Signal By Analysts Expecting Jet Replacement Orders*, **Wall St. J.**, Feb. 16, 1984, at col. 3.

\textsuperscript{104} The major new entrant will be the Japanese. They already contribute to about 15 percent of the Boeing 767. Mitsubishi Heavy Industries, Kawasaki Heavy Industries, Fuji Heavy Industries, and the Japan Aircraft Development Corp. have entered into an agreement with Boeing concerning the possible construction of an aircraft to compete with the A320 sometime in the late 1980's or early 1990's. *N.Y. Times*, Mar. 16, 1984, at D1, col. 1 (city ed.).
markets will be fought between these two enterprises. Despite, or perhaps because of, this competition, Airbus, Boeing, and their respective governments are realizing that their interests overlap in many significant policy areas. Both sides are coming to realize that competition's virtues are limited in an interdependent world.

With AI’s and Boeing’s interests no longer cleanly separated but inextricably intertwined, the manufacturers and their respective governments can no longer afford to ignore the international policy-making option for this industry. Purely national policies must be coordinated with each other to accommodate the growing international scope of this industry. Effective regulation, control, and productive cooperation in this industry require coherent international industrial policy.

Whether the broad treaty arrangement of the Civil Aircraft Agreement and the narrower multilateral agreements in this industry will be successful in enhancing cooperation and control in the industry remains to be seen. The arrangements currently in force lay a solid foundation for an international industrial policy in the large civil aircraft industry. They have addressed many of the industry’s problems of the past; participants hope they will prevent such problems in the future. If competition between AI and Boeing intensifies, expansion of the commonline concept of narrow multilateral agreements may be desirable to cover troublesome issues in the industry. Should the legal policy-making tools of treaties and other narrow bilateral and multilateral negotiations fail, the interested parties will then have to create and apply other legal tools for policy implementation. In any case, they will not be able to avoid the need in this industry for an international industrial policy.